EVERSHEDS

DATED: 8 December 2009

(1) DERBYSHIRE COUNTY COUNCIL AND DERBY CITY COUNCIL

(2) RESOURCE RECOVERY SOLUTIONS (DERBYSHIRE) LIMITED

PROJECT AGREEMENT

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relating to the Derbyshire and Derby City Long Term Waste Management Project

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CONTENTS

Clause		Page
	PART I - PRELIMINARY	7
1	DEFINITIONS	7
2	INTERPRETATION	89
	2A RESPONSIBILITY FOR RELATED PARTIES	91
3	COMMENCEMENT AND DURATION OF CONTRACT	91
4	WARRANTIES AND GENERAL OBLIGATIONS OF THE PARTIES	93
5	ADVISERS AND REPRESENTATIVES	96
6	DELIVERY OF INITIAL AND CHANGED PROJECT DOCUMENTS	98
	PART I - LAND ISSUES	99
7	NATURE OF LAND INTERESTS	99
	PART II - WORKS	105
8	PRINCIPAL OBLIGATIONS	105
9	NOT USED	106
10	NOT USED	106
11	NECESSARY CONSENTS	106
12	FOSSILS AND ANTIQUITIES	107
13	CONSTRUCTION CONTRACTOR AND OPERATING CONTRACTOR	108
14	DESIGN DEVELOPMENT	109
15	CHANGES TO THE WORKS DELIVERY PLAN AND THE WORKS PROGRAMME	111
16	CARRYING OUT OF THE WORKS	111
17	CDM REGULATIONS	113
18	MONITORING AND INSPECTION	114
19	COMPENSATION EVENTS	115
20	RELIEF EVENTS	117
21	CERTIFICATION OF COMPLETION OF COMMISSIONING AND COMPLETION OF THE WORKS AT THE NEW WASTE TREATMENT FACILITY	119
22	COMPLETION OF THE WORKS AT THE MINOR FACILITY A	122
23	COMPLETION OF WORKS AT MINOR FACILITIES B	122
24	DEPOSIT OF AND ACCESS TO AS BUILT DRAWINGS	122
	PART III THE SERVICES	124
25	PRINCIPAL OBLIGATIONS	124
26	ASSET REGISTER	129
27	MAINTENANCE	130
	PART IV - CHANGES TO THE WORKS OR SERVICES	133
28	CHANGES TO THE WORKS OR SERVICES	133
29	CHANGE IN LAW	140
	PART V - PAYMENT PROVISIONS	141
30	THE UNITARY CHARGE	141
31	VAT	143
32	REPORT AND INVOICING	144
33	CAPITAL CONTRIBUTION	147

34 INTEREST ON LATE PAYMENT 149
35 BENCHMARKING AND MARKET TESTING 149
36 REFINANCING 158
37 ROCS REGIME 162
38 BEST VALUE 162
PART VI PERFORMANCE AND MONITORING 165
39 PERFORMANCE MONITORING 165
40 AUDIT ACCESS 167
41 INSURANCE 167
42 SECURITY 179
43 HEALTH AND SAFETY 180
44 INTELLECTUAL PROPERTY 180
45 REGULAR MEETINGS OF THE COUNCILS AND CONTRACTOR 182
46 OPERATING MANUALS 182
47 CONTRACTOR'S RECORDS 183
48 ENVIRONMENTAL PROTECTION AND ANNUAL ENVIRONMENTAL REPORT 185
49 DATA PROTECTION 185
50 COUNCIL STEP IN 186
PART VII - EMPLOYEES 189
51 TRANSFER OF EMPLOYEES 189
52 PENSIONS 202
53 EMPLOYEES 205
PART VIII TERMINATION 207
54 DIRECT AGREEMENT 207
55 TERMINATION ON COUNCIL DEFAULT 207
56 COMPENSATION ON TERMINATION FOR COUNCIL DEFAULT 207
57 TERMINATION ON CONTRACTOR DEFAULT 209
58 COMPENSATION ON TERMINATION ON CONTRACTOR DEFAULT 212
59 TERMINATION ON FORCE MAJEURE 217
60 COMPENSATION ON TERMINATION FOR FORCE MAJEURE 218
61 TERMINATION ON CORRUPT GIFTS AND FRAUD 220
62 COMPENSATION ON TERMINATION ON CORRUPT GIFTS AND FRAUD 221
63 VOLUNTARY TERMINATION BY THE COUNCILS 221
64 COMPENSATION ON VOLUNTARY TERMINATION 222
65 TERMINATION BY THE COUNCILS FOR BREACH OF THE REFINANCING PROVISIONS 222
66 COMPENSATION ON TERMINATION FOR BREACH OF THE REFINANCING PROVISIONS 222
67 CALCULATION AND PAYMENT OF COMPENSATION ON EARLY TERMINATION 222
68 EXPIRY OF CONTRACT PERIOD 225
PART IX GENERAL 227
69 INDEMNITY 227
70 CONDUCT AND CONTROL OF CLAIMS 229
71 SET OFF 230
72 CHANGE OF CONTROL OF CONTRACTOR 231

73 ASSIGNMENT AND SUB-CONTRACTING 231
74 STATUTORY RESPONSIBILITIES 235
75 CONFIDENTIALITY 235
76 FREEDOM OF INFORMATION 238
77 PUBLIC RELATIONS AND PUBLICITY 239
78 DISPUTE RESOLUTION 240
79 WAIVER 243
80 SEVERABILITY 244
81 COUNTERPARTS 244
82 RELATIONSHIP OF THE PARTIES 244
83 NOTICES 244
84 ENTIRE AGREEMENT 245
85 LOCAL GOVERNMENT (CONTRACTS) ACT 1997 245
86 AMENDMENTS 246
87 THIRD PARTY RIGHTS 246
88 OWNERSHIP OF CONTRACT WASTE 246
89 COMPLAINTS 246
90 LAW OF CONTRACT AND JURISDICTION 246
91 QUALITY ASSURANCE 246
92 FINANCIAL ADJUSTMENTS 247

Schedules

1 Specification 248
APPENDIX A – JOB DESCRIPTION AND PERSON SPECIFICATION FOR THE WASTE MINIMISATION AND EDUCATION SUPPORT OFFICER 300
APPENDIX B - CONTRACTOR'S PROPOSALS CONTENTS 304
2 Contractor and Holdco 327
3 Payment Mechanism 329
4 Reporting 362
5 Construction Completion and Acceptance Tests 370
ANNEX 1 – ACCEPTANCE TESTS 373
ANNEX 2 – FIRING DIAGRAM 375
6 Change in Law - Contractor’s Share 376
7 Relevant Discharge Terms 377
8 Environmental Provisions 378
9 Review Procedure 398
10 Employee Information 407
PART 1 - FIRST EMPLOYEE LIST 407
PART 2 - PROPOSED WORKFORCE, REMUNERATION COSTS AND REORGANISATION COSTS 411
11 Insurance 415
PART 1 - REQUIRED INSURANCES 415
PART 2 - INSURANCE 423
PART 3 – ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE 430
PART 4 - ENDORSEMENTS 434
PART 5 - BROKER'S LETTER OF UNDERTAKING 437
PART 6 - INSURANCE PREMIUM RISK SHARING MECHANISM 442

12 Commercially Sensitive and Confidential Information 450
PART 1 - COMMERCIALLY SENSITIVE CONTRACTUAL PROVISIONS 450
PART 2 - COMMERCIALLY SENSITIVE MATERIAL 455
13 Waste Law List 465
14 Performance Mechanism 469
15 Project Documents and Finance Documents 481
PART 1 - PROJECT DOCUMENTS 481
PART 2 - INITIAL FINANCING AGREEMENTS 482
PART 3 - SUBORDINATED FINANCING AGREEMENTS 484
16 Minor Facilities Protocol 485
PART 1 - DEVELOPMENT OF MINOR FACILITIES B 485
PART 2 - HANDOVER OF MINOR FACILITIES 486
17 Waste Reception Protocol 487
18 Project Liaison Group 500
19 Not Used 503
20 Not Used 504
21 Unitary Charge Adjustment Protocol 505
22 Title Defects 512
23 Combined Heat and Power ('CHP') Protocol 518

Agreed Form documents:

1. Contractor's Proposals

2. Base Case

3. Councils' Asset Register

4. Knotweed Control Programme

5. Contractor Environmental Reports

6. Appointment of Atkins Limited by Derby City Council (including the letter amending it) dated 6 September 2006

7. The Atkins Report dated March 2007

8. Planning Permission (NWTF)

9. Environmental Permit (NWTF)

10. Glossop Development Plans

11. Northwood Development Plans

12. Raynesway Development Plans

13. Form of Warranty for the purposes of **paragraph 6.1.3** of **Schedule 16** (Minor Facilities Protocol)

14. Replies to Enquiries

15. Stonegravels Site Plan (1)

16. Stonegravels Site Plan (2)

17. Taylor Lane, Loscoe, Site Plan (1)

18. Raynesway Site Plan (1)

19. Sinfin Substation Plan

THIS CONTRACT is made on 8th December 2009

BETWEEN

(1) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, DE4 3AG and **DERBY CITY COUNCIL** of The Council House, Corporation Street, Derby DE1 2FS (together the "**Councils**"); and

(2) **RESOURCE RECOVERY SOLUTIONS (DERBYSHIRE) LIMITED** (Company registered number: 6835759) of Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire MK1 1BU (the "**Contractor**").

BACKGROUND

(A) The Councils are the waste disposal authorities for their respective administrative areas.

(B) The Councils have procured waste management facilities and associated services from the Contractor upon the terms of this Contract.

(C) This Contract is a certified contract for the purposes of the Local Government (Contracts) Act 1997.

OPERATIVE PROVISIONS

PART I - PRELIMINARY

1. **DEFINITIONS**

In this Contract the following expressions have the following meanings:

"1999 Act"	the Local Government Act 1999 (as amended by the 2007 Act);
"2007 Act"	the Local Government and Public Involvement in Health Act 2007;
"Acceptance Tests"	the technical and operational tests set out in **Schedule 5** (Acceptance Tests);
"Access to Information Legislation"	(a) the provisions of Part VA and Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information (Variation) Order 2006; (b) the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended by the Local Authorities (Executive Arrangements) (Access to Information) (Amendment) Regulations 2006; and (c) the Relevant Authorities (Standards Committees) Regulations 2001 as amended by the Relevant Authorities

(Standards Committees) Amendment) Regulations 2006;

"Acquired Rights Directive" the EC Acquired Rights Directive 77/187 as amended;

"ACT Facility" the advanced conversion technology process plant to form, or, following completion of the NWTF, forming part of the New Waste Treatment Facility;

"ACT Supply Agreement" the agreement entered into by the Construction Contractor and Energos Limited on or around the Amendment and Restatement Date, under which Energos Limited will design, manufacture, supply, install, test and commission an advanced conversion technology process plant as part of the New Waste Treatment Facility and grant the Construction Contractor and licence of certain Intellectual Property Rights;

"Actual Diversion Tonnage" has the meaning given to "ADT_y" in paragraph 5.3.1 of Schedule 3 (Payment Mechanism);

"Additional Permitted Borrowing" on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreement (as the same may from time to time be amended, whether or not with the approval of the Councils) in excess of the amount of principal scheduled under the Senior Financing Agreement at Financial Close to be outstanding at that date but only to the extent that:

(a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and

(b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under clause 11.4(c) of the Direct Agreement as it applies to such Additional Permitted Borrowing

and provided further that any such excess amount of principal which is:

(i) invested as part of any Qualifying Variation;

(ii) outstanding from time to time as a result of any drawing under the Senior Finance Agreements as entered into at the

Amendment and Restatement Date, disregarding any subsequent amendment; or

(iii) outstanding from time to time as a result of any amendment to the Senior Finance Agreements in respect of which the Councils have agreed that their liabilities on a termination may be increased pursuant to **clause 13.4.1**,

shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowings Limit" an amount equal to:

(a) 10% of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreement is reduced to 50% or less of the Original Senior Commitment; and thereafter

(b) the higher of:

(i) 5% of the Original Senior Commitment; and

(ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in (a) above;

"Additional Services" services introduced as a result of a change to the Services pursuant to **clause 28** (Changes to the Works or Services) and/or **clause 29** (Change in Law);

"Adjoining Owners" all owners and occupiers of any Adjoining Property;

"Adjoining Property" any land and/or property adjoining or in the neighbourhood of the Sites and each and every part thereof including all Conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;

"Adjudicator" the person selected in accordance with **clause 78** (Dispute Resolution) to consider a dispute referred to him;

"Adjusted Estimated Fair Value of the Contract" the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

(a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number);

(b) the Tender Costs; and

(c) amounts that the Councils are entitled to set off or deduct under **clause 71** (Set Off)

plus an amount equal to the aggregate of:

(d) all credit balances on any bank accounts held by or on behalf of the Contractor in connection with this Contract on the date that the Estimated Fair Value of the Contract is calculated;

(e) any insurance proceeds and other amounts owing to the Contractor (and which the Contractor in connection with this Contract is entitled to retain), to the extent not included in (d); and

(f) the Post Termination Service Amounts (if a negative number)

to the extent that :

(i) (d), (e) and (f) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and

(ii) the Councils have received such amounts under (d) and (e) in accordance with the Contract or such amounts are standing to the credit of the Joint Insurance Account;

"Adjusted Highest Compliant Tender Price" the Highest Compliant Tender Price less the aggregate of:

(a) any Post Termination Service Amounts paid to the Contractor to date;

(b) the Tender Costs; and

(c) amounts that the Councils are entitled to set off or deduct under **clause 71** (Set off),

plus an amount equal to the aggregate of:

(i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest priced Compliant Tender is received;

(ii) any insurance proceeds and other amounts owing to the Contractor, to the extent not included in (i) above; and

(iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

1. (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and

2. the Councils have received such amounts in accordance with this Contract;

"Adjustments" the sum of Monthly Adjustments and Annual Adjustments;

"Adverse Right" all (if any) rights of light and air and any other rights and easements whatever (including any rights and easements in respect of Conduits) and all (if any) other Restrictions enjoyed over any Site by any Adjoining Property or Adjoining Owners;

"Affiliate" in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and "holding company" and "subsidiary" shall have the meanings given to them in section 736 of the Companies Act 1985;

"Agent" Sumitomo Mitsui Banking Corporation Limited in its capacity as agent for the Senior Lenders under the Senior Financing Agreement;

"Agreed Form" in respect of any document means in the form agreed between the Parties for the purpose of

	this Contract and initialled by or on behalf of each of the Parties for the purpose of identification as at the Amendment and Restatement Date, unless the context otherwise requires;
"Amendment and Restatement Date"	
"Annual Adjustments"	adjustments to payment made at the end of each Contract Year dependent upon performance calculated in accordance with **paragraph 5** of **Schedule 3** (Payment Mechanism);
"Annual Payment Reconciliation Report"	the report to be provided in accordance with **paragraph 7.1.2** of **Schedule 4** (Reporting) following each anniversary of the Initial Services Commencement Date;
"Annual Performance Deductions"	Deductions arising as a result of Annual Performance Points calculated in accordance with **paragraph 5.2** of **Schedule 3** (Payment Mechanism);
"Annual Performance Points"	has the meaning given to it in **paragraph 13.2** of **Schedule 14** (Performance Mechanism);
"Annual Reconciliation Amount"	the amount calculated in accordance with **paragraph 3** of **Schedule 3** (Payment Mechanism);
"Annual Reports"	the Annual Service Report, Annual Payment Reconciliation Report and the Annual Service Plan;
"Annual Service Plan"	the report to be provided in accordance with **paragraph 7.1.3** of **Schedule 4** (Reporting) following each anniversary of the Initial Services Commencement Date;
"Annual Service Report"	the report to be provided in accordance with **paragraph 7.1.1** of **Schedule** 4 (Reporting) following each anniversary of the Initial Services Commencement Date;
"Annual Service Report Date"	28 February in each year of the Contract Period following the Initial Services Commencement Date;
"APB Distribution"	for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted

Borrowing on the first day of that period;

"Approved RDD Item" an item of Reviewable Design Data which has been returned or deemed to have been returned marked "no comment" or "proceed subject to amendment" under the Review Procedure;

"As Built Drawings" drawings, technical information, models, operation and maintenance manuals and technical information of a like nature to encompass the method of construction, manufacture, operation and maintenance of each element of the New Waste Treatment Facility, the Minor Facility A and/or Minor Facilities B (as applicable) in sufficient detail to allow a competent person to understand all material elements of the construction of the New Waste Treatment Facility, the Minor Facility A and/or Minor Facilities B (as applicable) and to maintain, dismantle, reassemble, adjust and operate all plant and equipment forming the same;

"Asset Register" the asset register maintained by the Contractor in accordance with **clause 26** (Asset Register);

"Assets" all assets and rights to enable the Councils or a successor contractor to own, operate and maintain the Project in accordance with this Contract, including:

(a) any land or buildings;

(b) any equipment;

(c) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);

(d) any spare parts, tools, and other assets (together with any warranties in respect of assets being transferred);

(e) any revenues and any other contractual rights; and

(f) any Intellectual Property Rights required to be made available in accordance with **clause 44** (Intellectual Property)

but excluding;

(i) any assets and rights in respect of which either of the Councils is the full

legal and beneficial owner;

(ii) any Third Party Transfer Station; and

(iii) any Landfill Site;

"Assigned Employees" all those persons employed by the Contractor or any relevant Sub-Contractor who are wholly or substantially engaged in the provision of the Services;

"Associated Company" in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include Holdco and each of the Shareholders;

"Available"

(a) in respect of the NWTF, a Completion Certificate has been issued and the NWTF meets the relevant Availability Criteria; and

(b) in respect of any other Facility, the Facility meets the relevant Availability Criteria;

and in each case **"Availability"** shall be construed accordingly;

"Availability Criteria" the availability criteria for each Facility set out in:

(a) **paragraph 4.11** of **Schedule 1** (Specification) in relation to each Delivery Point;

(b) **paragraph 6.6** of **Schedule 1** (Specification) in relation to each HWRC; and

(c) **paragraph 5.5** of **Schedule 1** (Specification) in relation to the NWTF;

"Background Information" all and any materials, documents, drawings, plans, surveys, models or other information relating in any way to the Project and/or the Sites and made available by the Councils or their agents to the Contractor in connection with the preparation of this Contract and during the process of competitive tender and in any subsequent period of negotiation prior to the date hereof including inter alia all such materials, documents, drawings, plans, surveys, models or other information provided in connection with pre-qualification for that

process;

"Base Case" the SPV financial model in the Agreed Form (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Unitary Charge;

"Base Case Equity IRR" the base case equity internal rate of return set out in the cell captioned "Base Case Equity IRR" on the Base Case Output Sheet;

"Base Case Output Sheet" the worksheet in the Base Case entitled 'Base Case Output Sheet';

"Base Case Project IRR" the rate of return identified as the nominal post tax project internal rate of return in the Base Case as at the Commencement Date;

"Base Senior Debt Termination Amount" subject to **clause 13.4** (Changes to Financing Agreements):

(a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and

(b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing) or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible;

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

(i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the

Termination Date;

(ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;

(iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing) or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and

(iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Councils to the Contractor as a result of enforcing any other rights they may have;

"Basic Design Proposals" the section of the Works Delivery Plan as at the date of the Agreement entitled "Basic Design Proposals";

"Benchmarked Services" means the HWRC Services;

"Benchmarking" means the process described in clause 35.3 (Benchmarking and Market Testing) to compare prices for the HWRC Services and the term "benchmarked" shall be construed accordingly;

"Benchmarking Exercise" has the meaning given in **clause 35.3.1** (Benchmarking and Market Testing);

"Beneficial Use" Contract Waste that is diverted from Landfill (as evidenced by a Defined Audit Trail) but does not qualify towards the Recycling Rate and **"Beneficially Used"** shall be construed accordingly;

"Best Available Technique" has the meaning given to it in EC Directive

or "BAT"	96/61;
"Best Value"	the obligation to continuously improve both the quality and cost of the Services pursuant to the provision of the Local Government Act 1999;
"Best Value Duty"	the duty imposed on the Councils by section 3 (1) of the 1999 Act in relation to, inter alia, the Services;
"Best Value Inspector"	an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the Councils' compliance with the Best Value Duty in accordance with section 10 of the 1999 Act;
"Best Value Service Change Notice"	has the meaning given to it in **clause 38.2.3** (Annual Service Report and Annual Service Plan);
"Biodegradable Municipal Waste or BMW"	has the meaning given to it in Section 21 of the Waste and Emissions Trading Act 2003;
"Bretby Site"	the Site known as Civic Amenity Site, Main Street, Newhall at Harrison Way, Matlock;
"Bulky Waste"	large items of solid Waste that will not fit into a 240 litre wheeled bin;
"Business Day"	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
"Capital Contribution"	has the meaning given in **clause 33.2**;
"Capital Expenditure"	any capital expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
"CDM Regulations"	the Construction (Design and Management) Regulations 2007 or any amendment to or replacement thereof;
"Certification Period"	the period in which the Certification Requirements must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
"Certification Requirements"	the certification requirements which have to be satisfied by the Councils with respect to this Contract for it to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
"CfD Allocation Plan"	the plan set out at schedule 9 of the interface agreement between (i) the Contractor, (ii) the

Construction Contractor and (iii) the Operating Contractor dated on or about the Amendment and Restatement Date;

"Change in Control"

(a) any change in the legal or beneficial ownership of the shares of the Contractor after the Amendment and Restatement Date (or the making of any contract or arrangement relating thereto) which results in any single person or group of persons acting in concert (as defined in the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers from time to time) acquiring Control of the Contractor;

(b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above of this definition of Change in Control

"Change in Costs"

in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or any Key Sub-contractors (without double counting), including, as relevant, the following:

(a) the reasonable costs of complying with the requirements of **clauses 19** (Compensation Events), 28.1 (Council Changes to the Works or Services), 29 (Change in Law), 50 (Council Step-In) and/or 92 (Financial Adjustments), including the reasonable costs of preparation of design and estimates;

(b) the costs of continued employment of, or making redundant, staff who are no longer required;

(c) the costs of employing additional staff;

(d) reasonable professional fees;

(e) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the

Unitary Charge;

(f) the effects of costs on implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;

(g) operating costs, or life cycle, maintenance or replacement costs;

(h) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Councils are responsible);

(i) the costs required to ensure continued compliance with the Finance Agreements;

(j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and

(k) Direct Losses or Indirect Losses, including reasonable legal expenses on an indemnity basis;

"Change in Law" the coming into effect after the Amendment and Restatement Date of:

(a) Legislation, other than any Legislation which on the Amendment and Restatement Date has been published

(i) in a draft Bill as part of a Government Departmental Consultation Paper;

(ii) in a Bill;

(iii) in a draft statutory instrument; or

(iv) as a proposal in the Official Journal of the European Union;

(b) any Guidance; or

(c) any applicable judgement of a relevant court of law which establishes or changes a binding precedent;

"Change in Revenue" in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor and/or any Sub-Contractor including:

(a) Third Party Income; and

(b) revenue under the ROCS Regime assumed to be received under the Base Case, in accordance with clause 37;

"Chesterfield Transfer Station" the Delivery Point provided in accordance with **paragraph 4.4.1.6** of **Schedule 1** (Specification);

"Clinical Waste" has the meaning given in paragraph 1(2) of the Controlled Waste Regulations 1992;

"Clover Nook Transfer Station" the Delivery Point that has been constructed by the Contractor at Clover Nook and is provided in accordance with **paragraph 4.4.1.5** of **Schedule 1** (Specification);

"Code" the Code of Practice Workforce Matters in Local Authority Service Contracts as currently contained in DCLG Circular 3/03 Annex D;

"Code Obligations" the express obligations of the Contractor in **clause 51.13** which will derive from the Code;

"Code of Practice on Refuse and Litter" the code of practice on refuse and litter as issued by the Secretary of State under section 89(7) of the Environmental Protection Act 1990, published November 2006, as amended from time to time;

"Commencement Date" 8 December 2009;

"Commercially Sensitive Information" the sub set of Confidential Information listed in column 1 of **Part 1** (Commercially Sensitive Contractual Provisions) and column 1 of **Part 2** (Commercially Sensitive Material) of **Schedule 12** (Commercially Sensitive and Confidential Information) in each case for the period specified in column 2 of **Parts 1** and **2** of **Schedule 12**;

"Community Sector the community sector integration plan set out

Integration Plan" in the Service Delivery Plan;

"Compensation Date" either:

(a) if **clause 58.2** (Retendering Procedure) applies, the earlier of:

(i) the date that the New Contract is entered into; and

(ii) the date on which the Councils pay the Adjusted Highest Compliant Tender Price to the Contractor; or

(b) if **clause 58.3** (No Retendering) applies, the date on which the Adjusted Estimated Fair Value of this Contract has been agreed or determined;

"Compensation Event"

(a) a breach by the Councils of any of their obligations or any warranty provided by the Councils under this Contract; or

(b) the occurrence of a title defect set out in **Schedule 22** (Title Matters); or

(c) the occurrence of any matter stated in this Contract to be deemed to be a Compensation Event;

"Completion" either:

(a) where **clause 21.3** (Turbine Delay) does not apply, all the applicable Acceptance Tests for the New Waste Treatment Facility have been passed;

(b) in the case of the Minor Facility A, that the Minor Facility A:

(i) complies with requirements set out in any relevant Necessary Consents and applicable Legislation such that it is lawfully able to receive Contract Waste;

(ii) has an operational, appropriately calibrated weighbridge and recording system sufficient to satisfy the recording requirements set out in the Specification;

and

(iii) has an operational reception hall, weighbridge, reception hall doors, and all other facilities necessary for the operation of the reception hall to enable the receipt, handling and onward transfer of Contract Waste; or

(c) where **clause 21.3** (Turbine Delay) applies, all the applicable Acceptance Tests for the NWTF have been passed except for the Turbine Acceptance Test;

(as applicable) and **"Complete"** and **"Completed"** shall be construed accordingly;

"Completion Certificate" either:

(a) the certificate issued by the Independent Certifier in accordance with the provisions of **clause 21** and the Independent Certifier's Appointment certifying Completion of the New Waste Treatment Facility; or

(b) a certificate issued by the Independent Certifier in accordance with the provisions of **clause 22** and the Independent Certifier's Appointment certifying Completion of the Minor Facility A,

as the context so requires;

"Completion Date" (a) in respect of either the New Waste Treatment Facility or the Minor Facility A, the date upon which it is stated in the Completion Certificate that Completion has occurred (it being acknowledged by the Parties that the Works in respect of the Clover Nook Transfer Station have as at the Amendment and Restatement Date been certified as Complete); or

(b) the date upon which a Completion Certificate is deemed to have been issued under **clause 21.2.9**;

"Compliant Tender" any tender submitted by a Compliant Tenderer that meets the Qualification Criteria notified under **clause 58.2.3**;

"Compliant Tenderer"	a tenderer who is a Suitable Substitute Contractor;
"Compost"	a stable, sanitised material high in humus substances produced by composting that satisfies the Government's definition as set out in Government guidance *"Advice to Local Authorities in England on Reporting Household Recycling from April 2011"* and *"GN30 Waste Data Flow Methodology for calculating the new national performance indicators (NI 191, 192 and 193)"* as at the Amendment and Restatement Date provided that the term "**Compost**" shall relate only to material derived from Contract Waste and "**Composted**" and "**Composting**" shall be interpreted accordingly;
"Compostable Waste"	discrete fractions of Household Waste deposited by members of the public at HWRCs which are separated by the Contractor at HWRCs in accordance with the Services Delivery Plan, and which can be Composted by composting facilities used by the Contractor for the Services;
"Conduits"	all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media appliances and apparatus including any fixtures, louvers, cowls and other ancillary apparatus;
"Confidential Information"	means: (a) information that ought to be considered as confidential information (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and (b) Commercially Sensitive Information;
"Consent"	in relation to any Adverse Right which would or might be interfered with by the carrying out of the Works, the consent (to the extent that such consent is required), in writing of all Adjoining Owners entitled to or interested in the Adverse

Right in question to either:

(a) the removal or diversion (whether temporarily or permanently) of the subject matter of the Adverse Right in question; or

(b) the carrying out of the Works notwithstanding such interference

such consent (in any such case) to be on terms previously approved in writing by the Councils' Authorised Officer (such approval not to be unreasonably withheld or delayed);

"Construction Contract" subject to clause 13 and **clause 73**, the building contract dated on or about the Amendment and Restatement Date between the Contractor and the Construction Contractor relating to the Works;

"Construction Contractor" Interserve Construction Limited (Company registration number 00303359) whose registered office is at 395 George Road, Erdington, Birmingham B23 7RZ or such other Construction Contractor as the Contractor may subject to **clause 13.3** (Direct Warranties) and **clause 73** (Assignment) appoint to carry out the Works;

"Construction Contractor Direct Agreement" the agreement described as such and dated on or about the Amendment and Restatement Date between the Construction Contractor and the Councils;

"Contingency Plan" the contingency plan produced by the Contractor in accordance with **paragraph 3.15** of **Schedule 1** (Specification);

"Contingent Funding Liabilities" the contingent or future liability to subscribe for equity or subordinated debt (if any) at the relevant time of:

(a) the Shareholders; and/or

(b) the Subordinated Lenders; and/or

(c) any other parties providing equity or subordinated debt,

owed under the Financing Agreements to the Contractor, Holdco and/or the Senior Lenders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities which are triggered as a result of or in relation to the

	termination of this Contract;
"Contract"	this Contract executed by the Parties and all of its Schedules;
"Contract Area"	the administrative areas of Derbyshire and Derby City;
"Contract Diversion Tonnage"	has the meaning given in **paragraph 1.4.1** of **Schedule 3** (Payment Mechanism);
"Contract Manager"	any person to whom the Councils' Authorised Officer delegates any of his powers in accordance with **clause 5.9** (Councils' Authorised Officer's Power to Delegate) or, in the absence of any such delegation, the Councils' Authorised Officer;
"Contract Period"	the period from the Commencement Date until the earlier of the Termination Date and the Expiry Date or the Extended Expiry date (as the case may be);
"Contract Target"	each of: (a) the HWRC Re-use, Recycling and Composting Target; (b) the NWTF Re-use, Recycling and Composting Target; (c) the NWTF Diversion Tonnage Target; and (d) the Contract Diversion Tonnage;
"Contract Transfer Station"	Project Transfer Stations and Third Party Transfer Stations;
"Contract Waste"	(a) Waste collected in the Contract Area by the WCAs as required by S.51 EPA 1990 and delivered to a Delivery Point; and (b) Household Waste deposited by the public at any of the HWRCs;
"Contract Year"	any period of twelve Months commencing on 1 April provided that: (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on 31 March 2010; and (b) the last Contract Year shall be the period commencing on 1 April prior to

the date on which this Contract expires or earlier terminates and ending on the date of such expiry or earlier termination;

"Contractor Default" any of the following events:

(a) a breach by the Contractor of any of its obligations under this Contract which materially or adversely affects the performance of the Services;

(b) a Persistent Breach (except in relation to the execution of the Works) occurs;

(c) a court makes an order that the Contractor or Holdco be wound up or a resolution for a voluntary winding up of the Contractor or Holdco is passed;

(d) any receiver or manager in respect of the Contractor or Holdco is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;

(e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of the Contractor or Holdco;

(f) an administration order is made or an administrator is appointed in respect of the Contractor or Holdco;

(g) NOT USED;

(h) a breach by the Contractor of its obligations in **clause 73.2.1** (Assignment) occurs;

(i) a breach of **clause 72.2** (Change of Control of Contractor) occurs;

(j) NOT USED;

(k) the abandonment of the Works by the Contractor for a continuous period in excess of 25 Business Days save that any cessation of the Works for a period in excess of 25 Business Days shall not constitute abandonment for the purposes of this sub-paragraph (k) where such cessation is caused by the replacement of the Construction

Contractor following the termination of the Construction Contract provided that the Contractor is using all reasonable endeavours to replace the Construction Contractor in accordance with **clause 73** (Assignment and Sub-Contracting);

(l) NOT USED;

(m) a failure to obtain a Completion Certificate for the NWTF by the NWTF Long Stop Date, or (where a Turbine Delay occurs) failure to achieve Turbine Completion by the Turbine Long Stop Date;

(n) subject to **paragraph 9.4** of **Schedule 14** (Performance Mechanism), the Monthly Performance Points in each of any three (3) Months of any period of six (6) Months exceeds 50,000 per Month or the total Performance Points in any period of twelve (12) Months exceeds 450,000;

(o) a failure to rectify a Performance Failure within the Remediation Period as defined in the relevant Rectification Notice issued by the Councils in accordance with **paragraph 12** (Long Stop Period) of **Schedule 14** (Performance Mechanism);

(p) in any Contract Year following the NWTF Completion Date, the Derby Transfer Station has been Unavailable to receive Contract Waste for a period of ninety (90) consecutive Business Days or more;

(q) in any Contract Year following the NWTF Completion Date, the New Waste Treatment Facility has been Unavailable for a total of one hundred and twenty (120) Business Days or more;

(r) in each of any two (2) consecutive Contract Years beginning after the NWTF Completion Date the Contractor has failed to achieve more than eighty two per cent (82%) of the NWTF Diversion Tonnage Target;

(s) in any twelve (12) month period following the NWTF Completion Date, a

Primary Delivery Point (other than the Derby Transfer Station) is Unavailable for a total period of six (6) months;

(t) subject to **clauses 41.17** and **41.18**, a breach by the Contractor of its obligation to take out and maintain Required Insurances;

(u) the Contractor committing a material breach of its obligations under this Contract (other than as a consequence of a breach by the Councils of their obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the Contractor or any Contractor Related Party as defined in paragraph (a) or (b) of that definition or the Councils under health and safety Legislation (an "H&S Conviction") provided that an H&S Conviction of a Contractor Related Party as defined in paragraph (a) or (b) of that definition or the Councils shall not constitute a Contractor Default, if, within ninety (90) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Contractor Related Party as defined in paragraph (a) or (b) of that definition (which in the case of an individual director, officer or employee shall be deemed to include the Contractor Related Party as defined in paragraph (a) or (b) of that definition of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Contractor in accordance with **clause 73.3** (Assignment and Sub contracting) provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Contractor Related Party as defined in paragraph (a) or (b) of that definition under this limb (u), the Councils shall:

(i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the

person committing it; and

(ii) give all due consideration, where appropriate, to action other than termination of this Contract,

and for the purposes of this limb (u), the criminal conviction of the Contractor or a Contractor Related Party shall not of itself constitute a material breach of the Contractor's obligations under this Contract;

"Contractor Notice of Change" has the meaning given in **clause 28.3.1**;

"Contractor Related Party"

(a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person;

(b) any Sub-Contractor or sub-contractor of the Contractor of any tier and any of their officers, servants or agents; and

(c) any person on or at a Site at the express or implied invitation of the Contractor

but excluding in each case the Councils, any Council Related Party and any WCA;

"Contractor's Employees" those employees of the Contractor or Sub-Contractors whose contracts of employment would be transferred to the Councils or any new contractor of the whole or part of the Services in consequence of termination or expiry of this Contract;

"Contractor's Project Director" the manager appointed by the Contractor to act as the Contractor's agent in connection with the provision of the Services pursuant to **clause 5** (Advisers and Representatives);

"Contractor's Proposals" the Contractor's proposals in the Agreed Form or otherwise comprised within any Approved RDD Items as amended from time to time in accordance with this Contract or otherwise with the consent of the Parties;

"Contractor's Share" the percentage figure corresponding to that part of the Cumulative Capital Expenditure at the relevant time, shown in the first column of the table set out in **Schedule 6** (Change in Law Contractor's Share);

"Control"

(a) the acquisition of 50% or more of the equity share capital in the Contractor;

(b) the acquisition of shares in the Contractor having the right to cast 50% or more of the votes capable of being cast in general meetings of the Contractor;

(c) the ability to determine the composition of the majority of the board of directors (or like body) of the Contractor; or

(d) control as defined in section 840 of the Taxes Act;

"Council Change"

a change in Works or Services which the Contractor is obliged to implement under **clause 28.1** (the Councils Change to the Works or Services);

"Council Default"

one of the following events:

(a) an expropriation, sequestration or requisition of the Assets and/or the shares of the Contractor and/or Holdco by the Councils or other Relevant Authority;

(b) a failure by the Councils to make payment of any amount of money equal to or exceeding two months' Monthly Payment (excluding Deductions) that is due and payable by the Councils under this Contract within 30 days of service of a formal written demand by the Contractor, where that amount fell due and payable two or more months prior to the date of service of the written demand;

(c) a breach by the Councils of their obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of three Months;

(d) a breach by the Councils of **clause 73.1** (Restrictions on Transfer of the Contract by the Councils) occurs; or

(e) a failure by the Councils to pay any part of the Capital Contribution in accordance with **clause 33.2** except

in circumstances where **clause 33.3** applies;

"Council Default Termination Sum"	the amount calculated in accordance with **clause 56**;
"Council Notice of Change"	the notice to be served by the Councils on the Contractor requiring a change in the Works or Services in accordance with **clause 28.1** (the Councils Change to the Works or Services);
"Council Related Party"	an officer, agent or employee of either of the Councils or any sub-contractor of any tier of either of the Councils acting in the course of his office or employment but excluding in each case the Contractor, any Contractor Related Party and any WCA (other than Derby City Council in its capacity as a WCA);
"Council Share"	the percentage figure corresponding to the amount of Cumulative Capital Expenditure at the relevant time, as set out in **Schedule 6** (Change in Law Contractor's Share);
"Councils' Asset Register"	the list of assets to be transferred from the Councils to the Contractor as at the Initial Services Commencement Date in the Agreed Form;
"Councils' Authorised Officer"	the person appointed as such in accordance with **clause 5.5** (Councils' Authorised Officer) or any replacement or deemed replacement person appointed pursuant to **clause 5.7**;
"Councils' Monthly Reply"	has the meaning given in **clause 32.2** (Councils' Authorised Officer to Reply by Issuing Council Monthly Reply);
"Cumulative Capital Expenditure"	the aggregate of: (a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect during the Service Period; and (b) the amount of all Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under **clause 29** (Change in Law);
"Customer Satisfaction Survey"	has the meaning given in **paragraph 3.4.3** of **Schedule 1** (Specification);
"Day"	each period of 24 hours from midnight to midnight;

"Deduction" any deduction from or reduction in the Unitary Charge made pursuant to **Schedule 3** (Payment Mechanism) resulting from the Contractor's failure to deliver the Service in accordance with the requirements of **Schedule 1** (Specification);

"Deemed New Contract" an agreement on the same terms and conditions as this Contract, as at the Termination Date, but with the following amendments:

(a) if this Contract is terminated prior to the NWTF Planned Completion Date then the NWTF Planned Completion Date shall be extended by a period to allow a new contractor to achieve NWTF Services Commencement;

(b) any accrued Performance/ Deductions and/or Unavailability Deductions, warning notices and/or default notices shall for the purposes of termination only, and without prejudice to the rights of the Councils to make financial deductions, be cancelled;

(c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date or the Extended Expiry date (as the case may be);

(d) in the event that any New Contractor Rectification Works are required (in relation to a Facility that has, at the Termination Date, had a Completion Certificate issued) to enable the New Contractor to provide the Services to the full specification and standards required by this Contract, then provided that the New Contractor complies with the New Contractor Rectification Plan the Councils shall not exercise their rights to terminate the Contract under **clause 57** (Termination on Contractor Default) by reason of any failure to achieve some or all of the Specification and/or standards required by this Contract during the New Contractor Rectification Period solely as a consequence of the New Contractor Rectification Works being required. Such provision shall for the avoidance of doubt not affect the Councils' entitlement to make adjustments

and/or Deductions in accordance with **Schedule 3** (Payment Mechanism) as a result of failure to achieve the Specification and/or standards required by this Contract during the New Contractor Rectification Period;

(e) (only if it is practically impossible to achieve 100% following the implementation of the Upgrade Plan) vary the level of default applicable for the purposes of paragraph (r) of the definition of Contractor Default to an amount 10% above the average at which the Contractor was performing in the two years prior to the Termination (or where Termination occurs within two years from the NWTF Completion Date, the average at which the Contractor was performing since the NWTF Completion Date);

"Default Interest" any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;

"Defined Audit Trail" the accounting audit or other documentary evidence (whether paper based or in readable electronic form) required by this Contract, Legislation or as reasonably specified by the Councils' Authorised Officer from time to time which shall be maintained by the Contractor and its Sub-Contractors for the purpose of evidencing that any of the following, as relevant:

(a) statement of accounts;

(b) income and expenditure account;

(c) balance sheet (being a record of assets and liabilities);

(d) record of receipt or payments (being an entry from day-to-day of all sums of money received and expended by the Contractor and the matters to which the income and expenditure or receipts and payments relate);

(e) record of income and expenditure of the Contractor in relation to claims made, or to be made, by them for contribution, grant or subsidy from any Minister of the Crown, a body to whom such a Minister may pay sums out of

moneys provided by Parliament or a European Union institution;

(f) additional information provided by way of notes to the accounts;

(g) Monthly Report;

(h) Annual Service Report;

(i) the Annual Environmental Report prepared in accordance with **Schedule 4** (Reporting);

(j) environmental monitoring data; and

(k) other information that the Contractor is obliged to provide in accordance with this Contract

is collected, collated, compiled, drafted, calculated and recorded (as applicable) as soon as reasonably practicable and as accurately as reasonably possible and is maintained in readily accessible form and complies with the terms of this Contract and all applicable Legislation and ISO 9000 standards;

"DEFRA" the Department of Environment, Food and Rural Affairs or any successor body from time to time;

"Delivery Point" any:

(a) Primary Delivery Point, or

(b) alternative location provided by the Contractor (either itself or through any sub-contractor or third party) for the purpose of receiving Contract Waste as required by **paragraph 4.4** of **Schedule 1** (Specification) and identified by the Contractor in the Contingency Plan;

"Delivery Point Availability Criteria" those availability criteria set out at **paragraph 4.11** of **Schedule 1** (Specification);

"Delivery Point Opening Hours" means those opening hours for each Delivery Point specified in **paragraph 4.6** of **Schedule 1** (Specification);

"Demonstrably Reasonable and Proper Costs" has the meaning given to it in **paragraph 1.6** of **Schedule 3** (Payment Mechanism);

"Derby Interim Transfer such Third Party Transfer Station as the Contractor may provide in order to meet the

Station"	requirements of **paragraph 4.4.1** of **Schedule 1** (Specification) as set out in the SDP, and from which the Contractor will deliver the Services from the Initial Services Commencement Date to the NWTF Planned Completion Date;
"Derby Transfer Station"	such transfer station as the Contractor may provide in order to meet the requirements of **paragraph 4.4.1** of **Schedule 1** (Specification) as set out in the SDP, and from which the Contractor will deliver the Services following the NWTF Planned Completion Date;
"Design Visibility Information" or "DVI"	shall have the meaning given to it in **paragraph 11** (Design Visibility Information) of **Schedule 9** (Review Procedure);
"Detailed Maintenance Plan"	has the meaning given in **clause 27.2** (Planned Maintenance);
"Direct Agreement"	the direct agreement dated on or about the Amendment and Restatement Date and to be made between the Councils, the Contractor and the Agent;
"Direct Losses"	all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law including those arising under or in connection with any of the Project Documents but, to avoid doubt, excluding Indirect Losses;
"Discriminatory Change in Law"	a Change in Law, the terms of which apply expressly to: (a) the Project and not to similar projects; and/or (b) the Contractor and not to other persons; and/or (c) PPP Contractors and not to other persons;
"Dispute"	has the meaning given in **clause 78** (Dispute Resolution);
"Dispute Resolution Procedure"	the procedure for the resolution of disputes set out in **clause 78** (Dispute Resolution);
"Distribution"	(a) whether in cash or in kind any: (i) dividend or other distribution

in respect of share capital;

(ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;

(iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);

(iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;

(v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

"Divert" Contract Waste diverted in accordance with paragraph 1.5.4 of the Specification and the terms **"Diversion"** and **"Diverted"** shall be construed accordingly;

"DPA" the Data Protection Act 1998;

"EEA" means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

"e-Gif" the technical policies and specifications governing information flows across government and the public sector;

"Eligible Employees" has the meaning given to it in **clause 52.1**

(Pension Benefits);

"Employee Liability Information"	the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE regarding any person employed by him who is assigned to an economic entity or is part of the organised grouping of resources of employees which is the subject of the Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE;
"Enabling Works"	the preparatory works required in relation to the Sinfin Site as identified in the Works Delivery Plan;
"Energos Licensed IPR"	the Intellectual Property Rights to be used in connection with the New Waste Treatment Facility which are to be licensed by Energos Limited to the Construction Contractor pursuant to the ACT Supply Agreement;
"Energos Technology"	the technology to be used at the New Waste Treatment Facility to be licensed by Energos Limited to the Construction Contractor pursuant to the ACT Supply Agreement;
"Energy Recovery"	heat, power and other energy recovered from Contract Waste (as evidenced by a Defined Audit Trail), such as the recovery of energy from Contract Waste by incineration or any other combustion process or by anaerobic digestion, but excluding methane recovery from Landfill;
"Entsorga Licensed IPR"	the Intellectual Property Rights to be used in connection with the New Waste Treatment Facility which are to be licensed by Entsorga Italia S.p.A. to the Construction Contractor pursuant to the MBT Supply Agreement;
"Entsorga Technology"	the technology to be used at the New Waste Treatment Facility to be licensed by Entsorga Italia S.p.A. to the Construction Contractor pursuant to the MBT Supply Agreement;
"Environment"	all or any of the media of air, water and land (wherever occurring) and living organisms (including man) or systems supported by those media and, in relation to the media of air and water, includes the air and water within buildings and the air and water within other natural or man made structures above or below or within ground;
"Environment Agency"	the Environment Agency of England and Wales or any successor from time to time;

"Environmental Information Regulations"	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Departments in relation to such Act;
"Environmental Management Systems"	BS EN ISO 14001, EMAS or such similar scheme;
"Environmental Permit"	a permit issued under the Environmental Permitting (England and Wales) Regulations 2007;
"EPA"	the Environmental Protection Act 1990;
"Equipment"	any equipment that is: (a) purchased, leased or taken on hire purchase or other similar arrangement by the Contractor and/or the Operating Contractor using, directly or indirectly, funds set aside for the purpose in the Base Case; and (b) wholly or mainly dedicated to the provision of the Services;
"Equity IRR"	the projected blended rate of return to the Relevant Persons over the full term of the Contract, having regard to Distributions made and projected to be made;
"Estimate"	has the meaning given in **clause 28**;
"Estimated Change in Project Costs"	in relation to a Relevant Event, the aggregate of any estimated increase in construction costs, operating costs, financing costs and reduced revenues (including any lost revenue under the ROCS Regime assumed to be received under the Base Case, in accordance with clause 37) and any costs incurred by the Contractor due to a failure by the Councils to pay the Capital Contribution in accordance with **clause 33** (Capital Contribution) as a result of the Relevant Event less the aggregate of any estimated reduction in construction costs, operating costs, financing costs and additional revenues (including any additional revenue under the ROCS Regime above that assumed to be received under the Base Case, in accordance with clause 37);
"Estimated Fair Value of the Contract"	the amount determined in accordance with **clause 58.3** (No Retendering Procedure)) that a third party would pay to the Councils as the market value of the Deemed New Contract;

"Exempt Information" any information which is exempt from disclosure pursuant to the provisions of the:

(a) FOIA; or

(b) the Environmental Information Regulations;

"Exempt Refinancing"

(a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge;

(b) a change in taxation or change in accounting treatment;

(c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are in respect of:

(i) breach of representations and warranties or undertakings;

(ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreement as at Financial Close;

(iii) late or non-provision of information, consents or licences;

(iv) amendments to Sub-Contracts;

(v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements);

(vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreement and/or amounts released from the Drawdown Account during the Availability Period, each as defined in the Senior Financing Agreement and

which are given as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Lenders to the Councils prior to being given;

(vii) changes to milestones for drawdown and/or amounts released from any Drawdown Account during the Availability Period set out in the Senior Financing Agreement and which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Lenders to the Councils prior to being given;

(viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreement; or

(ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreement;

(d) any amendment, variation or supplement of any agreement approved by the Councils as part of any Qualifying Variation under this Contract;

(e) any sale of shares in the Contractor or Holdco by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor or Holdco provided that this paragraph (e) shall, in respect of shares in Holdco, only apply for so

long as Holdco holds 100% of the issued share capital in the Contractor;

(f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or

(g) any Qualifying Bank Transaction

"Existing Employee" in relation to any service equivalent to any of the Services, all those persons employed by the existing contractors and/or sub-contractors of the Councils who are wholly or substantially engaged in the provision of that service immediately before the Service Transfer Date;

"Expiry Date" the date which is 25 years from the NWTF Planned Completion Date;

"Extended Expiry Date" has the meaning given to it in **clause 3.1.3.2**;

"Facility" a facility used in connection with the performance of the Services being the NWTF, the HWRCs, the Project Transfer Stations and any other facility or facilities which are to be or are constructed, adapted or adopted by the Contractor and/or any Sub-Contractor in accordance with the Overall Project Plan for the provision of the Services and/or pursuant to any change agreed or determined under **clause 28** (Changes to the Works or Services) or **clause 29** (Change in Law);

"Fair Value" the amount at which an asset or liability could be exchanged in an arms' length transaction between informed and willing parties, other than in a forced or liquidation sale;

"Fees Regulations" the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

"Final Employee List" has the meaning given to it in **clause 51.3.2** (Employment Costs);

"Final Warning Notice" a notice served by the Councils pursuant to the provisions of **clause 57.2.2**;

"Financial Close" has the meaning given to it in the Senior Financing Agreement;

"Financing Agreements"	all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Contractor or any of its Associated Companies relating to the rescheduling of their indebtedness or any Refinancing);
"Financing Default"	any event or condition which, with or without the giving of notice, entitles the Senior Lenders to terminate any facility or demand early repayment of any amount in accordance with the terms of the Senior Financing Agreement;
"First Employee List"	has the meaning given to it in **clause 51.3.1** (Employment Costs);
"Fly-Tipped Waste"	Waste deposited on land as anticipated by Section 33(1)(a) of the EPA of mass in excess of 500kg. excluding excess domestic refuse and bulky household waste that may be left out by a householder for collection by the domestic refuse collection service;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
"Force Majeure Event"	the occurrence after the Amendment and Restatement Date of: (a) war, civil war, armed conflict or terrorism; (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of, or breach of the obligations under this Contract, by the Contractor or its Sub-Contractors (except where such actions or breach of the Contractor constitute solely the receipt by the Contractor or any Sub-Contractor of Contract Waste that contains nuclear, chemical or biological contamination, in accordance with this Contract); (c) pressure waves caused by devices

	travelling at supersonic speeds; or
	which directly causes any Party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Contract;
"Force Majeure Termination Sum"	the amount calculated in accordance with **clause 60**;
"Future Service Provider"	each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Contract;
"General Change in Law"	a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;
"GHG Methodology"	a methodology for the measurement of Greenhouse Gas Emissions related to the services pursuant to **paragraph 3.3** of **Schedule 1** (Specification);
"Gilt A"	the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Base Case;
"Gilt B"	the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Base Case;
"Glossop Development Plans"	the plans for the development of the Glossop Transfer Station and HWRC Site in the Agreed Form;
"Glossop Transfer Station"	the Delivery Point at Melandra Road, Glossop provided in accordance with **paragraph 4.4.1.4** of **Schedule 1** (Specification);
"Good Industry Practice"	the exercise of that degree of skill, diligence, prudence and foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Contractor, the Construction Contractor, or the Operating Contractor (as the case may be) under the same or similar circumstances at the relevant time for such exercise;
"Greenhouse Gas Emissions"	has the meaning set out in the Greenhouse Gas Emissions Trading Scheme Regulations 2005;

"Guidance"	any applicable guidance or directions issued by a Relevant Authority with which the Contractor is, or (in the case of the Change in Law referred to in **clause 33.3** (Capital Contribution), the Councils are, bound to comply pursuant to Legal Requirements or expected to comply in accordance with Good Industry Practice;
"Handback Condition"	the condition of the Physical Assets had the Contractor complied with its obligations under **paragraph 3.1.7** of **Schedule 1** (Specification) and any other relevant obligations under this Contract;
"Handle"	receive, weigh, sort, tip, transfer, compact, treat, process, transport, Re-use, Compost, Recycle, Recover and Landfill (or otherwise dispose of), and "Handling" and "Handled" shall be construed accordingly;
"Hazardous Waste"	has the meaning given in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005;
"Health and Safety Management Scheme"	means OSH SAS 18001 or such similar scheme;
"Health and Safety Plan"	means the Contractor's plan to manage its obligations under the Health and Safety at Work etc Act 1974 as set out in the Contractor's Proposals;
"Highest Compliant Tender Price"	the price offered by the Compliant Tenderer (if any) with the highest tender price;
"Highway Authority"	has the meaning given in section 1 of the Highways Act 1980;
"Holding Company"	has the meaning given to it in Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989;
"Holdco"	Resource Recovery Solutions (Derbyshire) Holdings Limited (Registered number 06887587) whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU;
"Household Hazardous Waste"	Waste which is both: (a) Household Waste; and (b) Hazardous Waste;
"Household Waste"	has the meaning given in Section 75(5) and Section 89 of the EPA 1990 and Schedules 1

	and 2 of the Controlled Waste Regulations 1992;
"HWRC"	household waste recycling centres provided by the Councils pursuant to section 51 of the EPA, and managed by the Contractor pursuant to this Contract, being those sites located at: (a) Glossop; (b) Stonegravels (Chesterfield); (c) Loscoe; (d) Ilkeston; (e) Ashbourne; (f) Raynesway (g) Bolsover; (h) Northwood; and (i) Bretby as shown for identification edged red on the Site Plan for each of those Sites;
"HWRC Availability Criteria"	the Availability Criteria for the HWRCs as set out in **paragraph 6.6** of **Schedule 1** (Specification);
"HWRC Benchmarking Date"	has the meaning given in **clause 35.3.3** (Benchmarking and Market Testing);
"HWRC Benchmarking Final Proposals"	has the meaning given in **clause 35.3.6.3** (Benchmarking and Market Testing);
"HWRC Benchmarking Proposals"	has the meaning given in **clause 35.3.4.4** (Benchmarking and Market Testing);
"HWRC Benchmarking Schedule"	has the meaning given in **clause 35.3.5** (Benchmarking and Market Testing);
"HWRC Contractor"	H W Martin Waste Limited (company number 03843329) whose registered office is at Fordbridge Lane, Blackwell, Alfreton, Derbyshire, DE55 5JY, or such other operator of the HWRCs and Project Transfer Stations as the Operating Contractor may, subject to the terms of this Contract and the Operating Contract, appoint from time to time;
"HWRC Opening Hours"	means the HWRC opening hours as set out in **paragraph 6.5** of **Schedule 1** (Specification);

"HWRC Re-Use, Recycling and Composting Target"	the relevant target specified in **paragraph 6.2** of the Specification;
"HWRC Services"	the services to be provided by the Contractor at HWRCs in accordance with Service Output 4 contained in **paragraph 6** of **Schedule 1** (Specification);
"HWRC Services Review"	has the meaning given in **clause 35.3.4** (Benchmarking and Market Testing);
"HWRC Unavailability Rate"	the HWRC unavailability rate as set out in table 4.2.1 of **Schedule 3** (Payment Mechanism);
"Independent Certifier"	Fichtner Consulting Engineers Limited (Company registered number: 02605319);
"Independent Certifier's Appointment"	the appointment of the Independent Certifier between the Contractor and the Independent Certifier dated on or about the Amendment and Restatement Date;
"Independent Certifier's Collateral Warranty"	a collateral warranty in favour of the Councils issued by the Independent Certifier in the form set out in Schedule 5 of the Independent Certifier's Appointment together with such amendments as may be agreed with the Councils (such agreement not to be unreasonably withheld or delayed);
"Indexation Factor"	has the meaning given to it in **paragraph 6** of **Schedule 3** (Payment Mechanism);
"Indirect Losses"	loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature (including loss of profits which were not within the reasonable contemplation of the Parties at the Amendment and Restatement Date);
"Information"	has the meaning given under Section 84 of the Freedom of Information Act 2000;
"Initial Contribution Rate"	the initial contribution rate payable by the Contractor to either the LGPS or the Contractor Scheme or the Citrus Pension Scheme, as applicable at the point the Contractor begins to participate in the LGPS or the Contractor Scheme (as applicable) but which shall be no more than 10% of Eligible Employees' "pensionable pay" (where "pensionable pay" has the meaning ascribed to it in Regulation 4 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 (SI 2007/1166) or the formal governing documents of the Contractor

Scheme (as applicable));

"Initial Financing Agreement" the Financing Agreements entered into at or around the Amendment and Restatement Date as set out in **Part 2** of **Schedule 15**, together with such other documents agreed between the Parties to be Initial Financing Agreements on or prior to the Amendment and Restatement Date;

"Initial Services" the Services which the Contractor is obliged to provide prior to the NWTF Completion Date (including those services contemplated by **clause 25.9** (Extra Diversion));

"Initial Services Commencement Date" 1 April 2010;

"Initiatives Fund" the amount of the payment made by the Councils to the Contractor pursuant to **paragraph 1.7.1** (Strategic Partnering Services) of **Schedule 3** (Payment Mechanism);

"Insurance Term" any terms and/or conditions required to be included in a policy of insurance by **clause 41** and/or **Schedule 11** (Insurance), but excluding any risk;

"Insurance Undertaking" has the meaning given in the rules from time to time of the Financial Services Authority;

"Intellectual Property Rights" any and all patents, trade marks, service marks, copyright rights in a design, semi-conductor topography rights, know how, rights in confidential information, rights in databases and any other intellectual property rights having an equivalent or similar effect whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world;

"Interim Project Report" an interim project report which sets out the reasons for the Financing Default and the steps that the Contractor and the Senior Lender propose to take in relation to such default;

"Interserve Group"

(a) Interserve Developments No 4 Limited (company registration number 07659845) and any company which is its subsidiary, any holding company of Interserve Developments No 4 Limited (company registration number 07659845) or a subsidiary of such holding company; and/or

(b) the Interserve Trustees Limited

(registered number 183821) as trustee to the Interserve pension fund; and/or

(c) any unit trust, investment fund, partnership or other fund including any investor or potential investor therein or other entity of which any entity referred to in paragraph (a) of this definition is the general partner, trustee, principal manager or co-manager (either directly or indirectly) (an **"Interserve Related Fund"**); and/or

(d) any body corporate or other entity (whether or not having separate legal personality) in which the majority of voting or economic rights vests directly or indirectly in an Interserve Related Fund; and/or

(e) any general partner, nominee or trustee of any entity falling within paragraphs (a), (c) or (d) of this definition acting in such capacity (whether on a change of general partner, nominee or trustee or otherwise); and/or

(f) limited partners, members or investors in any Interserve Related Fund, but only to the extent that such holders become holders as a result of a transfer in specie to them which is a distribution on a winding up out of the assets of the trust fund or partnership in question; and/or

(g) any entity which holds shares for groups of employees or former employees of any entity referred to in paragraph (a) of this definition;

"Joint Insurance Account" the joint bank account in the names of each of the Councils and the Contractor, with Sumitomo Mitsui Banking Corporation Europe Limited having account number 325129;

"Joint Municipal Waste Management Strategy" the strategy published by the Councils from time to time and copied to the Contractor when it is updated;

"Key Financial Parameters" means Key Financial Parameters A and Key Financial Parameters B;

"Key Financial Parameters has the meaning given to it in paragraph 3.2.2 of Schedule 21 (Unitary Charge Adjustment

A"	Protocol)
"Key Financial Parameters B"	has the meaning given to it in paragraph 3.2.2 of Schedule 21 (Unitary Charge Adjustment Protocol)
"Key Performance Indicators or "KPIs""	the key performance indicators detailed in **Schedule 14** (Performance Mechanism);
"Key Sub-contractors"	the Construction Contractor and/or the Operating Contractor;
"Knotweed Control Programme"	the plan for remediating Japanese knotweed at the Sinfin Site in the Agreed Form;
"Landfill"	has the meaning attributed to it by section 65(1) of the Finance Act 1996;
"Landfill Adjustment"	has the meaning given to it in **paragraph 5.3** of **Schedule 3** (Payment Mechanism);
"Landfill Diversion"	Contract Waste diverted from Landfill such that it: (a) is Recycled; or (b) is Composted; or (c) satisfies the requirements for Energy Recovery as set out in BV82(c); and (d) does not attract Landfill Tax;
"Landfill Market Testing Date"	has the meaning given in **clause 35.4.1** (Benchmarking and Market Testing);
"Landfill Market Testing Proposals"	has the meaning given in **clause 35.4.2** (Benchmarking and Market Testing);
"Landfill Services"	the landfill services described in **paragraph 7** of **Schedule 1** (Specification);
"Landfill Services Proposal"	has the meaning given in **clause 35.4.16** (Benchmarking and Market Testing);
"Landfill Site"	any landfill site used by the Contractor as a Delivery Point or used for the purposes of delivering the Landfill Services from time to time;
"Landfill Tax"	has the meaning set out in section 39(1) of the Finance Act 1996 or any similar tax replacing the same;
"Latest Services Element"	the element within the Base Case as the costs of providing the Services in question (as such element may have been adjusted as a result of

being indexed or as a result of previous adjustments made pursuant to **clause 35** (Benchmarking and Market Testing);

"Laws" any applicable law, statute, statutory instrument, standards, law, proclamation, order, resolution, regulation, notice, judgement, determination, rule, by-law, directive, code of conduct or other instrument or requirement in each case as aforesaid having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by HM Parliament, the legislative making institutions of the European Union, any court, tribunal or other person or body exercising judicial functions or any Commission of Inquiry, local authority, statutory undertaker or Relevant Authority or any other body or person having such powers and any exercise of the Royal Prerogative;

"Lease" the leases between the Councils and the Contractor being:

(a) in respect of each Site other than the Sinfin Site and the Bretby Site, the leases dated on or around the Commencement Date;

(b) in respect of the Sinfin Site, the lease dated on or around the Amendment and Restatement Date; and

(c) in respect of the Bretby Site, the lease dated on or around the Amendment and Restatement Date;

"Lease Contracting Out Procedure" means the procedure set out in the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 or any revision to or replacement thereof to exclude sections 24-28 of the Landlord and Tenant Act 1954;

"Legal Requirements" the requirements of any present or future Laws;

"Legislation" any Act of Parliament or subordinate legislation within the meaning of section 21 (1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable Community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom or any part of it;

"Levy Exemption Certificates the legislative and regulatory regime

Regime" or "LECS Regime"	established by the Climate Change Levy (General) Regulations 2001, as amended from time to time;
"Liquid Market"	means that there are sufficient willing parties (being at least two parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to the Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;
"Litter"	shall have the meaning set out in the Code of Practice on Refuse and Litter;
"Local Transport Plan"	the Derbyshire Local Transport Plan as published by Derbyshire County Council and Derby Joint Local Transport Plan as published by Derby City Council, both as updated from time to time;
"Long Stop Date"	either: (a) the NWTF Long Stop Date; or (b) the Turbine Long Stop Date as the context so requires;
"Long Stop Period"	the period of time in relation to a particular Performance Failure set out in column 9 of table 1 of **Schedule 14** (Performance Mechanism);
"Losses"	all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgements, proceedings, internal costs or demands including those arising under or in connection with any Project Document;
"Market Tested Landfill Rate"	with effect from each Landfill Market Testing Date until the next Landfill Market Testing Date, the rate arising as set out in **clause 35.4.20**;

"Market Testing"	the process described in **clause 35** (Benchmarking and Market Testing) to competitively test prices for the Landfill Services and the term market tested shall be construed accordingly;
"Market Value Availability Deduction Amount"	for any Payment Period or part of a Payment Period, an amount equal to the Unavailability Deduction that was made in establishing the Monthly Payment in the Payment Period immediately preceding the Termination Date, less an amount equal to any Unavailability Deduction that was made for any of the NWTF, HWRC or Delivery Point which was Unavailable at the Termination Date but which has subsequently ceased to be Unavailable whether as a result of the Councils incurring Rectification Costs or otherwise;
"MBEAM Methodology"	the Mass Balance Estimator and Allowance Manager methodology developed by DEFRA;
"MBT"	the mechanical and biological bio-drying plant to form, or, following Completion of the NWTF, forming, part of the New Waste Treatment Facility;
"MBT Supply Agreement"	the agreement entered into by the Construction Contractor and Entsorga Italia S.p.A. on or around the Amendment and Restatement Date, under which Entsorga Italia S.p.A. will design and supply certain aspects of the MBT and grant the Construction Contractor a licence of certain Intellectual Property Rights;
"Minor Facility"	any of the HWRCs and/or Project Transfer Stations;
"Minor Facility A"	the Clover Nook Transfer Station which has been developed and is managed by the Contractor in accordance with this Contract;
"Minor Facility B"	the following Facilities which have been developed by the Councils and handed to the Contractor in accordance with **Schedule 16** (Minor Facilities Protocol): (a) the Northwood HWRC Site; and (b) the Glossop Transfer Station and HWRC;
"Month"	each of the 12 periods into which a Year is divided;
"Monthly Adjustment"	Unavailability Deductions, Monthly Performance

Adjustments and Tipping Away Payments;

"Monthly Report" a report in the form set out in **Schedule 4** (Reporting) supported in all cases by a Defined Audit Trail;

"Monthly Payment" the amount calculated in accordance with **paragraph 2** of **Schedule 3** (Payment Mechanism);

"Monthly Performance Adjustments" Deductions arising as a result of Monthly Performance Points established in accordance with **paragraph 4.3** of **Schedule 3** (Payment Mechanism);

"Monthly Performance Points" has the meaning given to it in **paragraph 13.1** of **Schedule 14** (Performance Mechanism);

"Necessary Consents" means all of the permissions, consents, approvals, certificates, permits, licenses and authorisations of a Relevant Authority required for the performance of any of the Contractor's obligations under this Contract;

"Net Present Value" the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"New Contract" an agreement on the same terms and conditions as this Contract at the Termination Date, but with the following amendments:

(a) if this Contract is terminated prior to the NWTF Planned Completion Date then the NWTF Planned Completion Date shall be extended by a period to allow a new contractor to achieve NWTF Services Commencement;

(b) any accrued Performance/ Deductions and/or Unavailability Deductions, warning notices and/or default notices shall for the purposes of termination only, and without prejudice to the rights of the Councils to make financial deductions, be cancelled;

(c) the term of such agreement shall be equal to the term from the Termination Date to the Expiry Date or the Extended Expiry date (as the case may be);

(d) the inclusion of a provision confirming

that in the event that any New Contractor Rectification Works are required (in relation to any Facility that has, at the Termination Date, had a Completion Certificate issued) to enable the New Contractor to achieve the full Specification and standards required by this Contract, then provided that the New Contractor complies with the New Contractor Rectification Plan for the New Contractor Rectification Period the Councils shall not exercise their rights to terminate the Contract under **clause 57** (Termination on Contractor Default) by reason of any failure to achieve some or all of the Specification and/or standards required by this Contract during the New Contractor Rectification Period solely as a consequence of the New Contractor Rectification Works being required. Such provision shall for the avoidance of doubt not affect the Councils' entitlement to make adjustments and/or Deductions in accordance with **Schedule 3** (Payment Mechanism) as a result of failure to achieve the Specification and/or standards required by this Contract during the New Contractor Rectification Period;

(e) (only if it is practically impossible to achieve 100% following the implementation of the Upgrade Plan) vary the level of default applicable for the purposes of paragraph (r) of the definition of Contractor Default to an amount 10% above the average at which the Contractor was performing in the two years prior to the Termination (or where Termination occurs within two years from the NWTF Completion Date, the average at which the Contractor was performing since the NWTF Completion Date);

(f) any other amendments which do not adversely affect the Contractor;

"New Contractor" the person who has entered or who will enter into the New Contract with the Councils;

"New Contractor Rectification Period" means such period as is reasonable in the circumstances from the date of the New Contract to allow the New Contractor to carry out the New Contractor Rectification Works as

	shall be agreed by the parties or in default of agreement determined pursuant to **clause 78** (Dispute Resolution);
"New Contractor Rectification Plan"	means the rectification plan to be implemented by the New Contractor setting out the New Contractor Rectification Works and timescales;
"New Contractor Rectification Works"	means such works (including new and rectification works) and implementation of such new systems as shall be required to enable the New Contractor to achieve the standards and targets set out in **Schedule 1** (Specification);
"New Employee"	those new employees employed by the Contractor to provide the Services who will be working alongside any Relevant Employee to whom the Code applies;
"New Waste Treatment Facility" or "NWTF"	the new waste treatment facility to be provided by the Contractor on the Sinfin Site in accordance with the provisions of this Contract;
"NNDR"	national non-domestic rates (or a successor or replacement thereof) as contained in the Local Government Finance Act 1988;
"Northwood Development Plans"	the plans for the development of the Northwood HWRC Site in the Agreed Form;
"Northwood HWRC Site"	the site acquired by the Councils pursuant to **paragraph 2** of **Schedule 16** (Minor Facilities Protocol);
"Notice Date"	the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the Parties pursuant to **clause 58.3** (No Retendering Procedure);
"Notifiable Financing"	any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the Contractor's or any Associated Company's ability to carry out any such arrangement;
"NWTF Availability Criteria"	the Availability Criteria for the NWTF set out in **paragraph 5.5** of **Schedule 1** (Specification);
"NWTF Completion Date"	the Completion Date of the New Waste Treatment Facility;
"NWTF Diversion Tonnage Target"	the target for NWTF Diversion as set out in **paragraph 5.1.1** of **Schedule 1**

(Specification);

"NWTF Long Stop Date" eighteen (18) months following the NWTF Planned Completion Date;

"NWTF Planned Completion Date" 31 March 2017 or such later date as may be determined under and in accordance with the terms of this Contract on which the Completion of the NWTF is planned to occur;

"NWTF Re-use, Recycling and Composting Target" has the meaning given to it in **paragraph 5.1.5** of **Schedule 1** (Specification);

"NWTF Residual Waste" Contract Waste, excluding:

(a) Contract Waste under limb (b) of that definition which is Recycled, Composted or Re-Used;

(b) Contract Waste that is directly delivered by or on behalf of the WCAs to a Landfill Site (except in circumstances where such Contract Waste is directly delivered to a Landfill Site in accordance with the Contingency Plan because the relevant Delivery Point is Unavailable); and

(c) Contract Waste deposited by the public at HWRCs which does not fall under limb (a) of this definition and which has been deemed to be unsuitable for processing at the NWTF by the 'two bin separation process' or its replacement described in the Services Delivery Plan;

"NWTF Services Commencement" the commencement of the Services at the New Waste Treatment Facility following the NWTF Completion Date;

"NWTF Services Period" the period from the NWTF Services Commencement to the earlier of:

(a) the Expiry Date or the Extended Expiry Date (as the case may be); and

(b) the Termination Date;

"NWTF Works Commencement Date" or such other date as may be:

(a) determined in accordance with **clauses 19** (Compensation Events) or **20** (Relief Events); or

	(b) agreed pursuant to **clause 59** (Termination on Force Majeure);
"Opening Hours"	either: (a) the Delivery Point Opening Hours; or (b) the HWRC Opening Hours as the context requires;
"Operating Contract"	subject to clause 13 and **clause 73**, the contract between the Contractor and the Operating Contractor (as amended by a deed of amendment and restatement dated on or around the Amendment and Restatement Date) relating to the provision by the Operating Contractor of certain services;
"Operating Contractor"	Shanks Waste Management Limited (company registration number 02393309 whose registered office is at Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire, MK1 1BU) or such other operating contractor as the Contractor may subject to **clause 13.3** (Direct Warranties) and **clause 73** (Assignment and Sub Contracting) appoint to carry out certain services;
"Operating Contractor Direct Agreement"	the agreement described as such and dated on or around the Amendment and Restatement Date between the Operating Contractor and the Councils;
"Operating Contractor Underlease"	an underlease in respect of each Site in the form annexed to the Lease for the relevant Site to be made between (1) the Contractor and (2) Shanks Waste Management Limited (Company Registration Number 02393309);
"Operating Manuals"	the operating manuals referred to in **clause 46** (Operating Manuals);
"Overall Project Plan"	the plan detailed in **paragraph 16** of **Appendix B** (Contractor's Proposals Contents) of **Schedule 1** (Specification);
"Original Senior Commitment"	the amount committed under the Senior Financing Agreement as at the Amendment and Restatement Date (as adjusted to take into account any Qualifying Variation);
"Outstanding Principal"	the principal amount outstanding at the Termination Date of each borrowing (other than borrowing under any equity bridge facility) under the Senior Financing Agreement;

"Partial Indexation Factor"	means the partial indexation factor set out in **paragraph 6** of **Schedule 3** (Payment Mechanism);
"Parties"	the Councils and the Contractor and "Party" shall mean either of them;
"Payment Mechanism"	a mechanism for payment as set out in **Schedule 3** (Payment Mechanism);
"Payment Period"	a Month during the period commencing on the Initial Services Commencement Date and ending on the earlier of: (a) the Expiry Date or the Extended Expiry date (as the case may be); and (b) the Termination Date (including any incomplete Month at the beginning or end of the aforementioned period);
"Performance Criteria"	the performance criteria set out in **Schedule 1** (Specification);
"Performance Deductions"	Annual Performance Deductions and/or Monthly Performance Adjustments;
"Performance Failure"	the failure by the Contractor to achieve a KPI as set out column 3 of table 1 of **Schedule 14** (Performance Mechanism);
"Performance Monitoring Programme"	has the meaning given to it in **paragraph 4.1** of **Schedule 14** (Performance Mechanism);
"Performance Monitoring Report"	has the meaning given to it in **paragraph 2** of **Schedule 4** (Reporting);
"Performance Points"	Annual Performance Points and Monthly Performance Points;
"Permit"	an Environmental Permit and in respect of the NWTF the Environmental Permit with reference EPR/KP3236HW;
"Permitted Borrowing"	without double counting, any: (a) advance to the Contractor under the Senior Financing Agreement provided that such advance is not made under any Committed Standby Facility; (b) Additional Permitted Borrowing; (c) advance to the Contractor under any Committed Standby Facility which is

made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Contractor incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and

(d) interest under the Senior Financing Agreement (disregarding any amendments that have not been approved for the purpose of **clause 6.4**, save in the case of Additional Permitted Borrowing) and, in respect of the original Senior Financing Agreement only (as entered into at the Amendment and Restatement Date, prior to any subsequent amendment), other amounts accrued or payable under the terms of such original Senior Financing Agreement,

except where the amount referred to in paragraphs (a) to (d) inclusive above is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

"Persistent Breach" a breach for which a Final Warning Notice has been issued which has continued for more than fourteen (14) days or recurred three (3) or more times within six (6) months after the date on which such Final Warning Notice is served on the Contractor;

"Personal Data" personal data as defined in the DPA which is supplied to the Contractor by the Councils or obtained by the Contractor in the course of performing the Services;

"PFI" means the Government's Private Finance Initiative or any similar or replacement initiative;

"Physical Assets" the assets falling within paragraphs (a), (b) and (d) of the definition of Assets, but excluding the ground upon which buildings and other structures stand;

"Physical Damage Policies" has the meaning given in **clause 41.15**;

"Planned Maintenance" the planned maintenance requirements described in **clause 27** (Maintenance) and the Detailed Maintenance Plan, as varied from time to time in accordance with this Contract;

"Planning Act" the Town and Country Planning Act 1990;

"Planning Authority" the relevant authority for the purposes of the Planning Act;

"Planning Permission"

(a) means any planning permission granted pursuant to any Planning Application for the Works and any subsequent planning permission granted for the Works being in every case detailed planning permission granted either by the Planning Authority, the Secretary of State or an inspector appointed by him for that purpose; and

(b) in the case of the NWTF, the planning consent granted pursuant to planning application (reference: DER/05/09/00571/PRI and appeal reference APP/C1055/A/10/2124772) in connection with the New Waste Treatment Facility together with any associated planning agreement;

"Post Termination Service Amount" for the purposes of **clause 58.2** (Retendering Procedure), for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Unitary Charge (excluding Deductions and Adjustments) which would have been payable in that Payment Period under this Contract had this Contract not been terminated, together with any Third Party Income modelled to be received during that Payment Period less an amount equal to the aggregate of:

(a) the Market Value Availability Deduction Amount for that month;

(b) the Rectification Costs incurred by the Councils in that month; and

(c) (where relevant) the amount by which the Post Termination Service Amount for the previous month was less than zero;

"PPP Contractors" a party to a contract in respect of which the following conditions are fulfilled:

(a) the consideration due under the contract is determined at least in part by reference to one or more of the following:

(i) the standards attained in the performance of a service, the provision of which is the principal purpose or one of the principal purposes for which the building, structure or facility is constructed;

(ii) the extent, rate or intensity of use of all or any part of the building, structure or facility in question; or

(iii) the right to operate any facility in connection with the building, structure or facility in question; and

(b) one of the parties to the contract is:

(i) a Minister of the Crown;

(ii) a department in respect of which appropriation accounts are required to be prepared under the Exchequer and Audit Departments Act 1866;

(iii) any public authority or body whose accounts are required to be examined and certified by or are open to the inspection of the Comptroller and Auditor General by virtue of an agreement entered into before the commencement date or by virtue of any enactment;

(iv) any authority or body listed in Schedule 4 to the National Audit Act 1983 (nationalised industries and other public authorities);

(v) a body whose accounts are subject to audit by auditors appointed by the Audit Commission;

(vi) the governing body or trustees of a voluntary school within the meaning of section 31 of the Education Act 1996 (county schools and voluntary schools), or

(vii) a company wholly owned by any of the bodies described in paragraphs (i) to (v).

"Pre Refinancing Equity IRR" the nominal post-tax (which for the avoidance of doubt shall mean post tax with respect to the Contractor, pre-tax with respect to Shareholders) Equity IRR calculated immediately prior to the Refinancing;

"Prescribed Rate" two per cent (2%) above the base rate from time to time of Barclays Bank plc;

"Price Base Date"

(a) 1 April 2011 for the purposes of the Payment Mechanism (save where expressly stated otherwise in **Schedule 3** (Payment Mechanism); and

(b) 1 April 2008 in respect of any thresholds or caps which are expressly stated as indexed in the remainder of this Contract;

"Primary Delivery Point" a location provided by the Contractor (either itself or through any sub-contractor or third party) for the purpose of receiving Contract Waste as required by **paragraph 4.4** of **Schedule 1** (Specification) and nominated as a Primary Delivery Point in the Service Delivery Plan or implemented as a Primary Delivery Point through the Review Procedure;

"Prohibited Act"

(a) offering, giving or agreeing to give any officer of or person employed by or on behalf of the Councils or any WCA in the Contract Area or any member of either of the Councils receives any gift or consideration of any kind as an inducement or reward:

(i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with either of the Councils or the Crown; or

(ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with either of the Councils or the Crown;

(b) entering into this Contract or any other

contract with either of the Councils or the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Councils;

(c) committing any offence:

(i) under the Bribery Act 2010;

(ii) under Legislation creating offences in respect of fraudulent acts;

(iii) at common law in respect of fraudulent acts in relation to the Contract or any other contract with the Councils or the Crown; and

(d) defrauding or attempting to defraud or conspiring to defraud the Councils or the Crown;

"Project Accounts" the accounts referred to in and required to be established under the Senior Financing Agreement;

"Project" the whole of the Works and the provision at and to or from the relevant waste management facilities of the Services by the Contractor;

"Project IRR" the project IRR set out in the cell captioned "Project IRR" on the Base Case Output Sheet;

"Project Documents" the agreements entered into or to be entered into on or before the Amendment and Restatement Date by the Contractor for the performance of its obligations under this Contract which are listed in **Part 1** of **Schedule 15**;

"Project Transfer Station" (a) the Clover Nook Transfer Station; and

(b) the Glossop Transfer Station;

"Proposed Workforce" has the meaning given to it in **clause 51.3.4.1** (Employment Costs);

"Protestor Action" any picketing, demonstration, blockade, embargo or other protestor action (other than

as a result of industrial action which affects only the employees of the Contractor or any Contractor Related Party as defined in paragraphs (a) or (b) of that definition) taking place at the Sinfin Site or directly affecting the Sinfin Site;

"Qualification Criteria" means the criteria that the Councils require tenderers to meet as part of the Tender Process, which (subject to compliance with the procurement regulations) shall be:

(a) the New Contract terms,

(b) tenderers demonstrating they have the financial ability to pay the capital sum tendered for the New Contract and the financial ability to deliver the Works and/or the Services (as appropriate) for the price tendered,

(c) the tenderers only bidding on the basis of a single capital payment to be made on the date of the New Contract,

(d) the tenderers (either itself or through the proposed sub-contractors) being experienced in providing the Works and/or Services or similar services,

(e) the technical solution being proposed by the tenderers is capable of delivery and the tenderers (either themselves or through the proposed sub-contractors) being technically capable of delivery of the Works and/or Services, and

any other tender criteria agreed by the Councils and the Contractor;

"Qualifying Bank Transaction"

(a) the syndication by a Senior Lender in the ordinary course of its business of any of its rights or interests in the Senior Financing Agreement;

(b) the grant by a Senior Lender of any rights of participation or the disposition by a Senior Lender of any of its rights or interests (other than as specified in paragraph (a) above) in respect of the Senior Financing Agreement in favour of:

(i) any other Senior Lender;

(ii) any institution which is

recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;

(iii) a local authority or public authority;

(iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time);

(v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);

(vi) an EEA or Swiss Insurance Undertaking;

(vii) a Regulated Collective Investment Scheme;

(viii) any Qualifying Institution; or

(ix) any other institution in respect of which the prior written consent of the Councils have been given;

(c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreement or the revenues or assets of the Contractor or Holdco whether by way

of security or otherwise, in favour of:

(i) any other Senior Lender;

(ii) any institution specified in paragraphs (b)(ii) to (vii) above;

(iii) any Qualifying Institution; or

(iv) any other institution in respect of which the prior written consent of the Councils have been given;

"Qualifying Change in Law"

(a) a Discriminatory Change in Law;

(b) a Specific Change in Law;

(c) a General Change in Law which:

(i) comes into effect after a period of three (3) years following the Amendment and Restatement Date and which involves Capital Expenditure in relation to the Works; or

(ii) comes into effect at any time and which involves Capital Expenditure in relation to the Services,

which was not foreseeable at the Amendment and Restatement Date;

(d) any change in the Renewables Obligation Certificate Regime or the Levy Exemption Certificates Regime, save in circumstances where the ACT Facility has not been accredited under the Renewables Obligation Certificate Regime and is no longer eligible for accreditation under the Renewables Obligation Certificate Regime

(e) changes to or revocation of any Environmental Permit (or the conditions thereof) arising from any cause other than the Contractor's act and/or omission except those acts and/or omissions resulting from the Contractor's obligations under this Contract; and/or

(f) a change made by the Environment

Agency (and evidenced in writing) to:

(i) any guidance in relation to; or

(ii) any explanation or interpretation of,

any Legislation or Guidance relating to a Permit or a Planning Permission, where the Contractor can demonstrate that it had, acting reasonably and in accordance with Good Industry Practice, relied upon such guidance, explanation or interpretation, except to the extent that such change arises as a result of the negligence of the Contractor or any Contractor Related Party or a breach of this Contract by the Contractor or a Contractor Related Party;

(g) any Legislation or Guidance coming into effect after the Amendment and Restatement Date, to the extent that it gives effect to any proposals or policies which are set out in any of the documents listed in **Schedule 13** (Waste Law List);

"Qualifying Institution" any person who is a 'Qualifying Lender' for the purposes of the Senior Facilities Agreement;

"Qualifying Refinancing" any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

"Qualifying Variation" either:

(a) a change in the Works and/or the Services in respect of which either a Council Notice of Change or a Contractor Notice of Change has been served and, in the case of:

(i) a Council Notice of Change, the Councils have confirmed the Estimate and, where the Contractor is not funding all or part of the required Capital Expenditure, the Councils have agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; or

(ii) a Contractor Notice of

Change, the change has been accepted by the Councils; or

(b) a Qualifying Change in Law

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in the Works and/or the Services or Qualifying Change in Law have become unconditional in all respects;

"Quality Manual" the quality manual in force from time to time reflecting a quality management system in relation to the Services or any aspect thereof provided in accordance with **clause 91.1.4**;

"Raynesway Development Plans" the plans for the development of the Raynesway HWRC Site in the Agreed Form;

"Real Base Case Project IRR" the real pre tax Project IRR;

"Recovery" a waste management operation with the principal objective of using waste materials to replace other materials that would have to be used for the purpose, thereby conserving natural resources and "Recovered" shall be construed accordingly;

"Rectification Costs" for the purposes of any Termination Date that occurs during the Service Period an amount equal to the reasonable and proper costs incurred by the Councils in a particular Payment Period or part of a Payment Period in ensuring that the Services are available;

"Rectification Notice" has the meaning given to it in **paragraph 12.2** of **Schedule 14** (Performance Mechanism);

"Rectification Period" the period of time within which the contractor must remedy a Performance Failure as set out in column 7 of table 1 **Schedule 14** (Performance Mechanism);

"Recyclable Materials" any materials collected separately or otherwise separated from Contract Waste for the purposes of Recycling or Composting, including the materials listed below:

(a) paper and cardboard;

(b) plastics;

(c) ferrous and non ferrous metals;

(d) textiles;

(e) glass;

(f) wood;

(g) organic kitchen and garden waste;

(h) tyres; and

(i) waste electrical equipment

or such other materials as shall be agreed in writing between the Parties from time to time;

"Recycling" the process of making Contract Waste re-usable (including by way of repair, refurbishment or re-manufacturing) or for reclaiming substances from it for the original purpose or for other purposes (but shall exclude use of Contract Waste for Composting, energy recovery or use as a fuel) as further defined in Government guidance "*Advice to Local Authorities in England on Reporting Household Recycling from April 2011*" and "*GN30 Waste Data Flow Methodology for calculating the new national performance indicators (NI 191, 192 and 193)*" as amended or replaced and "Recycle" (and derivatives of that term) shall be construed accordingly;

"Recycling and Composting Rates" the rates of Recycling of Contract Waste during the relevant period calculated in accordance with **Schedule 1** (Specification);

"Recycling and Composting Target" the applicable target for the Recycling, including Composting, of Contract Waste as set out in the Specification for the relevant Contract Year;

"Refinancing"

(a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);

(b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);

(c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreement (other than

any Subordinated Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Contractor whether by way of security or otherwise; or

(d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Contractor's ability to carry out any of (a) to (c) above;

"Refinancing Gain" an amount equal to the greater of zero and {(A B)-C}, where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of the Contract following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of the Contract following the Refinancing; and

C = any adjustment required to raise the Pre Refinancing Equity IRR to the Threshold Equity IRR;

"Regulated Collective Investment Scheme" has the meaning given in the rules from time to time of the Financial Services Authority;

"Reinstatement Plan" has the meaning given in **clause 41.15**;

"Reinstatement Works" has the meaning given in **clause 41.15**;

"Relevant Authority" any court or tribunal with the relevant jurisdiction and any local, national or supra national agency, local authority, inspectorate,

	minister, ministry, official or public or statutory person of the Government or Parliament of the United Kingdom (or any part of it) or of the European Union;
"Relevant Discharge Terms"	the terms referred to in **clause 85.3** and set out in **Schedule 7**;
"Relevant Employees"	the employees who are the subject of a Relevant Transfer;
"Relevant Event"	a Council Change, Qualifying Change in Law, Compensation Event, the occurrence of the Change in Law referred to in **clause 33.3** (Capital Contribution), or other matter as a result of which there may be an adjustment to the Unitary Charge, in accordance with **clause 92** (Financial Adjustments);
"Relevant Incident"	has the meaning given in **clause 41.15.3**;
"Relevant Person"	a Shareholder and any of its Affiliates;
"Relevant Proceeds"	has the meaning given in **clause 41.15.4.3**;
"Relevant Services"	re-use, recycling, landfill and transport of Waste, operation of plants or facilities the same as or similar to the NWTF, composting, handling, carriage, treatment, production of refuse derived fuel or solid recovered fuel, processing and disposal or other management of Waste, energy recovery or other forms of combustion process, transport and disposal of ash and the construction and maintenance of premises for any of the relevant services listed above;
"Relevant Transfer"	a relevant transfer for the purposes of TUPE;
"Relevant Transfer Date"	the date on which Relevant Employees transfer to the Contractor and/or one or more Sub-Contractor whether by virtue of any Relevant Transfers or deemed Relevant Transfers or otherwise;
"Relief Event"	(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion; (b) failure by any statutory undertaker, utility company, local authority (excluding the Councils acting in their capacity as WDA) or other like body to

carry out works or provide services;

(c) any accidental loss or damage to the Sites or the Works or any roads servicing them;

(d) any failure or shortage of power, fuel or transport;

(e) any blockade or embargo which does not constitute a Force Majeure Event;

(f) any official or unofficial strike, lockout, go slow or other dispute generally affecting any activity carried on by the waste management and disposal, haulage, construction or maintenance industries or a significant sector of any of those industries;

(g) subject to, demonstration by the Contractor that the Contractor has taken reasonable, proportionate and lawful measures to secure the Sinfin Site including where necessary cooperation with the emergency services, the occurrence of any Protestor Action;

(h) the delivery of munitions, hazardous materials or human remains during the Services Period to a Delivery Point or HWRC where the law or any relevant authority requires the relevant Delivery Point or HWRC to be closed;

(i) the discovery during and as a result of the undertaking of the Works at a Site of any unexploded bomb or ammunition;

(j) any extreme weather conditions which materially affect the Works or any part thereof;

(k) the discovery of fossils, antiquities or human remains requiring action in accordance with **clause 12** (Fossils and Antiquities);

(l) any act or omission of a WCA or the driver of a vehicle delivering Contract Waste to a Delivery Point on behalf of a WCA; or

(m) save in relation to the Sinfin Site, the exercise, establishment or assertion by

a third party of a right, title, interest, restriction, covenant or easement affecting the Contractor's right to occupy, use and/or access the whole or any part of any Site, save to the extent such right, title, interest, restriction, covenant or easement (or the matter giving rise to such right) is referred to in Schedule 22 (Title Defects),

unless any of the events listed in paragraphs (a) to (m) inclusive arise (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any of its sub contractors of any tier;

"Remediation Survey" a survey carried out in accordance with **clause 68.5** (Surveys on Termination);

"Remuneration Costs" has the meaning given to it in **clause 51.3.4.2** (Employment Costs);

"Renewables Obligation Certificates" tradeable certificates established under the Electricity Act 1989 and pursuant to the Renewables Obligations Order 2006;

"Renewables Obligation Certificates Regime" or "ROCS Regime" the legislative or regulatory regime providing for the issue of tradeable certificates established under the Electricity Act 1989 and pursuant to the Renewables Obligations Order 2006 and the Renewables Obligation Order 2009;

"Reorganisation Costs" has the meaning given to it in **clause 51.3.4.3** (Employment Costs);

"Repeated Failure" the deduction of Performance Points in relation to a Performance Failure where the Contractor has already been deducted Performance Points in relation to the same KPI and Performance Failure in the Repeated Failure Period;

"Repeated Failure Multiplier" the multiplier to be applied to any further Performance Points incurred by the Contractor (where the Contractor fails to rectify a Performance Failure within the relevant Rectification Period) as set out in column 2 of table 2 of **Schedule 14** (Performance Mechanism);

"Repeated Failure Period" has the meaning given to it in **paragraph 11.1** of **Schedule 14** (Performance Mechanism);

"Replies to Enquiries" the replies to enquiries for each Site in the

	Agreed Form;
"Reporting Failure"	has the meaning given to it in **paragraph 3.3** of **Schedule 14** (Performance Mechanism);
"Reporting Failure Deduction"	has the meaning given to it in **paragraph 6.2** of **Schedule 14** (Performance Mechanism);
"Reporting Frequency"	has the meaning given to it in Table 1 of **Schedule 14** (Performance Mechanism);
"Reprocessing"	the physical, chemical or biological treatment by which Recyclable Materials are processed so as to produce a marketable product, whether for the original purpose or other purposes. "Reprocessor" and "Reprocessed" shall be interpreted accordingly;
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);
"Required Action"	has the meaning given in **clause 50.1** (the Councils Step In);
"Required Insurances"	the insurances specified in **parts 1**, **2** and **3** of **Schedule 11** (Insurance);
"Resolution Period"	the period of time to which the Contractor is entitled to remedy a Performance Failure;
"Response"	a response issued by the Contractor pursuant to **clause 18.1.2**;
"Restrictions"	all matters (whether arising before or after the date of this Contract) affecting the New Waste Treatment Facility or its use registered or capable of registration as local land charges and all notices, charges, orders, resolutions, demands, proposals, requirements, regulations, restrictions, agreements, directions or other matters affecting the New Waste Treatment Facility or its use served or made by any local or other competent authority or otherwise arising under any statute or any regulation or instrument or order made under any statute;
"Restricted Share Transfer"	a transfer or disposal of shares held in the Contractor prior to the expiry of one (1) Year after the issue of the final Completion Certificate;
"Retail Prices Indexation Factor - Cumulative"	has the meaning given to it in **paragraph 6** of **Schedule 3** (Payment Mechanism);

"Retendering Information"	has the meaning given to it in **clause 51.14.1.1** (Retendering);
"Retention Fund Account"	has the meaning given in **clause 68.5.5**;
"Return Date"	the date agreed between the Parties on which the responsibility for provision of (or procuring the provision by Sub-Contractor of) the Services (or part thereof) is assumed by the Councils or a Future Service Provider. In the case of Expiry or Termination of this Contract, this shall be the date of Expiry or Termination;
"Returning Employees"	Assigned Employees wholly or mainly engaged in the provision of the Services as the case may be immediately before the Expiry or Termination of this Contract whose employment transfers to either of the Councils or a Future Service Provider pursuant to TUPE;
"Re-Use"	means to use for its original purpose Waste, which has been accepted by the Contractor at a Delivery Point or HWRC and weighed in accordance with **Schedule 1** (Specification), such that it is not processed for Recycling, Composting or Landfill Diversion or disposed to Landfill and **"Re-used"** and **"Re-using"** shall be construed accordingly;
"Revenue"	income of the Contractor to the extent the Contractor's income is less than an amount equal to the projected Unavoidable Fixed Costs and Senior Debt Service Costs of the Contractor;
"Review Procedure"	the procedure set out in **Schedule 9** (Review Procedure);
"Reviewable Design Data"	the plans, drawings, documents and information relating to the Works listed in **paragraph 10.1** of **Schedule 9** (Review Procedure);
"Revised Project Costs"	the adjustment to the Unitary charge calculated in accordance with the provisions of **clause 28** (Change in Works and Services);
"Revised Senior Debt Termination Amount"	subject to **clause 13.4** (Changes to Financing Agreements): (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted

Borrowing; and

(b) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or in the case of early termination or interest rate hedging arrangements only, as a result of termination of this Contract subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

(i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the Termination Date;

(ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;

(iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of a prepayment of amounts outstanding in respect of Permitted Borrowing or in the case of early termination of interest rate hedging arrangements only, as a result of the termination of this Contract;

(iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Councils to the Contractor as a result of

enforcing any other rights they may have; and

(v) all APB Distributions;

"RIDDOR" the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;

"ROCS/MWh" the number of Renewables Obligation Certificates issued for each megawatt hour of electricity generated by the ACT Facility;

"RPIx" the index published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) published by the Office for National Statistics;

"Rubble" rubble (including soil associated with rubble) deposited at HWRCs;

"Senior Debt Amount" the financing provided by the Senior Lenders under the Senior Financing Agreement;

"Senior Debt Service Costs" shall mean interest and debt service costs incurred in accordance with the Senior Financing Agreement less:

(a) sums which are in arrears

(b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Senior Financing Agreement;

"Senior Debt Rate" the non-default interest rate payable under the Senior Financing Agreement or such other lower rate as the Parties may agree in writing;

"Senior Financing Agreement" the facilities agreement entered into on or around the Amendment and Restatement Date between the Contractor and the Senior Lenders (as may be amended from time to time in accordance with and as permitted by this Contract);

"Senior Lender" a person providing finance to the Contractor under the Senior Financing Agreement;

"Services" the services to be provided by the Contractor to the Councils under this Contract to meet the Specification and, where the context permits, the term "Services" shall also include any Additional Services;

"Services Commencement" either:

(a) NWTF Services Commencement;

(b) the commencement of the Services at the Minor Facility A following the Completion Date for such Facility (it being acknowledged by the Parties that the Works at the Clover Nook Transfer Station have as at the Amendment and Restatement Date been certified as Complete); or

(c) commencement of the Initial Services on the Initial Services Commencement Date

as the context so requires;

"Services Delivery Plan" or "SDP" the plan as set out in the Contractor's Proposals which sets out the method of performing the Services and certain of the standards to which the Services must be performed in respect of the relevant Facilities;

"Services Period" the period specified in **clause 3.1.2**;

"Service Transfer Date" the date agreed between the Parties on which the responsibility for provision of (or procuring the provision by Sub-Contractors of) the Services in accordance with this Contract is assumed by the Contractor which should be the Initial Services Commencement Date;

"Service Users" a reasonably representative sample of those users who consume or benefit from the Services;

"Settlement Agreement" the settlement agreement dated 21 December 2009 between (1) Shanks Group plc, (2) Ecodeco s.r.l, (3) the Contractor, (4) United Utilities Waste Management Limited, and (5) Entsorga Italia s.r.l;

"Shareholder" any person from time to time holding share capital in the Contractor or Holdco;

"Sinfin Site" the Site abutting Sinfin Lane, Derby;

"Site" each of the areas edged red on the relevant Site Plan for each HWRC, each Project Transfer Station and the New Waste Treatment Facility;

"Site Conditions" the condition of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;

"Site Plan" the plan of each of the Sites attached to the relevant Lease;

"Small Works" any change to the Works (save in relation to the Entsorga and/or Energos processes or equipment) requested by the Councils having an individual cost not exceeding £1,000 (indexed), or as otherwise agreed from time to time, except for any request which will (if implemented):

(a) increase the likelihood of the Service not complying with the Performance Criteria;

(b) materially and adversely affect the Contractor's ability to perform its obligations under this Contract; or

(c) result in a significant loss of revenue;

"Specification" the specification setting out the Councils' requirements for the Works and Services set out at **Schedule 1** as may be amended from time to time in accordance with this Contract;

"Specific Change in Law" (a) any Change in Law which specifically refers to:

(i) the provision of works and/or services the same as or similar to the Works and/or any of the Relevant Services;

(ii) the holding of shares in companies whose main business is providing works and/or services the same as or similar to the Works and/or the Relevant Services and/or the construction, operation, or maintenance of EfW facilities;

(iii) the receipt, handling, transport, storage, sale, disposal (including disposal by any means of landfill or composting), processing, treatment, recycling of Waste the same or similar to Contract Waste or any product derived there from or recyclables or the facilities at which such activities are carried out;

(iv) the construction, operation and maintenance of premises for the provision of any service the same as or similar to any of the Relevant Services and/or the construction, operation and maintenance of EfW facilities;

(v) (in relation to the Entsorga Technology only) emissions from industrial or waste management facilities;

(b) any Change in Law which discriminates against the sale of electricity generated from an EfW facility; or

(c) any Change in Law which relates to the provision or trading of permits or allowances in relation to emissions of carbon dioxide or other gases (including the EU Emission Trading Scheme);

for the avoidance of doubt, any references to 'EfW facility' within limbs (a) to (c) above shall be deemed to include plants which produce a syngas from the thermal treatment of Waste;

"Specified Hazardous Waste" Hazardous Waste other than those items delivered to HWRCs and listed in **paragraph 6.10.3** of **Schedule 1** (Specification) but excluding Household Hazardous Waste;

"Staff" all employees or workers or self-employed persons used or employed by the Contractor and/or Sub-Contractors and used by the Contractor or Sub-Contractors from time to time in the performance of the Works and/or the Services;

"Street Cleansing Waste" means Waste collected by the WCAs during the undertaking of their street cleansing activities and delivered to the Delivery Points as Contract Waste;

"Sub Contracts" the contracts entered into between the Contractor and the Sub-Contractors for the purpose of carrying out the Works and/or Services or any part thereof;

"Sub-Contractors" any or, as the context requires, each of the counterparties to the Project Documents or any person engaged by the Contractor from time to time as may be permitted by this Contract to

procure the provision of the Works and/or the Services (or any part thereof) which for the avoidance of doubt shall include the Construction Contractor and the Operating Contractor;

"Sub-Contractor Breakage Costs" Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that:

(a) the Losses are incurred in connection with the Project and in respect of the provision of Services or the completion of Works, including:

(i) any materials or goods ordered or Sub Contracts placed that cannot be cancelled without such Losses being incurred;

(ii) any expenditure incurred in anticipation of the provision of Services or goods or the completion of Works in the future;

(iii) the cost of demobilisation including the cost of any relocation of equipment used in the Project; and

(iv) redundancy payments; and

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and

(c) the Contractor and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

"Sub-Contractor Direct Agreements" either of the Construction Contractor Direct Agreement, and the Operating Contractor Direct Agreement;

"Subordinated Debt" all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;

"Subordinated Financing the subordinated financing agreements as at Financial Close as set out in Part 3 of

Agreements"	**Schedule 15** as amended with the prior written approval of the Councils;
"Subordinated Lender"	a person providing finance under the Subordinated Financing Agreement;
"Subsidiary"	has the meaning given to it in section 736 Companies Act 1985 as amended by section 144 Companies Act 1989; but notwithstanding the provisions of **clause 2.1.6** this definition shall not be changed in event of any amendment after the date hereof to the definition of "subsidiary" contained in the Companies Act 1985 as amended by the Companies Act 1989, whether by any subordinate legislation or otherwise;
"Sub-Underlease"	a sub-underlease in respect of each Site (other than the Sinfin Site) in the form annexed to the Operating Contractor Underlease for the relevant Site to be made between (1) the Operating Contractor and (2) the HWRC Contractor;
"Sub Underlease Contracting Out Procedure"	means the procedure set out in the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 or any revision to or replacement thereof to exclude sections 24-28 of the Landlord and Tenant Act 1954;
"Successful Tenderer"	the Tenderer selected in accordance with **clause 35.4.12** (Benchmarking and Market Testing);
"Survey"	a survey carried out by the Councils pursuant to **clause 27.9** (Surveys);
"Suitable Substitute Contractor"	a person approved by the Councils (such approval not to be unreasonably withheld or delayed) as: (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Contract; and (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract;
"Tax"	any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any

	in force at the Commencement Date and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;
"Tender"	means the tender submitted by a Tenderer;
"Tender Costs"	the reasonable and proper costs of the Councils incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;
"Tender Documents"	has the meaning given in **clause 35** (Benchmarking and Market Testing);
"Tender Process"	the process by which the Councils request tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with **clause 58.2** (Retendering Procedure);
"Tender Process Monitor"	a third party appointed by the Contractor under **clause 58.2.5**;
"Tenderer"	means those of the prospective tenderers selected to submit Tenders in accordance with **clause 35** (Benchmarking and Market Testing);
"Termination Date"	any date of early termination of this Contract in accordance with any of **clause 55** (Termination on the Councils Default), **clause 57** (Termination on Contractor Default), **clause 59** (Termination on Force Majeure), **clause 61** (Termination on Corrupt Gifts and Fraud), **clause 63** (Voluntary Termination by the Councils) and **clause 65** (Termination by the Councils for Breach of the Refinancing Provisions);
"Termination Date Discount Rate"	a discount rate expressed as [(1 + Real Base Case Project IRR + Gilt B - Gilt A) * (1 + i) - 1] where: "real base case project IRR": is the real pre-tax Project IRR as set out in the Base Case "i": is the agreed assumed forecast rate of increase in the Inflation Index set out in the Contract for the remaining term of the Contract, which for

	the avoidance of doubt is equal to the Bank of England's prevailing long term inflation target "Gilt A": is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Base Case at Financial Close; and "Gilt B": is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the Base Case as at the Termination Date;
"Termination Notice"	has the meaning given pursuant to **clause 55.1**;
"Termination Sum"	any compensation payable by the Councils to the Contractor on an early termination of this Contract under Part VIII (Termination) (excluding the Adjusted Highest Compliant Tender Price);
"Third Party Income"	the net income derived from parties (other than the Councils) after offsetting any costs of deriving the same including income in respect of tradeable certificates pursuant to the regime established under the Electricity Act 1989 and the Renewables Obligation Order 2006 and the Renewables Obligation Order 2009;
"Third Party Transfer Station"	a transfer station which is nominated as a Delivery Point in accordance with **paragraph 4.4** of **Schedule 1** (Specification) by the Contractor and which is operated by a third party but which is not a Project Transfer Station;
"Third Party Waste"	Waste which is not Contract Waste;
"Threshold Equity IRR"	the threshold equity IRR set out in the cell captioned "Threshold Equity IRR" on the Base Case Output Sheet;
"Tipping Away Payment"	has the meaning given to it in **paragraph 4.4** of **Schedule 3** (Payment Mechanism);
"Tonne"	1,000 kilograms and "Tonnage" shall be construed accordingly;
"TPL Risk"	a risk which is required to be insured under the construction third party liability insurance, third

	party public and products liability insurance, environmental impairment liability insurance and/or contractors pollution liability insurance specified in **paragraph 3** of Part 1 of **Schedule 11** (Insurance), **paragraph 3** of Part 2 of **Schedule 11** (Insurance) and Part 3 of **Schedule 11** (Insurance);
"Transfer Amount"	the aggregate of the Transfer Values as at the Relevant Transfer Date of respectively those Eligible Employees who elect to transfer their benefits;
"Transfer Station Unavailability Rate"	the transfer station unavailability rate as set out in table 4.2.2 of **Schedule 3** (Payment Mechanism);
"Transport Plan"	the transport plan required to be included in the SDP as required by paragraph 6.4 of Appendix B of **Schedule 1** (Specification);
"TUPE"	the Transfer of Undertaking (Protection of Employment) Regulations 2006 (246/2006) and/or any other regulations enacted for the purposes of implementing the Acquired Rights Directive into English law;
"Turbine"	the turbine forming part of the NWTF;
"Turbine Acceptance Test"	test number 4 as set out in Annex 1 to **Schedule 5** (Acceptance Tests);
"Turbine Completion"	the Turbine Acceptance Test has been satisfied;
"Turbine Completion Date"	the date upon which Turbine Completion occurs;
"Turbine Delay"	has the meaning given to it in **clause 21.3.1** (Turbine Delay);
"Turbine Long Stop Date"	has the meaning given to it in **clause 21.3.2** (Turbine Delay);
"Unavailable"	means that an HWRC, the NWTF or a Delivery Point is not Available and **"Unavailability"** shall be construed accordingly;
"Unavailability Deductions"	amounts established in accordance with **paragraph 4.2** of **Schedule 3** (Payment Mechanism);
"Unavoidable Fixed Costs"	should mean the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:

(a) costs which could have reasonably been mitigated or avoided by the Contractor;

(b) payments which are not entirely at arm's length;

(c) payments to holders of equity in the Contractor, subordinated debt holders and any other financing costs other than Senior Debt Service Costs;

(d) Indirect Losses suffered or allegedly suffered by any person;

(e) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;

(f) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability;

(g) payments to the extent that the Contractor has available to it:

(i) reserves which the Contractor can draw upon without breaching the Senior Financing Agreement;

(ii) standby or contingent facilities or funds of senior debt or equity which the Contractor is entitled to have available;

(h) payments representing any profits of the Contractor (to the extent not already excluded in (e) above);

"Underlease Contracting Out Procedure" means the procedure set out in the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 or any revision to or replacement thereof to exclude sections 24-28 of the Landlord and Tenant Act 1954;

"Unilateral Notice" a unilateral notice within the meaning of the Land Registration Rules 2003;

"Uninsurable" in relation to a risk, either that:

(a) insurance is not available to the Contractor in respect of the Project in the worldwide insurance market with

reputable insurers of good standing in respect of that risk; or

(b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

"Unitary Charge" the fee notionally payable by the Councils as consideration for the delivery of the Services calculated in accordance with **paragraph 1** of **Schedule 3** (Payment Mechanism) on the basis of complete performance of the Services in accordance with the Specification and without allowing for over performance;

"Unsuitable" a person who persistently carries out his duties incompetently or negligently or persists in any conduct which is prejudicial to safety, health or the protection of the Environment and Unsuitability shall be construed accordingly;

"Upgrade" has the meaning given to it in **paragraph 6.1** of **Schedule 16** (Minor Facilities Protocol);

"Upgrade Plan" a rectification plan demonstrating how a new tenderer plans to upgrade the New Waste Treatment Facility and/or alter the method of service delivery to achieve a level of performance that is better than, equal to or as close to the diversion targets as reasonably practicable within the Upgrade Period;

"Upgrade Period" a period of time for a new contractor to implement the Upgrade Plan having regard to the Councils' objective of achieving that level of performance as soon as reasonably practicable;

"Utilities" the services of gas, water, electricity, telecommunications and sewerage;

"VAT" any value added taxes;

"Waste" has the meaning ascribed to it in Section 75 of the EPA;

"WasteDataFlow" the system of municipal waste data reporting by UK local authorities to central government;

"Waste Delivery Schedule" means the waste delivery schedule set out in the Services Delivery Plan;

"Waste Electrical And as defined in the Waste Electrical and

Electronic Equipment"	Electronic Equipment Regulations 2006 and **"WEEE"** and **"WEEE Regulations"** shall be construed accordingly;
"Waste Law List"	a list of Legislation which is agreed to be too uncertain to price at the date hereof set out at **Schedule 13** (Waste Law List);
"Waste Minimisation and Education Plan"	the activities, initiatives and objectives agreed between the Councils and the Contractor pursuant to **paragraph 8.2.2 Schedule 1** (Specification);
"Waste Minimisation and Education Services"	means the waste minimisation and education services to be provided by the Contractor pursuant to paragraph 8 of the Specification;
"Waste Reception Criteria"	means the waste reception criteria for the New Waste Treatment Facility set out in the Waste Reception Protocol;
"Waste Reception Protocol"	the waste reception protocol set out at **Schedule 17**;
"WCA"	each Waste Collection Authority (as defined by section 30(3) of the EPA) whose statutory collection duties fall within the Contract Area being as at the Amendment and Restatement Date, Derby City Council, Amber Valley Borough Council, Erewash Borough Council, the district of Bolsover, Chesterfield Borough Council, North East Derbyshire District Council, High Peak Borough Council, Derbyshire Dales District Council, South Derbyshire District Council (or any successor body or bodies in whom such statutory collection duties vest from time to time);
"WDA"	the Councils in their capacity as waste disposal authorities as defined by section 30(2) of the EPA;
"Works"	the works to be undertaken by the Contractor to construct and develop each of: (a) the Clover Nook Transfer Station; and (b) the NWTF, to meet the Specification and the requirements of this Contract (and including the works set out in the Works Delivery Plan);
"Works Commencement Date"	either: (a) the NWTF Works Commencement

Date; or

(b) the date set out in the Works Programme for commencement of the Works at the Minor Facility A (it being acknowledged by the Parties that the Works in respect of the Clover Nook Transfer Station have as at the Amendment and Restatement Date been certified as Complete),

as the context so requires or such other later date as may be agreed or determined under and in accordance with the terms of this Contract;

"Works Delivery Plan" or "WDP" the construction and development works plan for the NWTF and the Minor Facility A, and the method by which it is intended such construction and development shall be undertaken, such plan being set out in the Contractor's Proposals or otherwise comprised within any Approved RDD Items, as may be amended from time to time in accordance with this Contract (it being acknowledged by the Parties that the Works in respect of the Clover Nook Transfer Station have as at the Amendment and Restatement Date been certified as Complete);

"Works Programme" the agreed dates and timescales for the NWTF and the Minor Facility A within which the Contractor shall provide the Works, such programme set out in the Contractor's Proposals as updated from time to time in accordance with this Contract (it being acknowledged by the Parties that the Works in respect of the Clover Nook Transfer Station have as at the Amendment and Restatement Date been certified as Complete);

"Year" a calendar year; and

"1999 Act" the Local Government Act 1999.

2. **INTERPRETATION**

2.1 In this Contract, except where the context otherwise requires or expressly states:

2.1.1 the masculine includes the feminine and the neuter and vice versa;

2.1.2 the singular includes the plural and vice versa;

2.1.3 a reference in this Contract to any Clause, Sub Clause, paragraph, Schedule, Appendix or Annex is except where it is expressly stated to

the contrary, a reference to such Clause, Sub Clause, paragraph, Schedule, Appendix or Annex of this Contract;

2.1.4 save where stated to the contrary, reference to this Contract or to any other document shall include any permitted variation, amendment or supplements to such document;

2.1.5 a reference to a person includes firms, corporations and statutory bodies and their successors and permitted assignees or transferees;

2.1.6 references to any statute or statutory provisions (including any EU Instrument) shall, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provisions, or re-enacted in any such statute or provisions, and to any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments, or other subordinate legislation made under the relevant statute or statutory provisions;

2.1.7 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words unless inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply;

2.1.8 the list of contents and the headings to the clauses and parts of this Contract and to the paragraphs of the Schedules are for the ease of reference only and shall not affect the construction of this Contract;

2.1.9 the schedules and appendices hereof all form part of this Contract and will have the same force and effect as if expressly set out in the body of this Contract;

2.1.10 each Council shall each be jointly and severally liable for the obligations and liabilities of the other Council and itself arising under or in connection with the entering into, performance or non-performance of this Contract and the Direct Agreement by the Councils and the Contractor may take action against, or release or compromise the liability of either Council or grant time or any other indulgence to either Council without in each case affecting the liability of the other Council; and

2.1.11 where any sum is stated to be "indexed", subject to indexation or subject to RPI, then the said sum shall be multiplied by:

$$\frac{RPI_y}{RPI_0}$$

where RPIy is the value of RPIx most recently published prior to the relevant calculation date, and RPI0 is the value of RPIx published in January 2008 (and "indexation" shall be construed accordingly).

2.2 In the event of any inconsistency between the provisions of clauses 1 to 92 of this Contract and any part of any of the Schedules and/or the Contractor's

Proposals, the conflict will be resolved according to the following descending order of priority:

2.2.1 **clauses 1** to 92,

2.2.2 the Specification (**Schedule 1**) and the Payment Mechanism (**Schedule 3**) equally;

2.2.3 the remaining Schedules and the Basic Design Proposals equally; and

2.2.4 the Contractor's Proposals (excluding the Basic Design Proposals).

2.3 The Contractor's Proposals shall not in any case impose any obligation on the Councils.

2.4 All calculations shall be carried out without rounding. The final result of any calculation shall be rounded as follows:

2.4.1 where a monetary amount, to the nearest penny;

2.4.2 where a weight, to the nearest 10 kilograms; and

2.4.3 where a financial ratio or rate of return, to two decimal places.

2.5 This Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of paragraph 4 of the Construction Contracts (England and Wales) Exclusion order 1998 (being a project applying similar principles to those applicable to the UK Government's Private Finance Initiative). The Contractor acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the Parties' rights and obligations under this Contract.

2.6 Where there is a requirement for any consent or approval to be given by the Councils in this Contract, unless specifically stated otherwise, that consent shall not be unreasonably withheld or delayed.

2.7 Where there is a requirement for either Party to notify the other, that Party shall give notice to the other Party in accordance with **clause 83** (Notices).

2.8 If RPIx, the indices referred to in **paragraphs 6.4** or 6.5 of **Schedule 3** (Payment Mechanism) or any other index referred to in this Contract ceases to be published or is fundamentally changed, such other index as the Parties may agree shall be substituted for that index, or such adjustments to that index as the Parties may agree shall be made (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, if no such agreement is reached, the matter shall be determined in accordance with **clause 78** (Dispute Resolution Procedure).

2A RESPONSIBILITY FOR RELATED PARTIES

Subject to the provisions of this Contract, the Contractor shall be responsible to the Councils for acts and omissions of Contractor Related Parties as if they were acts or omissions of the Contractor and the Councils shall be responsible to the Contractor for acts and omissions of Council Related Parties as if they were acts or omissions of the Councils.

3. COMMENCEMENT AND DURATION OF CONTRACT

3.1 Duration of Contract

3.1.1 This Contract and the rights and obligations of the Parties to this Contract shall take effect on the Commencement Date.

3.1.2 The Services Period will commence on the Initial Services Commencement Date and terminate on the earlier of:

3.1.2.1 the Expiry Date (unless extended in accordance with **clause 3.1.3** below); or

3.1.2.2 the Termination Date.

3.1.3 The term of this Contract may be extended for an additional period to expire no later than 31 March 2045 in the circumstances and in accordance with the procedure set out in this **clause 3.1.3**:

3.1.3.1 not less than twelve (12) months before the Expiry Date the Contractor and the Councils shall meet to review:

(a) the performance of the Parties under this Contract and, in particular, the performance of the Contractor in delivering the Services;

(b) the waste management needs of the population within the Contract Area;

(c) the Councils' requirements for the Services; and

(d) whether it would be beneficial to the provision of waste management services to extend the Contract for any period to expire no later than 31 March 2045.

3.1.3.2 If the Contractor and the Councils both agree that it would be beneficial to the provision of waste management services in the Contract Area to extend the Contract, the Councils shall serve a written notice upon the Contractor at least six (6) months before the Expiry Date the effect of which shall be to extend the term of this Contract by the agreed period to expire no later than 31 March 2045 (the "**Extended Expiry Date**"). If either Party does not agree then this Contract shall expire on the Expiry Date.

3.2 Continuation of Obligations

3.2.1 The Termination of this Contract is without prejudice to the rights, duties and liabilities of the Parties accrued prior to termination.

3.2.2 The Termination of this Contract for any reason shall not affect this clause and **clause 30** (The Unitary Charge), **clause 32.12** (Final Reconciliation) **clause 40** (Audit Access), **clause 44** (Intellectual Property) **clause 47** (Contractor's Records), **clause 56** (Compensation on the Councils Default), **clause 57** (Compensation on Termination for Contractor Default), **clause 60** (Compensation on Termination for Force Majeure), **clause 62** (Compensation on Termination for Corrupt

Gifts and Fraud), **clause 64** (Compensation on Voluntary Termination), **clause 67** (Compensation on Termination for Breach of Refinancing Provisions), **clause 68** (Expiry of Contract Period), **clause 73** (Assignment and Sub Contracting), **clause 75** (Freedom of Information and Confidentiality), **clause 77** (Public Relations and Publicity), **clause 78** (Dispute Resolution), **clause 83** (Notices), **clause 85** (Relevant Discharge Terms) **clause 90** (Law of Contract and Jurisdiction) and **Schedule 3** (Payment Mechanism) which shall continue in force after such termination.

3.3 **Commencement of Works and Services**

3.3.1 The Contractor shall provide the Services in accordance with the Specification and the Services Delivery Plan for the Services Period.

3.3.2 The Contractor shall commence and complete the Works in accordance with the Specification, the Works Delivery Plan.

4. **WARRANTIES AND GENERAL OBLIGATIONS OF THE PARTIES**

4.1 **Status of Warranties**

4.1.1 All warranties, representations, covenants, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and, save as otherwise expressly provided none shall be given a limited construction by reference to any other.

4.1.2 The warranties by the Contractor under this Contract are given only at the date of this Contract or the Amendment and Restatement Date (as stated).

4.2 The Contractor warrants, represents and undertakes to the Councils that as at the Amendment and Restatement Date:

4.2.1 the legal and beneficial ownership of the Contractor and Holdco is as set out in **Schedule 2** (Contractor and Holdco) and that other than any Shareholder pre-emption rights, no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any of the shares in the Contractor or Holdco;

4.2.2 it is properly constituted and incorporated under the laws of England and Wales and has all necessary authority, power and capacity to enter into and perform this Contract and each of the Project Documents to which it is a party;

4.2.3 it has no Subsidiaries;

4.2.4 there are no material facts or circumstances in relation to the financial position or operational constitution of the Contractor which have not been fully and fairly disclosed to the Councils and which if disclosed might reasonably have been expected to affect the decision of the Councils to enter into this Contract; and

4.2.5 in entering this Contract it has not committed any Prohibited Act.

4.3 The Contractor shall, as soon as the same are obtained or entered into (as the case may be) provide evidence to the reasonable satisfaction of the Councils that it has duly and properly:

4.3.1 obtained all Necessary Consents to enable it to procure the design and construction of and to operate and to maintain the New Waste Treatment Facility in accordance with this Contract;

4.3.2 entered into a construction contract (other than the Construction Contract) and promptly provide a copy of each and any amendments thereto or replacements thereof to the Councils; and

4.3.3 entered into agreements (other than the Operating Contract) to procure the supply, installation, maintenance and operation of all plant and equipment which are material to the full operation of the New Waste Treatment Facility in accordance with the terms of this Contract and (save in respect of any documentation supplied under clause 4.3.2) promptly provide a complete copy of the same and any amendments thereto or replacements thereof to the Councils.

4.4 The Contractor shall provide the Councils' Authorised Officer, subject to any other supervening and unavoidable legal obligations, with the name, address, e mail address, facsimile and telephone number(s) and, if any, mobile telephone number(s) of all management or other specialist staff who are employed in a senior capacity by the Contractor and promptly update the Councils' Authorised Officer with any changes.

4.5 **Councils Liabilities to be excluded**

4.5.1 Subject to **clauses 4.6**, 4.7 and 7.7 and any other warranties given by the Councils and expressly set out in this Contract, the Councils do not give any warranty or undertaking or make any representation (either express or implied) as to the completeness, accuracy or fitness for any purpose of any of the Background Information or any omission in respect thereof;

4.5.2 Subject to **clause 4.6** the Councils and its agents or servants shall not be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation in any of the Background Information or any omission in respect thereof to the extent that the Contractor has failed to satisfy itself as to the nature and extent of the risks assumed by it in relation to the Project; and

4.5.3 Subject to **clause 4.6** nothing in this Contract or the Background Information or otherwise shall constitute or imply a warranty, undertaking or representation by or on the part of the Councils as to the fitness and suitability of the Sites or any part thereof for the Works, the Services or for any other purpose.

4.6 **Fraudulent statements**

Nothing in this **clause 4** shall exclude any liability which the Councils or any of its agents or servants would otherwise have to the Contractor in respect of any fraudulent misrepresentation made prior to the Amendment and Restatement Date.

4.7 **Councils Warranty**

The Councils warrant to the Contractor that:

4.7.1 they will comply with their obligations in each of the Project Documents to which they are a party; and

4.7.2 they have complied with their obligations contained in the Knotweed Control Programme prior to the Commencement Date, and will continue to comply with such programme prior to the Works Commencement Date.

4.8 **Contractor Due Diligence**

Subject to **clauses 4.6**, 4.7, 7.7, **12** and **Schedule 8** (Environmental Provisions) the Contractor shall be deemed to have:

4.8.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract; and

4.8.2 gathered all information necessary to perform its obligations under this Contract and other obligations assumed, including:

4.8.2.1 information as to the nature, location and condition of each Site (including hydrological, geological, hydrogeological, geo technical and sub surface conditions); and

4.8.2.2 information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures.

4.9 **Background Information**

Subject to **clauses 4.6**, 4.7, 7.7 and **Schedule 8**, the Contractor shall not in any way be relieved from any obligation under this Contract or be entitled to claim against the Councils on grounds that any Background Information, where obtained from the Councils or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

4.10 **Historic claims**

4.10.1 Each Party agrees and acknowledges that in respect of the period prior to the Amendment and Restatement Date:

4.10.1.1 they have not accrued any right to terminate this Contract,

4.10.1.2 they have not accrued any personal claims against the other Party pursuant to this Contract,

4.10.1.3 they are not aware of any claims asserted by any third party for which they may have a right of action against the other Party (other than claims which have been satisfied) pursuant to this Contract,

4.10.1.4 they shall not have any right to, or take any steps to, terminate this Contract in reliance on breaches of this Contract on the part of the Contractor in the period before the Amendment and Restatement Date; and

4.10.1.5 without prejudice to paragraph 3 (Annual Reconciliation Amount) of Schedule 3 (Payment Mechanism), neither Party has any accrued but not satisfied claim which is not inchoate against the other under this Contract.

4.10.2 The Councils confirm that there are no accrued warning notices or Final Warning Notices in respect of Persistent Breach as at the Amendment and Restatement Date.

5. ADVISERS AND REPRESENTATIVES

5.1 Contractor's Project Director

The Contractor shall appoint an individual to be the Contractor's Project Director throughout the Contract Period, the identity of whom from time to time shall be notified in writing to the Councils' Authorised Officer. The identity of the Contractor's Project Director shall be approved by the Councils' Authorised Officer, such approval not to be unreasonably withheld or delayed.

5.2 Authority of the Contractor's Project Director

The Contractor's Project Director shall have full authority to act on behalf of the Contractor for all purposes of this Contract save in respect of any matter arising relating to the termination or amendment of this Contract or the waiver of any right arising thereunder. The Councils shall be entitled to treat any act of the Contractor's Project Director in connection with this Contract as being expressly authorised by the Contractor (save for acts undertaken after the Contractor has notified the Councils' Authorised Officer that such authority has been revoked) and the Councils shall not be required to determine whether any such authority has in fact or in law been given.

5.3 Replacement of the Contractor's Project Director

The Contractor may remove or replace the Contractor's Project Director from time to time and must give written notice to the Councils' Authorised Officer promptly after so doing.

5.4 Absence of Appointment of the Contractor's Project Director

If at any time the Councils' Authorised Officer shall:

5.4.1 not have received notification from the Contractor of the identity of the Contractor's Project Director; or

5.4.2 have received notification from the Contractor that the Contractor's Project Director has been removed and does not immediately receive notification of the replacement of such person by the appointment of a new Contractor's Project Director (as appropriate),

the Contractor shall be deemed to have appointed and properly notified the Councils' Authorised Officer of the appointment as the Contractor's Project Director of the Managing Director of the Contractor and in default of appointment

of a Managing Director of the Contractor any other director of the Contractor until such time as the Contractor properly notifies the Councils' Authorised Officer of an appointment under **clause 5.1** (Contractor's Project Director).

5.5 **Councils' Authorised Officer**

The Councils shall appoint throughout the Contract Period an authorised officer (the **"Councils' Authorised Officer"**) to liaise with the Contractor's Project Director and shall keep the Contractor informed of the identity from time to time of the Councils' Authorised Officer.

5.6 **Removal of Councils' Authorised Officer**

The Councils may remove or replace the Councils' Authorised Officer from time to time and must give written notice to the Contractor promptly after so doing.

5.7 **Absence of Appointment of the Councils' Authorised Officer**

If at any time the Contractor shall:

5.7.1 not have received notification from the Councils of the identity of the Councils' Authorised Officer; or

5.7.2 have received notification from the Councils that the Councils' Authorised Officer has been removed and does not receive notification immediately of the replacement of such person by the appointment of a new Councils' Authorised Officer,

the Councils shall be deemed to have appointed and properly notified the Contractor of the appointment as Councils' Authorised Officer of the County Secretary of Derbyshire County Council from time to time to be the Councils' Authorised Officer until such time as the Councils properly notify the Contractor of the appointment of a replacement or alternative Councils' Authorised Officer in accordance with **clauses 5.5** or 5.6.

5.8 **Authority of Councils' Authorised Officer**

The Councils' Authorised Officer shall have full authority, save where any matter is expressly reserved to the Councils to act on behalf of the Councils in connection with this Contract and the Contractor and the Contractor's Project Director shall be entitled (subject to the saving words in this clause) to treat any act of the Councils' Authorised Officer as being expressly authorised by the Councils (save for acts undertaken after the Councils have notified the Contractor that such authority has been revoked) and the Contractor and the Contractor's Project Director shall not be required to determine whether any such authority has in fact or in law been given.

5.9 **Councils' Authorised Officer's Power to Delegate**

The Councils' Authorised Officer may from time to time delegate to any Contract Manager any of the powers he is entitled to exercise.

5.10 **Councils' Authorised Officer to give Notice of Appointment of Contract Manager**

The Councils' Authorised Officer shall give notice in writing to the Contractor of the appointment of any Contract Manager specifying the extent of the powers of

the Councils' Authorised Officer which the Councils' Authorised Officer is delegating to the Contract Manager and subject to **clause 5.8** (Authority of the Councils' Authorised Officer) if no extent or limit of powers are specified in the notice then the Contract Manager may exercise all of the powers which the Councils' Authorised Officer is able to delegate pursuant to **clause 5.9** (Councils' Authorised Officer's Power to Delegate).

5.11 **Reliance on Notice of Appointment**

The Contractor may treat any notice given pursuant to **clause 5.10** (Councils' Authorised Officer to give Notice of Appointment of Contract Manager) as conclusive evidence of the lawful appointment of such Contract Manager until such time as the Councils' Authorised Officer notifies the Contractor of the revocation of such appointment and the Contractor may treat any act of the Contract Manager prior to receipt of such notice of revocation as being expressly authorised by the Councils' Authorised Officer and further the Contractor shall not be required to determine whether any such authority has in fact or in law been given.

5.12 **Communications to be Given in Writing**

Subject to any express provisions in this Contract to the contrary, all instructions, decisions, opinions and other communications from the Councils' Authorised Officer and/or Contract Manager (as the case may be) to the Contractor or the Contractor's Project Director or from the Contractor or the Contractor's Project Director to the Councils' Authorised Officer and/or Contract Manager which are intended to have a binding effect on the Contractor or the Councils (as the case may be) shall be in writing or, if given orally, shall be confirmed in writing no later than the next Business Day.

5.13 **Conflict Between the Councils, Councils' Authorised Officer and Contract Manager**

5.13.1 Where the instructions of the Councils and those of the Councils' Authorised Officer or any appointed Contract Manager conflict, the matter shall be referred to the Councils for resolution, without prejudice to any action taken by the Contractor in reliance on any resolution, decision, opinion or other communication before the conflict becomes apparent.

5.13.2 Where the instructions of the Councils' Authorised Officer and those of any appointed Contract Manager conflict, the matter shall be referred to the Councils' Authorised Officer for resolution, without prejudice to any action taken by the Contractor in reliance on any resolution, decision, opinion or other communication before the conflict becomes apparent.

6. DELIVERY OF INITIAL AND CHANGED PROJECT DOCUMENTS

6.1 The Contractor has provided to the Councils copies of the Project Documents and of the Initial Financing Agreements.

6.2 Without prejudice to the provisions of **clauses 6.3** or 6.4 or to the definition of Senior Financing Agreement in **clause 1** (Definitions), if at any time an amendment is made to any Project Document or Financing Agreement (save for the Initial Financing Agreements), or the Contractor enters into a new Project Document or Financing Agreement (save for the Initial Financing Agreements),

(or any agreement which affects the interpretation of application of any Project Documents or Financing Agreement (save for the Initial Financing Agreements), the Contractor shall deliver to the Councils a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy of an officer of the Contractor.

6.3 The Contractor shall perform its obligations under, and observe all of the provisions of, the Project Documents and shall not:

6.3.1 terminate or agree to the termination of all or part of any Project Document;

6.3.2 make or agree to any material variation of any Project Document

6.3.3 in any material respect depart from its obligations, (or waive or allow to lapse any rights it may have in a material respect), or procure that any counterparty to a Project Document in any material respect departs from its obligations (or waives or allows to lapse any rights they may have in a material respect), under any Project Document; or

6.3.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Councils under the Review Procedure and the Contractor is entitled to implement such action in accordance with the terms of the Review Procedure provided, in the circumstances specified in **clause 6.3.1**, that the Contractor has complied with the provisions of **clause 73** (Assignment and Sub-Contracting). The Councils may only make objection on the grounds set out in the Review Procedure.

6.4 Without prejudice to the provisions of **clauses 6.1**, **6.2**, **12.5** and **32** the Contractor shall not, without the prior written consent of the Councils, enter into new Financing Agreements or terminate, amend, waive its rights or otherwise deal with its Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of the Contractor to perform its obligations under the Project Documents or this Contract.

PART I - LAND ISSUES

7. NATURE OF LAND INTERESTS

7.1 Grant of the Leases

7.1.1 The Parties acknowledge that on the Commencement Date the relevant Council granted to the Contractor and the Contractor accepted a Lease of each Site (other than the Sinfin Site and the Bretby Site) each of which commenced on the Initial Services Commencement Date.

7.1.2 On or before the Amendment and Restatement Date, the relevant Council shall grant and the Contractor shall accept, Leases of each of the Sinfin Site and the Bretby Site.

7.1.3 Each Lease has or will be granted subject to all matters affecting them including those mentioned in the Lease and the Site Conditions relating to them at the time.

7.1.4 The relevant Council and the Contractor shall comply with their respective obligations within each Lease.

7.2 **Underleases, Sub-underleases and/or Licences**

The Contractor has granted or will grant an Operating Contractor Underlease or a licence of each of the Sites to the Operating Contractor and acknowledges that the Operating Contractor has granted or shall procure that the Operating Contractor grants, a Sub-Underlease or licence of each of the Sites (other than the Sinfin Site) to the HWRC Contractor and, where applicable, the provisions of **clause 7.4** shall apply to the grant of such underleases and sub-underleases.

7.3 **Contracting-out**

7.3.1 The Councils and the Contractor have agreed to exclude the provisions of sections 24 to 28 Landlord and Tenant Act 1954 in relation to the tenancy to be created by each Lease of the Sites.

7.3.2 The Contractor confirms that on or before the Commencement Date in respect of each Site (other than the Sinfin Site and the Bretby Site):

7.3.2.1 the relevant Council served on the Contractor a notice (the **"Notice"**) dated 8 December 2009 in relation to the tenancy to be created by each Lease in a form complying with the requirements of Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

7.3.2.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Notice made a statutory declaration (the **"Declaration"**) dated 8 December 2009 in a form complying with the requirements of Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and

7.3.2.3 where the Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Declaration on the Contractor's behalf.

7.3.3 The Contractor confirms that on or before the Amendment and Restatement Date in respect of the Sinfin Site:

7.3.3.1 the relevant Council served on the Contractor a notice (the **"Sinfin Notice"**) dated on or about the Amendment and Restatement Date in relation to the tenancy to be created by the Lease of the Sinfin Site in a form complying with the requirements of Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

7.3.3.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Sinfin Notice made a

statutory declaration (the **"Sinfin Declaration"**) dated on or about the Amendment and Restatement Date in a form complying with the requirements of Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and

7.3.3.3 where the Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Declaration on the Contractor's behalf.

7.3.4 The Contractor confirms that on or before the Amendment and Restatement Date in respect of the Bretby Site:

7.3.4.1 the relevant Council served on the Contractor a notice (the "**Bretby Notice**") dated on or about the Amendment and Restatement Date in relation to the tenancy to be created by the Lease of the Bretby Site in a form complying with the requirements of Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

7.3.4.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Bretby Notice made a statutory declaration (the "**Bretby Declaration**") dated on or about the Amendment and Restatement Date in a form complying with the requirements of Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and

7.3.4.3 where the Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Declaration on the Contractor's behalf.

7.4 **Land Registry Applications**

7.4.1 The Contractor is not to send this Contract or any copy of it to the Land Registry and is not to protect the benefit of this Contract at the Land Registry except by the registration of a Unilateral Notice. The Councils agree not to object to the registration of a Unilateral Notice.

7.4.2 On the earlier of 10 Business Days of either the assignment of or the ending of this Contract (howsoever that may occur), or 20 Business Days of the date of the grant of a Lease in respect of a Site the Contractor shall submit to the Land Registry an application to withdraw any Unilateral Notice imposed on any title to that Site pursuant to an application by or on behalf of the Contractor and thereafter shall use all reasonable endeavours to procure the removal of any such Unilateral Notice from the title.

7.4.3 In the event that the Contractor fails to comply with its obligations in **clause 7.4.2** the Contractor hereby grants to the Councils a power of attorney to take all necessary actions to apply for and secure the removal of any Unilateral Notice imposed on any title to the relevant Site or Sites.

7.4.4 The Councils agree to provide such assistance as reasonably required by the Contractor to deal with any requisition raised by the Land Registry relating to the applications for registrations permitted by this Contract.

7.5 **Environmental Liabilities**

The Parties agree that from the Commencement Date until the earlier of the Expiry Date or the Extended Expiry Date (as the case may be) or earlier termination of this Contract the Parties shall comply with the provisions of **Schedule 8** (Environmental Provisions).

7.6 **Consents Of Adjoining Owners**

If the Works or any part thereof cannot be carried out without interfering with or affecting any Adverse Right the Contractor shall promptly and at its own expense obtain all Consents and shall pay such sums as may be required for the giving of such Consent and shall supply to the Councils a copy of every Consent obtained, provided that if to obtain such consents the Councils are required to enter into (where lawfully not prevented from doing so) a contract or any other document with the owner or beneficiary of the Adverse Rights it shall do so as soon as reasonably practicable provided that:

7.6.1 the contract or document and its contents shall be in such form as the Councils reasonably approve; and

7.6.2 that the Contractor indemnifies the Councils against all costs losses expenses and damages incurred by the Councils arising from the provisions of that contract or other document or the exercise of any rights conferred thereunder; and

7.6.3 the Contractor meets on an indemnity basis all costs incurred by the Councils in relation to the review, negotiation and completion of such contract or other document.

7.7 **Replies to Enquiries**

7.7.1 Subject to **clause 7.7.2** below, the Councils warrant to the Contractor that the Councils' Replies to Enquiries and the replies given in respect of the Certificate Questionnaires are correct (subject to the limitations set out therein).

7.7.2 To the extent that any of the Replies to Enquiries or the replies to Certificate Questionnaires referred to in **clause 7.7.1** above relate to the Clover Nook Site, and for as long as H W Martin Waste Limited (company number 03843329) is in occupation of the Clover Nook Site, the Contractor shall have no remedy in respect of any matter that is incorrect in those replies.

7.8 **Access Easement to Glossop Site**

The Councils will procure the grant of a deed of easement (including provisions to deal with any upgrade works required) in which a right of access and egress from and to the Glossop Site to the public highway (being the A57) over the route shown coloured brown on the Site Plan for the Glossop HWRC with all relevant landowners by 31 March 2015. It is acknowledged by the Councils that

any costs to be incurred under the terms of that deed of easement shall not fall to the Contractor to bear.

7.9 **NOT USED**

7.10 **NOT USED**

7.11 **NOT USED**

7.12 **Vacation of the Bretby Site**

If the Contractor is required at any time during the Contract Period to vacate the Bretby Site or is unable to carry out the relevant Services at the Bretby Site because the relevant Council does not have a sufficient interest in the Bretby Site to allow the Contractor to remain in occupation of the Bretby Site for that period and for the purposes required by this Contract, then the Councils shall serve (and shall not be entitled to withdraw) a Council Notice of Change on the Contractor requiring that the Services which relate to the Bretby Site:

7.12.1 are removed from this Contract; or

7.12.2 are to be carried out at another location in respect of which the Councils are entitled to grant the rights of occupation which the Contractor reasonably requires for this purpose; and

the Contractor shall not (subject to **clause 28.1.1**) be entitled to refuse the Council Notice of Change in accordance with **clause 28** of this Contract.

7.13 **Northwood**

The Councils shall procure that on or before the Amendment and Restatement Date, the equitable charge contained in an agreement dated 24 May 1993 made between (1) The Most Noble Charles John Robert Duke of Rutland CBE and Lord Edward John Francis Manners and (2) Derbyshire Dales District Council in relation to the Northwood Site noted at entry 5 of the Charges Register for Title Number DY395749 is released.

7.14 **Minor Facilities B**

Where the Councils fail to comply with their obligations in either **paragraphs** 2.1 and 3.1 of **Schedule 16** (Minor Facilities Protocol) prior to the Initial Services Commencement Date then in respect of the relevant Minor Facility B Site:

7.14.1 the Contractor shall:

7.14.1.1 not exercise or enforce its right of occupation of any such Site until the date when the Councils do comply with their obligations in either **paragraphs** 2.1 and 3.1 of **Schedule 16** (Minor Facilities Protocol) as relevant (the **"Possession Date"**);

7.14.1.2 permit the Councils to remain in occupation of the relevant Minor Facility B Site until the Possession Date; and

7.14.1.3 procure that the Operating Contractor and the Sub-Contractor shall not exercise or enforce its right of

occupation of any such Minor Facility B Site until the Possession Date.

7.14.2 the Councils shall indemnify the Contractor against all claims made against or losses suffered by the Contractor, the Operating Contractor or the HWRC Contractor in respect of any liability:

7.14.2.1 arising from such parties' obligations pursuant to the provisions of the Leases (or Operating Contractor Underlease or Sub-Underlease as appropriate) PROVIDED THAT the Contractor will remain obliged to comply with and this indemnity shall not extend to any liability arising from such parties' obligations under clauses 1, 2, 3, 6, 7, 11, 13, 14, 15, 16, 17 and 18 of the Leases of the Minor Facility B Sites or otherwise in relation to the Leases and without prejudice to any obligations of the Contractor arising under this Contract irrespective of whether or not the relevant Leases have been granted and;

7.14.2.2 arising from the Councils' activities on or the Councils having possession of the relevant Minor Facility B Sites; and/or

7.14.2.3 owed to third parties which would not have been owed if the relevant Lease, Operating Contractor Underlease or Sub-Underlease had not been granted.

in each case in relation to the relevant Minor Facility B Sites in the period between the Initial Services Commencement Date and the Possession Date.

7.15 **Warranty in relation to the Sites**

The Councils warrant to the Contractor that between the Commencement Date and the Amendment and Restatement Date:

7.15.1 the Councils have not granted or consented to the grant of any rights over any of the Sites that are registered or capable of being registered at HM Land Registry against the title to the Sites;

7.15.2 so far as the Councils are aware (having made all reasonable enquiries), no rights against the title to the Sites have been asserted or are in the process of being acquired.

7.16 **Extension of Leases**

7.16.1 The Parties acknowledge that the Leases for each of the Sites other than the Sinfin Site and the Bretby Site (the **"Relevant Sites"**) may expire prior to the end of the Contract Period.

7.16.2 To enable the Contractor to deliver its obligations under this Contract, the Councils agree that, provided that this Contract continues to subsist as at the expiry date of the existing Leases of each Relevant Site and such Relevant Site is being used by the Contractor for the provision of the Services, Derbyshire County Council or Derby City Council (as the case may be) will grant to the Contractor an additional lease of each of the Relevant Sites on the same terms as the existing Leases (save as to the term) from the date of expiry of the existing

Leases to the Expiry Date or the Extended Expiry Date (as the case may be) (the **"New Leases"**).

7.16.3 The Councils and the Contractor have agreed to exclude the provisions of sections 24 to 28 Landlord and Tenant Act 1954 in relation to the tenancies to be created by each of the New Leases. The Contractor confirms that before the date of this Contract:

7.16.3.1 the Councils served on the Contractor notices (each a **"Lease Extension Notice"**) dated on or about the Amendment and Restatement Date in relation to each of the tenancies to be created by the New Leases in a form complying with the requirements of Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

7.16.3.2 the Tenant, or a person duly authorised by the Tenant, in relation to each Lease Extension Notice made a statutory declaration (the **"Lease Extension Declaration"**) dated on or about the Amendment and Restatement Date in a form complying with the requirements of Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and

7.16.3.3 where the Lease Extension Declaration was made by a person other than the Tenant, the declarant was duly authorised by the Tenant to make the Lease Extension Declaration on the Tenant's behalf.

7.16.4 The Councils acknowledge that upon any disposition of any of the freehold interests in a Relevant Site the Councils shall be required to procure that the disponee enters into a deed of covenant in favour of the Contractor to observe and perform the obligations set out in this clause 7.16 of this Contract.

7.16.5 Within five (5) Business Days of the date hereof and in respect of the obligation set out in clause 7.16.4 above the Councils shall apply to the Land Registry for the following restriction to be placed on the title of each Relevant Site in the following Land Registry form:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a certificate signed by the applicant for registration or their conveyancer that the provisions of clause 7.16 of the Project Agreement relating to the Derbyshire and Derby City Long Term Waste Management Project dated 8 December 2009 have been complied with or do not apply to the disposition."

PART II - WORKS

8. PRINCIPAL OBLIGATIONS

8.1 The Contractor shall commence the Works at the Sinfin Site no later than the NWTF Works Commencement Date and shall thereafter continue and complete the Works at the NWTF in accordance with this Contract. A failure by the

Contractor to comply with this **clause 8.1** shall not of itself be capable of giving rise to a Contractor Default under limb (a) or (b) of that definition.

8.2 The Contractor shall complete the Works at the Sinfin Site on or before the NWTF Planned Completion Date provided that a breach of this **clause 8.2** shall not, of itself, be capable of giving rise to a Contractor Default under limb (a) or (b) of that definition.

8.3 The Contractor shall commence, provide and complete the Works:

8.3.1 in accordance with the Specification;

8.3.2 in accordance with the Works Delivery Plan;

8.3.3 in accordance with the requirements of all Necessary Consents and Legal Requirements;

8.3.4 in accordance with Good Industry Practice;

8.3.5 in a good and workmanlike manner;

8.3.6 with materials in accordance with **clause 16.1** (Materials); and

8.3.7 ensuring that the Works are free from all defects which have arisen as a result of the Contractor's failure to comply with its obligations under this Contract,

provided that a failure by the Contractor to comply with **clause 8.3.2** shall not of itself be capable of giving rise to a Contractor Default under limb (a) or (b) of that definition.

8.4 Subject to **clause 25.3** (Third Party Waste), no Assets (other than Intellectual Property Rights) will be used by the Contractor during the Contract Period for any purpose other than that of performing the Services (**"Third Party Use"**) unless (and then only to the extent that) the Councils gives its consent to such Third Party Use. Such consent shall not be unreasonably withheld or delayed and, in these circumstances, the reasonableness of any decision by the Councils to withhold such consent to Third Party Use shall be assessed taking into account factors including, without limitation:

8.4.1 the level of any economic benefit to the Councils which would result from it; and

8.4.2 any risk of a reduction in the level of performance in the Services.

In requesting the consent of the Councils to any Third Party Use, the Contractor will provide all detail of its proposals reasonably required by the Councils (including, without limitation, in relation to the factors set out at **clauses 8.4.1** and 8.4.2) to enable the Councils to consider all factors relevant to such a decision.

9. **NOT USED**

10. **NOT USED**

11. **NECESSARY CONSENTS**

11.1 Subject to **Schedule 16** (Minor Facilities Protocol), the Contractor shall at its own expense obtain and maintain all Necessary Consents which are from time to time required or necessary and shall promptly supply to the Councils a copy of every application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of every Necessary Consent obtained.

11.2 The Contractor shall, and shall procure that all Sub-Contractors shall:

11.2.1 comply with the conditions of and requirements attached to all Necessary Consents; and

11.2.2 notify the Councils promptly of any notices or other communications received (whether from any Relevant Authority or any other person) relating to any Necessary Consent and shall provide a copy of any such notice within two Business Days of receipt of the same to the Councils.

11.3 The Contractor shall not (and shall procure that no other person under its control shall) without the prior written consent of the Councils (such consent not to be unreasonably withheld or delayed) apply for or agree to any material variation, relaxation or waiver of any Necessary Consents (whether obtained before or after the date of this Contract) or any condition attached to such Necessary Consents as from time to time varied, relaxed or waived.

12. **FOSSILS AND ANTIQUITIES**

12.1 As between the Parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at any of the Sites are or shall become, upon discovery, the absolute property of the Councils.

12.2 Upon the discovery of such item during the course of the Works, the Contractor shall:

12.2.1 immediately inform the Councils' Authorised Officer of such discovery;

12.2.2 take all steps not to disturb the object and, if necessary, cease any Works in so far as the carrying out of such Works would endanger the object or prevent or impede its excavation; and

12.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

12.3 The Councils shall procure that the Councils' Authorised Officer promptly, and in any event within ten (10) Business Days, issues an instruction to the Contractor specifying what action the Councils' Authorised Officer requires to be taken in relation to such discovery provided that if no such instruction is forthcoming within such ten (10) Business Days the Contractor may continue to carry out the Works.

12.4 The Contractor shall promptly and diligently comply with any instruction issued by the Councils' Authorised Officer referred to in **clause 12.3** above at its own cost (except and to the extent that such instruction constitutes a Council Change pursuant to **clause 12.6** below in which case the provisions of **clause 28** (Changes to the Works and Services) shall apply.

12.5 If directed by the Councils' Authorised Officer, the Contractor shall allow representatives of the Councils to enter the relevant Sites for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Councils complying with all relevant safety procedures, which shall include any relevant health and safety plans from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Project Director from time to time.

12.6 If any instruction referred to in **clause 12.4** (above) includes a requirement for the Contractor to suspend the carrying out of any Works and/or to carry out works (being any work of alteration, addition, demolition or extension or variation in any Facility) which are not works which would be strictly necessary for the purpose of compliance with Legislation or any Necessary Consents, such works or instruction to suspend shall be deemed to be a Council Change (which the Councils shall not be entitled to withdraw) and the provisions of **clause 28** (Changes to the Works and Services) shall apply.

12.7 The Councils shall act promptly and diligently in dealing with its obligations in this **clause 12** in relation to any find so as to mitigate any effect on the Contractor, the Works and/or the Services.

13. CONSTRUCTION CONTRACTOR AND OPERATING CONTRACTOR

13.1 Engagement of Construction Contractor and Operating Contractor

The Contractor shall engage the services of:

13.1.1 the Construction Contractor to carry out the Works on the terms of the Construction Contract; and

13.1.2 the Operating Contractor to carry out the Services on the terms of the Operating Contract.

13.2 Construction Contractor and the Operating Contractor

13.2.1 The Contractor shall not terminate, waive any rights under or vary the Construction Contract or the Operating Contract once it has been executed without the written consent of the Councils save that the prior written consent of the Councils shall not be required insofar as the Contractor reasonably considers (at the time such action is contemplated) that the same:

13.2.1.1 will not adversely affect the ability of the Contractor to perform its obligations under this Contract; and

13.2.1.2 will not increase the Councils' obligations or prejudice its rights under this Contract,

provided that the Contractor shall:

13.2.1.3 seek to consult with the Councils regarding all such terminations and variations or waivers; and

13.2.1.4 the Contractor shall promptly supply full details of all such terminations, and variations or waivers together with complete copies of the amending documentation to the Councils.

13.2.2 Subject to **clause 13.2.1**, the Contractor shall not fail to enforce any rights (of which it is aware) it may have under the Construction Contract or the Operating Contract where such failure is likely (or would be likely if the Councils were to exercise its rights under the relevant Sub-Contractor Direct Agreement) to be materially adverse to the interests of the Councils under such Sub-Contractor Direct Agreement provided that a breach of this **clause 13.2.2** shall not, of itself, be capable of giving rise to a Contractor Default under limb (a) or (b) of that definition.

13.3 **Warranties**

The Contractor shall not engage the Construction Contractor, the Operating Contractor or any replacement thereof in connection with the Works or Services (as the case may be) without having procured that such persons have first delivered to the Councils a duly executed warranty in the same terms as contained in the relevant Sub-Contractor Direct Agreement.

13.4 **Changes to Financing Agreements**

No amendment, waiver or exercise of a right under any Financing Agreements or Project Document shall have the effect of increasing the liabilities of the Councils on early termination of this Contract unless:

13.4.1 the Contractor has obtained the prior written consent of the Councils to such increased liability for the purposes of this **clause 13.4**; or

13.4.2 it is a Permitted Borrowing.

14. **DESIGN DEVELOPMENT**

14.1 **Obligation to Finalise Design**

The Contractor shall develop and finalise the design and specification of the Works and the Councils may review the Reviewable Design Data in accordance with the Review Procedure and the provisions of this clause provided that the Contractor shall not be entitled to vary the Basic Design Proposals under this **clause 14** (Design Development) or **clause 15** (Changes to the Works Delivery Plan and the Construction Programme) or the Review Procedure.

14.2 **Submission of Reviewable Design Data**

The Contractor shall submit the Reviewable Design Data and the design of any variations developed in accordance with **clause 15** (Changes to the Works Delivery Plan) to the Councils' Authorised Officer for review under the Review Procedure.

14.3 **No Construction prior to Review**

14.3.1 Subject to **clause 14.3.2**, the Contractor shall not commence or permit the commencement of the construction of the part or parts of the Works to which any Reviewable Design Data relates until it has submitted the relevant Reviewable Design Data for review and the Contractor is entitled to proceed with construction in accordance with the Review Procedure or the Contractor is disputing the status of such Reviewable Design Data pursuant to **Schedule 9**.

14.3.2 If the Contractor commences or permits the commencement of construction before it is entitled to do so under the Review Procedure or during such a dispute and it is subsequently determined that the Contractor was not entitled to proceed with construction in accordance with **Schedule 9**, then the Contractor shall forthwith, at its own cost, undo, remove from the relevant Sites and replace (in a manner complying with this Contract) any parts of the Works which it has been determined the Contractor was not entitled to construct.

14.4 **Approved RDD**

With effect from the date on which any item of Reviewable Design Data is or becomes an Approved RDD Item in accordance with the Review Procedure, the Contractor may proceed with the construction of the relevant part or parts of the Works (subject to the need to submit any associated Reviewable Design Data to review) in accordance with that Approved RDD Item and the Approved RDD Item shall become part of the Contractor's Proposals.

14.5 **Review of Design Visibility Information**

The Contractor shall allow the Councils' Authorised Officer at any time a reasonable opportunity to view any items of Design Visibility Information, which shall be made available to the Councils' Authorised Officer as soon as reasonably practicable following receipt of any written request from the Councils' Authorised Officer.

14.6 **Design Database**

The Contractor shall procure that the Construction Contractor establishes and maintains a computerised design database which the Contractor's Project Director and the Councils' Authorised Officer and Contract Manager may access remotely by computer to view drawings comprised within the Design Visibility Information (including Reviewable Design Data) and electronically store and print copies of such Design Visibility Information. If the Contract Manager is unable to access that design database, the Contractor shall procure that the database is made available as soon as reasonably practicable for inspection by the Councils' Authorised Officer or any person authorised by the Councils' Authorised Officer.

14.7 **Priority of Obligations and Rectification of Works Delivery Plan**

14.7.1 The fact that the Contractor has complied with the Specification but not the Works Delivery Plan shall not be a defence to an allegation that the Contractor has not satisfied the Works Delivery Plan provided that the Specification shall take priority over the Works Delivery Plan in the event of any discrepancy or inconsistency between them; and

14.7.2 The fact that the Contractor has complied with the Works Delivery Plan but not the Specification shall not be a defence to an allegation that the Contractor has not satisfied the Specification.

14.7.3 If it should be found that the Works Delivery Plan does not fulfil the Specification, the Contractor shall at its own expense amend the Works Delivery Plan and rectify the Works or any part of the Works affected. Such amendment and rectification shall be proposed by the Contractor submitting the relevant variation to the Councils for review under the Review Procedure, but does not need to be implemented through the application of **clause 28** (Changes to the Works or Services). Such amendment and rectification shall have the effect that:

14.7.3.1 the Works Delivery Plan shall satisfy the Specification; and

14.7.3.2 following the amendment or rectification the structural, mechanical and electrical performance of the Site will be of an equivalent standard of performance to that set out in the Works Delivery Plan prior to their amendment or rectification (for the purpose of comparison disregarding the fault which required the amendment or rectification to be made).

15. CHANGES TO THE WORKS DELIVERY PLAN AND THE WORKS PROGRAMME

15.1 Proposal to Vary Works Delivery Plan or the Works Programme

15.1.1 Without prejudice to **clause 14.7** (Rectification of Works Delivery Plan), the Contractor shall be entitled to propose variations to the Works Delivery Plan by submitting the relevant variation to the Councils for review under the Review Procedure. Such variations do not need to be implemented through the application of **clause 28** (Changes to the Works or Services).

15.1.2 The Contractor shall be entitled to propose variations to the Works Programme by submitting the relevant variation to the Councils for review under the Review Procedure.

15.2 Implementing a Variation to the Works Delivery Plan or the Works Programme

The Contractor shall not implement any variation to the Works Delivery Plan or the Works Programme until it is entitled to do so in accordance with the Review Procedure. Once consented to, a proposed variation will form part of the Works Delivery Plan or the Works Programme as the case may be.

15.3 Reporting on the Works Programme

In respect of the New Waste Treatment Facility prior to the NWTF Completion Date, and in circumstances of Turbine Delay, between the NWTF Completion Date and the Turbine Completion Date, the Contractor shall provide to the Councils on a monthly basis a written summary of progress of the Works compared to the Works Programme.

16. CARRYING OUT OF THE WORKS

16.1 Materials

16.1.1 If any of the materials referred to in the Works Delivery Plan are not procurable within a reasonable time then the Contractor may, with the prior consent in writing of the Councils' Authorised Officer (which shall not be unreasonably withheld or delayed), in carrying out the Works substitute for them alternative materials of no lesser quality and as nearly as may be of the same visual appearance provided that such consent shall be deemed to have been given to the Contractor if the Councils' Authorised Officer fails to provide any written response within ten Business Days after the Contractor's request for the same provided that all relevant information was submitted with such request.

16.1.2 Notwithstanding anything to the contrary expressly set out in or implied elsewhere in this Contract the Contractor undertakes that the Works will comprise only new materials and goods of satisfactory quality, or if not new, are recycled or reused materials of an equivalent standard to new materials and their use in lieu of new materials is in accordance with Good Industry Practice, and that no substances not in conformity with (save where they exceed) current relevant British or European Standards or British or European Codes of Practice or which are generally known at the time of use to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used shall be used or incorporated in the Works.

16.2 Persons Employed

The Contractor shall ensure that all persons employed in connection with the performance of the Works will be careful, skilled and have received appropriate training for the tasks which they are to undertake.

16.3 Supervision

All aspects of the Works will be supervised by sufficient numbers of people having adequate knowledge, appropriate training and adequate experience of such matters for the satisfactory and safe supervision of the Works in accordance with this Contract.

16.4 Safety, Security and Cleaning

During the carrying out of the Works the Contractor shall and shall procure that the Construction Contractor and all Sub Contractors shall:

16.4.1 take all necessary steps in accordance with Good Industry Practice to keep the Works in a safe condition and working areas of the Sites secure against trespassers;

16.4.2 maintain the Works in good order;

16.4.3 take all necessary steps in accordance with Good Industry Practice to protect the Works from damage;

16.4.4 take all necessary steps in accordance with Good Industry Practice to keep the Sites clean and tidy having regard to the nature of the Works;

16.4.5 take all necessary steps in accordance with Good Industry Practice to provide adequate retaining and supporting walls to support any Adjoining Property during the carrying out of the Works;

16.4.6 not use or occupy or permit or suffer the Sites or any land affected by the Works to be used or occupied for any purpose other than the carrying out of the Works and the performance of the Services and the Initial Services (which shall, for the avoidance of doubt, include commissioning activities at the NWTF);

16.4.7 not deposit or manufacture or permit or suffer to be deposited or manufactured on the Sites or any land on which the Works are being carried out any materials (other than Contract Waste) which are not required for the carrying out of the Works;

16.4.8 dispose of all surplus materials arising from the Works lawfully;

16.4.9 not permit or suffer the storage of materials or the parking of vehicles by persons outside the boundaries of the Sites other than for reasonable periods necessary for loading and unloading;

16.4.10 ensure that all vehicles leaving the Sites are adequately cleaned to prevent the deposit of waste materials and debris on any public highway or surfaced private road and if any such material or debris is so deposited the Contractor shall forthwith at its own cost employ such measures as shall be necessary to clean up and remove the material or debris;

16.4.11 not (save in accordance with any Necessary Consent) permit any oil, grease, deleterious, dangerous, poisonous, explosive or radioactive matter to be discharged from the Sites into any rivers or any ditches or Conduits on the Sites or on any Adjoining Property and shall not permit or suffer the blockage of any of such rivers, ditches and Conduits by reason of anything done or omitted to be done on the Sites or any land affected by the Works and to comply at the Contractor's expense with any requirements of the Environment Agency or any other Relevant Authority so far as such requirements relate to or affect the Works;

16.4.12 save in the case of an emergency, not gain access to and egress from the Sites except via such points as indicated in the Leases;

16.4.13 not without the written consent of the Councils erect or permit or suffer to be erected on the Sites any temporary structure except as is reasonably required for the carrying out of the Works; and

16.4.14 not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Sites any signs or trade boards save those previously approved in writing by the Councils.

17. CDM REGULATIONS

17.1 CDM Regulations for the Project

The Councils hereby appoint the Contractor to act as the only client in respect of the Project. Accordingly within ten Business Days of the date of the Construction Contract the Contractor shall make an election in writing (and provide a copy to the Councils) pursuant to Regulation 8 of CDM Regulations to that effect. The Contractor shall as soon as possible provide to the Councils a copy of each notice which it receives pursuant to paragraph (5) of Regulation 4 of the CDM Regulations. The Contractor shall ensure that the Construction Contractor and each of the sub-contractors (of any tier) are each aware of the terms of such election and shall not at any time prior to the relevant Completion Date for each Site or earlier termination of this Contract seek to withdraw, terminate or in any manner derogate from such election. For the avoidance of doubt, the Contractor shall assume the Client's duties in respect of the Health and Safety file pursuant to Regulation 17 of the CDM Regulations, and shall provide to the Councils a certified copy of the Health and Safety File within 5 Business Days of the Completion Date for the relevant Site.

17.2 **Duties under the CDM Regulations**

The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge by each of its Sub-Contractors and any sub-contractors (of any tier) of all the obligations, requirements and duties arising under the CDM Regulations in connection with the Works.

17.3 **Relevant Information**

The Councils agree to provide the Contractor with such necessary and relevant written information about each Site which is in the Councils' knowledge or possession as the Contractor may reasonably request in writing from the Councils from time to time for the sole purpose of enabling the Contractor to discharge its obligations as the Client under the CDM Regulations in connection with the Works.

17.4 **Councils' Retained Obligations**

Notwithstanding the election made under **clause 17.1**, the Councils shall observe and shall continue to observe their duties which pursuant to Regulation 8 of the CDM Regulations are to remain with the Councils, notably those duties under Regulations 5(i)(b), 10(i), 15 and 17(i).

18. **MONITORING AND INSPECTION**

18.1 **Right of Inspection**

18.1.1 At all reasonable times prior to the NWTF Completion Date (but subject to compliance with the Contractor's and either the Construction Contractor's or other Sub-Contractor's reasonable safety and security requirements as they may be updated from time to time in respect of the NWTF) the Councils and any person authorised by the Councils may (but not so as to delay or impede the progress of the Works) enter any part of the Sinfin Site in order to inspect and view the state and progress of the Works and to ascertain whether they are being executed in accordance with this Contract.

18.1.2 If the Councils reasonably believe that the Contractor is in breach of its obligations under this Contract in respect of the New Waste Treatment Facility at any time prior to the NWTF Completion Date, then they may notify the Contractor of such breach and the Contractor shall within 15

Business Days of receipt of such notice put forward to the Councils a response (a **"Response"**) either demonstrating that there is no breach or a proposal to rectify the breach and where the Councils do not believe (acting reasonably) that the Response is sufficient to demonstrate that there is no breach or the Contractor does not rectify the breach within the time set out in the Response then the Councils may carry out (or procure) an inspection of the NWTF to assess whether it has been and is being constructed by the Contractor in accordance with its obligations under this Contract provided that if any such inspection shall reveal that there has been no breach by the Contractor of its obligations under this Contract the actions of the Councils shall be deemed to have been a Compensation Event.

18.1.3 The Councils shall use reasonable endeavours to notify the Contractor in writing of any non compliance with this Contract of which they become aware as a result of any inspection. Such notification shall be provided to the Contractor as soon as is reasonably practicable in the circumstances after the relevant inspection by the Councils or their representatives. the Councils shall, if any such notification is given, provide to the Contractor such detailed particulars of the non compliance as are available to the Councils.

18.1.4 The Councils shall have due regard to any representations made by the Contractor concerning any notification of non-compliance issued pursuant to **clause 18.1.3** but unless within 10 Business Days after service of the notification, the Councils have notified the Contractor that it has withdrawn its notification of non compliance, the matter shall be determined in accordance with **clause 78** (Dispute Resolution).

18.1.5 The Contractor shall immediately at its own expense take all such measures as shall be necessary to remedy the non compliance identified by the Councils pursuant to **clause 18.1.3** and which are agreed by the Parties or specified in the determination pursuant to **clause 78** (Dispute Resolution).

18.1.6 No test or inspection of the Works by the Councils and (if any Works have not been or are not being carried out in accordance with this Contract) no failure or omission by the Councils to notify the Contractor of non compliance and no approval by the Councils of the Contractor's Proposals or of any variation or of any other matter or thing referred to in this Contract shall in any way affect or lessen the obligations of the Contractor under this Contract.

18.2 Supply of Information

The Contractor shall supply to the Councils and any representative or adviser of the Councils visiting the Sinfin Site pursuant to this **clause 18** such information in respect of the Works as may reasonably be required by such person visiting the Sinfin Site in relation to issues identified during the course of such inspection.

18.3 Site Meetings

The Contractor shall procure:

18.3.1 that the Councils' Authorised Officer is notified of all programmed site meetings relating to the Works as soon as possible after they are arranged and is entitled to attend all such meetings and is kept appraised of any delays, problems or obstacles in the Works and afforded the opportunity to attend all programmed meetings with the Construction Contractor or the relevant Sub-Contractor in respect of the Works and is notified of such meetings as soon as possible after they are arranged and that full details of any unplanned liabilities which may arise in connection with the Works are forthwith identified to the Councils' Authorised Officer; and

18.3.2 that a copy of the minutes of every site meeting and meeting with the Construction Contractor or the relevant Sub-Contractor in respect of the Works are promptly supplied to the Councils' Authorised Officer (whether or not the Councils' Authorised Officer and/or representatives of the Councils have attended such site meeting).

19. COMPENSATION EVENTS

If, during the Contract Period as a direct result of the occurrence of a Compensation Event:

19.1.1 the Contractor is unable to achieve the NWTF Completion Date on or before the NWTF Planned Completion Date, or following the NWTF Planned Completion Date the NWTF Long Stop Date;

19.1.2 the Contractor is unable to comply with any of its obligations under this Contract; and/or

19.1.3 the Contractor incurs costs or loses revenue (including Third Party Income),

then the Contractor is entitled to apply for relief from its obligations and/or claim compensation under this Contract.

19.2 Subject to **clause 19.4** below, to obtain relief and/or claim compensation the Contractor must:

19.2.1 as soon as practicable, and in any event within 15 Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs or lose revenue, give to the Councils a notice of its claim for an extension of time for Services Commencement, payment of compensation and/or any relief from its obligations under this Contract;

19.2.2 within 10 Business Days of receipt by the Councils of the notice referred to in **clause 19.2.1**, give full details to the Councils of the Compensation Event and the extension of time claimed and/or Estimated Change in Project Costs and/or Change in Revenue claimed; and

19.2.3 demonstrate to the reasonable satisfaction of the Councils that:

19.2.3.1 the Compensation Event was the direct cause of the Estimated Change in Project Costs, Change in Revenue and/or delay in the achievement of the NWTF Planned

Completion Date, breach of the Contractor's obligations under this Contract and/or following the NWTF Planned Completion Date, delay in achieving NWTF Services Commencement before the NWTF Long Stop Date;

19.2.3.2 the Estimated Change in Project Costs, Change in Revenue, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice; and

19.2.4 in circumstances where the ACT Facility is no longer eligible for Renewables Obligation Certificates as a result of the Compensation Event, provide evidence that the Contractor has used reasonable endeavours to oblige its Sub-Contractors to comply with the CfD Allocation Plan.

19.3 In the event that the Contractor has complied with its obligations under clause 19.2 above, then:

19.3.1 in the case of delay, the NWTF Planned Completion Date or following the NWTF Planned Completion Date the NWTF Long Stop Date shall be postponed by such time as shall be reasonable for such Compensation Event, taking into account the likely effect of delay;

19.3.2 in the case of any additional costs being incurred or revenue being lost by the Contractor:

19.3.2.1 on or before the relevant Completion Date; or

19.3.2.2 as a result of Capital Expenditure being incurred by the Contractor at any time,

the Councils shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and without double counting for revenue actually lost (to the extent it could not reasonably have been mitigated) within 20 Business Days of receipt of a written demand by the Contractor supported by all relevant information;

19.3.3 in the case of a payment of compensation for the Estimated Change in Project Costs and/or without double counting, Change in Revenue that does not result in Capital Expenditure being incurred by the Contractor and/or Change in Revenue referred to in **clause 19.3.2.2**, but which reflects a change in the costs being incurred by and/or a Change in Revenue of the Contractor after the relevant Completion Date, the Councils shall compensate the Contractor in accordance with **clause 19.6** by an adjustment to the Unitary Charge; and/or

19.3.4 the Councils shall give the Contractor such relief from its obligations under this Contract as is reasonable for such a Compensation Event.

19.4 In the event that information is provided under **clause 19.2** after the dates referred to in **clause 19.2.2**, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under this Contract in respect of the period for which the information is delayed.

19.5 If the Parties cannot agree the extent of any compensation, delay incurred or relief from the Contractor's obligations under this Contract, or the Councils disagree that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this clause, the Parties shall resolve the matter in accordance with **clause 78** (Dispute Resolution).

19.6 Any payment of compensation referred to in **clause 19.3.3** shall be calculated in accordance with **clause 92** (Financial Adjustments).

19.7 In the case of a claim for an extension of time and/or Estimated Change in Project Costs and/or Change in Revenue arising from Title Defect number 1.6 in **Schedule 22** (Title Defects), where the Councils serve a Council Notice of Change in accordance with **Clause 28** in relation to the same, the Parties shall agree (subject to the terms of **Clause 28**) appropriate arrangements to allow the Councils and their contractors such access to the Bolsover Site as is reasonably required by them to rectify the cause of and/or mitigate the effect of the Compensation Event.

20. RELIEF EVENTS

20.1 If and to the extent that a Relief Event:

20.1.1 is the direct cause of a delay to Services Commencement; and/or

20.1.2 adversely affects the ability of the Contractor to perform any or all of its obligations under this Contract,

then the Contractor is entitled to apply for relief from any rights of the Councils arising under **clause 57** (Termination on Contractor Default)

20.2 To obtain relief, the Contractor must:

20.2.1 as soon as practicable, and in any event within 15 Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations under this Contract give to the Councils a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

20.2.2 within 10 Business Days of receipt by the Councils of the notice referred to in **clause 20.2.1** above, give full details of the relief claimed;

20.2.3 demonstrate to the reasonable satisfaction of the Councils that:

20.2.3.1 the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure; and

20.2.3.2 the Relief Event directly caused the delay to the relevant Planned Completion Date or following the NWTF Planned Completion Date, delay in achieving Completion by the NWTF Long Stop Date or the need for relief from any of its other obligations under the Contract;

20.2.3.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

20.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under the Contract;

20.2.4 In the event that the Contractor has complied with its obligations under **clause 20.2** above, then:

20.2.4.1 the NWTF Planned Completion Date or following the NWTF Planned Completion Date, the NWTF Long Stop Date, shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

20.2.4.2 the Councils shall not be entitled to exercise their rights to terminate the Contract under **clause 57** (Termination on Contractor Default) and subject to **clause 20.4** shall give such other relief as has been requested by the Contractor.

20.3 Nothing in **clause 20.2** above shall affect any entitlement to levy Performance and/or Unavailability Deductions under **Schedule 3** (Payment Mechanism) or record instances of the breach of Performance Criteria or instances of Unavailability during the period in which the Relief Event is subsisting.

20.4 In the event that information required by **clause 20.2** above is provided after the dates referred to in that clause, then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.

20.5 The Contractor shall notify the Councils if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

20.6 If the Parties cannot agree the extent of the relief required, or the Councils disagree that a Relief Event has occurred or that the Contractor is entitled to any extension of the NWTF Planned Completion Date or the relevant Long Stop Date and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with **clause 78** (Dispute Resolution).

20.7 If, following the end of any Contract Year, the Councils would otherwise be entitled to terminate this Contract by virtue of paragraph (r) of the definition of Contractor Default and the Contractor demonstrates that it has been unable during that Contract Year and the preceding Contract Year to achieve the NWTF Diversion Tonnage Target because of the inter-action of:

20.7.1 the profile of deliveries of Contract Waste; and

20.7.2 the tonnage capacity of the New Waste Treatment Facility;

the Councils shall not terminate this Contract in reliance only on paragraph (r) of the definition of Contractor Default on that occasion.

21. CERTIFICATION OF COMPLETION OF COMMISSIONING AND COMPLETION OF THE WORKS AT THE NEW WASTE TREATMENT FACILITY

21.1 Appointment of the Independent Certifier

21.1.1 The Contractor shall appoint an Independent Certifier to certify Completion of the New Waste Treatment Facility. The Independent Certifier's Collateral Warranty shall be delivered to the Councils as soon as reasonably practicable after the same has been duly executed by the Independent Certifier.

21.1.2 In the event of any change to the Acceptance Tests pursuant to **clause 28** (Changes to the Works or Services), the Contractor shall procure that the appointment of the Independent Certifier is updated accordingly and **clause 21.1.3** shall continue to apply.

21.1.3 The cost and expenses of the Independent Certifier in respect of the New Waste Treatment Facility and any other independent certifier(s) referred to in this **clause 21** shall be borne by the Contractor.

21.2 Completion and Commissioning of the New Waste Treatment Facility

21.2.1 The Contractor shall in respect of the New Waste Treatment Facility provide to the Councils and the Independent Certifier not less than 20 Business Days' notice of the anticipated date upon which the Contractor considers that the New Waste Treatment Facility is ready for commissioning and is capable of treating Contract Waste. Such date shall be no earlier than the time periods set out in the Works Programme without the consent of the Councils.

21.2.2 The Contractor shall, not less than 10 Business Days prior to the date upon which the Contractor anticipates that the New Waste Treatment Facility will be ready for commissioning and capable of treating Contract Waste, notify the Councils of that date and confirm to the Councils the waste delivery requirements for such Contract Waste.

21.2.3 The Contractor shall undertake commissioning and the Acceptance Tests in accordance with the provisions of **Schedule 5** (Acceptance Tests).

21.2.4 When the Contractor is of the opinion that the Completion of the New Waste Treatment Facility has occurred it shall promptly notify the Independent Certifier and the Councils of the same.

21.2.5 In relation to the New Waste Treatment Facility only, the Councils shall provide all necessary co-operation and assistance to the Contractor in order to procure, from the date stated in the notice issued under **clause 21.2.2** that Contract Waste is delivered directly to the Sinfin Site for commissioning and testing of the New Waste Treatment Facility. Such arrangements shall be made in accordance with the waste delivery requirements for such Contract Waste confirmed in the notice issued under **clause 21.2.2**). The Parties acknowledge that any such arrangements should:

21.2.5.1 be made with the maximum amount of notice reasonably possible to minimise inconvenience and cost to the Councils; and

21.2.5.2 seek to minimise haulage distance of such Contract Waste; and

21.2.5.3 be for a definite period agreed with the Councils.

The Contractor shall keep the Councils informed at all times as to the likely need for a further definite period of diversion to the New Waste Treatment Facility.

21.2.6 The Contractor shall procure in accordance with the Independent Certifier's Appointment that the Independent Certifier shall, within the period of 10 Business Days of receipt of the Contractor's notice given under **clause 21.2.4**, either:

21.2.6.1 subject to **clause 21.3.1**, issue a certificate in accordance with the Independent Certifier's Appointment stating the date upon which the Completion of the New Waste Treatment Facility has occurred; or

21.2.6.2 subject to **clause 21.3.1**, notify the Councils and the Contractor that the Completion of the New Waste Treatment Facility has not occurred together with a report setting out the respects in which it considers that the Acceptance Tests have not been passed.

21.2.7 If the Independent Certifier provides a report pursuant to **clause 21.2.6.2**, the Contractor shall, when it is of the opinion that each of the respects referred to in the Independent Certifier's report have been satisfied, notify the Independent Certifier and the Councils of the same and thereafter the procedures set out in **clauses 21.2.5** to 21.2.6 shall be repeated (save that the applicable notice period shall be reduced to five (5) Business Days) until the Completion Certificate is issued or it is determined by the Adjudicator that the Completion Certificate should have been issued.

21.2.8 The Parties agree that the Independent Certifier shall issue a Completion Certificate notwithstanding the existence of minor snagging items provided that the same are unlikely to give rise to Unavailability, likely to be repaired without giving rise to Unavailability and do not affect the safe operation of the New Waste Treatment Facility.

21.2.9 If the Independent Certifier fails to issue the Completion Certificate in accordance with the terms of the Independent Certifier's Appointment and the Contractor wishes to challenge the same or if there are certain aspects of the Independent Certifier's report provided pursuant to the terms of the Independent Certifier's Appointment which the Contractor wishes to challenge, the Contractor shall be entitled to refer the matter for determination by an Adjudicator under the Disputes Resolution Procedure as if it constituted a dispute. In the event it is agreed or determined that a Completion Certificate should have been issued by the Independent Certifier on any prior date, the Completion Certificate shall be deemed for all purposes of this Contract to have been issued on that date provided that the Contractor shall have no liability to the Councils in relation to any non-performance of the Services in the period from such deemed issue until the date such deemed issued is agreed or determined.

21.2.10 The Parties agree that the Completion Certificate shall be final, binding and enforceable upon the Parties except in the case of fraud, collusion, bias or manifest error provided that the matter has been referred for determination by an Adjudicator under the Disputes Resolution Procedure within ten Business Days of receipt of the Completion Certificate.

21.2.11 Following the issue of the Completion Certificate, the Contractor shall procure that the snagging matters identified in the Completion Certificate are attended to as soon as is reasonably practicable in the circumstances. The Contractor shall keep the Councils informed regarding the progress in addressing such snagging matters.

21.2.12 Without prejudice to any rights or remedies that the Parties may have against the Independent Certifier, the Parties agree that, notwithstanding any other provision contained in **clause 78** and **clause 90**, an Adjudicator's decision referred to in this **clause 21.2** shall be final, binding and enforceable upon the Parties and may not subsequently be referred by any Party to arbitration and/or any court of competent jurisdiction.

21.3 Turbine Delay

21.3.1 If the Independent Certifier is of the opinion that all of the Acceptance Tests other than the Turbine Acceptance Test have been satisfied, the Parties acknowledge that the Independent Certifier shall issue a Completion Certificate in respect of the New Waste Treatment Facility notwithstanding that the Turbine Acceptance Test has not been passed (being a **"Turbine Delay"**). Where there is a Turbine Delay, the Contractor shall provide written notice to the Councils accordingly (a **"Turbine Delay Notice"**) including the Contractor's estimate of when the Turbine will be Completed.

21.3.2 Where **clause 21.3.1** applies:

21.3.2.1 the Contractor shall ensure that Turbine Completion occurs prior to the later of the NWTF Long Stop Date and the date twelve (12) months following the NWTF Completion Date (the **"Turbine Long Stop Date"**); and

21.3.2.2 under no circumstances may the occurrence of a Turbine Delay or the Works comprising the installation of the Turbine at the NWTF be capable of giving rise to a Contractor Default under limb (a), (b), (k), (n) or (o) of the definition thereof.

21.3.3 The Contractor shall in respect of the Turbine:

21.3.3.1 provide to the Councils and the Independent Certifier not less than 20 Business Days' notice of the anticipated date upon which the Contractor considers that the Turbine is capable of being certified as Complete; and

21.3.3.2 procure certification of the Turbine by the Independent Certifier on the same terms as set out in **clauses 21.2.2** and 21.2.12 (inclusive) save that references to the 'New

Waste Treatment Facility' shall be deemed to be reference to the 'Turbine'.

22. COMPLETION OF THE WORKS AT THE MINOR FACILITY A

The Parties acknowledge that a Completion Certificate has been issued by the Independent Certifier prior to the Amendment and Restatement Date in respect of the Clover Nook Transfer Station.

23. COMPLETION OF WORKS AT MINOR FACILITIES B

23.1 The Parties acknowledge that the Works in respect of each Minor Facility B have been certified as Complete in accordance with the procedure set out in **Schedule 16** (Minor Facilities Protocol).

23.2 The Parties acknowledge that the Services to be provided at the Glossop Transfer Station and HWRC have been provided by the Contractor since 8 November 2010 and will from the Amendment and Restatement Date be provided by the Contractor using the facilities existing at the Glossop Transfer Station and HWRC as at 8 November 2010.

24. DEPOSIT OF AND ACCESS TO AS BUILT DRAWINGS

24.1 As-Built Drawings for the New Waste Treatment Facility

The Contractor shall provide to the Councils, in respect of the New Waste Treatment Facility, a draft set of As Built Drawings on the relevant Completion Date and a final set of As Built Drawings on the earlier of the date falling seven Days after the date they become available to the Contractor or within six Months after the relevant Completion Date, provided that in circumstances of Turbine Delay, the Contractor shall deliver a draft set of As-Built Drawings in respect of the NWTF excluding the Turbine on the NWTF Completion Date, and a draft set of As-Built Drawings in respect of the Turbine on the Turbine Completion Date and a final set of As-Built Drawings in respect of the NWTF and the Turbine on the earlier of the date falling seven Days after the date they become available to the Contractor or within six months after the NWTF Completion Date or Turbine Completion Date (as applicable). The Contractor shall promptly update any As Built Drawings supplied to the Councils to reflect any changes from time to time and promptly provide a set of each amended As Built Drawings to the Councils. The As-Built Drawings shall be in a pdf version of the scanned drawings with legible and appropriate signatures, stamped "as-built" and accompanied by an editable Autocad compatible electronic version (or, in either case, shall be in such other form as the Councils require in writing, acting reasonably).

24.2 Copyright in As-Built Drawings (NWTF)

Copyright in any of the As Built Drawings shall not pass to the Councils but the Councils may make or obtain copies of all or any part of any of the As Built Drawings but only for the purpose of this Contract or for the purposes of managing, running or using the New Waste Treatment Facility or procuring services from third parties to manage, use or run the New Waste Treatment Facility.

24.3 Access to As-Built Drawings (NWTF)

A set of each As Built Drawings shall be kept by the Councils. The Councils will allow access to any of the As Built Drawings only to such persons as it considers

have legitimate interests in viewing and/or using any of the As Built Drawings in connection with the Works or Services.

24.4 **As-Built Drawings (Minor Facility A)**

The Contractor shall provide to the Councils, in respect of the Minor Facility A, a draft set of As Built Drawings on the relevant Completion Date and a final set of As Built Drawings on the earlier of the date falling seven Days after the date they become available to the Contractor or within six Months after the relevant Completion Date. The Contractor shall promptly update any As Built Drawings supplied to the Councils to reflect any changes from time to time and promptly provide a set of each amended As Built Drawings to the Councils. The As-Built Drawings shall be in a pdf version of the scanned drawings with legible and appropriate signatures, stamped "as-built" and accompanied by an editable Autocad compatible electronic version (or, in either case, shall be in such other form as the Councils require in writing, acting reasonably). The Parties acknowledge that as at the Amendment and Restatement Date, the Works in respect of the Clover Nook Transfer Station have been certified as Complete and the Contractor has complied with this clause in relation to that Facility.

24.5 **Copyright in As-Built Drawings (Minor Facility A)**

Copyright in any of the As Built Drawings shall not pass to the Councils but the Councils may make or obtain copies of all or any part of any of the As Built Drawings but only for the purpose of this Contract or for the purposes of managing, running or using the Minor Facility A or procuring services from third parties to manage, use or run the Minor Facility A.

24.6 **Access to As-Built Drawings (Minor Facility A)**

A set of each As Built Drawings shall be kept by the Councils. The Councils will allow access to any of the As Built Drawings only to such persons as it considers have legitimate interests in viewing and/or using any of the As Built Drawings in connection with the Works or Services.

24.7 **As-Built Drawings (Minor Facilities B)**

The Councils shall provide to the Contractor, in respect of Minor Facilities B, a draft set of As Built Drawings on the relevant Completion Date and a final set of As Built Drawings on the earlier of the date falling seven Days after the date they become available to the Councils or within six Months after the relevant Completion Date. The As-Built Drawings shall be in a pdf version of the scanned drawings with legible and appropriate signatures, stamped "as-built" and accompanied by an editable Autocad compatible electronic version (or, in either case, shall be in such other form as the Contractor requires in writing, acting reasonably).

24.8 **Copyright in As-Built Drawings (Minor Facilities B)**

Copyright in any of the As Built Drawings shall not pass to the Contractor but the Contractor may make or obtain copies of all or any part of any of the As Built Drawings but only for the purpose of this Contract or for the purposes of managing, running or using the Minor Facilities B or procuring services from third parties to manage, use or run Minor Facilities B.

24.9 **Access to As-Built Drawings (Minor Facilities B)**

A set of each As Built Drawings shall be kept by the Contractor. The Contractor will allow access to any of the As Built Drawings only to such persons as it considers have legitimate interests in viewing and/or using any of the As Built Drawings in connection with the Works or Services.

PART III THE SERVICES

25. PRINCIPAL OBLIGATIONS

25.1 Services Commencement

The Contractor shall undertake the provision of the Services in accordance with the provisions of this Contract from the Initial Services Commencement Date.

25.2 Waste Reception Protocol

From the Initial Services Commencement Date the Councils shall ensure that any Contract Waste delivered by, or on behalf of, the Councils is delivered in accordance with the provisions of **Schedule 17** (Waste Reception Protocol) and the Contractor shall accept delivery of Contract Waste at the Delivery Points in accordance with the provisions of **Schedule 17** (Waste Reception Protocol).

25.3 Third Party Waste

The Contractor shall be entitled (but not required) to process Third Party Waste, provided that processing of Third Party Waste shall not prejudice the performance of the Contractor's obligations to process Contract Waste in accordance with the requirements of this Contract.

25.4 Minimum Waste Delivery Obligation

25.4.1 If in any Contract Year from the date specified in the Contractor's notice served in accordance with **clause 21.2.2**, the total quantity of NWTF Residual Waste delivered to the Contractor (which is not Rejected in accordance with Schedule 17 (Waste Reception Protocol)) is less than 149,000 tonnes (pro-rated if there are fewer than 365 days in the Contract Year), then provided that the Contractor has used reasonable endeavours to accept Third Party Waste in order to make up the shortfall, the Councils shall make a payment to the Contractor equal to:

25.4.1.1 the Third Party Income which the Contractor would have received had the total quantity of NWTF Residual Waste delivered to the Contractor (which is not Rejected in accordance with Schedule 17 (Waste Reception Protocol)) been 149,000 tonnes (pro-rated if there are fewer than 365 days in the Contract Year), calculated on the assumption that such NWTF Residual Waste is of equivalent calorific value to the average net calorific value of the NWTF Residual Waste which the WCAs did deliver in the relevant Contract Year; less

25.4.1.2 the Third Party Income actually received (excluding income in respect of Third Party Waste which the Contractor has accepted in order to make up the shortfall in accordance with this clause) by the Contractor.

25.4.2 Any payment due from the Councils pursuant to **clause 25.4.1** shall be payable by the Councils at the same time as the Annual Reconciliation Amount in respect of the relevant Contract Year.

25.4.3 For the purposes of this **clause 25.4**, "reasonable endeavours" shall mean the Contractor (and the Operating Contractor) shall act as a prudent commercial waste operator would act in order to secure Waste for its own facility having the capability of the NWTF.

25.4A **Fluctuation in Tonnage of NWTF Residual Waste**

In acknowledgement of the fixed capacity of the NWTF, if over any rolling twelve (12) week period (where a week is a period of seven (7) consecutive Days commencing on a Monday) commencing on the first Monday after the NWTF Planned Completion Date, excluding the period from 22 December to 4 January (a Relevant 12 Week Period) the Councils or the Contractor consider that the aggregate amount of NWTF Residual Waste delivered to the Contractor across all Delivery Points in any week is likely to be less than 3,000 tonnes on four (4) or more occasions (or such tonnage delivery levels have actually occurred during such period) and this is considered likely by the Contractor to result in it being unable to meet the NWTF Diversion Tonnage Target, the Parties shall meet within five (5) Business Days of a request to do so by the Contractor and shall acting reasonably seek to agree within a further five (5) Business Days (or such later period as the Parties may agree) what measures the Councils can take to assist the Contractor in avoiding any failure by the Contractor in achieving the NWTF Diversion Tonnage Target.

25.4B In seeking to reach agreement pursuant to **clause 25.4A** the Councils acting reasonably shall consider what actions they can take or avoid taking:

25.4B.1 in their own right and as a WDA; and

25.4B.2 what powers they could exercise under the EPA in relation to their respective WCAs; and

25.4B.3 to the extent either is a WCA what steps it can take in that capacity;

in each case having regard to and without prejudice to its statutory duties and rights. Nothing in this **clause 25.4B** or **clause 25.4A** shall require the Contractor to incur material additional expenditure or fetter any statutory power of the Councils.

25.4C The Contractor shall only be entitled to submit a new request to meet pursuant to **clause 25.4A** at any time after the expiry of a period of twelve (12) weeks commencing on the resolution date of the previous request.

25.5 **Standard of Performance**

The Services will, at all times, be performed by appropriately qualified and trained personnel to such high standards of performance as it is reasonable to expect in accordance with:

25.5.1 the Specification;

25.5.2 the Services Delivery Plans;

25.5.3 the requirements of all Necessary Consents;

25.5.4 Good Industry Practice; and

25.5.5 all Legal Requirements.

25.6 **Emergencies**

25.6.1 If an emergency arises during the Contract Period in relation to the Councils' waste disposal operations (and whether or not an emergency has arisen shall be determined in the case of any dispute by the Councils' Authorised Officer acting reasonably) which cannot be dealt with by performance of the Services, the Contractor shall use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Councils' Authorised Officer in writing to ensure that the emergency is dealt with and normal operation of the relevant Site resumes as soon as is reasonably practicable.

25.6.2 As soon as reasonably practicable following each occasion on which the Councils exercises their rights pursuant to **clause 25.6.1** the Parties shall liaise and seek to agree upon the amended charge (if any) to the Councils for provision by the Contractor of any such additional or alternative services. The Parties hereby agree that the basis of assessment of any additional charge shall be receipted invoices (in the event that such are not available due to a proper reason then reasonable evidence that any additional charges have been incurred by the Contractor shall be supplied) for such services provided to the Councils by the Contractor. If such charges are not agreed or determined by the Parties the matter shall be referred on the application of either Party for resolution under **clause 78** (Dispute Resolution). No additional charge shall arise if the emergency is caused by the breach, neglect or default of the Contractor or any Contractor Related Party as defined in paragraphs (a) or (b) of that definition.

25.6.3 For the period that the Contractor provides additional or alternative services in accordance with **clause 25.6.1** and to the extent that the emergency has not arisen through the breach, neglect or default of the Contractor or any Contractor Related Party (as defined in paragraphs (a) or (b) of that definition) no Monthly Adjustment or Annual Adjustment shall arise to the extent that they would not have arisen but for the provision of or requirement to provide such additional or alternative services by the Contractor and the Councils shall indemnify the Contractor in respect of any loss of Third Party Income assumed in the Base Case and any additional landfill costs (including landfill taxes and transport costs) directly caused by the provision of or requirement to provide such additional or alternative services by the Contractor.

25.7 **Use of Hazardous Materials**

The Contractor shall ensure that any Hazardous Materials used or intended to be used by the Contractor in the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legal Requirements and the procedures documented in the Services Delivery Plan.

25.8 **Environmental Management System**

The Contractor shall implement an Environmental Management System and in so doing shall ensure that the minimum possible use is made of Hazardous Materials in the delivery of the Services and shall use less harmful substances or materials where practicable. The Contractor shall ensure that all such substances or materials are used at no greater concentration than is required and that used containers are disposed of so as not to cause any danger or damage to the Environment in accordance with Legal Requirements.

25.9 **Guaranteed Additional Diversion and Extra Diversion**

The provisions of this **clause 25.9** shall have effect in the Contract Years commencing on 1 April 2011, 1 April 2012, 1 April 2013, and 1 April 2014 only.

25.9.1 The Contractor shall secure Diversion from Landfill of 15,000 tonnes of Contract Waste (the **"Guaranteed Additional Diversion"**) in addition to the other requirements of this contract including the requirements to meet the Contract Targets for each Contract Year commencing on 1 April 2011, 1 April 2012, 1 April 2013 and 1 April 2014.

25.9.2 The Contractor shall use reasonable endeavours to secure Diversion from Landfill over and above the Guaranteed Additional Diversion (the "Extra Diversion") PROVIDED THAT subject to **clause 25.9.5** the Contractor shall obtain the prior written approval of the Councils before entering into any arrangements for such Diversion. The Contractor shall be reimbursed for the direct costs of such Extra Diversion (including additional haulage and gate fees but excluding management and overhead costs) in accordance with **paragraph 1.4** (Landfill Diversion Saving) of **Schedule 3** (Payment Mechanism).

25.9.3 Any additional Recycling and/or Diversion over and above Contract Targets achieved through the operation of HWRCs shall not be considered to be Guaranteed Additional Diversion or Extra Diversion and the provisions of this **clause 25.9** shall not apply to such overperformance.

25.9.4 On or around 1 October in each Contract Year, the Councils shall notify the Contractor of its forecast requirement for Extra Diversion for the following Contract Year (or Contract Years as appropriate).

25.9.5 Within 30 Business Days of receipt of such notification provided pursuant to **clause 25.9.4** above, the Contractor shall provide to the Councils a plan setting out its proposals to provide Extra Diversions (the **"Extra Diversion Plan"**) including details of:

25.9.5.1 the tonnages of Extra Diversion which it is anticipated would be obtainable, broken down by facility;

25.9.5.2 the commercial terms pertaining to Extra Diversion at each facility, including details of any associated uncertainty;

25.9.5.3 whether the relevant tonnage is likely to be contracted or available on a short-term spot market basis and, if contracted, the anticipated duration of the contract;

25.9.5.4 the anticipated sources of Contract Waste which will be subject to the Extra Diversion;

25.9.5.5 how the Extra Diversion will be distinguished from Guaranteed Additional Diversion;

25.9.5.6 a proposed maximum daily average turnaround time (pursuant to **paragraph 4.8.3** of **Schedule 1** (Specification) in respect of any direct delivery to a facility providing Extra Diversion;

25.9.5.7 the haulage costs and gate fees to be incurred for the purpose of the Extra Diversion;

25.9.5.8 an analysis comparing the overall costs set out in **clause 25.9.5.7** with those Landfill and haulage costs which would be payable by the Councils if the Extra Diversion did not take place.

25.9.6 Following receipt of the Extra Diversion Plan, the Councils will set out parameters for the implementation of Extra Diversion in the following Contract Year (the **"Extra Diversion Parameters"**).

25.9.7 The Contractor shall implement the Extra Diversion Plan in accordance with the Extra Diversion Parameters, provided always that the Councils shall not be liable to pay additional costs to the Contractor pursuant to **paragraph 1.4.4** of **Schedule 3** (Payment Mechanism) as a result of the Contractor not complying with the Extra Diversion Parameters and/or not providing Extra Diversion in accordance with the Extra Diversion Plan.

25.9.8 To the extent that:

25.9.8.1 the Contractor fails to implement the Extra Diversion Plan;

25.9.8.2 the Extra Diversion Plan does not provide for the Diversion of Contract Waste sufficient to meet the Councils forecast requirement for Extra Diversion specified in their notification issued pursuant to **clause 25.9.4**; or

25.9.8.3 the Councils identify the requirement for additional Diversion greater than that specified in their notification issued pursuant to **clause 25.9.4** after the issue of that notification and, following notice of the additional requirement from the Councils, the Contractor has not agreed to secure it,

the Councils may procure additional waste treatment services as necessary, in order to meet their requirements provided that before commencing any such procurement:

25.9.8.4 the Councils reasonably believe that additional Diversion capacity over and above that being delivered through the Contractor's implementation of the Extra Diversion Plan is available in the market;

25.9.8.5 the Councils shall first consult the Contractor who shall be entitled promptly to rectify any failure to implement the Extra Diversion Plan or amend the existing Extra Diversion Plan (as the case may be); and

25.9.8.6 the liability of the Contractor to the Councils under this Contract shall not be increased as a result.

25.9.9 Within each Monthly Report, the Contractor shall report any Extra Diversion achieved by reference to the Extra Diversion Plan.

25.9.10 The Contractor shall review and amend the Extra Diversion Plan in the event of any changes to the provision of Extra Diversion and shall submit the revised plan to the Councils. Based on the revised plan, the Councils may amend the Extra Diversion Parameters and the Contractor shall comply with any such amended parameters.

25.9.11 The actual Extra Diversion achieved in each Contract Year and the associated costs shall be reported to the Councils in the Rebate Report submitted pursuant to **paragraphs 7.1.2** and **7.3.3A** of **Schedule 4** (Reporting).

26. ASSET REGISTER

26.1 The Contractor shall be obliged to maintain the Asset Register in accordance with this **clause 26** (Asset Register).

26.2 Within 20 Business Days of the date hereof and each subsequent 3 year anniversary the Contractor shall deliver to the Councils a proposed asset register (the **"Proposed Asset Register"**) showing all assets employed for the purposes of delivering the Project in accordance with the provisions of this Contract together with an indication of the life expectancy of such assets.

26.3 The Councils shall within 10 Business Days of receipt of the Proposed Asset Register be entitled to raise any objections, amendments or deletions (as the case may be).

26.4 In the event that the Councils do not raise any objections, the Proposed Asset Register shall be deemed to become the Asset Register.

26.5 In the event that the Councils raise any objections or propose any alterations to the Proposed Asset Register the Contractor shall either make the necessary amendments or demonstrate to the reasonable satisfaction of the Councils that such amendments are not appropriate. Any dispute under this clause 26.5 may be referred by either Party to the Dispute Resolution Procedure.

26.6 Following agreement or any determination pursuant to the Dispute Resolution Procedure in accordance with **clause 26.5** above the Proposed Asset Register as modified or not (as the case may be) shall become the Asset Register.

26.7 The Proposed Asset Register shall include:

26.7.1 any land or buildings;

26.7.2 any equipment;

26.7.3 any books and records (including operating and maintenance manuals, health and safety manuals and other know how);

26.7.4 any spare parts, tools and other assets (together with any warranties in respect of assets being transferred) with a replacement value of over £1000 (indexed);

26.7.5 any revenue and any other contractual rights; and

26.7.6 any Intellectual Property Rights,

but excluding any assets and rights in respect of which the Councils are full legal and beneficial owners

26.8 The Contractor shall propose a final asset register (the **"Final Assets Register"**) of those Assets used by the Contractor at the time of the final survey under clause 68.5 (Surveys on Termination).

27. MAINTENANCE

27.1 Maintenance

The Contractor shall ensure that at all times its maintenance and operating procedures are sufficient to ensure that:

27.1.1 the Services are continuously available;

27.1.2 it can maintain the design intention to achieve the full working life of each of the NWTF and the Clover Nook Transfer Station in accordance with the Specification and Works Delivery Plan; and

27.1.3 the Physical Assets are handed back to the Councils on the Expiry Date or the Extended Expiry Date (as the case may be) or the Termination Date in a condition complying with the Handback Condition.

27.2 Planned Maintenance

27.2.1 At least 20 Business Days prior to the beginning of each Contract Year, the Contractor shall develop a plan ("**Detailed Maintenance Plan**") for each Site setting out the maintenance to be carried out at the relevant Site over the next 2 Contract Years and the Contractor shall develop such plan in accordance with the principles set out in **paragraph 3.16** of **Schedule 1** (Specification).

27.2.2 The Contractor shall deliver to the Councils' Authorised Officer within three Months after the Completion Date for each Site a complete and accurate copy of the Detailed Maintenance Plan, provided that in circumstances of Turbine Delay, the Contractor shall deliver the Detailed Maintenance Plan in respect of the NWTF excluding the Turbine within three months of the NWTF Completion Date, and provide an updated Detailed Maintenance Plan in respect of the NWTF including the Turbine within three months of the Turbine Completion Date. The Contractor shall keep the Detailed Maintenance Plan up to date in accordance with Good Industry Practice and promptly supply updates as and when any changes are made thereto. Maintenance in the hours during which the relevant Site is to be open to the public or open for deliveries by or on behalf of any WCA in accordance with the Services Delivery Plan shall be minimised.

27.3 In respect of each Site the Contractor shall, throughout the Contract Period comply with the Detailed Maintenance Plan and during periods of maintenance make alternative arrangements at no cost to the Councils to receive, treat, manage and dispose of Contract Waste which would otherwise have been received, treated, managed or disposed of at, in or by the relevant Site.

27.4 The Contractor shall give such notice as is reasonably practicable to the Councils' Authorised Officer of any maintenance to be carried out by the Contractor pursuant to any Detailed Maintenance Plan if it is to be carried out at times materially different from those specified in such plan. Any such different times shall be set so as to minimise the disruption to the Councils and/or delivery of the Services and shall require prior agreement of the Councils' Authorised Officer (such agreement not to be unreasonably withheld or delayed provided that it would be unreasonable to withhold or delay consent if such different times are required by the Senior Lender's technical adviser). The Councils shall not have the right to make Unavailability Deductions or make Performance Deductions which have arisen as a result of the carrying out of any maintenance set out in the Detailed Maintenance Plan or agreed to be carried out in respect of the relevant Site.

27.5 Within five Business Days after each anniversary of the Commencement Date the Contractor shall produce to the Councils a report setting out the following:

27.5.1 the works, services or other matters carried out by way of maintenance in the previous Year detailing whether such works services or other matters were in accordance with the Detailed Maintenance Plan and if not an explanation as to why such works, services or other matters were carried out or not carried out (as the case may be); and

27.5.2 statistics identifying in all material respects the consolidated maintenance records of the various components of building, plant and equipment of each Site and where reasonably required by the Councils any further information relating to the statistics that the Councils may reasonably require in order to verify the report.

27.6 The Contractor shall promptly provide to the Councils such information as it reasonably requires in order to verify the report referred to in **clause 27.5** above.

27.7 If the report referred to in **clause 27.5** reveals that any Site is in a worse condition than that required by the Specification, the Services Delivery Plan and Detailed Maintenance Plan, then the Contractor and the Councils shall as soon as reasonably practicable meet to discuss and agree what the Contractor shall do to rectify such deficiencies in order to bring the condition thereof to that specified in the Specification, the Services Delivery Plan and Detailed Maintenance Plan. In default of agreement within ten Business Days the matter may be referred at the instance of either Party for resolution under **clause 78** (Dispute Resolution).

27.8 The Contractor shall carry out at its own cost, any works or services agreed or determined pursuant to **clause 27.7**.

27.9 **Surveys**

27.9.1 If the Councils reasonably believe that the Contractor is in breach of its obligations under **clause 27.1** then they may procure a Survey from a suitably qualified and experienced independent surveyor (and the Councils shall procure that such surveyor exercises reasonable skill and care and acts impartially between the Parties) of the Assets to assess whether the Assets have been and are being maintained by the Contractor in accordance with its obligations under **clause 27.1**. This right may not be exercised more often than once every two years.

27.9.2 The Councils shall notify the Contractor in writing a minimum of 14 Days in advance of the date it wishes to procure the carrying out of the Survey. The Councils shall consider in good faith any reasonable request by the Contractor for the Survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the Survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

27.9.3 When carrying out any Survey, the Councils shall procure that reasonable endeavours are taken by the Surveyor to minimise any disruption caused to the provision of the Services by the Contractor. The cost of the Survey shall, except where **clause 27.9.4** applies, be borne by the Councils. The Contractor shall give the Councils (free of charge) any reasonable assistance required by the Surveyor during the carrying out of any Survey.

27.9.4 If the Survey shows that the Contractor has not complied or is not complying with its obligations under **clause 27.1**, the Councils shall:

27.9.4.1 notify the Contractor of the standard that the condition of the relevant Site(s) and/or Asset(s) should be in to comply with its obligations under this **clause 27.1** as such is properly determined by the Surveyor acting in accordance with his appointment;

27.9.4.2 specify a reasonable period within which the Contractor must carry out any necessary rectification and/or maintenance work as such is properly determined by the Surveyor acting in accordance with his appointment; and

27.9.4.3 be entitled to be reimbursed by the Contractor for the total cost of the Survey.

27.9.5 The Contractor shall carry out such rectification and/or maintenance work notified to the Contractor pursuant to **clause 27.9.4** within the period and to the standard specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

PART IV - CHANGES TO THE WORKS OR SERVICES

28. CHANGES TO THE WORKS OR SERVICES

28.1 Council Change to the Works or Services

28.1.1 The Councils have the right to propose changes to the Works (other than Small Works Changes) or the Services in accordance with this clause. The Contractor shall be entitled to refuse a change in the Works or the Services (including any Small Works Changes) which:

28.1.1.1 requires the Works or the Services to be performed in a way that infringes law or is inconsistent with Good Industry Practice;

28.1.1.2 would cause any Necessary Consent to be revoked (or a new consent required to implement the relevant change to the Works or Services to be unobtainable);

28.1.1.3 would materially and adversely affect the Contractor's ability to deliver the Works or Services;

28.1.1.4 would, if implemented, materially and adversely change the nature of the Project (including its risk profile) in a manner which could not be adequately financially compensated;

28.1.1.5 the Councils do not have the requisite legal power or capacity to require the implementation of; or

28.1.1.6 requires any extension, alteration or omission of the Energos Technology and/or Entsorga Technology or is incompatible with the same.

28.1.2 The Contractor shall not be obliged to implement a Council Change to the Works and/or Services which would require a modification to an existing Planning Permission or Permit which, having used all reasonable endeavours to obtain such modification, the Contractor is unable to obtain.

28.1.3 If the Councils require a change in the Works or Services, the Councils must serve a Council Notice of Change on the Contractor.

28.1.4 The Council Notice of Change shall:

28.1.4.1 set out the change in Works or Services required in sufficient detail to enable the Contractor to calculate and provide the Estimated Change in Project Costs in accordance with **clause 28.1.6** below (the **"Estimate"**);

28.1.4.2 require the Contractor to provide the Councils within 20 Business Days (or such other reasonable period of time as may be necessary given the nature of the change as may be agreed between the Parties) of receipt of the Council Notice of Change with the Estimate; and

28.1.4.3 in the event that the change will require Capital Expenditure, state whether the Councils intends to pay to the Contractor the costs involved in implementing the change or whether the Councils require the Contractor to use its reasonable efforts to obtain funding in accordance with **clause 28.1.12** below.

28.1.5 As soon as practicable and in any event within 10 Business Days after having received the Council Notice of Change, the Contractor shall deliver to the Councils an estimate of third-party costs (if any) to be incurred by the Contractor in developing the Estimate and which will be payable by the Councils if the Council Notice of Change is withdrawn or deemed to be withdrawn. The Contractor shall not incur any material third-party costs in respect of the Estimate and shall not be required to submit an Estimate until the Councils have given their prior written

approval to the quantum and nature of those third party costs (such approval not to be unreasonably withheld or delayed).

28.1.6 As soon as practicable and in any event within 20 Business Days (or such other reasonable period of time as may be necessary given the nature of the change as may be agreed between the Parties) after having received the Council Notice of Change, the Contractor shall deliver to the Councils the Estimate. The Estimate shall include the opinion of the Contractor on

28.1.6.1 whether relief from compliance with obligations is required, including the obligations of the Contractor to achieve the NWTF Planned Completion Date and meet the Councils' requirements during the implementation of the change in Works or Services;

28.1.6.2 any impact on the carrying out of the Works or the provision of Services;

28.1.6.3 any amendment required to this Contract and/or any Project Document as a result of the change in Works or Services;

28.1.6.4 any Estimated Change in Project Costs that result from the change in Works or Services;

28.1.6.5 any Capital Expenditure that is required or no longer required as a result of the change in Works or Services;

28.1.6.6 any regulatory approvals which are required;

28.1.6.7 the proposed method of certification of any construction or operational aspects of any Facility required by the change in the Works or Services if not covered by the procedures specified in **clause 21** (Certification of Completion of the Works); and

28.1.6.8 any Change in Revenue (including Third Party Income) that results from the change in Works or Services.

28.1.7 As soon as practicable after the Councils receive the Estimate, the Parties shall discuss and agree the issues set out in the Estimate, including:

28.1.7.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;

28.1.7.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor; and

28.1.7.3 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Council Change concerned, has been taken into account in the amount which in the Contractor's opinion has resulted or is required under any of **clauses 28.1.6.4** and/or 28.1.6.5 and/or **28.1.6.8** above.

28.1.8 In such discussions the Councils may modify the Council Notice of Change and (if the estimated increase in Capital Expenditure in respect of the change is expected to exceed £100,000 (indexed) and it is practicable for the Contractor to do so), the Councils may require the Contractor to seek and evaluate competitive tenders for the relevant capital works. In each case the Contractor shall, as soon as practicable, and in any event not more than 10 Business Days after receipt of such modification, notify the Councils of any consequential changes to the Estimate.

28.1.9 If the Parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with **clause 78** (Dispute Resolution).

28.1.10 As soon as practicable after the issues referred to in **clause 28.1.7** are agreed or have been determined, the Councils shall:

28.1.10.1 confirm in writing to the Contractor the Estimate (as modified if applicable); or

28.1.10.2 withdraw the Council Notice of Change.

28.1.11 If the Councils do not confirm in writing the Estimate (as modified) within 20 Business Days of the contents of the Estimate having been agreed in accordance with **clause 28.1.7** above or determined pursuant to **clause 28.1.9** above, then the Council Notice of Change shall be deemed to have been withdrawn. Where there is a withdrawal (either pursuant to this **clause 28.1.11** or **clause 28.1.10** above) the Councils shall pay to the Contractor the reasonable additional third-party costs incurred by the Contractor in preparing such Estimate provided that:

28.1.11.1 the Contractor has used all reasonable endeavours to submit a reasonably priced Estimate;

28.1.11.2 the Contractor has made available to the Councils a cost breakdown of the Estimate;

28.1.11.3 the Councils have:

(a) approved the estimate of third-party costs and the type of third-party prior to any third-party costs being incurred in accordance with **clause 28.1.5** above; and

(b) agreed in accordance with **clause 28.1.5** that, given the nature of the proposed Change, it is reasonable to expect the relevant third party to incur costs in preparing the Estimate on the basis of the extent of the proposed change to the Services or the Works and the work

required in submitting an accurate Estimate in compliance with this **clause 28.1**;

28.1.12 In the event that the Estimate (as modified) involves Capital Expenditure then, unless the Councils have elected to fund such costs in accordance with **clause 28.1.4.3** the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to it and the Senior Lenders.

28.1.13 If the Contractor has used all reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within 40 Business Days of the date that the Councils confirmed the Estimate, then the Contractor shall have no obligation to carry out the change in Works or Service, unless the Councils agree within 20 Business Days of the end of such period to pay the costs for which funding is not available on the basis provided in **clause 28.1.12**.

28.1.14 If the Contractor does not intend to use its own resources to implement any change it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that the Contractor should not be worse off as a result of the implementation of the change) when procuring any work, services, supplies, materials or equipment required in relation to the change in the Works or Services.

28.1.15 Where the Councils agree to pay the costs for which funding is not available pursuant to **clause 28.1.13** above:

28.1.15.1 the Councils and Contractor shall agree:

(a) a payment schedule in respect of the payment of such sum reflecting the amount and timing of the costs to be incurred by the Contractor in carrying out the change in Service or Works to the extent borne by the Councils; and

(b) where payment for part of the change in the Services or Works reflects the carrying out of, or specific progress towards, an element within the change in the Services or Works, an objective means of providing evidence confirming that the part of the change in Service or Works corresponding to each occasion when payment is due under the payment schedule appears to have been duly carried out

(such payment schedule and evidence to be determined in accordance with **clause 78** (Dispute Resolution) in the event of the Councils and Contractor failing to agree as to its terms);

28.1.15.2 the Councils shall make a payment to the Contractor within 10 Business Days of receipt by the Councils of invoices presented to the Councils (complete in all material respects) in accordance with the agreed payment schedule (as the case may be, varied by agreement from time to time) accompanied by the relevant evidence

(where applicable) that the relevant part of the change in Service or Works has been carried out.

28.1.15.3 if payment is not made in accordance with **clause** 28.1.15, the Councils shall pay interest at the Prescribed Rate to the Contractor on the amount unpaid from the date 10 Business Days after receipt of the relevant invoice, until paid.

28.1.16 The Councils may, at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent the Contractor has obtained finance for part of the Capital Expenditure, the remaining part of the estimated Capital Expenditure.

28.1.17 In the event that the Estimate has been confirmed by the Councils, then the Parties shall determine and adjust the Unitary Charge in accordance with **clause 92** (Financial Adjustments).

28.2 **Small Works Changes**

28.2.1 Twenty eight (28) days prior to the Initial Services Commencement Date and the commencement of each subsequent Contract Year for the first 5 years and within 20 Business Days of any request in any subsequent Contract Year, the Contractor shall propose a schedule of rates to be agreed with the Councils (the **"Small Works Rates"**), such agreed rates to be applied in respect of any request from the Councils for Small Works to be completed during that Contract Year. The value of any Small Works shall be calculated on the basis that:

28.2.1.1 the labour element shall be calculated in accordance with the Small Works Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable; and

28.2.1.2 the materials element shall be charged at the cost of the materials to the Contractor or to the contractor carrying out the work (net of all discounts) plus 7.5%.

28.2.2 The Contractor and the Councils shall agree the timing of any Small Works, so as to minimise any inconvenience to the Councils. The Contractor shall take all reasonable steps to minimise the duration of any Small Works.

28.2.3 Any dispute between the Parties relating to Small Works shall be determined in accordance with **clause 78** (Dispute Resolution).

28.3 **Contractor Change in Works or Services**

28.3.1 If the Contractor wishes to introduce a change in the Works or Services, it must serve a notice (**"Contractor Notice of Change"**) on the Councils.

28.3.2 The Contractor Notice of Change must:

28.3.2.1 set out the proposed change in the Works or Services in sufficient detail to enable the Councils to evaluate it in full;

28.3.2.2 specify the Contractor's reasons for proposing the change in the Works or Services;

28.3.2.3 request the Councils to consult with the Contractor with a view to deciding whether to agree to the change in the Works or Services and, if so, what consequential changes the Councils require as a result;

28.3.2.4 indicate any implications of the change in the Works or Services;

28.3.2.5 indicate, in particular, whether a variation to the Unitary Charge is proposed (and, if so, give a detailed cost estimate of the proposed change);

28.3.2.6 indicate if there are any dates by which a decision by the Councils is critical; and

28.3.2.7 set out the timetable for implementing the proposed change to the Works or Services.

28.3.3 The Councils shall evaluate the Contractor's proposed change in Works or Services, in good faith, taking into account all relevant issues, including whether:

28.3.3.1 a change in the Unitary Charge will occur;

28.3.3.2 the change affects the quality of the Works or Services or the likelihood of successful delivery of the Works or Services;

28.3.3.3 the change will interfere with the relationship of the Councils with third parties;

28.3.3.4 the financial strength of the Contractor is sufficient to perform the changed Works or Services;

28.3.3.5 the residual value of the relevant Site(s) and/or relevant Asset(s) is reduced; or

28.3.3.6 the change materially affects the liabilities, risks or costs to which the Councils are exposed.

28.3.4 As soon as practicable after receiving the Contractor Notice of Change (but in any event within 15 Business Days), the Parties shall meet and discuss the matter referred to in it. During their discussions the Councils may propose modifications or accept or reject the Contractor Notice of Change.

28.3.5 If the Councils accept the Contractor Notice of Change (with or without modification), the relevant change in Works or Services shall be implemented in accordance with the timetable set out pursuant to **clause 28.3.2.7** or as agreed by the Parties pursuant to **clause 28.3.4**. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract or any Project Document which are necessary to give effect to the change in Works or Services.

28.3.6 If the Councils reject the Contractor Notice of Change, it shall be obliged to give reasons for its rejection.

28.3.7 Unless the Councils' acceptance specifically agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a change in the Works or Services proposed by the Contractor.

28.3.8 If the change in the Works or Services proposed by the Contractor causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease, there shall be a reduction in the Unitary Charge determined and made in accordance with **clause 92** (Financial Adjustments) such that any savings are shared 50:50 between the Councils and the Contractor respectively.

28.3.9 The Councils cannot reject a Change in Works or Services which is required in order to conform to a Change in Law. The costs of introducing a Change in Service resulting from a Qualifying Change in Law (including any resulting variation in the Unitary Change) shall be dealt with in accordance with **clause 29** (Change in Law) and to the extent not dealt with, borne by the Contractor.

29. CHANGE IN LAW

29.1 Qualifying Change in Law

29.1.1 If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

29.1.1.1 any necessary change in the Works or Services;

29.1.1.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

29.1.1.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve the NWTF Planned Completion Date and/or meet the requirements of this Contract during the implementation of any relevant Qualifying Change in Law;

29.1.1.4 any Change in Revenue (including Third Party Income) that will result from the relevant Qualifying Change in Law;

29.1.1.5 any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and

29.1.1.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Services Period,

in each case giving full details of the procedure for implementing the change in Works or Services. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with **clauses 29.1.2** to 29.1.6 below.

29.1.2 As soon as practicable after receipt of any notice from either Party under **clause 29.1.1**, the Parties shall discuss and agree the issues referred to in **clause 29.1.1** (including any extension of time to the NWTF Planned Completion Date) and any ways in which the Contractor can reasonably mitigate the effect of the Qualifying Change in Law, including:

29.1.2.1 providing evidence that the Contractor has used reasonable endeavours to oblige its Sub-Contractors (including, where practicable, the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs;

29.1.2.2 demonstrating how any Capital Expenditure to be incurred has been measured in a cost effective manner including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;

29.1.2.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business;

29.1.2.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under **clauses 29.1.1.5** and 29.1.1.6 above; and

29.1.2.5 in circumstances where the ACT Facility is no longer eligible for Renewables Obligation Certificates as a result of a Qualifying Change in Law, providing evidence that the Contractor has used reasonable endeavours to oblige its Sub-Contractors to comply with the CfD Allocation Plan.

29.1.3 If the Parties agree or it is determined under **clause 78** (Dispute Resolution) that the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Contractor's Share of any Capital Expenditure agreed or determined to be required as a result of a General Change in Law under this clause), then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and the Senior Lender.

29.1.4 The Contractor's Share shall be solely for the account of the Contractor.

29.1.5 If the Contractor has used reasonable endeavours to obtain funding for Capital Expenditure referred to in **clause 29.1.3** but has been unable to do so within 60 Days of the date that the agreement or determination in **clause 29.1.3** occurred, then the Councils shall pay to the Contractor an amount equal to the remaining Capital Expenditure on or before the date falling 30 Days after the Capital Expenditure has been incurred.

29.1.6 To the extent any compensation payable under this clause is to be made by means of an adjustment to or reduction in the Unitary Charge, the Parties shall determine and adjust the Unitary Charge in accordance with **clause 92** (Financial Adjustments).

PART V - PAYMENT PROVISIONS

30. THE UNITARY CHARGE

30.1 Monthly Payment

The Councils shall from the Initial Services Commencement Date pay the Contractor in respect of each Payment Period (subject to a pro rata adjustment in respect of any Payment Period of less than one Month at the beginning or end of the Services Period) the Monthly Payment determined from time to time in accordance with **Schedule 3** (Payment Mechanism) until the termination or expiry of this Contract.

30.2 Payment Mechanism: No double remedy

30.2.1 Subject to:

30.2.1.1 any other express right of the Councils pursuant to this Contract; and

30.2.1.2 the Councils' right to claim, on or after termination of this Contract, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Contract by the Contractor (provided that where the breach is one in respect of which the Councils are able to make a Deduction, the making of such Deduction shall be the sole remedy of the Councils in relation to such breach), save to the extent that the same has already been recovered by the Councils pursuant to this Contract or has been taken into account to calculate any compensation payable by the Councils pursuant to **clauses 60** (Compensation on Termination for Force Majeure), 58 (Compensation on Termination on Contractor Default), 56 (Compensation on Council Default) 64 (Compensation on Voluntary Termination) or 62 (Compensation on Termination on Corrupt Gifts, Fraud) and 66 (Compensation on Termination for Breach of the Refinancing Provisions);

the sole remedy of the Councils in respect of a failure to provide the Services in accordance with this Contract shall be the operation of **Schedule 3** (Payment Mechanism) and **Schedule 14** (Performance Mechanism).

30.2.2 Nothing in this **clause 30.2** (Payment Mechanism: No Double Remedy) shall prevent or restrict the rights of the Councils or the Contractor to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

30.3 Payment for Works at Clover Nook Transfer Station

The Contractor confirms that in respect of the Works undertaken by the Contractor in relation to the Clover Nook Transfer Station, the Councils paid to the Contractor the sums set out in the right hand column of the table below and the Councils shall have no further liability to the Contractor in respect of such Works:

Event	**Lump Sum £**
Outline Design Drawings - Full architectural plans and sections.	41,213.00
Working Drawings Issued - Full civil engineering drawings issued for construction.	82,426.00
Site Mobilisation - completion of access to site and installation of site accommodation.	449,824.00
Site Preparation/Clearance - levelling of site and bulk earthworks, main drainage, water distribution, street lighting, weighbridge and office/welfare building complete prior to paving.	380,074.00
Substructure Complete - foundations complete ready for steelwork erection.	414,418.00
Steel Frame Complete	400,811.00
Building Weatherproof - cladding complete	390,811.00
Issue of Completion Certificate	372,315.00

For the avoidance of doubt the lump sum figures in the right hand column of the table in this **clause 30.3** were not indexed.

30.4 **NOT USED**

31. **VAT**

31.1 All amounts due under this Contract are exclusive of VAT.

31.2 If any supply made or referred to in this Contract is or becomes chargeable to VAT then the person receiving the supply (the **"Recipient"**) shall in addition pay the person making the supply (the **"Supplier"**) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

31.3 The Councils shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within 28 Days of the delivery by the Contractor to the Councils of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this **clause 31.3**, **"Irrecoverable VAT"** means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Works or the Services or any of the obligations or provisions under this Contract (together with input VAT incurred as part of its overhead in relation to

such activities) to the extent that the Contractor is not entitled to the repayment or credit from Revenue and Customs in respect of such input VAT.

31.4 The Councils reserve the right after the Commencement Date to make elections to waive the exemption from VAT in accordance with paragraph 2(1) Schedule 1 of the Value Added Tax Act 1994, in respect of any property subject to this Contract.

31.5 If the Contractor has been paid compensation in accordance with the procedure laid down in **clause 31.3** and the Contractor is repaid by HM Customs and Excise any part of the input tax previously treated as Irrecoverable VAT under **clause 31.3** in respect of which the Contractor has received compensation pursuant to **clause 31.3** the Contractor shall repay to the Councils an amount equal to the lower of the amount paid by the Councils as compensation under **clause 31.3** in the exact period to which the adjustment relates and the amount repaid to the Contractor by HM Customs and Excise. If a repayment to the Councils is due it shall be made within 28 Days of the receipt of the refund referred to.

31.6 Where under this Contract any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set-off or repayment.

31.7 The Contractor shall provide the Councils with any information reasonably requested by the Councils in relation to the amount of VAT chargeable in accordance with this Contract and payable by the Councils to the Contractor.

32. REPORT AND INVOICING

32.1 Contractor to Issue Monthly Report

32.1.1 On or before the 10th Business Day of each Month during the Services Period the Contractor shall provide to the Councils a Monthly Report in the form set out in **Schedule 4** (Reporting) setting out the calculation of the Monthly Payment claimed by the Contractor for that Payment Period after the application of any Monthly Adjustments arising in respect of the preceding Payment Period (if any) and all other deductions the Councils are entitled to make in accordance with this Contract.

32.1.2 If the Monthly Report shows a net amount owing by the Councils to the Contractor, it shall be accompanied by a valid VAT invoice from the Contractor to the Councils in the amount properly chargeable to VAT.

32.2 Councils' Authorised Officer to Reply by Issuing Councils' Monthly Reply

Within five Business Days of receiving the Monthly Report the Councils shall provide to the Contractor the Councils' Monthly Reply which shall state:

32.2.1 whether or not the Councils agree with the Monthly Report; and

32.2.2 if the Councils do not agree with the Monthly Report, such disagreement and the amount which in the Councils' opinion is due to the Contractor for such Payment Period together with evidence to support such opinion.

32.3 **Councils May Suspend Payment if no Monthly Report**

If the Contractor does not deliver a Monthly Report within the specified period the Councils may suspend payment of the Monthly Payment until such time as the Contractor delivers the relevant Monthly Report.

32.4 **Deemed Consent if the Councils does not Issue the Councils' Monthly Reply**

If the Councils do not deliver the Councils' Monthly Reply within the specified period the Councils shall be deemed to have agreed with the Monthly Report provided by the Contractor.

32.5 **Councils Disagree with Monthly Report**

If in any Councils' Monthly Reply the Councils notify the Contractor that the Councils disagree with such a Monthly Report the Contractor shall take proper account of such objection and shall thereupon as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the Councils' Monthly Reply notify the Councils of the Contractor's confirmation or modification of the Monthly Report.

32.6 **Contractor Disagrees with the Councils' Monthly Reply**

If the Contractor disputes any matter referred to in the Councils' Monthly Reply the Contractor shall immediately so notify the Councils giving reasonable details and the Councils shall take proper account of such objection and shall thereupon as soon as reasonably practicable and in any event within five (5) Business Days of receipt of the Contractor's notification of Dispute notify the Contractor of his confirmation or modification of the Councils' Monthly Reply.

32.7 **Referral to Dispute Resolution Procedure**

32.7.1 If the Councils and the Contractor do not agree on the amount of any Monthly Payment on or before the fourteenth Business Day after submission of the Councils' Monthly Reply either Party may refer such dispute for determination in accordance with **clause 78** (Dispute Resolution).

32.7.2 Following resolution of the dispute the amount agreed or adjudged to be due shall be treated as not in dispute and shall, together with interest thereon at the Prescribed Rate calculated on a daily basis from the day after the date on which the Monthly Payment was due but for the dispute until the date of payment of the disputed amount, be paid by the Councils within five Business Days of receipt by the Councils of a valid VAT invoice in respect thereof.

32.8 **Councils to Pay Undisputed Amounts**

Notwithstanding any such dispute as referred to in **clause 32.7** (Referral to Dispute Resolution Procedure) the Councils shall pay the undisputed amount on or before the later of:

32.8.1 the last Business Day of the Month in which the invoice was submitted with the Monthly Report pursuant to **clause 32.1**; and

32.8.2 the day which is ten (10) Business Days after the actual date of submission of the relevant Monthly Report;

provided always that the Councils shall not be obliged to pay the Monthly Payment in respect of the final Payment Period until the amount specified in **clause 32.12.2** or 32.12.3 (Final Reconciliation) as the case may be, is due and payable.

32.9 **Tax Gross Up**

Where as a consequence of a Change in Law the Councils are obliged to make a payment subject to the deduction or withholding of tax, the sum payable by the Councils in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after making the required deduction or withholding, the Contractor receives and retains (free from any liability in respect of any such deduction or withholding and after taking into account any further deduction or withholding which is required to be made which arises as a consequence of such increase) a net sum equal to the full sum it would have received and retained had no deduction or withholding been made. There shall be no obligation on the Councils under this **clause 32.9** if the Contractor is not or shall cease to be resident in the UK at the time such payment is made.

32.10 If the Councils are or would but for this **clause 32.10** be required to pay an additional amount to the Contractor pursuant to **clause 32.9** (Tax Gross Up) and the Contractor is or will become entitled to any tax credit, tax deduction, a refund of tax or similar benefit by reason of the withholding or deduction, which the Councils are required to make, the Contractor shall when it receives such tax credit, tax deduction, refund or similar benefit pay to the Councils for the benefit of the Councils the amount of the benefit of such tax credit, tax deduction, refund or similar benefit as aforesaid which it has received and to the extent that it is attributable to such withholding or deduction and/or the payment to be made by the Councils under **clause 32.9** (Tax Gross Up) shall be reduced to such amount (if any) as is necessary in either case to leave the Contractor after allowing for such credit, deduction or benefit (taking account of the time value of money) in the same net financial position after Tax in which it would have been in the absence of the obligation to make a deduction or withholding.

32.11 To the extent that a tax credit tax deduction or similar benefit has been taken into account pursuant to **clause 32.10** and it subsequently transpires that the Contractor was not entitled thereto or was entitled only to a lesser amount (in either case otherwise than as a result of negligence or wilful default or failure to file any relevant claim or notice or to take any similar action on a timely basis on the part of the Contractor where the Contractor was or ought reasonably to have been aware that such failure would result in the loss or diminution of such credit, deduction or benefit and that the same was available) the Councils shall pay to the Contractor such sums as shall be necessary (after taking account of any tax thereon) to restore the Contractor to the same net financial position after Tax in which it would have been in the absence of the obligation to make a deduction or withholding.

32.12 **Final Reconciliation**

32.12.1 On or before the 10th Business Day of the Month following the end of the Month in which the Expiry Date or Termination Date (if earlier) occurs the Contractor shall provide to the Councils a report setting out:

32.12.1.1 the Monthly Adjustments arising in respect of the final Payment Period in the final Contract Year calculated in accordance with **paragraph 4.1** of **Schedule 3** (Payment Mechanism); and

32.12.1.2 the Annual Reconciliation Amount in respect of the final Contract Year calculated in accordance with **paragraph 3.1** of **Schedule 3** (Payment Mechanism).

32.12.2 If the report provided pursuant to **clause 32.12.1** shows a net amount owing by the Councils to the Contractor, it shall be accompanied by a valid VAT invoice from the Contractor to the Councils in the amount properly chargeable to VAT and the Councils shall pay to the Contractor the amount due on the final Business Day of the second Month following the end of the final Contract Year.

32.12.3 If the report provided pursuant to **clause 32.12.1** shows a net amount owing by the Contractor to the Councils, the Contractor shall pay to the Councils the amount due on the final Business Day of the second Month following the end of the final Contract Year.

33. CAPITAL CONTRIBUTION

33.1 Following the occurrence of the later of the NWTF Planned Completion Date and the NWTF Completion Date, or (where relevant) the Turbine Completion Date, the Contractor shall give to the Councils a notice stating that:

33.1.1 the NWTF Completion Date, or the Turbine Completion Date (as the case may be) has occurred or, where later, the NWTF Planned Completion Date has passed; and

33.1.2 that the Contractor requires payment from the Councils towards the capital cost of the NWTF on the terms set out in **clause 33.2** below.

33.2 Within ten (10) Business Days of receipt of a validly served notice from the Contractor pursuant to **clause 33.1**:

33.2.1 if there is no Turbine Delay, the Councils shall pay to the Contractor the sum of fifty million pounds (£50,000,000); or

33.2.2 if there is a Turbine Delay, the Councils shall pay to the Contractor the sum of forty four million and five hundred thousand pounds (£44,500,000) and, ten (10) Business Days following the Turbine Completion Date, the sum of five million and five hundred thousand pounds (£5,500,000),

in each case in immediately available cleared funds as a contribution towards the capital cost of New Waste Treatment Facility (the **"Capital Contribution"**) together with, where **clause 33.5** applies, any amount recoverable by the Contractor under that clause.

33.3 The Contractor acknowledges that the Councils intend to fund the Capital Contribution by means of borrowing. To the extent that, as a result of a Change in Law, the Councils are not able to borrow and/or pay the Capital Contribution to the Contractor for the purpose of complying with their obligations under **clause 33.2** (a "**Capital Contribution Shortfall**"), then subject to **clause 33.3C** the Councils shall not be obliged to do so provided that within twenty (20)

Business Days of becoming aware of such circumstances the Councils notify the Contractor of the relevant Change in Law and the shortfall in the amount of the Capital Contribution which they are able to fund or pay to the Contractor (the "**Councils' Notice of Capital Contribution Shortfall**") and the Councils shall (immediately upon serving the Councils' Notice of Capital Contribution Shortfall) be deemed to have served a Council Notice of Change on the Contractor on the terms set out in **clause 33.3A**, provided that the Councils shall not be relieved from their obligations under **clause 33.2** where:

33.3.1 a Change in Law prevents the Councils from borrowing the requisite funds from a particular source (including the Public Works Loan Board) but does not prevent the Councils from borrowing the requisite funds from another source (including from commercial lenders) regardless of whether the prohibited source of funding offered more attractive terms; or

33.3.2 the Councils lack the capacity or vires to borrow or pay to the Contractor the requisite funds (whether due to exceeding any borrowing limits or otherwise) other than due to a Change in Law following the Amendment and Restatement Date.

33.3A The Council Notice of Change deemed to be served on the Contractor in accordance with **clause 33.3** shall:

33.3A.1 be governed by the provisions of **clause 28.1** (Council Change to the Works or Services) provided that the Contractor shall be required to produce its Estimate within such period as the Contractor considers necessary (acting reasonably) to secure funding for the Capital Contribution Shortfall following the date of the Contractor's receipt of the Councils' Notice of Capital Contribution Shortfall and, for the purposes of which, **clause 28.1.6.4** shall be deemed to refer to "any Estimated Change in Project Costs that result from the Capital Contribution Shortfall";

33.3A.2 not be capable of being modified or withdrawn by the Councils or deemed to have been withdrawn in accordance with **clause 28.1.11** (Council Change to the Works or Services), unless a subsequent Change in Law (or other change in circumstances) results in there no longer being a Capital Contribution Shortfall (and in which case the Council Notice of Change shall be deemed to have been withdrawn by the Councils and **clauses 33.1** and 33.2 shall apply unamended);

33.3A.3 not be capable of being refused by the Contractor;

33.3A.4 require the Contractor to use reasonable endeavours to obtain funding for the Capital Contribution Shortfall by the date which is 90 Days after agreement or determination of the Contractor's Estimate in accordance with **clause 28.1.9** on terms reasonably satisfactory to the Contractor and the Senior Lender; and

33.3A.5 provide that where the Contractor is able to obtain funding for the Capital Contribution Shortfall in accordance with **clause 33.3A.4**, the Unitary Charge shall be adjusted in accordance with **clause 92** (Financial Adjustments).

33.3B If the Contractor has been unable to obtain funding for the Capital Contribution Shortfall within the time periods set out in **clause 33.3A**, either Party shall be

entitled to terminate this Contract by giving sixty (60) Business Days' written notice to the other Party, in which case:

33.3B.1 this Contract will terminate upon the expiry of the sixty (60) Business Days' notice period;

33.3B.2 compensation shall be payable by the Councils to the Contractor in accordance with **clause 60** (Compensation on Termination for Force Majeure) calculated on the basis that the Capital Contribution Shortfall has not been paid; and

33.3B.3 the Councils may require the Contractor to transfer its (or procure the transfer of the) title, interests and rights in and to any Assets (excluding any accrued rights of the Contractor) to the Councils.

33.3C The Councils acknowledge that by the date on which a Capital Contribution Shortfall arises, the Contractor will have borrowed amounts equivalent to the Capital Contribution Shortfall from the Senior Lenders in order to fund the Works pending receipt of the Capital Contribution from the Councils. Notwithstanding **clause 33.3**, **33.3A** or **33.3B** above, the Councils agree to indemnify and hold harmless the Contractor from and against its additional financing costs (including interest payments) for the amount of any such Capital Contribution Shortfall from the date on which the Councils were obliged to pay the Capital Contibution under **clause 33.2** until the earlier of:

33.3C.1 the date on which the Councils have paid the Capital Contribution Shortfall to the Contractor;

33.3C.2 payment of the Capital Contribution Shortfall to the Contractor by a third party pursuant to the implementation of the Council Notice of Change under **clause 33.3**; and

33.3C.3 payment of compensation on termination of this Contract to the Contractor under **clause 33.3B.2**.

termination of this Contract in accordance with **clause 33.3B**.

33.4 Neither Party shall be entitled to waive the requirement for Completion of the NWTF to be certified by the Independent Certifier in accordance with **clause 21.2.6** or the Independent Certifier's Appointment or the Independent Certifier's Collateral Warranty (as applicable) or otherwise.

33.5 This **clause 33.5**, will apply, if the Councils fail to pay any part of the Capital Contribution on the due date for payment in accordance with **clause 33.2**. To the extent that the payment by the Councils of interest at the Prescribed Rate in accordance with **clause 34** (Interest on Late Payment) on the amount of the Capital Contribution unpaid fails to compensate the Contractor in full for the additional interest and any other costs payable by the Contractor under the Senior Financing Agreement on the principal amount equal to the unpaid Capital Contribution for a period equal to the Councils' delay in payment, the Councils will pay the shortfall to the Contractor.

34. INTEREST ON LATE PAYMENT

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Councils or from the Councils to the Contractor under any provision of this Contract is not paid within five (5)

Business Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Contract relating to the payment of compensation on termination of this Contract following the occurrence of a Council Default provide the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

35. BENCHMARKING AND MARKET TESTING

35.1 The HWRC Services shall be subject to:

35.1.1 Benchmarking throughout the Contract Period in accordance with the procedure set out at **clause 35.3** (Benchmarking); and

35.1.2 Market Testing once during the Contract Period in accordance with the procedure set out at **clause 35.5** (HWRC Services: Market Testing).

35.2 The Landfill Services shall be subject to Market Testing throughout the Contract Period in accordance with the procedure set out at **clause 35.4** (Landfill Services: Market Testing).

35.3 Benchmarking

35.3.1 The Contractor shall undertake a benchmarking exercise (the **"Benchmarking Exercise"**) at its own cost in relation to the HWRC Services in accordance with the procedure and on the dates identified in this **clause 35.3** (Benchmarking).

35.3.2 Each Benchmarking Exercise will be undertaken to ascertain the relative quality and competitiveness of the HWRC Services in question. The Benchmarking Exercise will be undertaken in good faith by the Contractor and so far as reasonably practicable on the basis of an objective and like for like comparison by comparing the standards and prices of the HWRC Services in question and the costs of providing them with the standards and prices of equivalent services and the costs of providing them provided by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the HWRC Services in question.

35.3.3 The first HWRC Benchmarking Date shall be 1st April 2015. Thereafter HWRC Benchmarking Dates shall occur every five (5) Years, unless otherwise agreed by the Parties.

35.3.4 The Contractor's annual Services Delivery Plan for the Contract Year immediately preceding the Contract Year which begins on the HWRC Benchmarking Date shall include a review of the HWRC Services being provided (the **"HWRC Services Review"**), including without limitation:

35.3.4.1 a comparison of the levels of performance, by reference to the targets and KPIs achieved by the Contractor compared to:

(a) those achieved nationally;

(b) those achieved in all immediately adjacent WDAs;

(c) those WDAs assessed by CIPFA to be most comparable to the Councils;

35.3.4.2 an analysis of the HWRC Services, comparing the cost of delivering each element of the HWRC Services including, without limitation, details of:

(a) the quantity of Contract Waste Handled;

(b) the Recycling and Composting performance; and

(c) the rate of Diversion (including BMW diversion) achieved at HWRCs;

35.3.4.3 a comparison of the HWRC Services with the Derbyshire Joint Municipal Waste Management Strategy extant at the next forthcoming HWRC Benchmarking Date; and

35.3.4.4 the Contractor's indicative proposals (the HWRC Benchmarking Proposals) for improving the HWRC Services to achieve higher levels of performance, improved cost effectiveness and compatibility with the Derbyshire Joint Municipal Waste Management Strategy, including indicative costs (compared to the prevailing HWRC Services) and revised KPIs.

35.3.5 Based on the HWRC Services Review, the Councils' shall provide to the Contractor, no less than thirty-nine (39) weeks before the HWRC Benchmarking Date, a schedule (the **"HWRC Benchmarking Schedule"**) setting out the revised scope of HWRC Services which the Councils' propose the Contractor shall provide from the HWRC Benchmarking Date.

35.3.6 No less than twenty-six (26) weeks before the HWRC Benchmarking Date, the Contractor shall provide the Councils' with its proposals for implementing the revised scope of HWRC Services set out in the HWRC Benchmarking Schedule, including without limitation:

35.3.6.1 rates, prices, and charges for the revised scope of HWRC Services to be provided from the HWRC Benchmarking Date and details of the specific elements of the Base Case which are subject to change as a result of this revised scope of HWRC Services and the amendments required as provided within **clause 92** (Financial Adjustments);

35.3.6.2 a revised Services Delivery Plan for the HWRC Services to be provided from the HWRC Benchmarking Date. This shall clearly identify the KPIs which would form the basis of assessing the effectiveness and value for money of the revised HWRC Services compared with previous HWRC Services; and

35.3.6.3 justification that the rates, prices and charges made by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the HWRC Services represent good value for money when compared with services which

are comparable to the HWRC Services with comparable KPIs being delivered in other comparable WDA areas, together such proposals to be referred to as the HWRC Benchmarking Final Proposals.

35.3.7 The Councils shall request such additional information as it may require to assess the Contractor's HWRC Benchmarking Final Proposals within four (4) weeks of receipt by the Councils of the HWRC Benchmarking Final Proposals. The Contractor shall provide any such additional information within four (4) weeks of request by the Councils.

35.3.8 No less than thirteen (13) weeks before the HWRC Benchmarking Date, the Councils shall either:

35.3.8.1 by giving written notice to the Contractor, accept the Contractor's HWRC Benchmarking Final Proposals for undertaking HWRC Services from the HWRC Benchmarking Date, in which case such revised HWRC Services shall commence from the HWRC Benchmarking Date;

35.3.8.2 by giving written notice to the Contractor, accept the Contractor's HWRC Benchmarking Final Proposals in respect of the revised HWRC Services which shall commence from the HWRC Benchmarking Date, but refer the rates, prices and charges for determination in accordance with **clause 78** (Dispute Resolution), in which case the Adjudicator's decision shall be binding; or

35.3.8.3 by giving written notice to the Contractor, reject the Contractor's HWRC Benchmarking Final Proposals, in which case the prevailing HWRC Services, KPIs, rates, prices and charges shall continue beyond the HWRC Benchmarking Date.

35.3.9 Following the acceptance of the HWRC Benchmarking Proposal by the Councils or determination in accordance with **clause 35.3.8.1** or **clause 35.3.8.2** above, the rates, prices and charges in paragraph 1.3 of Schedule 3 (Payment Mechanism) HWRC Services shall be amended to reflect the revised rate as a result of the Benchmarking exercise and any changes to the Unitary Charge will be made in accordance with **clause 92** (Financial Adjustments) and shall be updated accordingly.

35.4 **Landfill Services: Market Testing**

35.4.1 The first Landfill Market Testing Date shall be 1st April 2020, and references in this **clause 35.4** to **"Landfill Market Testing Date"** shall be interpreted accordingly. Thereafter Landfill Market Testing Dates shall occur every five (5) years, unless otherwise agreed by the Parties.

35.4.2 No less than thirty-nine (39) weeks before the Landfill Market Testing Date, the Contractor shall prepare and submit to the Councils its proposals for Market Testing of Landfill Services (the **"Landfill Market Testing Proposals"**) describing in detail the Contractor's proposed Tenderers and the Tender Documents.

35.4.3 The Landfill Market Testing Proposals shall include:

35.4.3.1 a list of those Landfill operators from which the Contractor or the Operating Contractor proposes to seek bids. Unless otherwise agreed, this shall include all Landfill operators within thirty (30) miles of any Delivery Point and (where practicable) a minimum of three (3) Landfill operators in respect of all parts of the Contract Area;

35.4.3.2 a proposed specification and sub-contract terms, which shall be in all material respects consistent with the provisions of this Contract, including the Specification and **Schedule 14** (Performance Mechanism); and

35.4.3.3 a schedule setting out the proposed tonnages it is proposed to Landfill in the period up to the next Landfill Market Testing Date.

35.4.4 The Councils shall either:

35.4.4.1 comment on the Contractor's Landfill Market Testing Proposals within fourteen (14) days, in which case the Contractor shall take into account the Councils' comments in the Tenders it seeks; or

35.4.4.2 not offer comment on the Contractor's Landfill Market Testing Proposals within fourteen (14) days in which case the Contractor shall proceed to invite Tenders as proposed.

35.4.5 No less than twenty-six (26) weeks before the Landfill Market Testing Date, the Contractor or the Operating Contractor shall commence conducting the Market Testing of Landfill Services in accordance with the Landfill Market Testing Proposals.

35.4.6 The Contractor shall be responsible for compiling the list of prospective tenderers and selecting the Tenderers from the list of prospective tenderers.

35.4.7 The Contractor shall issue the Tender Documents to prospective tenderers on the basis of their:

35.4.7.1 financial standing; and

35.4.7.2 technical and managerial experience and ability (taking into account any references).

35.4.8 The Councils shall have the right to review the list of prospective tenderers. The Contractor shall provide the Councils with an explanation of the reasons behind the non-inclusion on the list of prospective tenderers of any person identified as suitable by the Councils, if so requested by the Councils.

35.4.9 The Councils shall have the right to object to the selection of a Tenderer where the Tenderer has committed a Prohibited Act by notifying the Contractor of such objection in writing and such Tenderer shall not be selected.

35.4.10 The Contractor shall provide to the Councils as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents.

35.4.11 Subject to **clause 35.4.12**, following the expiry of the Tender period for the return of responses to the Tender Documents (which shall be no later than twenty (20) weeks before the Landfill Market Testing Date) the Contractor shall determine, following consultation with the Councils, which Tender or Tenders to select, if any, in respect of the Landfill Services.

35.4.12 No less than sixteen (16) weeks before the relevant Landfill Market Testing Date, the Contractor shall select the most economically advantageous Tender or Tenders received in respect of the provision of the Landfill Services.

35.4.13 On making this determination, the Contractor shall supply to the Councils a copy of its Tender evaluation, together with sufficient supporting information concerning the Tender evaluation to enable the Councils to analyse and understand the basis for the Contractor's determination.

35.4.14 If the Councils does not agree with the Contractor's determination, the Councils may, within fifteen (15) Business Days of being provided with the Tender evaluation, dispute such determination and, if the Parties do not resolve such dispute within a further fifteen (15) Business Days, the dispute shall be dealt with in accordance with **clause 78** (Dispute Resolution).

35.4.15 The Contractor shall provide any prospective Tenderer which is unsuccessful in being selected with an explanation of the reasons behind its non-selection, if so requested by the person in question.

35.4.16 No less than eight (8) weeks before the Landfill Market Testing Date, the Contractor shall provide the Councils with its proposals for providing Landfill Services (the Landfill Services Proposal) up to the next Landfill Market Testing Date.

35.4.17 The Landfill Services Proposal shall include without limitation:

35.4.17.1 all rates, prices and charges received;

35.4.17.2 details of calculation, including transport costs and Tipping Away Payments, and rates for the Landfill Services to be provided from the Landfill Market Testing Date;

35.4.17.3 a revised Services Delivery Plan for the Landfill Services to be provided from the Landfill Market Testing Date; and

35.4.17.4 justification that the rates, prices and charges represent good value for money for the Councils.

35.4.18 The Councils shall request such additional information as it may require to assess the Contractor's Landfill Services Proposal within three (3) weeks of receipt by the Councils of the Landfill Services Proposal. The Contractor shall provide any such additional information within three (3) weeks of request by the Councils.

35.4.19 No less than three (3) weeks before the Landfill Market Testing Date, the Councils shall either:

35.4.19.1 by giving written notice to the Contractor, accept the Contractor's Landfill Services Proposal for undertaking Landfill Services from the Landfill Market Testing Date, in which case such revised Landfill Services shall commence from the Landfill Market Testing Date;

35.4.19.2 by giving written notice to the Contractor, refer the matter for determination in accordance with **clause 78** (Dispute Resolution) but only on the basis that the Contractor has not complied with market testing procedure in this clause 35.

35.4.20 Following the acceptance of the Contractor's Landfill Services Proposal by the Councils or determination in accordance with **clauses 35.4.19.1** and 35.4.19.2 above:

35.4.20.1 the successful tenderer(s) shall take over the provision of the relevant Service as a sub-contractor to the Operating Contractor; and

35.4.20.2 the rates, prices and charges in **paragraph 1.4** of **Schedule 3** (Payment Mechanism) (Landfill Services), shall be amended to reflect the revised rates as a result of the Market Testing exercise in accordance with **clause 92** (Financial Adjustments) and **paragraph 6.6** of **Schedule 3** (Payment Mechanism) provided that any such adjustment shall take into account any change of transport costs to be incurred by the Contractor associated with the appointment of the successful tenderer(s).

35.4.21 Where the Tender price of a Sub-Contractor or sub-contractors appointed by the Contractor or the Operating Contractor (the **"Successful Tenderer"**) is lower than the Latest Services Element, then the cost difference between the Successful Tenderer's Tender price and the Latest Services Element shall be deducted from the Latest Services Element with effect from the relevant Landfill Market Testing Date.

35.4.22 Where the Tender price of the Successful Tenderer is higher than the Latest Services Element, then the cost difference between the Successful Tenderer's Tender price and the Latest Services Element shall be added to the Latest Services Element with effect from the relevant Landfill Market Testing Date.

35.4.23 Any dispute under this **clause 35.4** shall be determined in accordance with **clause 78** (Dispute Resolution).

35.5 **HWRC Services: Market Testing**

35.5.1 For the purposes of the following market testing procedure the HWRC Market Testing Date shall be 31 March 2025 and references in this **clause 35.5** to **"HWRC Market Testing Date"** shall be interpreted accordingly.

35.5.2 No less than thirty-nine (39) weeks before the HWRC Market Testing Date, the Contractor shall prepare and submit to the Councils its proposals for Market Testing of HWRC Services (the **"HWRC Market Testing Proposals"**) describing in detail the Contractor's proposed Tenderers and the Tender Documents.

35.5.3 The HWRC Market Testing Proposals shall include:

35.5.3.1 a list of those HWRC operators from which the Contractor or the Operating Contractor proposes to seek bids; and

35.5.3.2 a proposed specification and sub-contract terms, which shall be in all material respects consistent with the provisions of this Contract, including the Specification and **Schedule 14** (Performance Mechanism).

35.5.4 The Councils shall either:

35.5.4.1 comment on the Contractor's HWRC Market Testing Proposals within fourteen (14) days, in which case the Contractor shall take into account the Councils' comments in the Tenders it seeks; or

35.5.4.2 not offer comment on the Contractor's HWRC Market Testing Proposals within fourteen (14) days in which case the Contractor shall proceed to invite Tenders as proposed.

35.5.5 No less than twenty-six (26) weeks before the HWRC Market Testing Date, the Contractor or the Operating Contractor shall commence conducting the Market Testing of HWRC Services in accordance with the HWRC Market Testing Proposals.

35.5.6 The Contractor shall be responsible for compiling the list of prospective tenderers and selecting the Tenderers from the list of prospective tenderers. Such list may include the incumbent provider of the HWRC Services and/or the Operating Contractor.

35.5.7 The Contractor shall issue the Tender Documents to prospective tenderers on the basis of their:

35.5.7.1 financial standing; and

35.5.7.2 technical and managerial experience and ability (taking into account any references).

35.5.8 The Councils shall have the right to review the list of prospective tenderers. The Contractor shall provide the Councils with an explanation of the reasons behind the non-inclusion on the list of prospective tenderers of any person identified as suitable by the Councils, if so requested by the Councils.

35.5.9 The Councils shall have the right to object to the selection of a Tenderer where the Tenderer has committed a Prohibited Act by notifying the Contractor of such objection in writing and such Tenderer shall not be selected.

35.5.10 The Contractor shall provide to the Councils as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents.

35.5.11 Subject to **clause 35.5.12**, following the expiry of the Tender period for the return of responses to the Tender Documents (which shall be no later than twenty (20) weeks before the HWRC Market Testing Date) the Contractor shall determine, following consultation with the Councils, which Tender or Tenders to select, if any, in respect of the HWRC Services.

35.5.12 No less than sixteen (16) weeks before the relevant HWRC Market Testing Date, the Contractor shall select the most economically advantageous Tender or Tenders received in respect of the provision of the HWRC Services.

35.5.13 On making this determination, the Contractor shall supply to the Councils a copy of its Tender evaluation, together with sufficient supporting information concerning the Tender evaluation to enable the Councils to analyse and understand the basis for the Contractor's determination.

35.5.14 If the Councils do not agree with the Contractor's determination, the Councils may, within fifteen (15) Business Days of being provided with the Tender evaluation, dispute such determination and, if the Parties do not resolve such dispute within a further fifteen (15) Business Days, the dispute shall be dealt with in accordance with **clause 78** (Dispute Resolution).

35.5.15 The Contractor shall provide any prospective Tenderer which is unsuccessful in being selected with an explanation of the reasons behind its non-selection, if so requested by the person in question.

35.5.16 No less than eight (8) weeks before the HWRC Market Testing Date, the Contractor shall provide the Councils with its proposals for providing HWRC Services (the **"HWRC Services Proposal"**) up to the Expiry Date.

35.5.17 The HWRC Services Proposal shall include without limitation:

35.5.17.1 all rates, prices and charges received;

35.5.17.2 details of calculation, and rates for the HWRC Services to be provided from the HWRC Market Testing Date;

35.5.17.3 a revised Services Delivery Plan for the HWRC Services to be provided from the HWRC Market Testing Date; and

35.5.17.4 justification that the rates, prices and charges represent good value for money for the Councils.

35.5.18 The Councils shall request such additional information as it may require to assess the Contractor's HWRC Services Proposal within three (3) weeks of receipt by the Councils of the HWRC Services Proposal. The Contractor shall provide any such additional information within three (3) weeks of request by the Councils.

35.5.19 No less than three (3) weeks before the HWRC Market Testing Date, the Councils shall either:

35.5.19.1 by giving written notice to the Contractor, accept the Contractor's HWRC Services Proposal for undertaking HWRC Services from the HWRC Market Testing Date, in which case such revised HWRC Services shall commence from the HWRC Market Testing Date;

35.5.19.2 by giving written notice to the Contractor, refer the matter for determination in accordance with **clause 78** (Dispute Resolution) but only on the basis that the Contractor has not complied with market testing procedure in this Clause 35.

35.5.20 Following the acceptance of the Contractor's HWRC Services Proposal by the Councils or determination in accordance with **clauses 35.5.19.1** and 35.5.19.2 above:

35.5.20.1 the successful tenderer shall take over the provision of the relevant Service as a sub-contractor to the Operating Contractor; and

35.5.20.2 the rates, prices and charges in **paragraph 1.3.1** (HWRC Fixed Payment) and Table 4.2.1 (HWRC Unavailability Rates) of **Schedule 3** (Payment Mechanism) shall be amended to reflect the revised rates as a result of the Market Testing exercise in accordance with **clause 92** (Financial Adjustments).

35.5.21 Where the Tender price of a sub-contractor or sub-contractors appointed by the Contractor or the Operating Contractor (the **"Successful Tenderer"**) is lower than the Latest Services Element, then the cost difference between the Successful Tenderer's Tender price and the Latest Services Element shall be deducted from the Latest Services Element with effect from the relevant HWRC Market Testing Date.

35.5.22 Where the Tender price of the Successful Tenderer is higher than the Latest Services Element, then the cost difference between the Successful Tenderer's Tender price and the Latest Services Element shall be added to the Latest Services Element with effect from the relevant HWRC Market Testing Date.

35.5.23 Any dispute under this **clause 35.5** shall be determined in accordance with **clause 78** (Dispute Resolution).

36. REFINANCING

36.1 Qualifying Refinancing

36.1.1 The Contractor shall obtain the Councils' prior written consent to any Qualifying Refinancing and the Councils and the Contractor shall at all times act in good faith with respect to any Refinancing or any potential or proposed Refinancing under **clause 36.7**.

36.1.2 The Councils shall be entitled to receive:

36.1.2.1 a 50% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of £1 million;

36.1.2.2 a 60% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing gain of £3 million; and also

36.1.2.3 a 70% share of any other Refinancing Gain arising from a Qualifying Refinancing.

36.1.3 The Councils shall not withhold or delay their consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in **clause 36.1.2**.

36.2 **Provision of information**

The Contractor shall promptly provide the Councils with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Councils shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).

36.3 **Payment of any Refinancing Gain**

The Councils shall have the right to elect to receive their share of any Refinancing Gain as:

36.3.1 single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;

36.3.2 a reduction in the Unitary Charge over the remaining term of the Contract; or

36.3.3 a combination of any of the above.

36.4 **Calculation of the Refinancing Gain**

The Councils and the Contractor will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Councils' share of the Refinancing Gain (taking into account how the Councils have elected to receive their share of the Refinancing Gain under **clause 36.3** above). If the Parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Councils' share, the dispute shall be determined in accordance with **clause 79** (Dispute Resolution).

36.5 The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Councils will be paid to the Councils by the Contractor within 28 Days of any Qualifying Refinancing.

36.6 **Notifiable Financings**

Without prejudice to the other provisions of this **clause 35**, the Contractor shall:

36.6.1 notify the Councils of all Notifiable Financings on becoming aware of the same and again when they are entered into; and

36.6.2 include a provision in the Financing Agreements whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements.

36.7 **The Councils Right to Request Refinancing**

36.7.1 If the Councils (acting reasonably) consider the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements, the Councils may, by notice in writing to the Contractor, require the Contractor to request potential funders to provide terms for a potential Refinancing (a **"Refinancing Notice"**).

36.7.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Councils believe such funding terms to be available. The Contractor and Councils shall meet to discuss the Refinancing Notice within 28 days. Such a meeting will consider the evidence available to both Parties about the availability of funding terms for a potential Refinancing. The Councils shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten days following the meeting.

36.7.3 If the Councils serve a Refinancing Notice which is not withdrawn pursuant to **clause 36.7.2**, then the Contractor shall:

36.7.3.1 act promptly, diligently and in good faith with respect to the potential Refinancing;

36.7.3.2 use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that the Contractor shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in the United Kingdom to that operated by the Contractor, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of **clause 36.5**; and

36.7.3.3 either:

(a) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Councils (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Councils that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in **clause 36.7.3.2** above and (ii) initial

drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or

(b) if the Contractor (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements in accordance with the requirements of **clause 36.7.3.2**, provide evidence to the reasonable satisfaction of the Councils for such belief and evidence to the reasonable satisfaction of the Councils that the Contractor has complied with its obligations in **clauses 36.7.3.1** and **36.7.3.2**.

36.7.4 Following receipt of the information referred to in **clause 36.7.3.3(a)**, the Councils shall (in their absolute discretion) either:

36.7.4.1 instruct the Contractor to implement the proposed Refinancing; or

36.7.4.2 instruct the Contractor to discontinue the proposed Refinancing

provided that if the Councils reasonably consider that the requirements of **clause 36.7.3.3(a)** have not been satisfied, the Councils may require the Contractor to satisfy its obligations under **clause 36.7.3.3(a)** whereupon the provisions of **clauses 36.7.3** and 36.7.4 shall apply as if the Councils had served a Refinancing Notice.

36.7.5 If the Councils instruct the Contractor to implement the proposed Refinancing:

36.7.5.1 the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;

36.7.5.2 such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

36.7.5.3 the provisions of **clauses 36.1** to **36.6** shall apply.

36.7.6 If:

36.7.6.1 the Councils instruct the Contractor to discontinue the potential Refinancing pursuant to **clause 36.7.4.2**; or

36.7.6.2 the requirements of **clause 36.7.3.3(b)** are satisfied then, the Councils shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Councils within 28 days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Contractor except insofar as:

(a) it can be demonstrated to the reasonable satisfaction of the Councils that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties; and

(b) the Councils have, by prior written agreement, approved the use of such internal management resource.

36.7.7 The Councils shall be entitled to issue a Refinancing Notice under **clause 36.7.1** at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under **clause 36.7.2** has been issued for the purpose of this **clause 36.7.7**.

37. ROCS REGIME

37.1 The Parties acknowledge that the Council shall not be liable to the Contractor for any Losses arising out of a failure of the ACT Facility to be accredited under the ROCS Regime, save where such failure arose as a result of a Relevant Event (in which case, the relevant provisions of this Contract shall apply).

37.2 The Parties agree that the Contractor will not be entitled to claim a Qualifying Change in Law to the extent that the banding under the ROCS Regime for waste gasification facilities is reduced but remains at 1.505 ROCS/MWh or higher.

37.3 The Councils acknowledge that as at the Amendment and Restatement Date, the banding under the ROCS Regime for gasification facilities is 1.8 ROCS/MWh but the Base Case is modelled on 1.505 ROCS/MWh and agrees that the Contractor shall not be liable to the Councils for any revenue arising as a result of the difference between such levels.

37.4 If, and to the extent that, at any time Renewable Obligations Certificates are awarded to the Energos Technology on the basis of more than 1.8 ROCS/MWh (the **"Increased ROC Allocation"**), then for the period of the Increased ROC Allocation, the Contractor shall pay to the Councils on a monthly basis, by way of deduction from the Monthly Payment, an amount equal to the increased revenue received by the Contractor in the preceding month arising from the Increased ROC Allocation, provided that the calculation of the increased revenue shall disregard the Renewables Obligation Certificates revenue between 1.505 ROCS/MWh and 1.8 ROCS/MWh.

38. BEST VALUE

38.1 Councils' Best Value Duty

38.1.1 The Contractor acknowledges that:

38.1.1.1 the Councils are subject to the Best Value Duty;

38.1.1.2 the provisions of this **clause 38** (Best Value) are intended to assist the Councils in discharging their Best Value Duty in relation to the Services; and

38.1.1.3 the provisions of this **clause 38.1** shall apply in respect of the obligations of the Contractor and the Councils concerning the Best Value Duty and the 1999 Act generally.

38.1.2 The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

38.1.3 The Contractor shall undertake or refrain from undertaking such actions as the Councils shall reasonably request to enable the Councils to comply with Part 1 of the 1999 Act, including from the Initial Services Commencement Date:

38.1.3.1 complying with requests for information, data or other assistance made by the Councils in pursuance of their Best Value Duty including to:

(a) NOT USED;

(b) facilitate any inspection or audit undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the Councils' compliance with their Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;

(c) facilitate the Councils preparing any statement, in response to an Councils' auditor's report;

(d) assist the Councils in relation to any action taken by the Secretary of State under section 15 of the 1999 Act;

(e) assist the Councils to comply with any government departmental direction;

(f) NOT USED;

(g) complying with all requests by the Councils to procure the attendance of specific officers or employees of the Contractor or its Construction Contractor, its Operating Contractor or the HWRC Contractor at any meetings of the Councils at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than twice in any one (1) Contract Year);

38.1.3.2 permitting any Best Value Inspector or other Relevant Authority empowered to inspect the Councils' compliance with Part 1 of the 1999 Act, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:

(a) any HWRC, Project Transfer Station and the NWTF;

(b) any document or data relating to the Services which is (i) in the possession or control of the Contractor, a Key Sub-Contractor or the HWRC Contractor; or (ii) the Contractor is able, using reasonable endeavours, to obtain from any other sub-contractor; and

(c) any Sub-Contractor, agent or employee of the Contractor.

38.2 **Annual Service Report and Best Value Annual Service Plan**

38.2.1 The Contractor shall in each Contract Year, at its own cost, provide to the Councils a written report (the **"Annual Service Report"**) in accordance with the requirements of **Schedule 4** (Reporting).

38.2.2 The Contractor shall upon a written request from the Councils promptly provide such written evidence or other supporting information as the Councils may reasonably require to verify and audit the information and other material contained in the Annual Service Report.

38.2.3 If, in the Councils' reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Councils may serve a written notice upon the Contractor (a **"Best Value Service Change Notice"**) stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Councils desire.

38.2.4 The Contractor shall, within twenty (20) Business Days of the date of receipt of the Best Value Service Change Notice, provide the Councils at its own cost with a written statement (the **"Best Value Annual Service Plan"**) containing the Contractor's proposals to achieve the change to the Services (or the relevant part) in accordance with the Best Value Service Change Notice.

38.2.5 As soon as practicable after the Councils receive the Best Value Annual Service Plan, the Parties shall discuss and agree the issues set out in the Best Value Annual Service Plan. In such discussions the Councils may modify the Best Value Service Change Notice, in which case the Contractor shall, as soon as practicable, and in any event not more than twenty (20) Business Days after the receipt of such modification, notify the Councils of any consequential changes to the Best Value Annual Service Plan.

38.2.6 If the Parties cannot agree on the contents of the Best Value Annual Service Plan then the dispute will be determined in accordance with the Dispute Resolution Procedure.

38.2.7 As soon as practicable after the content of the Best Value Annual Service Plan has been agreed or otherwise determined pursuant to the Dispute Resolution Procedure the Councils shall:

38.2.7.1 confirm in writing the Best Value Annual Service Plan; or

38.2.7.2 withdraw the Best Value Service Change Notice.

38.2.8 If the Councils do not confirm the Best Value Annual Service Plan within ten (10) Business Days of the Best Value Annual Service Plan having been agreed or determined pursuant to the Dispute Resolution Procedure, then the Best Value Annual Service Plan and the Best Value Service Change Notice shall be deemed to have been withdrawn.

38.2.9 If the Councils confirm the Best Value Annual Service Plan then the Councils shall issue a Council Notice of Change save that the Councils shall not be entitled to instruct any such proposed change to that extent that any of **clauses 28.1.1.1** to **28.1.1.6** applies thereto.

38.2.10 To the extent that the implementation of the proposals in the Best Value Annual Services Plan will result in a decrease in the costs of the Contractor, the Unitary Charge shall be adjusted downwards in accordance with **clause 92** (Financial Adjustments) to reflect a sharing in the decrease of costs 50:50 as to the Authority and Contractor respectively.

38.2.11 The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Best Value Service Change Notice and a Council Notice of Change served pursuant to **clause 38.2.9** (Annual Service Report and Best Value Annual Service Plan).

PART VI PERFORMANCE AND MONITORING

39. PERFORMANCE MONITORING

39.1 Contractor Responsibility

The Contractor acknowledges and agrees that, notwithstanding any provision of this Contract which contemplates that, in respect of the provision of the Services, the Councils will or may from time to time:

39.1.1 inspect any part of any Site;

39.1.2 check compliance by the Contractor with its obligations;

39.1.3 confirm or indicate approval of or non-objection to proposals made by the Contractor;

39.1.4 request the Contractor to make a change to the Services;

39.1.5 otherwise seek to influence the manner in which the Project is conducted by the Contractor; or

39.1.6 take samples,

it will always be fully the responsibility of the Contractor, and not the responsibility of the Councils, to ensure that the Services are performed in all respects in accordance with the Contractor's obligations under this Contract, and in accordance with all Legal Requirements and Necessary Consents and no such action by or on behalf of the Councils will in any way limit or affect such obligations.

39.2 Contractor Monitoring

The Contractor shall diligently carry out a monthly performance monitoring exercise in accordance with **Schedule 4** (Reporting).

39.3 Council Monitoring

The Councils may elect to undertake their own performance monitoring exercise at any stage during the Contract Period for any purpose including ensuring that

the Services are being provided in accordance with this Contract, that all information provided by the Contractor is accurate as to the adequacy of the Contractor's own monitoring processes. The Contractor shall cooperate with and assist the Councils with such performance monitoring. In that respect the Councils shall have the right to audit the Contractor's quality management systems (for example ISO 9000 or equivalent standard) to establish the adequacy or accuracy of the quality management system documentation. The Contractor shall use its reasonable endeavours to assist the Councils in such an exercise.

39.4 **Cost of Performance Monitoring**

Each Party shall bear its own costs of performance monitoring.

39.5 **Legal Requirements**

Without prejudice to the generality of **clause 39.1** (Contractor Responsibility), no such actions by or on behalf of the Councils will in any way lessen the Contractor's responsibility for ensuring that the Services are at all times conducted in a manner which complies with all applicable Legal Requirements.

39.6 **Increased Monitoring**

If there are reasonable grounds to believe that either the Contractor has failed to observe or perform any of its obligations under this Contract or the Contractor is likely to fail to observe or perform any of its obligations under this Contract in relation to the Services the Councils may (without prejudice to any other right or remedy available to it) give notice to the Contractor:

39.6.1 requiring the Contractor to carry out additional monitoring in such manner and to such extent as the Councils shall reasonably specify;

39.6.2 requiring the Contractor to supply such additional reports, plans and other information in such manner and to such extent as the Councils shall reasonably specify;

39.6.3 specifying any inspections to be carried out by the Councils their agents or employees in monitoring the performance and observance of the Contractors obligations under this Contract as are reasonably considered necessary by the Councils (causing as little disruption and inconvenience to the Contractor as is reasonably practicable).

39.7 In the event of a failure by the Contractor to observe or perform its obligations in accordance with **clause 32** (Report and Invoicing) this **clause 39** and **Schedule 3** (Payment Mechanism) the Councils may give notice to the Contractor notifying the Contractor that the Councils will undertake all or any part of the future monitoring to such level and extent as would be required of the Contractor pursuant to this Contract to ensure that the Services are conducted in all respects in accordance with the Contractor's obligations under this Contract, and in accordance with all Legal Requirements and Necessary Consents whereupon the Contractor shall be relieved of future monitoring in such respect until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Councils that it will perform (and is capable of performing) its obligations under **clause 32** (Report and Invoicing), this **clause 39** and **Schedule 3** (Payment Mechanism), provided that it is hereby agreed that the Contractor will have demonstrated to the reasonable satisfaction of the

Councils if such obligations have been complied with for three (3) consecutive Months.

39.8 The Contractor shall cooperate and assist the Councils with the monitoring by the Councils their agents or employees in accordance with **clause 39.6.3** and shall make available all the Contractor's records relating to the provision of the Services forthwith on request by the Councils and the Councils their agents and employees shall be permitted access forthwith on request by the Councils to any Site or premises where such records are kept or where the Services are provided or to be provided.

39.9 The Contractor shall pay to the Councils all reasonable costs (including any associated administrative costs and overheads) incurred by the Councils in respect of the inspections referred to in **clause 39.6.3** or in respect of the monitoring referred to in **clause 39.6.1** where such inspections or monitoring demonstrates that the Contractor has failed to observe or perform any of its obligations under this Contract.

40. AUDIT ACCESS

40.1 The Contractor shall cooperate fully and in a timely manner with any reasonable request from time to time of any auditor (whether internal or external) of the Councils (including any official of the Environment Agency, Best Value Inspectorate or any other statutory inspectorate) to inspect the Sites in connection with any audit regarding the carrying out by the Councils of their statutory functions with regard to the performance or non-performance of this Contract, such request to be made on the giving of reasonable notice to the Contractor.

40.2 The Contractor shall cooperate fully, and in a timely manner with any request from time to time of any auditor (whether internal or external) of the Councils (including any official of the Environment Agency, Best Value Inspectorate or any other statutory inspectorate) to provide documents, or to procure the provision of documents, relating to the Project other than where such documents contain Commercially Sensitive Information (except to the extent that the Contractor can be required to provide such information to such persons by Law) and to provide, or to procure the provision of, any oral or written explanation relating to the same but only in connection with any audit regarding the carrying out by the Councils of their statutory functions with regard to the performance or non-performance of this Contract.

40.3 For the avoidance of doubt no Party shall be in breach of clause 75 (Freedom of Information and Confidentiality) by reason of any disclosure properly and reasonably made pursuant to this **clause 40**.

40.4 The Contractor shall procure that reasonably satisfactory office facilities are made available to the Councils and any auditor (whether internal or external) of the Councils (including any official of the Environment Agency, Best Value Inspectorate or any other statutory inspectorate) for the purposes of **clauses 40.1** and 40.2 if requested by the Councils to do so.

41. INSURANCE

41.1 Requirement to Maintain

41.1.1 The Contractor shall:

41.1.1.1 for the periods specified in **Parts 1, 2** and **3** of **Schedule 11** (Insurance) take out and maintain in force or procure the taking out and maintenance of the Required Insurances, all of which shall be subject to the endorsement(s) specified in **Part 4** of **Schedule 11** (Insurance), and any other insurances as may be required by Legislation (provided that all such insurances must be effective in each case not later than the date on which the relevant risk commences);

41.1.1.2 use its reasonable endeavours to procure that any broker (who shall at all times be of good repute) of the Contractor charged with the responsibility from time to time of placing or maintaining any of the Required Insurances provides the Councils with a broker's letter of undertaking in the form set out in **Part 5** of **Schedule 11** (Insurance) on:

(a) inception and each renewal of any of the Required Insurances;

(b) termination of the broker's appointment and appointment of a replacement broker; and

(c) otherwise at the Councils' request.

41.2 **Obligations on Parties**

The Contractor shall not (and shall procure that no Contractor Related Party shall) and the Councils shall not (and shall procure that no Councils Related Party shall) take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur, which would entitle any insurer to refuse to pay any claim under any insurance policy in which it is an insured, a co insured or additional insured person or noted on the policy.

41.3 **Nature of the Insurances**

41.3.1 The insurances referred to in **clause 41.1.1.1** (other than those insurances required by Law) shall:

41.3.1.1 where the Councils are required to be an insured party under **Schedule 11**, name the Councils as a co-insured with any other insured party each for its separate interests;

41.3.1.2 contain a clause whereby the insurance shall apply to each of the insured parties as if a separate policy had been issued to each of them, other than in the event of exhaustion of the sum insured or the limit of indemnity, with non-vitiation protection in respect of any claim made by the Councils as a co insured in accordance with endorsement 2 in Part 4 of **Schedule 11** (Insurance);

41.3.1.3 contain a clause waiving the insurers' subrogation rights against the Councils, their employees and agents in accordance with endorsement 2 in Part 4 of **Schedule 11** (Insurance);

41.3.1.4 provide for 30 Days (or such lesser period as is market practice from time to time) prior written notice of their cancellation, non-renewal or amendment to be given to the Councils in accordance with endorsement 1 in Part 4 of **Schedule 11** (Insurance);

41.3.1.5 in respect of the Physical Damage Policies (as defined in **clause 41.15** (Reinstatement)) provide for payment of proceeds in accordance with endorsement 4 in Part 4 of **Schedule 11** (Insurance); and

41.3.1.6 contain a clause whereby notice of a claim given by an insured party shall be accepted by insurers as valid notification of a claim on behalf of all insured parties in accordance with endorsement 3 in Part 4 of **Schedule 11** (Insurance).

41.3.2 Whenever the Councils are to be an insured party in respect of the insurances referred to in **clause 41.1.1.1**, the Councils shall be named as a co insured for its separate interests.

41.3.3 For the avoidance of doubt:

41.3.3.1 the minimum levels of indemnity required in respect of each Required Insurance (other than those insurances required by Law) pursuant to the terms of this Contract shall be maintained by the Contractor so that such levels of indemnity are available at all times to the extent that they are available in the worldwide insurance market (subject to **clause 41.17** (Uninsurable Risks), otherwise at the nearest whole insurable amount available in the insurance market; and

41.3.3.2 at all times the Contractor shall have the option, at its own cost, of taking out and maintaining in force, or procuring the taking out and maintenance of, one or more of the Required Insurances specified in Part 2 of **Schedule 11** (Insurance) with waivers of subrogation in favour of the Construction Contractor (and its subcontractors of any tier), provided that the availability or otherwise of any such waivers of subrogation shall not be taken into account in determining whether or not any risk is Uninsurable for the purposes of **clause 41.17** and the provisions of Part 6 of **Schedule 11** (Insurance) shall not apply in respect of any costs associated with such waivers of subrogation.

41.4 **Evidence of Policies**

41.4.1 The Contractor shall use reasonable endeavours to obtain and provide to the Councils:

41.4.1.1 copies on request of all insurance policies in respect of the insurances referred to in **clause 41.1.1.1** (together with any other information reasonably requested by the Councils relating to such insurance policies, including (without limitation) copies of all documents evidencing

any amendments, extensions or variations to such insurances) and the Councils shall be entitled to inspect them during ordinary business hours;

41.4.1.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this **clause 41**; and

41.4.1.3 in respect of any insurance which is not maintained exclusively in respect of the Project and/or which involves a captive insurer, all such documentation and information as the Councils may reasonably require from time to time so as to enable the Councils to evaluate the adequacy of those insurance arrangements.

41.5 **Renewal Certificates**

Renewal certificates in relation to the insurances referred to in **clause 41.1.1.1** shall be obtained as and when necessary and the Contractor shall use all reasonable endeavours to forward copies (certified in a manner reasonably acceptable to the Councils) to the Councils as soon as possible but in any event on or before each renewal date.

41.6 **Breach**

If the Contractor is in breach of **clause 41.1.1.1**, the Councils may pay any premiums required to keep the insurances (or part thereof, at the Councils' absolute discretion) referred to in **clause 41.1.1.1** in force or itself procure such insurance (or part thereof, at the Councils' absolute discretion) and may in either case recover the amount of such premiums, together with any costs incurred in procuring such insurance (including, but not limited to, brokerage) from the Contractor on written demand.

41.7 **Notification of Claims**

41.7.1 The Contractor shall:

41.7.1.1 give the Councils notification as soon as is practicable (and in any event within twenty Business Days) upon becoming aware of any claim, or any event or circumstance which is likely to give rise to a claim, in excess of £50,000 (indexed) on any of the insurances referred to in **clause 41.1.1.1** (or any loss or liability which, but for the application of the applicable policy excess, would form the basis of a claim on such insurances) and (if requested by the Councils) provide full details of the event or circumstance giving rise or likely to give rise to the claim (or loss or liability) within three Business Days of the Councils' request;

41.7.1.2 promptly and diligently deal with all claims received relating to the insurances referred to in **clause 41.1.1.1** and in accordance with all insurer requirements and recommendations; and

41.7.1.3 in relation to all claims made under the insurances referred to in **clause 41.1.1.1** give the Councils details of the value and nature of all such claims as may from time to time be required by the Councils provided always that such information shall in any event be supplied by the Contractor no less frequently than once every six months.

41.8 **Limit of Liability**

Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its other liabilities and obligations under this Contract.

41.9 **Premiums**

Save as specified in Part 6 of **Schedule 11** (Insurance), all insurance premiums payable in respect of the insurances referred to in **clause 41.1.1.1** shall at all times be the responsibility of the Contractor.

41.10 **The Councils Approval**

The insurances referred to in **clause 41.1.1.1** shall be effected with insurers approved by the Councils, such approval not to be unreasonably withheld or delayed.

41.11 **Council Change**

41.11.1 The Councils may, during the period of this Contract, determine that the Required Insurances are no longer sufficient to protect the Councils' interests. In these circumstances, the Councils will be entitled to require of the Contractor that it purchases additional insurance cover to give the Councils the insurance protection they have determined is needed. This will be deemed to be a Council Change to the Works or Services pursuant to the provisions of **clause 28.1** (Changes to the Works or Services). For the avoidance of doubt, the requirement to increase the insured amount as detailed in **clause 41.12** (Increase in Insured Amounts) is not subject to the provisions of this **clause 41.11** (Council Change).

41.11.2 In the event of additional insurance covers being purchased by the Contractor in accordance with **clause 41.11** (Council Change) such insurances will be considered to be Required Insurances as required by the Councils.

41.12 **Increase in Insured Amounts**

41.12.1 The:

41.12.1.1 minimum limits of indemnity in respect of the insurances specified in paragraph 3 of Part 2 of **Schedule 11** (Third Party Public and Products Liability Insurance) and Part 3 of **Schedule 11** (Contractor's Pollution Liability Insurance and Environmental Impairment Liability Insurance); and

41.12.1.2 maximum deductibles for each of the Required Insurances (save for those specified in Part 1 of **Schedule 11**) ; and

41.12.1.3 any sub-limits specified in **Schedule 11** (save for those specified in Part 1 of **Schedule 11** as being of a minimum amount,

shall be indexed, provided such minimum limits of indemnity, maximum deductibles and sub-limits shall only be increased on each renewal date in circumstances where the limit or deductible that is indexed becomes equal to or exceeds the next whole insurable amount or uninsured policy deductible available in the insurance market.

41.13 **Insured Loss**

The Contractor shall not pursue any claim against the Councils in relation to this Contract to the extent that the Contractor is entitled to recover any losses under any of the insurances to be maintained in accordance with this Contract, (or where the Contractor fails to maintain any such insurance, to the extent that the Contractor would have been entitled to recover any losses were such insurance maintained in accordance with the terms of this Contract) provided that, to avoid doubt, this **clause 41.13** (Insured Loss) shall not by itself prevent the Contractor from claiming against the Councils for any loss or damage caused by the Councils which is not insured because of the level of deductibles under such insurance permitted by this Contract or to the extent such loss or damage exceeds the limits of indemnity required by the terms of this Contract.

41.14 **Professional Indemnity Insurance**

41.14.1 The Contractor shall use all reasonable endeavours to procure in relation to the works comprising the construction of the Clover Nook Transfer Station, that from the date of this Contract and throughout until the date twelve years after the completion of such works, professional indemnity (**"PI"**) insurance (written on a claims made basis) which has a limit of indemnity of at least £2,000,000 per claim and in total for all claims in the policy period is in place in respect of design services provided in respect of such works by the Construction Contractor and any design professionals employed by the Construction Contractor provided that such insurance is generally available in the market to members of the relevant party's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the relevant party's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates;

41.14.2 The Contractor shall use all reasonable endeavours to procure in relation to the works comprising the construction of the NWTF that from the Amendment and Restatement Date and throughout until the date twelve years after the completion of such Works, professional indemnity (**"PI"**) insurance (written on a claims made basis):

41.14.2.1 which has a limit of indemnity of at least £10,000,000 per claim and in total for all claims in the policy period is in place in respect of design services provided in respect of such works by the Construction Contractor; and

41.14.2.2 which has a limit of indemnity of at least £2,000,000 per claim and in total for all claims in the policy period is in

place in respect of any design professionals employed by the Construction Contractor,

in each case provided that such insurance is generally available in the market to members of the relevant party's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the relevant party's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

41.14.3 The Contractor shall use all reasonable endeavours to procure that the applicable providers of design services provide to the Councils:

41.14.3.1 upon request evidence that the premiums payable in respect of all PI insurance required in accordance with **clause 41.14.1** have been paid and that such insurance(s) are in full force and effect in accordance with the requirements of **clause 41.14.1**; and

41.14.3.2 notice of any cancellation or termination of any PI insurance required in accordance with **clause 41.14.1** as soon as the Contractor becomes aware of such cancellation or termination.

41.15 **Reinstatement**

41.15.1 Subject to **clause 41.16** (Economic Test), all insurance proceeds received under any policy referred to in paragraph 1 of Parts 1 and 2 of **Schedule 11** (the **"Physical Damage Policies"**) shall be applied to repair, reinstate and replace each part or parts of the Assets in respect of which the proceeds were received.

41.15.2 All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of £500,000 (indexed) shall be paid into the Joint Insurance Account.

41.15.3 Subject to **clause 41.16** (Economic Test), where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the **"Relevant Incident"**) in an amount in excess of £500,000 (indexed):

41.15.3.1 the Contractor shall deliver as soon as practicable and in any event within 28 days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the **"Reinstatement Works"**) to repair, reinstate or replace (the **"Reinstatement Plan"**) the assets which are the subject of the relevant claim or claims in accordance with **clause 41.15.5** below. The Reinstatement Plan shall set out:

(a) if not the Construction Contractor, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the

Councils (not to be unreasonably withheld or delayed); and

(b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Councils, which approval shall not be unreasonably withheld or delayed;

41.15.4 Provided that the Councils are satisfied that the Reinstatement Plan will enable the Contractor to comply with **clause 41.15.5** below within a reasonable timescale:

41.15.4.1 the Reinstatement Plan will be adopted;

41.15.4.2 the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Councils;

41.15.4.3 prior to the earlier to occur of the Termination Date or the Expiry Date or the Extended Expiry Date (as the case may be), any amounts standing to the credit of the Joint Insurance Account (the **"Relevant Proceeds"**) (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in **clause 41.15.4.2** above, and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the Parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date or the Extended Expiry Date (as the case may be), the Councils may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;

41.15.4.4 the Councils agree and undertake that, subject to compliance by the Contractor with its obligations under this clause, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in **clause 41.15.4.2**, it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds;

41.15.4.5 the Councils undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan; and

41.15.4.6 after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Councils and in accordance

with **clause 41.15.5** below the Councils shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under **clause 41.15.4.3** above, in respect of the Relevant Incident, together with any interest accrued;

41.15.4.7 subject to the provisions of **clauses 69.1.2** and 69.1.3 (Contractor Indemnities), the Contractor shall be solely responsible for the payment of any deficiency.

41.15.5 Where insurance proceeds are to be used, in accordance with this Contract, to repair, reinstate or replace any Asset, the Contractor shall carry out the work in accordance with the Specification so that on completion of the work, the provisions of the Contract are complied with.

41.16 **Economic Test**

41.16.1 If all of the Assets at the Sinfin Site are, or the ACT Facility is, destroyed or substantially destroyed in a single event and the insurance proceeds (when taken together with any other funds available to the Contractor) are equal to or greater than the amount required to repair or reinstate the Assets at the Sinfin Site or the ACT Facility, then the Contractor shall calculate the senior debt loan life cover ratio as used in the Base Case (on the assumption that the Assets are or the ACT Facility (as the case may be) is repaired or reinstated in accordance with **clause 41.15.3**).

41.16.2 If the calculation referred to in **clause 41.16.1** above shows that the Loan Life Cover Ratio (as defined in the Senior Financing Agreement) is greater than or equal to a level below which an Event of Default (as defined in the Senior Financing Agreement) would occur then the Contractor shall be subject to the procedure set out in **clause 41.15** (Reinstatement).

41.16.3 If the calculation referred to in **clause 41.16.1** above shows that the Loan Life Cover Ratio (as defined in the Senior Financing Agreement) is less than a level below which an Event of Default (as defined in the Senior Financing Agreement) would occur then an amount equal to the lesser of:

41.16.3.1 the insurance proceeds; and

41.16.3.2 the Base Senior Debt Termination Amount, or, if any Additional Permitted Borrowing has been advanced, the Revised Senior Debt Termination Amount,

shall be released from the Joint Insurance Account to the Contractor.

41.16.4 If, pursuant to **clause 41.16.3** above, insurance proceeds are released from the Joint Insurance Account the Contractor shall be in breach of its obligations under this Contract and shall not, pursuant to clause 20 (Relief Events), be relieved of its obligations unless it can demonstrate, to the satisfaction of the Councils, that it can carry out the works necessary to repair, reinstate or replace the assets which are subject to the relevant claims in accordance with **clause 41.15.5** (Reinstatement) and within a reasonable timescale.

41.17 **Uninsurable Risks**

41.17.1 Nothing in this **clause 41** shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Contractor or a Contractor Related Party.

41.17.2 For the purposes of **clause 41.17** the term **"Contractor Related Party"** shall mean the parties set out in paragraphs (a) and (b) of that definition as contained in clause 1 (excluding the Councils, any Council Related Party and any WCA).

41.17.3 If a risk, usually covered by contractors' "all risks" insurance, marine cargo insurance, marine cargo delay in start up (but not loss of profits) insurance, property damage insurance (including engineering breakdown insurance), third party liability insurance (including construction third party liability insurance and third party public and products liability insurance), environmental impairment liability insurance and/or contractors pollution liability insurance, delay in start up and business interruption insurance (but not loss of profits) or statutory insurances in each case required under this Contract becomes Uninsurable then:

41.17.3.1 the Contractor shall notify the Councils of any risk becoming Uninsurable within five (5) Business Days of becoming aware of the same and in any event at least five (5) Business Days before expiry or cancellation of any existing insurance in respect of that risk; and

41.17.3.2 if both Parties agree, or it is determined in accordance with **clause 78** (Dispute Resolution) that the risk is Uninsurable and that:

(a) the risk being Uninsurable is not caused by the actions of the Contractor or any Contractor Related Party; and

(b) the Contractor has demonstrated to the Councils that the Contractor and a prudent board of directors of a company operating the same or substantially similar public private partnership businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company

the Parties shall meet to discuss the means by which the risk should be managed (including considering the issue of self-insurance by either Party).

41.17.4 If the requirements of **clause 41.17.3** are satisfied, but the Parties cannot agree as to how to manage the risk, then:

41.17.4.1 in respect of such third party liability insurance, environmental impairment liability insurance and/or contractors pollution liability insurance only the Councils shall (at the Councils' option) either pay to the Contractor an amount equal to the amount calculated in accordance with clause 60 (Compensation on Termination for Force Majeure) and the Contract will terminate, or elect to allow the Contract to continue and **clause 41.17.4.2** below shall thereafter apply in respect of such risk; and

41.17.4.2 in respect of contractors' "all risks" insurance, marine cargo insurance, marine cargo delay in start up (but not loss of profits) insurance, property damage insurance (including engineering breakdown insurance), third party liability insurance (including construction third party liability insurance and third party public and products liability insurance), environmental impairment liability insurance and/or contractors pollution liability insurance (if the Councils elect to allow the Contract to continue in accordance with **clause 41.17.4.1**), delay in start up and business interruption insurance (but not loss of profits) or statutory insurances the Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Councils shall (at the Councils' option) either pay to the Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and the Contract will continue, or an amount equal to the amount calculated in accordance with clause 60 (Compensation on Termination for Force Majeure) plus (in relation to third party liability insurance (including construction third party liability insurance and third party public and products liability insurance), environmental impairment liability insurance and/or contractors pollution liability insurance only) the amount of insurance proceeds that would have been payable whereupon the Contract will terminate; and

41.17.4.3 where pursuant to **clauses 41.17.4.1** and/or 41.17.4.2 this Contract continues then the Unitary Charge shall be reduced in each year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Contractor in respect of the relevant risk in the year prior to it becoming Uninsurable (indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only the reduction in the Unitary Charge shall be pro-rated to the number of months for which the risk is Uninsurable; and

41.17.4.4 where pursuant to **clause 41.17.4.1** and/or 41.17.4.2 this Contract continues the Contractor shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as the

Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Contract.

41.17.5 If, pursuant to **clause 41.17.4**, the Councils elect to make payment to the Contractor (such that the Contract will terminate) (the **"Relevant Payment"**), the Contractor shall have the option (exercisable in writing within 20 Business Days of the date of such election by the Councils (the **"Option Period"**)) to pay to the Councils on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case the Contract will continue (and the Relevant Payment will not be made by the Councils), and the Contractor's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

41.17.6 In respect of any period between the Councils receiving notification in accordance with **clause 41.17.3.1** that a TPL Risk has become Uninsurable and the Councils' notification to the Contractor in accordance with **clause 41.17.4.1** in respect of such risk then, provided it is ultimately agreed or determined that the requirements of **clause 41.17.3.2** are satisfied in respect of the Uninsurable TPL Risk and subject to **clause 41.17.7** below, **clause 41.17.4.2** shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the Parties otherwise agree how to manage the risk during this period; and

41.17.7 **Clause 41.17.6** shall only apply provided that the Contractor does not unreasonably materially delay:

41.17.7.1 agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of **clause 41.17.3.2** are satisfied in respect of the Uninsurable TPL Risk; and/or

41.17.7.2 meeting with the Councils to discuss the means by which the risk should be managed.

41.18 **Terms and Conditions That Become Unavailable**

41.18.1 If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Contract:

41.18.1.1 any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or

41.18.1.2 the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions of the Contractor and/or any sub-contractor of the Contractor) then **clause 41.18.2** shall apply.

41.18.2 If it is agreed or determined that **clause 41.18.1** applies then the Councils shall waive the Contractor's obligations in **clause 41.1** and/or **Schedule 11** (Insurance) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Contract as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in **clause 41.18.1** continue to apply to such Insurance Term.

41.18.3 To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Contract, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Part 6 of Schedule 11 (Insurance Premium Risk Sharing Schedule).

41.18.4 The Contractor shall notify the Councils as soon as reasonably practicable and in any event within five days of becoming aware that **clause 41.18.1.1** and/or **clause 41.18.1.2** are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Councils with such information as the Councils reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

41.18.5 In the event that **clause 41.18.1.1** and/or **clause 41.18.1.2** apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four months to establish whether clause 41.18.1.1 and/or clause 41.18.1.2 remain applicable to the Insurance Term. As soon as the Contractor is aware that **clause 41.18.1.1** and/or **clause 41.18.1.2** have ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.

42. SECURITY

42.1 Investigations

The Contractor shall cooperate with any investigation relating to security which is carried out by or on behalf of the Councils and:

42.1.1 shall use its reasonable endeavours to make any Staff identified by the Councils available to be interviewed by the Councils for the purposes of the investigation;

42.1.2 shall, subject to any legal restriction on their disclosure and without prejudice to the Councils' obligations under **clause 75** (Freedom of Information and Confidentiality), provide all documents, records or other material of any kind (excluding any information attracting legal privilege) which may reasonably be required by the Councils for the purposes of the investigation. The Councils shall have the right to retain any such material for use in connection with the investigation and shall provide the Contractor with a copy of any material retained; and

42.1.3 shall comply with the Councils' reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Contractor.

42.2 **Security information**

The Councils shall, in so far as is practical, inform the Contractor of any specific or general security information in its possession which would reasonably be expected to affect the security of the Contractor, its property or the Staff.

43. **HEALTH AND SAFETY**

43.1 **Contractor Responsibility**

Without prejudice to the Contractor's obligations under **clause 47** (Contractor's Records) the Contractor shall be responsible for the observance by itself and any Contractor Related Party (as defined in paragraphs (a) and (b) of that definition) of:

43.1.1 all Legal Requirements relating to health and safety for all aspects of the Project; and

43.1.2 all precautions necessary for the protection of itself and or any Contractor Related Party invited onto or otherwise visiting any Site.

43.2 **Incidents**

The Contractor shall immediately report to the Councils' Authorised Officer all incidents relating to the Contractor's or Sub-Contractors' employees or agents which ordinarily require reporting in accordance with the Health and Safety at Work etc Act 1974 or other Legal Requirements relating to health and safety.

43.3 **Health and Safety Management Scheme**

The Contractor shall, as soon as is reasonably practicable, implement a Health and Safety Management Scheme.

44. **INTELLECTUAL PROPERTY**

44.1 **Make Data Available**

The Contractor shall to the extent that it is entitled so to do:

44.1.1 make available to the Councils without charge all data, materials and documents of any nature acquired or brought into existence in any manner whatsoever by the Contractor for the purposes of the Project (excluding confidential internal documents and anything attracting legal privilege) and which might reasonably be required by the Councils for the purposes of exercising their rights under this Contract or performing its obligations or statutory duties; and

44.1.2 make available to the Councils all such data, materials and documents acquired or brought into existence by third parties and in the possession and control of the Contractor as may reasonably be required for the purposes of the Project and which might reasonably be required by the Councils for the purposes of exercising their rights under this Contract or performing its obligations or statutory duties.

Nothing in this clause shall however restrict or limit any other obligation of the Contractor under this Contract to provide specific information or documents to the Councils.

44.2 **Contractor Licence**

The Contractor:

44.2.1 save in respect of the Energos Licensed IPR and the Entsorga Licensed IPR, hereby grants or shall procure the grant to the Councils of a licence which is in perpetuity irrevocable, transferable (only to a person whom the Councils have transferred its rights and obligations in accordance with **clause 73.1** (Restriction on the Councils), non-exclusive and royalty free (carrying the right to grant sub licences) to use all and any Intellectual Property Rights which are or which become vested in the Contractor (the **"Contractor's IPRs"**) for any purpose relating to the Project (and including the operation and/or maintenance of the Works);

44.2.2 save in respect of the Energos Licensed IPR and the Entsorga Licensed IPR, where any Intellectual Property Rights relating to the Project, the Works or any of the Assets are vested in any third party, shall use its reasonable endeavours to procure the grant of a like licence to the Councils for the purposes referred to in **clause 44.2.1**;

44.2.3 upon the Councils taking action pursuant to **clause 50** (Council Step-In), Expiry or Termination, shall procure a licence for the Councils to use the Energos Licensed IPR relating to the Energos Technology and the Enstorga Licensed IPR relating to the Entsorga Technology on terms equivalent to the licence granted pursuant to **clause 44.2.1** above respectively provided that in the case of the Councils taking action pursuant to **clause 50** (Council Step-In), the Contractor shall only be obliged to procure such licences for the period for which the Councils are taking the Required Action;

44.2.4 warrants that the use of the Contractors IPRs by:

44.2.4.1 the Contractor and/or its Sub-Contractors; and/or

44.2.4.2 the Councils in accordance with the licence granted pursuant to **clause 44.2.1**

will not infringe the rights of any third party;

44.2.5 warrants that it (and each of its sub-contractors of any tier) has and will maintain all necessary Intellectual Property Rights and/or licences of Intellectual Property Rights required to carry out and complete the Works and the Services in accordance with the obligations of the Contractor under this Contract;

44.2.6 shall indemnify and keep indemnified the Councils in respect of all liabilities, costs, damages, expenses and losses incurred and/or suffered by the Councils as a result of any breach of the warranties contained in **clauses 44.2.4** and **44.2.5** provided that the Contractor shall not be obliged to indemnify the Councils to the extent the Construction Contractor or the Operating Contractor is not liable for the relevant amount; and

44.2.7 shall notify the Councils in writing as soon as reasonably practicable after becoming aware of the exercise of a Covenant Termination Right (as defined in the Settlement Agreement) or after receipt of a notice of intention to exercise a Covenant Termination Right (as defined in the Settlement Agreement).

44.3 **Execute and Deliver Documents**

Each Party undertakes at the request of the other to execute and deliver unconditionally all documents and to do all acts which may be necessary to bring into effect the provisions of this **clause 44**.

45. REGULAR MEETINGS OF THE COUNCILS AND CONTRACTOR

45.1 The Contractor shall ensure that appropriate members of Staff attend those meetings agreed as part of the Services Delivery Plan, together with such other meetings as are reasonably required by the Councils' Authorised Officer in relation to the performance by the Contractor, its employees or its Sub-Contractors of their respective obligations in respect of the Project.

45.2 Should the most appropriate member of the Staff be unable to attend the meeting, then a suitable replacement shall be fully briefed and shall attend on his behalf or the meeting shall be rearranged.

45.3 If requested, the Contractor shall nominate a suitable representative to attend meetings of the Councils or any committee thereof to report to members of the Councils concerning the Project.

45.4 The Contractor shall ensure that minutes of all such meetings are sent to the Councils' Authorised Officer no later than 10 Business Days after the Day on which such meetings took place.

45.5 The Parties shall comply with their respective obligations as set out in Schedule 18 (Project Liaison Group).

46. OPERATING MANUALS

46.1 **Maintenance of Manuals**

46.1.1 The Contractor shall provide to the Councils a draft set of operating and maintenance manuals for the Minor Facility A and the New Waste

Treatment Facility (in circumstances of Turbine Delay, such manuals excluding the Turbine) on the relevant Completion Date for each Facility (and in circumstances of Turbine Delay, on the Turbine Completion Date) and a final and complete set of Operating Manuals on the earlier of the date falling five Business Days after they become available to the Contractor or within six Months after the relevant Completion Date of the relevant Facility (and in circumstances of Turbine Delay, on the Turbine Completion Date) such manuals shall be provided in both electronic and "hard copy" format, setting out in all necessary detail such information, instructions, drawings, plans and specifications as would allow a competent person to understand, assemble, disassemble (to the extent usually necessary having regard to the nature of the plant and Equipment in question) repair and use for its intended purpose in accordance with the manufacturer's instructions all of the plant and Equipment to be used by the Contractor at the relevant Site and setting out in reasonable detail (where appropriate using checklists, flow diagrams and process maps) all the procedures for providing the Services which if complied with would constitute compliance by the Contractor with its obligations in respect of the Services (the **"Operating Manuals"**).

46.1.2 The Contractor shall throughout the Service Period maintain and update the Operating Manuals and promptly supply amendments to the Councils in electronic and "hard copy" format.

46.2 **Access to Manuals**

The Contractor shall at the request of the Councils provide the Councils with an updated copy of any of the Operating Manuals and access to any of the Operating Manuals in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manuals under **clause 46.1.2**.

46.3 **Copy on Termination**

On termination or expiry of this Contract the Contractor shall at once provide two copies in both electronic and "hard copy" format of all of the current Operating Manuals to the Councils.

47. **CONTRACTOR'S RECORDS**

47.1 The Contractor shall at all times:

47.1.1 maintain a full record of particulars of the costs of performing the Works and the Services, including those relating to the design, construction, maintenance, operation and finance;

47.1.2 when requested by the Councils, provide a summary of any of the costs referred to in **clause 47.1.1** including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Councils may reasonably require to enable the Councils to monitor the performance by the Contractor of its obligations under this Contract;

47.1.3 provide such facilities as the Councils may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this **clause 47**;

47.1.4 provide to the Councils on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three month period and, at the request of the Councils, provide to the Councils any information provided by it to the Senior Lenders during the term of the Contract and any other information relating to the Project that the Councils may reasonably require;

47.1.5 provide to the Councils copies of its annual report and accounts within 30 days of publication;

47.1.6 provide to the Councils a copy of the Senior Lenders' Base Case at the Amendment and Restatement Date and (as the same may be amended) within 30 days of any amendment thereto;

47.1.7 promptly upon the occurrence of a Financing Default notify the Councils of such Financing Default; and

47.1.8 use all reasonable endeavours to assist the Councils in their preparation of any report required by the Department for Environment, Food and Rural Affairs or any successor body thereof from time to time.

47.2 Compliance with the above shall require the Contractor to keep (and where appropriate to procure that the Sub-Contractors shall keep) books of account in accordance with best accountancy practice with respect to this Contract showing in detail:

47.2.1 administrative overheads;

47.2.2 payments made to Sub-Contractors and by sub-contractors to Sub-Contractors;

47.2.3 capital expenditure and revenue expenditure;

47.2.4 any balances in any account or fund held for the purpose of servicing any debts relating to the Project;

47.2.5 such other items as the Councils may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure for the purpose of any adjustments to the Unitary Charge in accordance with **clause 92** (Financial Adjustments).

and the Contractor shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items listed in **clauses 47.2.1** to **47.2.5** available for inspection by the Councils (and any experts) upon reasonable notice, and shall submit a report of these to the Councils as and when requested.

47.3 The Contractor shall maintain or procure that the following are maintained:

47.3.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and

47.3.2 full records of all maintenance procedures carried out during the term of this Contract,

and the Contractor shall have the items referred to in **clauses 47.3.1** and 47.3.2 above available for inspection by the Councils upon reasonable notice, and shall present a report of them to the Councils as and when requested.

47.4 The Contractor shall permit records referred to in this **clause 47** to be examined and copied by the Councils' auditor and their representatives and other representatives of the Councils who reasonably require access to the same.

47.5 The records referred to in this **clause 47** shall be retained for a period of at least 6 Years after the Contractor's obligations under this Contract have come to an end.

47.6 Upon termination of this Contract, and in the event that the Councils wishes to enter into another contract for the operation and management of the Project or any part of it the Contractor shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Councils to provide information relating to the Contractor's costs of operating and maintaining the Project.

47.7 The Councils may, in the circumstances referred to in **clause 47.1.7** above (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreement) require the Contractor to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Councils may convene to discuss such Interim Project Report and the circumstances giving rise to it.

48. ENVIRONMENTAL PROTECTION AND ANNUAL ENVIRONMENTAL REPORT

48.1 The Contractor shall at all times comply with all applicable Legal Requirements including, without limitation, its duty of care under Section 34 of the EPA.

48.2 The Contractor shall take all and any steps as are necessary to ensure that the impact of the operations of the Contractor upon the Environment in pursuance of its obligations under this Contract are adequately and sufficiently assessed, controlled, monitored, mitigated and remediated as required by all appropriate enforcement agencies, Legal Requirements, Good Industry Practice and the Environmental Management System.

48.3 Not used.

48.4 The Contractor shall promptly notify the Councils of all circumstances which shall or might reasonably be regarded as a breach of this clause 48 and shall act at all times in good faith in respect of this **clause 48**.

49. DATA PROTECTION

49.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services.

49.2 The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Project and shall not transfer any Personal Data to any country or territory outside the geographic area of the European Economic Area.

49.3 The Contractor and/or any sub-contractor of any tier shall not disclose Personal Data to any third parties other than:

49.3.1 to employees and sub-contractors of any tier to whom such disclosure is reasonably necessary in order for the Contractor or its sub-contractors of any tier to carry out the Works and or the Services; or

49.3.2 to the extent required under a court order,

provided that disclosure under **clause 49.3.1** is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 49 and that the Contractor shall give notice in writing to the Councils of any disclosure of Personal Data it or a Sub-Contractor is required to make under clause 49.3.2 immediately it becomes aware of such a requirement.

49.4 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

49.5 The Councils may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub-Contractors referred to in **clause 49.2**. Within 30 Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Councils can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

49.6 The Contractor shall indemnify and keep indemnified the Councils against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this clause 49 by the Contractor and/or any act or omission of any Sub-Contractor.

50. COUNCIL STEP IN

50.1 Council Step in

50.1.1 If the Councils reasonably believe that they need to take action in connection with any or all parts of the Services following the NWTF Completion Date:

50.1.1.1 because a serious risk exists to the health or safety of persons or property or to the Environment; and/or

50.1.1.2 to discharge a statutory duty,

then the Councils shall be entitled to take action in accordance with **clause 50.1.2** to 50.1.10.

50.1.2 If **clause 50.1.1** applies and the Councils wishes to take action, the Councils shall notify the Contractor in writing of the following:

50.1.2.1 the action it wishes to take;

50.1.2.2 the reason for such action;

50.1.2.3 the date it wishes to commence such action;

50.1.2.4 the time period which it believes will be necessary for such action; and

50.1.2.5 to the extent practicable, the effect on the Contractor and its obligation to carry out the Works and/or to provide the Services during the period such action is being taken.

50.1.3 Following service of such notice, the Councils shall take such action as notified under **clause 50.1.2** and any consequential additional action as it reasonably believes is necessary for the purpose specified in **clause 50.1.1** (the **"Required Action"**) and the Contractor shall give all reasonable assistance to the Councils while it is taking the Required Action including, without limitation, the novation of any agreements or contracts including, without limitation, those referred to in Schedule 8 (Environmental Provisions).

50.1.4 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Councils shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Contractor against all Direct Losses where it fails to do so.

50.1.5 Where the Required Action has been taken as a result of a breach by the Contractor, the Councils shall undertake the Required Action acting reasonably in the circumstances.

50.1.6 **Step-in without Contractor Breach**

If the Contractor is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Works or Services:

50.1.6.1 the Contractor shall be relieved from its obligations to provide such part of the Works or Services; and

50.1.6.2 in respect of the period in which the Councils are taking the Required Action and provided that the Contractor provides the Councils with reasonable assistance (such assistance to be at the expense of the Councils to the extent incremental costs are incurred), the Unitary Charge due from the Councils to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations in providing the Works or the Services affected by the Required Action in full over that period (including any additional landfill disposal costs (including landfill taxes and transport costs)).

50.1.6.3 in addition to the payment of Unitary Charge under **clause 50.1.6.2**, the Councils shall pay to the Contractor the amount shown in the Base Case in respect of Third Party Income, net of related costs (without double counting).

50.1.7 **Step-in on Contractor Breach**

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Works or Services:

50.1.7.1 the Contractor shall be relieved of its obligations to provide such part of the Works or Services;

50.1.7.2 in respect of the period in which the Councils are taking the Required Action and provided that the Contractor provides the Councils with reasonable assistance (such assistance to be at the expense of the Councils to the extent incremental costs are incurred), the Unitary Charge due from the Councils to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations in providing the Works or the Services affected by the Required Action in full over that period (including any additional landfill disposal costs (including landfill taxes and transport costs)).

50.1.7.3 in addition to the payment of Unitary Charge under **clause 50.1.7.2**, the Councils shall pay to the Contractor an amount in respect of lost Third Party Income which shall be the higher of:

(a) the amount received; or

(b) the lower of the average performance, in respect of such Third Party Income, in the 3 Months prior to step-in pursuant to this **clause 50.1.7** and the amount shown in the Base Case, in each case net of related costs (without double counting).

50.1.8 The Councils or any representatives of the Councils (and any agents and advisers) may at all reasonable times enter upon any property used by the Contractor to take the Required Action. The Councils may enter at any time without prior notice to take the Required Action if there shall exist an imminent threat to the health and safety of any individual or imminent threat of material damage to any property.

50.1.9 **Cessation of the Council Step In**

The Councils shall cease any Required Action and permit the Contractor to perform its obligations under this Contract upon the earlier of:

50.1.9.1 the cessation of the circumstances giving rise to the Required Action; or

50.1.9.2 the Contractor demonstrating to the reasonable satisfaction of the Councils that the Contractor can and will perform the Required Action itself; and

shall, as soon as they are aware of becoming obliged to cease the Required Action, notify the Contractor accordingly.

50.1.10 During any period in which Required Action is being taken, the Councils and its representatives will act in accordance with Good Industry

Practice and, to the extent it does not do so, indemnify the Contractor in respect of any loss which the Contractor suffers as a direct result of such failure.

50.2 **Rights of Access**

50.2.1 The Councils or a representative of the Councils may enter upon any property used by the Contractor to perform the Services, to inspect the construction, operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations.

50.2.2 The Councils or a representative of the Councils may at all reasonable times and upon reasonable written notice enter upon any property used by the Contractor as training or workshop facilities and places where work is being prepared or materials being obtained for the Project.

50.2.3 The Contractor shall procure that satisfactory facilities are made available to the Councils and any representatives of the Councils and that reasonable assistance is given for the purposes of **clauses 50.2.1** and 50.2.2, subject to the Contractor's and Sub-Contractors' construction or operational requirements not being adversely affected and to reimbursement of any reasonable costs or expenses of the Contractor.

50.2.4 If the Councils are or becomes aware of a breach by the Contractor of its obligations under **clause 27** (Maintenance) and provided that the Councils have given the Contractor notice of a reasonable period to begin to implement any necessary works to remedy the breach and the Contractor has failed to do so or is not proceeding to implement such remedied works in a reasonable manner, then the Councils may exercise their rights of access and remedy such breach and shall be entitled to recover any costs or expenses incurred from the Contractor as a debt.

50.2.5 The Councils and its representatives shall at all times comply with any health and safety requirements and all Necessary Consents when exercising its rights under **clause 50.1** and this **clause 50.2**.

50.2.6 If the Councils or its representatives cause damage to any asset in exercising any right under **clause 50.1** and this **clause 50.2** which results in loss or additional expenditure and/or causes a claim under the Required Insurances, then the Councils shall be liable to the Contractor for the reasonable costs caused by such damage.

PART VII - EMPLOYEES

51. TRANSFER OF EMPLOYEES

51.1 Relevant Transfers

51.1.1 Notwithstanding any other provision in this Contract, the Councils warrant that on the Initial Services Commencement Date and the NWTF Completion Date, there will be no employees of the Councils affected by TUPE in relation to this Contract.

51.1.2 The Councils and the Contractor understand and agree that the following events:

51.1.2.1 the commencement of the provision of the Services on the Service Transfer Date;

51.1.2.2 where the identity of a provider (including the Councils) of any Service which constitutes or which will constitute one of the Services is changed whether in anticipation of changes pursuant to this Contract or not,

shall constitute a Relevant Transfer and that the contracts of employment (together with any contractual terms contained in any collective agreement) of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors' benefits (save as required under section 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of this Contract) the Contractor shall comply and procure that the former and the new Sub-Contractor shall both comply with their obligations under TUPE.

51.1.3 The Councils shall comply with their obligations under TUPE in respect of each Relevant Transfer pursuant to this Contract and the Contractor shall comply and shall procure that each Sub-Contractor shall comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and each of the Councils and the Contractor shall indemnify the other against any Direct Losses sustained as a result of any breach of this **clause 51.1.3** by the Party in default (including for the avoidance of doubt, the failure to provide sufficient information to enable the other Party to comply with its information and consultation obligations under TUPE or otherwise - whether any such claim arises or has its origins before or after the date of the Relevant Transfer). SAVE THAT there shall be no obligation on the Councils to indemnify the Contractor for any breach by the Councils of their obligations under Regulation 13 of TUPE or any award of Compensation under Regulation 15 where such failure arises from the failure of the Contractor or any Sub-Contractor of the Contractor to comply with its or their duties under Regulation 13 of TUPE. The provisions of these clauses 51 and 52 shall not apply to the Market Testing Procedure which shall be governed by the provisions of clause 35 (Benchmarking and Market Testing).

51.1.4 The Contractor will and shall procure that each Sub-Contractor will provide the Councils and the existing contractors and/or subcontractors of the Councils, where appropriate, as soon as reasonably practicable with all information which the existing contractors and/or subcontractors of the Councils where appropriate may require to enable them to comply with their information and consultation obligations under TUPE.

51.2 **Emoluments and Outgoings**

51.2.1 The Councils shall and shall procure that existing contractors and subcontractors of the Councils where appropriate shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Existing Employees, including without limitation all salaries, wages, holiday pay (including payment for accrued but untaken holiday), bonuses, commissions, payments of PAYE, national insurance contributions, statutory contributions, pension contributions made to or on behalf of an employee, and otherwise, up to the Service Transfer Date.

51.2.2 The Contractor shall be responsible or shall procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay (including payment for accrued but untaken holiday), bonuses, commission, payment of PAYE, national insurance contributions, statutory contributions, pension contributions made to or on behalf of an employee, and otherwise, from and including the Service Transfer Date until the Return Date.

51.3 **Employment Costs**

51.3.1 The Councils have supplied to the Contractor the information, as at the date of this Contract, which is contained in Part 1 of **Schedule 10** (the **"First Employee List"**) regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters; affecting each of those employees of the Councils and the existing contractors and sub-contractors of the Councils who it is expected, if they remain in the employment of the Councils/existing contractors/sub-contractors of the Councils as the case may be until immediately before the Service Transfer Date, would be Relevant Employees but the Councils give no warranty as to the accuracy or completeness of this information.

51.3.2 The Councils shall supply to the Contractor an update of the First Employee List at three monthly intervals from the date of this Contract and an updated list ten (10) Business Days before the Service Transfer Date. The Councils shall also supply to the Contractor within five (5) Business Days after the Service Transfer Date information, which was correct as at the Service Transfer Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list is the **"Final Employee List"**. The Councils give and shall give no warranty as to the accuracy or completeness of any information contained in any update of the First Employee List or in the Final Employee List.

51.3.3 Without prejudice to **clauses 51.3.1**, 51.3.2 and 51.10, the Councils shall or shall procure that if they have the legal power to do so and shall otherwise use all reasonable endeavours to procure that every relevant contractor and sub-contractor of the Councils shall:

51.3.3.1 provide the Employee Liability Information to the Contractor at such time as are required by TUPE; and

51.3.3.2 update the Employee Liability Information to take account of any changes as required by TUPE. The Councils give and shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by any of the Councils or any of their relevant contractors and sub-contractors.

51.3.4 The Contractor has provided to the Councils, and the Councils have agreed, the details set out in **Schedule 10** (Employee Information) which show, in respect of each of the Services, the following information:

51.3.4.1 the workforce which the Contractor proposes to establish to provide the Services (the **"Proposed Workforce"**) classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;

51.3.4.2 the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services. These costs (the **"Remuneration Costs"**) have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and

51.3.4.3 the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation for economic technical or organisational reasons entailing changes in the workforce which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce. These costs (the **"Reorganisation Costs"**) have been calculated by the Contractor and the Sub-Contractors on the basis of (amongst other things) the information contained in the First Employee List.

51.4 If at any time (including after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to **clauses 51.5**, 51.6 and 51.7) there shall be a corresponding adjustment to the Unitary Charge to compensate for any such difference.

51.5 If the circumstances described in **clause 51.4** arise:

51.5.1 in circumstances where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the provision of Services; and

51.5.2 the Contractor and the relevant Sub-Contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Unitary Charge shall be calculated as if they had done so.

51.6 In calculating any adjustment to be made to the Unitary Charge pursuant to **clause 51.4**:

51.6.1 no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;

51.6.2 to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be compensated as a result of any indexation of the Unitary Charge under this Contract;

51.6.3 to avoid doubt any changes in costs which fall to be dealt with under clause 51.4 and which arise from a Change in Law shall be dealt with in accordance with the provisions of **clause 51.4** and shall not be taken into account for the purposes of **clause 29** (Change in Law);

51.6.4 no adjustments under **clause 51.4** shall be made in respect of overpayments made by the Contractor or a Sub-Contractor to Relevant Employees which arise from reliance on the Final Employee List to the extent that the Contractor or the Sub-Contractor is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;

51.6.5 if there are underpayments by the Contractor or a Sub-Contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Unitary Charge in respect of all such liabilities of the Contractor or the Sub-Contractor for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Transfer Date shall be dealt with in accordance with **clauses 51.2.1** or 51.11.1 to 51.11.3) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs; and

51.6.6 in order to prevent duplication, no adjustment shall be made under this **clause 51.6** if any indemnity given by the Councils under any other provision of this Contract would apply.

51.7 Either Party may propose an adjustment to Unitary Charge pursuant to **clause 51.4** by giving not less than ten (10) Business Days' notice to the other. Each Party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other Party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to **clause 51.4**.

51.8 In relation to all matters described in **clauses 51.5**, and 51.6 the Contractor and the Councils shall, and the Contractor shall procure that the relevant Sub-Contractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

51.9 The Councils shall and the Contractor shall and shall procure that each and every Sub-Contractor shall take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible

disruption to the activities of the Councils including the Services and to the employees who transfer.

51.10 **Union Recognition**

51.10.1 The Councils shall and shall procure if they have the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant existing contractor and sub-contractor of the Councils shall supply to the Contractor no later than five (5) Business Days prior to the Service Transfer Date true copies of its union recognition agreement(s) and the Contractor shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE, recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor) after the transfer to the same extent as they were recognised by the Councils or the relevant sub-contractor before the Service Transfer Date.

51.10.2 The Contractor shall procure that, on each occasion on which the identity of a Sub-Contractor changes pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor shall in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the change of identity of the Sub-Contractor in respect of the provision of the Services. The provisions of this **clause 51.10** do not apply to the Market Testing Procedure which shall be governed by the provisions of clause 35 (Benchmarking and Market Testing).

51.11 **Indemnities**

51.11.1 The Councils shall indemnify and keep indemnified in full the Contractor (for itself and the benefit of any relevant subcontractor of any tier) against all Direct Losses incurred by the Contractor or any relevant sub-contractor in connection with or as a result of:

51.11.1.1 a breach by the Councils of their obligations under clause 51.2.1 above;

51.11.1.2 subject to **clause 51.11.5** any claim or demand by any Existing Employee or by any trade union or staff association or employee representative in respect of all or any of the Existing Employees in either case that arises out of the employment of any Existing Employee provided that this arises from any act, fault or omission of the Councils in relation to any Existing Employee prior to the Service Transfer Date (save where such act, fault or omission arises as a result of the Contractor's or any relevant Sub-Contractor's failure to comply with Regulation 13 of TUPE, where any such claim arises as a result of action taken in respect of and/or communication made to the Existing Employees by or in accordance with the instruction of the Contractor or any relevant Sub-Contractor and/or where any such claim is not in connection with the Relevant Transfer).

51.11.2 Where any liability in relation to any Existing Employee, in respect of his or her employment by the Councils or its termination which

transfers in whole or part in accordance with TUPE and/or the Acquired Rights Directive, arises partly as a result of any act or omission occurring on or before the Service Transfer Date and partly as a result of any act or omission occurring after the Service Transfer Date, the Councils shall indemnify and keep indemnified in full the Contractor or the relevant sub-contractor against only such part of the Direct Losses sustained by the Contractor or any sub-contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the Service Transfer Date.

51.11.3 The indemnities contained in **clause 51.11.1** shall apply as if references in those clauses to any Existing Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the Councils also included a reference to the relevant third party contractor employer of the Relevant Employee prior to the Service Transfer Date.

51.11.4 The Contractor shall indemnify and keep indemnified in full the Councils and at the Councils' request each and every Future Service Provider against:

51.11.4.1 all Direct Losses incurred by the Councils and/or any Future Service Provider in connection with or as a result of any claim or demand against the Councils and/or any Future Service Provider by any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services or by any trade union or staff association or employee representative in respect of all or any of the Existing Employees in either case that arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor after the Service Transfer Date;

51.11.4.2 all Direct Losses incurred by the Councils and/or any Future Service Provider in connection with or as a result of a breach by the Contractor of its obligations under **clause 51.2.2** above;

51.11.4.3 all Direct Losses incurred by the Councils in connection with or as a result of any claim brought or other action taken by or on behalf of any of the Existing Employees which arises from or in connection with (directly or indirectly) any act or omission and/or, communication made to the Existing Employees before the Service Transfer Date by or in accordance with the instruction of the Contractor or Sub-Contractor;

51.11.4.4 all Direct Losses incurred by the Councils and/or any Future Service Provider in connection with or as a result of any claim brought or other action taken by or on behalf of the any of the Assigned Employees or Returning Employees which arises from or in connection with (directly or indirectly) any act or omission and/or, communication made to the Assigned Employees or Returning Employees before the Return Date by or in accordance with the instruction of the Contractor or Sub-Contractor;

51.11.4.5 all Direct Losses incurred by the Councils or any Future Service Provider in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.

51.11.5 The Contractor shall indemnify and keep indemnified in full the Councils against all Direct Losses incurred by the Councils in connection with or as a result of:

51.11.5.1 the change of identity of employer occurring by virtue of TUPE to the Contractor or the relevant Sub-Contractor being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of the change in employer and whether such claim arises before or after the Service Transfer Date;

51.11.5.2 any proposed or actual change by the Contractor or any Sub-Contractor to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Contractor or the relevant Sub-Contractor which are to any of the Relevant Employee's material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Service Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Service Transfer Date; and

51.11.5.3 any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor or Sub-Contractor to the Relevant Employees or their representatives whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.

51.11.6 The indemnities in **clauses 51.11.4** and 51.11.5 shall not apply in respect of any sum for which the Councils are to indemnify the Contractor or a relevant Sub-Contractor pursuant to **clause 51.11.1** or as a result of any adjustment to the Unitary Charge in accordance with **clause 51.4** or to the extent that the claim arises from a wrongful act or omission of the Councils.

51.11.7 **Clause 70** (Conduct and Control of Claims) of this Contract shall apply where any claim is made in respect of the indemnities given under **clause 51.11**.

51.12 **Provision of Details and Indemnity**

The Contractor shall immediately upon request by the Councils provide to the Councils details of any measures which the Contractor or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Councils against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.

51.13 **Compliance with Code Obligations**

51.13.1 The Councils and the Contractor shall have regard to the Code in interpreting and applying the Code Obligations.

51.13.1A Each of the Parties agree that the Code should not apply to any Relevant Employees under this Contract. However, to the extent it does, the provisions of this **clause 51.13** shall apply in relation to such Relevant Employees.

51.13.2 Subject to **clause 51.13.4**, the Contractor shall procure that any New Employees shall be employed on terms and conditions of employment which are, overall fair and reasonable and no less favourable than those of the Existing Employees engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the New Employees.

51.13.3 The Contractor shall procure that any relevant Sub-Contractor shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the New Employees pursuant to **clause 51.13.2**.

51.13.4 In addition to its obligations under **clause 51.13.2** above, the Contractor shall procure that the New Employees who are employed to work alongside those Relevant Employees who are Eligible Employees are offered either:

51.13.4.1 membership of the Local Government Pension Scheme where the employer has Admission Body status within the scheme and makes the requisite contribution; or

51.13.4.2 membership of a good quality employer pension scheme, being either a contracted-out final salary based defined benefit scheme, or a defined contribution scheme under which the employer must match employee contributions up to six per cent (6%); or

51.13.4.3 a stakeholder pension scheme, under which the employer matches employee contributions up to at least six per cent (6%).

51.13.5 During the Contract Period, the Contractor shall on request by the Councils provide or procure that the Councils are provided with such

accurate and complete information as reasonably requested by the Councils as soon as reasonably practicable, including the terms and conditions of employment of the Existing Employees and the New Employees, where this is required to monitor the Contractor's compliance with its Code Obligations.

51.13.6 The Contractor shall and shall procure that any relevant Sub-Contractor shall support any central Government sponsored review and monitoring programme on the impact of the Code and on request by the Councils provide the Councils with such accurate and complete information as reasonably requested by the Councils as soon as reasonably practicable in order to assist the Councils in doing this.

51.13.7 The Councils and the Contractor shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance by the Contractor and any Sub-Contractor of its Code Obligations.

51.13.8 Where it appears to the Councils or the Contractor that it is not possible to resolve the matter by continuing discussions between them pursuant to **clause 51.13.7** or where an employee of the Contractor or any recognised trade union writes to the Councils to confirm that it has been unable to resolve its complaint directly with the Contractor or any Sub-Contractor in relation to the Contractor's Code Obligations:

51.13.8.1 the Councils shall first write to the Contractor to seek an explanation for the alleged failure by the Contractor to comply with its Code Obligations. The Contractor shall or shall procure that the relevant Sub-Contractor provide such an explanation in writing within five (5) Business Days of receipt of the request from the Councils;

51.13.8.2 if the response provided by the Contractor or any Sub-Contractor satisfies the Councils that the Code Obligations have been met, then the Councils will inform the complainant of this and the matter will be deemed to have been concluded;

51.13.8.3 in the event that the Councils are not satisfied with the response provided by the Contractor or any Sub-Contractor the Councils shall write to the Contractor within five (5) Business Days to require the Contractor to take immediate action to resolve this dispute.

51.14 Provision of Information & Retendering

51.14.1 The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Contract or following the service of a notice under **clause 51.15** (Termination of Agreement) or as a consequence of the Councils notifying the Contractor of its intention to retender this Contract:

51.14.1.1 on receiving a request from the Councils provide in respect of any Assigned Employees full and accurate details regarding the identity, number, age, sex, length of service, job title, grade, terms and conditions of employment, salary and overtime rates, contractual

benefits, policies and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Sub-Contractor as the case may be until immediately before the Termination Date, would be Returning Employees (the **"Retendering Information"**);

51.14.1.2 provide the Retendering Information promptly and at no cost to the Councils;

51.14.1.3 notify the Councils forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;

51.14.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;

51.14.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of any of the Assigned Employees other than in the ordinary course of business and with the Councils' prior written consent;

51.14.1.6 be precluded from introducing any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any of the Assigned Employees other than in the ordinary course of business and the Contractor shall notify the Councils if such practice is introduced;

51.14.1.7 be precluded from terminating or giving notice to terminate the employment of any of the Assigned Employees other than in the ordinary course of business and the Contractor shall notify the Councils if it terminates or gives notice to terminate any Assigned Employee; and

51.14.1.8 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Councils' prior written consent.

51.14.2 Without prejudice to **clauses 51.14.1** and 51.14.3 the Contractor shall provide and shall procure that any Sub-Contractor shall provide the Employee Liability Information to the Councils at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.

51.14.3 The Contractor shall and shall keep indemnified in full the Councils and at the Councils' request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor or Sub-Contractor failing to provide or promptly to provide the Councils and/or any Future Service Provider where requested by the Councils with any Retendering Information and/or Employee

Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Councils and was materially inaccurate or incomplete when originally provided.

51.14.4 For the avoidance of doubt but subject always to the DPA, the Contractor confirms that the Councils will be permitted to disclose any information provided to it under this **clause 51.14** in summary form to any person who has been invited to tender for the provision of the Services (or similar services) and to any Future Service Provider.

51.15 **Employees & Termination of Agreement**

51.15.1 On the expiry or earlier termination of this Contract, the Councils and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the Law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.

51.15.2 If TUPE does apply on the expiry or earlier termination of this Contract, the contracts of employment (together with any contractual terms contained in any collective agreement) of all Returning Employees shall have effect (subject to Regulation 4(7) of TUPE) from the Return Date thereafter as if originally made between those employees and the Future Service Provider (or Councils where appropriate) except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors' benefits excluded under Regulation 10 of TUPE.

51.15.3 Upon the Return Date the provisions of this **clause 51.15** (Termination of Agreement) will apply:

51.15.3.1 the Contractor shall or shall procure that all wages, salaries wages, holiday pay (including payment for accrued but untaken holiday), bonuses, commissions and other benefits of the Returning Employees and other employees or former employees of the Contractor or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions, statutory contributions, pension contributions made to or on behalf of an employee and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor or Sub-Contractors up to the Return Date are satisfied;

51.15.3.2 Without prejudice to **clause 51.15.3.1**, the Contractor shall:

(a) remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Contractor's or Sub-Contractor's employees (other than the Returning Employees) on or after the Return Date and shall

indemnify the Councils and any Future Service Provider against all Direct Losses incurred by the Councils or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor's or Sub-Contractor's employees who do not constitute the Returning Employees;

(b) in respect of those employees who constitute Returning Employees the Contractor shall indemnify the Councils and any Future Service Provider against all Direct Losses incurred by the Councils or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor or any Sub-Contractor to comply with its or their obligations under Regulation 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Acquired Rights Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Councils or any Future Service Provider.

51.15.4 The Councils shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

51.15.5 During the period commencing on the date falling 6 calendar months before the Return Date and ending on the Return Date, the Contractor shall (and shall procure that any Sub-Contractor shall) subject always to the DPA and at the Councils and/or any Future Service Provider's cost:

51.15.5.1 provide the Councils and any Future Service Provider with access to such employment records as the Councils and/or any Future Service Provider may reasonably require to put in place the administrative arrangements for the transfer of the contracts of employment of the Assigned Employees to the Councils or any Future Service Provider (as appropriate);

51.15.5.2 allow the Councils and any Future Service Provider to have copies of any of the documents referred to in **clause 51.15.5.1**; and

51.15.5.3 provide all copies of the employment records relating to the Assigned Employees to the Councils and any Future Service Provider (as appropriate).

51.16 Offer of Employment on Expiry or Termination

51.16.1 If TUPE does not apply on the expiry or earlier termination of this Contract, the Councils shall ensure that each Future Service Provider (including either of the Councils) shall offer employment to the persons

employed by the Contractor or a Sub-Contractor in the provision of the Services immediately before the Return Date.

51.16.2 If an offer of employment is made in accordance with **clause 51.16.1**, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with **clause 52** (Pensions) as applied immediately before the expiry or earlier termination of this Contract including full continuity of employment, except that the Councils or Future Service Provider may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of **clause 51.14**.

51.16.3 Where any such offer as referred to in **clause 51.16.1** is accepted, the Contractor shall indemnify and keep indemnified in full the Councils and/or any Future Service Provider on the same terms and conditions as those set out in **clause 51.11** of this Contract as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this **clause 51** each and every such employee shall be treated as if they were a Returning Employee.

51.16.4 For the avoidance of doubt, where any such offer as referred to in **clause 51.16.1** is not accepted and TUPE does not apply, the employee shall remain an employee of the Contractor or Sub-Contractor as appropriate.

51.17 **Operating Contractor**

The Contractor shall impose obligations on the Operating Contractor in the same terms as those imposed on it pursuant to this **clause 51** (Transfer of Employees), and **clauses 52** (Pensions) and 53 (Employees - General) and shall procure that the Operating Contractor complies with such terms. The Contractor shall indemnify and keep the Councils and any Future Service Provider indemnified in full against all Direct Losses, incurred by the Councils or any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the Operating Contractor's failure to comply with such terms.

52. PENSIONS

52.1 Pension Benefits

52.1.1 Each of the Parties agrees that no Relevant Employee is entitled to acquire benefits under the Local Government Pension Scheme (LGPS) and that the provisions of **clause 52.1.4** apply. However, in the event that immediately before the Relevant Transfer Date, any Relevant Employee is an active member of or has the right to participate as an active member in either the LGPS or any occupational pension scheme (which scheme has been certified by the Government Actuary's Department (for the purposes of this **clause 52** only, the **"GAD"**) as providing benefits which are the same as, broadly comparable to, or better than the LGPS) including for the avoidance of doubt, any section or part of the Citrus Pension Scheme and that person has not previously either opted not to join or opted to cease to be an active member of that scheme then, subject always to the provisions of **clause 52.2** (Contractor Protection), the Contractor will procure that

with effect from and including the Relevant Transfer Date, those Relevant Employees (the **"Eligible Employees"**) will be provided with one of the following:

52.1.1.1 membership of the LGPS where the employer enters into an appropriate admission agreement in accordance with Regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008 and makes the requisite contributions; or

52.1.1.2 membership of an occupational pension scheme which is a registered pension scheme for the purposes of Part 4 of the Finance Act 2004 and which has been certified by the GAD as providing benefits which are the same as, broadly comparable to or better than those benefits provided under the LGPS (the **"Contractor Scheme"**).

52.1.2 In respect of past service, the Contractor will procure that, within two (2) months of the Relevant Transfer Date (or such other date as shall be agreed between the Parties) each Eligible Employee who agrees to become a member of the Contractor Scheme is offered the opportunity to transfer the value of the benefits he had accrued in either the LGPS or another occupational pension scheme certified by the GAD as providing benefits which are the same as, broadly comparable to or better than those benefits provided under the LGPS including, for the avoidance of doubt, the Citrus Pension Scheme (whichever applies), into the Contractor Scheme. For each Eligible Employee who accepts such an offer in writing within two (2) months of receipt of the offer and does not subsequently opt out of that offer or die, the Contractor shall procure that the Contractor Scheme will, subject to receipt of a transfer value which is sufficient to cover the cost of providing the level of benefits referred to in **clause 52.1.2.1**, provide benefits which

52.1.2.1 are in the opinion of the GAD in respect of past service equal in value to and no less favourable and in respect of future service are broadly comparable in value to and no less favourable than the benefits to which the Eligible Employee was entitled under their previous scheme in respect of those Eligible Employees who have accrued benefits in either the LGPS or the occupational pension scheme certified by GAD as providing benefits which are the same as, broadly comparable to or better than those provided under the LGPS;

52.1.2.2 are in the opinion of the scheme actuary to the Citrus Pension Scheme in respect of past service equal in value to and no less favourable and in respect of future service are broadly comparable to and no less favourable than the benefits to which the Eligible Employee was entitled under the Citrus Pension Scheme in respect of those Eligible Employees who have accrued benefits in the Citrus Pension Scheme in sections which are either required or no longer required to satisfy the terms of the Scheme's GAD passport or GAD certificate.

52.1.3 If the Parties to this Contract cannot agree the terms of or the amount of the appropriate transfer value as outlined in **clause 52.1.2.1** and

52.1.2.2 within one (1) month (or such longer period as shall be agreed between the Parties to this Contract), then the terms and the amount of the transfer value shall be determined by an independent actuary to be nominated by the Parties to this Contract jointly or, if they cannot agree on an appointment, by the President of the Institute of Actuaries on application by either Party to this Contract. The independent actuary shall act as an expert and not as an arbitrator and his decision shall be final and binding on the Parties. The independent actuary's costs shall be payable equally by the Parties to this Contract.

52.1.4 Subject to the provisions of **clause 52.2** (Contractor Protection), the Contractor will procure that with effect from the Relevant Transfer Date, any Relevant Employee of any existing contractor who, immediately before the Relevant Transfer Date, is neither an active member of nor has the right to be a member of the LGPS or an occupational pension scheme which has been certified by the GAD as providing benefits which are the same as, broadly comparable to or better than the LGPS (and who is not, therefore, an Eligible Employee) and whose contract of employment becomes in relation to what is done for the purpose of this Contract, a contract of employment with the Contractor, will be provided with pension benefits which are in accordance with Sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005 and the Best Value Authorities Staff Transfers (Pensions) Direction 2007, as applicable.

52.2 **Contractor Protection**

52.2.1 Where the Contractor is obliged to provide retirement benefits to any Eligible Employee in accordance with the provisions of **clause 52.1.1** (Pension Benefits) or to any employee to whom the provisions of **clause 52.1.4** (Pension Benefits) apply and who, immediately before the Relevant Transfer Date, is a member of the Citrus Pension Scheme, if at any time the Contractor is required to pay employer contributions or payments to either the LGPS, the Citrus Pension Scheme or the Contractor Scheme in excess of the Initial Contribution Rate, the excess of employer contributions or payments above the Initial Contribution Rate (the **"Excess Amount"**) shall be the responsibility of the Councils which shall indemnify and keep indemnified the Contractor in respect of such Excess Amount or Excess Amounts.

52.2.2 In particular, where, in relation to participation by the Contractor in the LGPS or continued participation in the Citrus Pension Scheme, the administering authority of that section or the trustees for the time being of the Citrus Pension Scheme obtains an actuarial valuation under the Local Government Pension Scheme (Administration) Regulations 2008 and/or the terms of the appropriate admission agreement referred to in **clause 52.1.1.1** (Pension Benefits) above or sections 75 or 75A of the Pensions Act 1995 (as amended), when that participation ceases to have effect and where the Contractor is required to pay any revised contribution or payment to the LGPS or the Citrus Pension Scheme representing any funding deficit (the **"Exit Contribution"**), such contribution or payment shall be the responsibility of the Councils which shall, on receipt from the Contractor of the account or notice of the Exit Contribution, pay or cause to be paid to the relevant administering authority, an amount equal to the Exit Contribution. For the avoidance of doubt the

provisions of this **clause 52.2** shall survive the termination of this Contract.

52.3 **Pensions Issues on Expiry or Termination**

Upon the Return Date, the provisions of this **clause 52.3** shall apply in relation to pension provision. The Contractor shall:

52.3.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any Returning Employees (including without limitation identification of the Returning Employees);

52.3.2 promptly provide to the Councils such documents and information mentioned in **clause 52.3.1** which the Councils may reasonably request in advance of the Return Date;

52.3.3 fully co-operate (and procure that the trustees of any pension scheme offered by the Contractor to the Returning Employees shall fully co-operate) with the reasonable requests of the Councils relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any Returning Employees on the Return Date; and

52.3.4 ensure that if an offer of employment is made the employment shall be on such terms and conditions for entitlement to membership of a pension scheme, as comply with Sections 257 and 258 Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 and the Best Value Authorities Staff Transfers (Pensions) Direction 2007, as applicable.

53. **EMPLOYEES**

53.1 **Conduct of Staff**

53.1.1 Whilst engaged at any of the Sites the Contractor shall and shall procure that any Sub-Contractor shall comply with the Councils' policies (where the existence and content of such policies have previously been notified to the Contractor by the Councils) relating to the conduct of staff and security arrangements. The Councils (acting reasonably) may where the Councils have reasonable grounds for considering that an employee is or would be Unsuitable, require the exclusion of the relevant employee from the relevant location(s).

53.1.2 The Contractor will be solely responsible for the management of all Assigned Employees (including, from the Service Transfer Date, Existing Employees) and for the acts and omissions of the Assigned Employees and of any Sub-Contractors.

53.1.3 The Contractor will indemnify, keep indemnified and hold harmless the Councils from and against all Direct Losses incurred by the Councils arising from or in connection with (whether directly or indirectly) the acts and omissions of the Assigned Employees and/or Sub-Contractors in the course of the provision of the Services or otherwise in their dealings with the Councils and/or those employed or engaged by the Councils.

53.2 **Admission to the Site**

The Contractor shall at least 20 Business Days before:

53.2.1 Completion of the NWTF or any Minor Facility

53.2.2 the date when the Contractor first provides Services at any other Facility;

provide the Councils with a written list of the names and addresses of all employees or other persons who it expects may require admission to each Site in connection with the provision of the Services, specifying the capacities in which those employees or other persons are concerned with the Services and giving such other particulars as the Councils may require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others, not less than one (1) Business Day before their inclusion. The decision of the Councils on whether any person is to be refused admission to a Site shall be final and conclusive and the Councils shall not be obliged to give reasons for its decision. The provisions of this **clause 53.2** shall not apply to those individuals who shall be required by the Contractor or any Sub-Contractor to attend on a Site to provide emergency reactive services. In the case of such individuals, the Contractor shall or shall procure that any Sub-Contractor shall ensure that such individuals are accompanied at all times while on each Site by a member of the Contractor or Sub-Contractor's staff who has been properly notified to the Councils in accordance with the terms of this **clause 53.2**.

53.3 **Refusal of Admission**

The Councils reserve the right to refuse to admit to the Sites any person, employed or engaged by the Contractor or a Sub-Contractor, whose admission would, in the opinion of the Councils, present a risk to themselves or a Council Related Party or property belonging to the Councils or a Council Related Party, and shall not be obliged to give any reasons for such refusal.

53.4 **Decision to Refuse Admission**

The decision of the Councils as to whether any person is to be refused admission to the Site pursuant to **clause 53.3** shall be final and conclusive. If the Councils decline to give reasons for exercising its rights under **clauses 53.2**, 53.3 and 53.5 and/or where the reasons given are found to be unreasonable the Councils shall indemnify the Contractor and keep the Contractor indemnified from and against any injury, claims, costs and expenses (including legal expenses) and or damage suffered or incurred by the Contractor, provided that the Contractor or the relevant Sub-Contractor has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

53.5 **Removal from Sites**

The Contractor shall comply with and/or procure compliance with any notice issued by the Councils from time to time requiring the removal from any of the Sites of any person employed thereon who in the opinion of the Councils (which it shall not be required to explain or disclose to the Contractor) is not acceptable on the grounds of risk to themselves or a Council Related Party or property and that such persons shall not be employed again upon the Project without the written consent of the Councils.

53.6 **Relief from Deductions**

Where the Councils exercise their rights under this **clause 53** and it can be shown that:

53.6.1 the Contractor or any Sub-Contractor has acted in accordance with the relevant provisions of this **clause 53**; or

53.6.2 the Councils did not act reasonably in instructing the Contractor not to employ and/or in requesting any removal and/or in refusing admission;

then the Councils shall give the Contractor such relief from Deductions for a reasonable period to allow the Contractor or any Sub-Contractor to make alternative arrangements to replace the person whose employment has been refused or whose removal has been requested. For the avoidance of doubt, any relief from Deductions given under this **clause 53.6** shall only be in respect of those Services in which such person is or would have been engaged.

53.7 **Resources and Training**

The Contractor shall procure that:

53.7.1 there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and

53.7.2 all staff receive such training and supervision as is necessary to ensure the proper performance of the Services under this Contract.

53.8 **Personnel Policies and Procedures**

The Contractor shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are issued to the Councils on request.

PART VIII TERMINATION

54. DIRECT AGREEMENT

The provisions set out in this Part VIII of this Contract are subject to the Direct Agreement.

55. TERMINATION ON COUNCIL DEFAULT

55.1 If a Council Default has occurred and the Contractor wishes to terminate the Contract, it must serve a termination notice, (**"Termination Notice"**) on the Councils within 35 Business Days of becoming aware of the Council Default.

55.2 The Termination Notice must specify the type of Council Default which has occurred entitling the Contractor to terminate.

55.3 The Contract will terminate on the Day falling 35 Business Days after the date the Councils received the Termination Notice, unless the Councils rectify the Council Default within 20 Business Days of receipt of the Termination Notice.

56. COMPENSATION ON TERMINATION FOR COUNCIL DEFAULT

56.1 On termination of this Contract under **clause 55** (Termination on Council Default) the Councils shall pay the Contractor the Council Default Termination Sum in accordance with **clause 67** (Calculation and Payment of Compensation on Early Termination) on the Termination Date.

56.2 Subject to **clauses 56.4** to 56.6, the Council Default Termination Sum shall be an amount equal to the aggregate of:

56.2.1 the Base Senior Debt Termination Amount;

56.2.2 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs; and

56.2.3 an amount which when taken together with:

56.2.3.1 dividends (or other distributions) paid by the Contractor on its share capital on or before the Termination Date

56.2.3.2 interest paid and principal repaid by the Contractor under the Subordinated Financing Agreements on or before the Termination Date,

taking account of the actual timing of all such payments, gives a real internal rate of return on the share capital subscribed and amounts advanced under the Subordinated Financing Agreements equal to the Base Case Equity IRR; and

56.2.4 in circumstances where this Contract is terminated due to Council Default pursuant to limb (e) of the definition of Council Default, any costs incurred by the Contractor and/or the Senior Lenders as a result of the failure by the Councils to pay the Capital Contribution, to the extent such costs are not otherwise included in the heads of compensation referred to in **clause 56.2.1** to 56.2.3 above.

56.3 On payment of the amount referred to in **clause 56.1** above, the Councils shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets (excluding any accrued rights of the Contractor) to the Councils, or as directed by the Councils.

56.4 If the aggregate of the amounts referred to in **clauses 56.2.1** and **56.2.3** is less than the Revised Senior Debt Termination Amount, then the Council Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in clause 56.2.2 provided always that:

56.4.1 the amount referred to in **clause 56.2.2** shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Councils that the amount will not be applied in payment (in whole or in part) of any Distribution; and

56.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub Contract in circumstances where there is an event of default under such Sub Contract which would entitle the Contractor to terminate such Sub Contract.

56.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under clause 11.4(d)(i) of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Councils shall be entitled to set off the value of that Distribution a second time against the Council Default Termination Sum, provided that the amount of the Council Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

56.6 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.4(d)(ii) of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Councils to reasonably believe that they would be required to pay a lesser sum at the Termination Date than it is actually required to pay under the terms of this **clause 56**, then the Council Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Council Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

57. TERMINATION ON CONTRACTOR DEFAULT

57.1 Right to Terminate on Contractor Default

57.1.1 If a Contractor Default has occurred and the Councils wish to terminate this Contract, they must serve a termination notice on the Contractor.

57.1.2 The termination notice (referred to in **clause 57.1.1**) must specify:

57.1.2.1 the type and nature of Contractor Default that has occurred giving reasonable details; and

57.1.2.2 that in the case of any Contractor Default falling within the limbs (a), (g), (h), (i) and (t) of the definition of Contractor Default this Contract will terminate on the day falling 120 Business Days after the date the Contractor receives the termination notice, unless:

(a) in the case of a breach under limb (a) of the definition of Contractor Default the Contractor puts forward a rectification programme within 60 Business Days after the date the Contractor receives the termination notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme);

(b) or in the case of any Contractor Default falling within the limbs (a), (g), (h), (i) and (t) of the definition of Contractor Default the Contractor rectifies the Contractor

Default within 120 Business Days of receipt of the termination notice; or

57.1.2.3 that in the case of any other Contractor Default (not being limbs (a), (g), (h), (i) and (t), this Contract will terminate on the date falling 30 days after the date the Contractor receives the termination notice.

57.1.3 If the Contractor either rectifies the Contractor Default within the time period specified in the termination notice or implements the rectification programme, if applicable, in accordance with its terms, the termination notice will be deemed to be revoked and this Contract will continue.

57.1.4 If:

57.1.4.1 in the case of a Contractor Default within limb (a) of the definition of that term no acceptable rectification programme has been put forward pursuant to **clause 57.1.2** and the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice; or

57.1.4.2 in the case of a Contractor Default falling within limbs (a) and (g) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice,

the Councils may give notice stating that the Contract will, subject to the terms of the Direct Agreement, terminate on the date falling 35 days after the date of receipt of such notice.

57.1.5 If the Contractor fails to implement any rectification programme in accordance with its terms, this Contract will, subject to the terms of the Direct Agreement, terminate on the date falling 35 Business Days after the date of notification by the Councils to the Contractor of such failure to implement the rectification programme in accordance with its terms.

57.1A **Ringfencing of Initial Services**

Notwithstanding any other provision in this Contract to the contrary but subject to **clause 57.1B**, under no circumstances may:

57.1A.1 any breach in respect of the performance of the Initial Services prior to the NWTF Completion Date; or

57.1A.2 any failure by the Contractor to comply with the terms of this Contract prior to the NWTF Completion Date,

be capable of giving rise to a Contractor Default.

57.1B **Councils' Right to Require Termination of the HWRC Contractor's Engagement in the Project**

57.1B.1 If the performance or non-performance of the Initial Services by the Contractor would, but for the operation of **clause 57.1A**, allow the Councils to terminate this Contract then provided that:

57.1B.1.1 the Councils have complied with the procedure in **clause 57.1** (Right to Terminate on Contractor Default) (including affording the Contractor the time set out in **clause 57.1** to rectify the relevant Contractor Default); and

57.1B.1.2 the Operating Contractor is entitled to terminate the HWRC Contractor in accordance with the terms of the contract between the Operating Contractor and the HWRC Contractor (the **"HWRC Contract"**) for the corresponding performance or non-performance of the Initial Services by the HWRC Contractor (including affording the HWRC Contractor the time set out in the relevant clause of the HWRC Contract to rectify the relevant default by the HWRC Contractor),

the Councils shall be entitled to serve written notice on the Contractor requiring the Contractor to procure that the Operating Contractor terminates the employment of the HWRC Contractor in the Project from the date falling 50 Business Days after receipt by the Contractor of the Councils' notice under this clause.

57.1B.2 Within 50 Business Days following receipt of the notice under **clause 57.1B.1**, the Contractor shall procure that the Operating Contractor terminates the employment of the HWRC Contractor in the Project.

57.1B.3 For the avoidance of doubt, the Operating Contractor may operate the HWRCs and Project Transfer Stations itself (rather than by the appointment of a third party) following a request from the Councils for the Contractor to procure that the Operating Contractor terminates the HWRC Contractor's engagement in the Project under **clause 57.1B** above.

57.1B.4 The Parties acknowledge that if the Contractor fails to procure the termination by the Operating Contractor of the HWRC Contractor's engagement in the Project in accordance with this **clause 57.1B**, the same may constitute a Contractor Default under limb (a) of the definition of Contractor Default which entitles the Councils to terminate this Contract in accordance with **clause 57.1** (Right to Terminate on Contractor Default) of this Contract.

57.1B.5 Neither **clause 57.1B.1** nor **clause 57.1B.2** shall require the Contractor to terminate the Operating Contractor's involvement in the Project or to replace the Operating Contractor.

57.2 **Persistent Breach**

57.2.1 If a particular breach (other than a breach for which Deductions or Adjustments could have been made) has occurred more than 3 times in any 6 month period then the Councils may serve a notice on the Contractor:

57.2.1.1 specifying that it is a formal warning notice;

57.2.1.2 giving reasonable details of the breach; and

57.2.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract;

57.2.2 If, following service of such a warning notice, the breach specified has continued beyond 30 Days or recurred 3 more times within the 6 month period after the date of service of the formal warning notice referred to in **clause 57.2.1**, then the Councils may serve another notice on the Contractor (a **"Final Warning Notice"**):

57.2.2.1 specifying that it is a Final Warning Notice;

57.2.2.2 stating that the breach specified has been the subject of a warning notice served, in the case of a recurring breach, within the twelve Month period prior to the date of service of the Final Warning Notice; and

57.2.2.3 stating that if such failure continues for more than fourteen (14) days or recurs three (3) or more times within the six (6) Month period after the date of service of the Final Warning Notice, this Contract may be terminated;

57.2.3 A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.

58. COMPENSATION ON TERMINATION ON CONTRACTOR DEFAULT

58.1 Retendering Election

58.1.1 Subject to **clause 58.1.2**, the Councils shall be entitled either to:

58.1.1.1 retender the provision of the Project in accordance with **clause 58.2** (Retendering Procedure); or

58.1.1.2 require an expert determination in accordance with **clause 58.3** (No Retendering Procedure).

58.1.2 The Councils shall be entitled to retender the provision of the Project in accordance with **clause 58.2** (Retendering Procedure) if:

58.1.2.1 the Councils notify the Contractor on or before the date falling 20 Business Days after the Termination Date that it intends to retender; and

58.1.2.2 there is a Liquid Market, and either:

(a) the Senior Lenders have not exercised their rights to step-in under the Direct Agreement; or

(b) the Contractor or Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under this Contract to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so.

but otherwise the Councils shall not be entitled to re-tender the provision of the Project and **clause 58.3** shall apply.

58.2 **Retendering Procedure**

If the Councils elect to retender the provision of the Project under **clause 58.1**, then the following provisions shall apply:

58.2.1 The objective of the retendering procedure shall be to establish and pay to the Contractor the Highest Compliant Tender Price, as a result of the Tender Process.

58.2.2 The Councils shall (subject to any legal requirements preventing them from doing so) use their reasonable endeavours to complete the Tender Process as soon as practicable.

58.2.3 The Councils shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms.

58.2.4 The Contractor authorises the release of any information by the Councils under the Tender Process which would otherwise be prevented under **clause 75** that is reasonably required as part of the Tender Process.

58.2.5 The Contractor may, at its own cost, appoint a person (the **"Tender Process Monitor"**) to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Lender on the Councils compliance with the Tender Process and making representations to the Councils. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Councils to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Councils have acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price.

58.2.6 The Tender Process Monitor shall enter into a confidentiality agreement with the Councils in a form acceptable to the Councils and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Councils regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Councils shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure.

58.2.7 For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Councils shall pay to the Contractor:

58.2.7.1 the Post Termination Service Amount for that month, on or before the date falling ten Business Days after the end of that month; and

58.2.7.2 the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling 20 Business Days after the Compensation Date.

58.2.8 If any Post Termination Service Amount is less than zero, then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price.

58.2.9 The Councils shall require bidders to bid on the following basis:

58.2.9.1 that they will demonstrate, by providing comparison bids, that full value has been attributed to the amount of Capital Contribution to be paid in accordance with clause 33.2;

58.2.9.2 that they will receive the benefit of any outstanding claims under material damage insurance policies; and

58.2.9.3 that they will receive amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into.

58.2.10 As soon as practicable after tenders have been received, the Councils shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Adjusted Highest Compliant Tender Price.

58.2.11 If the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure the Councils shall nevertheless be entitled to enter into a New Contract. The Councils shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling 20 Business Days after it has been determined under the Dispute Resolution Procedure and the Councils shall pay interest to the Contractor at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which has been withheld, from the date specified in **clause 58.2.12** below until the date specified in this **clause 58.2.11**. For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Councils shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in **clause 58.2.12** below, with the disputed amount being dealt with in accordance with this **clause 58.2.11**.

58.2.12 Subject to **clauses 58.2.11** and 58.2.15, the Councils shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling 20 Business Days after the date of the New Contract.

58.2.13 The discharge by the Councils of their payment obligation in **clauses 58.2.11** and/or 58.2.12 shall be in full and final settlement of all the Contractor's claims and rights against the Councils for breaches and/or termination of this Contract and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Councils which arose prior to the Termination Date that has not already been taken into account in the Adjusted Highest Compliant Tender Price.

58.2.14 Subject to **clauses 58.2.15** and 58.2.18, if the Councils have not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two years after the Termination Date then the following provisions of this **clause 58.2** shall not apply to that termination and the provisions of **clause 58.3** shall apply instead.

58.2.15 If the Adjusted Highest Compliant Tender Price is zero or a negative number then the Councils shall have no obligation to make any payment to the Contractor and with effect from the time that the Councils give notice of that event to the Contractor, the Councils shall be released from all liability to the Contractor for breaches and/or termination of this Contract and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Councils which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

58.2.16 If the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Councils on the date of the New Contract.

58.2.17 The Councils may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under **clause 58.3** by notifying the Contractor that this election has been made.

58.2.18 If the Councils have received all bids from bidders under the Tender Process and have received a Compliant Tender but decide not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within 20 Business Days of such notification.

58.2.19 If no Compliant Tenders are received by the Councils the Senior Lenders may within 20 Business Days of notification that no Compliant Tenders have been received (which the Councils shall be obliged to provide within 30 Business Days of the date of receipt for such tenders) give notice to the Councils that they require the Councils to proceed with the No Retendering Procedure and the provision of **clause 58.3** (No Retendering Procedure) shall apply instead.

58.3 **No Retendering Procedure**

If the Councils are not entitled to re-tender the provision of the Project under **clause 58.1** or the Councils elect to require an expert determination in accordance with this **clause 58.3** or **clause 58.2.19** applies, then the following procedure shall apply:

58.3.1 Subject to **clause 58.3.2**, the Contractor shall not be entitled to receive any Post Termination Service Amount.

58.3.2 If the Councils elect to require an expert determination in accordance with this **clause 58.3** after they have elected to follow the procedure under **clause 58.2**, then the Councils shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with **clause 58.2**.

58.3.3 In agreeing or determining the Estimated Fair Value of this Contract, the Parties shall be obliged to follow the principles set out below:

58.3.3.1 all forecast amounts shall be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Contract;

58.3.3.2 the total of all future payments of the full Unitary Charge (without Deductions) forecast to be made and Third Party Income forecast to be earned shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;

58.3.3.3 the total of all costs forecast to be incurred by the Councils as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to **clause 58.3.3.2**, such costs to include (without double counting):

(a) any loss of Third Party Income to which the Councils would otherwise have been entitled under **paragraph 5.5** of **Schedule 3** (Payment Mechanism) assumed at Base Case levels;

(b) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant Base Case;

(c) the costs of the Service (including any assessment of costs of generating any Third Party Income) forecast to be incurred by the Councils in providing the Project to the standard required; and

(d) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Councils to complete construction or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the full Unitary Charge referred to in **clause 58.3.3.2**.

58.3.3.4 where any element of the Capital Contribution has not been paid as at the Termination Date (the **"Unpaid Contribution"**), then:

(a) where the Termination Date is earlier than the NWTF Planned Completion Date, the Unpaid Contribution shall be discounted at the Termination Date Discount Rate, except that references in the definition of Termination Date Discount Rate to the "average life of the outstanding Senior Debt" shall be read as referring to the period of time between the Termination Date and the NWTF Planned Completion Date, and the outcome of this calculation shall be taken into account in calculating the Estimated Fair Value of the Contract;

(b) where the Termination Date is either the NWTF Planned Completion Date or a date falling thereafter, the full amount of the Unpaid Contribution shall be taken into account in calculating the Estimated Fair Value of the Contract.

58.3.4 If the Parties cannot agree on the Adjusted Estimated Fair Value of this Contract on or before the date falling 30 days after the date on which the Councils elected to require an expert determination in accordance with this **clause 58.3**, then the Adjusted Estimated Fair Value of this Contract shall be determined in accordance with the Dispute Resolution Procedure.

58.3.5 The Councils shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of this Contract on the date falling 60 days after the date on which the Adjusted Estimated Fair Value of this Contract has been agreed or determined in accordance with this **clause 58.3**.

58.3.6 The discharge by the Councils of their obligation in **clause 58.3.5** is in full and final settlement of all the Contractor's claims and rights against the Councils for breaches and/or termination of this Contract or other Project Document whether in contract, tort, restitution or otherwise, save for any liability which arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of this Contract.

58.3.7 To the extent that the Adjusted Estimated Fair Value of this Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of this Contract shall be due and payable by the Contractor to the Councils on the Compensation Date.

58.4 Transfer of Assets on Contractor Default

On termination under **clause 57** (Termination on Contractor Default) the Councils shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets (excluding any accrued rights of the Contractor).

59. TERMINATION ON FORCE MAJEURE

59.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party nor incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by the occurrence of that Force Majeure Event. For the avoidance of doubt (but without

prejudice to **clauses 59.5** and/or 59.7) the Councils shall not be entitled to terminate this Contract for a Contractor Default if such Contractor Default arises from a Force Majeure Event.

59.2 Nothing in **clause 59.1** above shall affect the Councils' entitlement to make Deductions (excluding the Landfill Adjustment) pursuant to the provisions of **Schedule 3** (Payment Mechanism) in the period during which the Force Majeure Event is subsisting.

59.3 On the occurrence of a Force Majeure Event, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.

59.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

59.5 If no such terms are agreed on or before the date falling 120 Days after the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is unable to comply with its obligations under this Contract for a period of more than 180 Days, then, subject to **clause 59.6**, either Party may terminate this Contract by giving 20 Business Days written notice to the other.

59.6 If this Contract is terminated under **clause 59.5** or 59.7:

59.6.1 then compensation shall be payable by the Councils in accordance with **clause 60** (Compensation on Termination for Force Majeure); and

59.6.2 the Councils may require the Contractor to transfer its (or procure the transfer of the) title, interests and rights in and to any Assets (excluding any accrued rights of the Contractor) to the Councils.

59.7 If the Contractor gives notice to the Councils under **clause 59.5** above that it wishes to terminate this Contract, then the Councils have the option either to accept such notice or to respond in writing on or before the date falling 10 Business Days after the date of its receipt stating that it requires this Contract to continue. If the Councils gives the Contractor such notice, then:

59.7.1 the Councils shall pay to the Contractor the Unitary Charge from the day after the date on which the Contract would have terminated under **clause 59.5** as if the Services were being fully provided together with any additional landfill disposal costs and Third Party Income as shown in the Base Case, net of related costs (without double counting); and

59.7.2 this Contract will not terminate until expiry of written notice (of at least 30 Days) from the Councils to the Contractor that they wish this Contract to terminate.

59.8 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

59.9 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

60. COMPENSATION ON TERMINATION FOR FORCE MAJEURE

60.1 On termination of this Contract under **clause 59** (Termination on Force Majeure) or **clause 33.3B** (Capital Contribution), the Councils shall pay to the Contractor the Force Majeure Termination Sum in accordance with **clause 67** (Calculation and Payment of Compensation on Early Termination).

60.2 Subject to **clauses 60.4** and 60.5, the Force Majeure Termination Sum shall be the amount equal to the aggregate of:

60.2.1 the Base Senior Debt Termination Amount;

60.2.2 the Subordinated Debt less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;

60.2.3 all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the shareholders of the Contractor (save to the extent deducted under **clause 60.2.2** above); and

60.2.4 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs.

60.3 If the amounts referred to in **clause 60.2.2** and/or **60.2.3** are less than zero, then, for the purposes of the calculation in **clause 63.2** they shall be deemed to be zero.

60.4 If the aggregate of the amounts referred to in **clauses 60.2.1**, 60.2.2 and **60.2.3** is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in **clause 60.2.4** provided always that:

60.4.1 the amount referred to in **clause 60.2.4** shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Councils that the amount will not be applied in payment (in whole or in part) of any Distribution; and

60.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub Contract in circumstances where there is an event of default under such Sub Contract which would entitle the Contractor to terminate such Sub Contract.

60.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully or through gross negligence, failed to comply with its obligations under clause 11.4(d)(i) of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Councils shall be entitled to set

off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

60.6 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.4(d)(ii) of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Councils to reasonably believe that they would be required to pay a lesser sum at the Termination Date than they actually are required to pay under the terms of this clause 60, then the Force Majeure Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

60.7 Such amount shall be determined and paid in accordance with **clause 67** (Calculation and Payment of Compensation on Early Termination).

60.8 On termination, the Councils shall have the option to require the Contractor to transfer to the Councils all of its right, title and interest in and to the Assets (excluding any accrued rights of the Contractor).

61. TERMINATION ON CORRUPT GIFTS AND FRAUD

61.1 The Contractor warrants that, in entering this Contract, it has not committed any Prohibited Act.

61.2 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Councils shall be entitled to act in accordance with **clauses 61.3** to **61.7** below.

61.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Councils may give notice to the Contractor of termination and the Contract shall terminate, unless within 20 Business Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

61.3A Notwithstanding **clauses 61.1** to **61.6**, if a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Councils may terminate this Contract by giving notice to the Contractor provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Councils may not terminate the Contract unless, acting reasonably, it considers termination of the Contract to be in the best interests of the Project.

61.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Councils may give notice to the Contractor of termination and the Contract will terminate, unless within 20 Business Days of receipt of such notice the Contractor terminates the relevant Project Document and procures the performance of such part of the Works and/or Services by another person.

61.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Councils may give notice to the Contractor of termination and the Contract will terminate, unless within 20

Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

61.6 If the Prohibited Act is committed by any other person not specified in **clauses 61.2** to 61.5 above, then the Councils may give notice to the Contractor of termination and the Contract will terminate unless, within 20 Business Days of receipt of such notices, the Contractor procures the termination of such person's employment or agency and of the appointment of their employer (where not employed by or an agent of the Contractor or the Sub-Contractors) and, if necessary, procures the performance of such part of the Works and/or Services by another person.

61.7 Any notice of termination under this **clause 61** shall specify:

61.7.1 the nature of the Prohibited Act;

61.7.2 the identity of the party whom the Councils believe has committed the Prohibited Act;

61.7.3 the date on which the Contract will terminate, in accordance with the applicable provision of this **clause 61**; and

61.7.4 the Councils' chosen option under **clause 62** (Compensation on Termination on Corrupt Gifts and Fraud).

62. COMPENSATION ON TERMINATION ON CORRUPT GIFTS AND FRAUD

62.1 Corrupt Gifts and Fraud

62.1.1 On termination of this Contract under **clause 61** (Termination on Corrupt Gifts and Fraud) then the Councils shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount.

62.1.2 Such amount shall be determined and paid in accordance with **clause 67** (Calculation and Payment of Compensation on Early Termination).

62.1.3 If termination occurs then the Councils may require the Contractor to transfer its rights, title and interest in and to the Assets to the Councils (excluding any accrued rights of the Contractor).

63. VOLUNTARY TERMINATION BY THE COUNCILS

63.1 The Councils may terminate this Contract at any time on or before its Expiry Date or the Extended Expiry Date (as the case may be) by complying with their obligations under **clauses 63.2** to **63.4**.

63.2 If the Councils wish to terminate this Contract under this **clause 63**, they must give notice to the Contractor stating:

63.2.1 that the Councils are terminating this Contract under this **clause 63**;

63.2.2 that this Contract will terminate on the date specified in the notice, which must be a minimum of 30 Days after the date of receipt of the notice; and

63.2.3 whether the Councils have chosen to exercise its option under **clause 63.3**.

63.3 On termination, the Councils shall have the option to require the Contractor to transfer all of its rights, title and interests in and to the Assets (excluding any accrued rights of the Contractor) to the Councils or as directed by the Councils.

63.4 The Contract shall terminate on the date specified in the notice referred to in **clause 63.2** above.

64. COMPENSATION ON VOLUNTARY TERMINATION

On termination under **clause 63** (Voluntary Termination by the Councils) the Councils shall pay the Contractor an amount equal to the amount payable under **clause 56** (Compensation on Termination for Council Default) in accordance with **clause 67** (Calculation and Payment of Compensation on Early Termination).

65. TERMINATION BY THE COUNCILS FOR BREACH OF THE REFINANCING PROVISIONS

65.1 If the Contractor wilfully breaches **clause 36.1** (Refinancing) then the Councils may terminate this Contract at any time on or before its Expiry Date or the Extended Expiry Date (as the case may be) by complying with their obligations under this **clause 65**.

65.2 If the Councils wish to terminate this Contract under this **clause 65**, they must give notice to the Contractor stating:

65.2.1 that the Councils are terminating this Contract under this **clause 65** (Termination by the Councils for breach of the Refinancing Provisions);

65.2.2 that the Contract will terminate on the date falling 20 Business Days after the date of receipt of the notice; and

65.2.3 whether the Councils have chosen to exercise its option under **clause 65.3** below.

65.3 On termination, the Councils shall have the option to require the Contractor to transfer to the Councils all of its right, title and interest in and to the Assets (excluding any accrued rights of the Contractor).

65.4 This Contract will terminate on the date falling 20 Business Days after the date of receipt of the notice referred to in **clause 65.2** above.

66. COMPENSATION ON TERMINATION FOR BREACH OF THE REFINANCING PROVISIONS

On termination under **clause 65.4**, the Councils shall pay the Contractor an amount equal to the amount payable under **clause 62.1** in accordance with **clause 67** (Calculation and Payment of Compensation on Early Termination).

67. CALCULATION AND PAYMENT OF COMPENSATION ON EARLY TERMINATION

67.1 Method of Payment

67.1.1 The Councils shall pay to the Contractor the Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate on or before the date falling 60 days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with **clause 67.1.2** below;

67.1.2 The Councils may, other than on Council Default or when this Contract is terminated pursuant to **clause 85.3** (Failure to Issue a Certificate), elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum;

67.1.2.1 in instalments, as follows:

(a) Where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal:

(i) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal on the dates (the **"Instalment Dates"**) and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the Senior Financing Agreement had the Termination Date not occurred; and

(ii) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) in equal instalments on the Instalment Dates;

(b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Senior Lenders on each Instalment Date under the terms of the Senior Financing Agreement had the Termination Date not occurred; or

67.1.2.2 as the Parties may otherwise agree.

67.1.3 From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

67.1.4 If the Councils have elected to pay in accordance with **clause 67.1.2** they may (on 28 Days' prior written notice to the Contractor) elect to pay the outstanding part of Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.

67.1.5 If the Councils:

67.1.5.1 fail to make a payment to the Contractor in accordance with **clauses 67.1.1** and/or 67.1.2 and/or 67.1.3 above; or

67.1.5.2 breaches **clause 73.1**,

the Contractor may issue a notice to the Councils declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

67.2 **Certification**

The Councils shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time. The receipt of the Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof as relevant shall discharge the Councils' obligation to pay such sums to the Contractor.

67.3 **Sole Remedy**

Any payment of compensation shall be in full satisfaction of any claim which can be made against the Councils by the Contractor in relation to termination of this Contract or any Project Document. The compensation payable under **clause 56** (Compensation on the Councils Default), **clause 58** (Compensation on Termination on Contractor Default), **clause 60** (Compensation on Termination for Force Majeure), **clause 62** (Compensation on Termination on Corrupt Gifts and Fraud), **clause 64** (Compensation on Voluntary Termination) and **clause 66** (Compensation on Termination for Breach of the Refinancing Provisions) shall be the sole remedy of the Contractor against the Councils in relation to termination of this Contract. The Councils' right to terminate this Contract is exclusively set out in this Contract and the Councils shall have no right in law or equity or otherwise to terminate, determine, set aside, seek rescission or similar of all or any part of this Contract other than as expressly set out herein.

67.4 **Set Off on Termination**

Except where expressly stated otherwise, the Councils are not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under **clause 56** (Compensation on the Councils Default), **clause 60** (Compensation on Termination for Force Majeure), **clause 62** (Compensation on Termination on Corrupt Gifts and Fraud), **clause 64** (Compensation on Voluntary Termination) and under **Schedule 7** (Relevant Discharge Terms) and **clause 66** (Compensation on Termination for Breach of the Refinancing Provisions), save to the extent that after such an amount has

been set off, the termination payment made would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

67.5 **Tax**

If any amount of compensation payable by the Councils under **clauses 56** (Compensation on the Councils Default), 60 (Compensation on Termination for Force Majeure), **62.1** (Compensation on Termination on Corrupt Gifts and Fraud), 64 (Compensation on Voluntary Termination) and under **Schedule 7** (Relevant Discharge Terms) and **clause 66** (Compensation on Termination for Breach of the Refinancing Provisions) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Councils shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been had the payment not been subject to Tax, taking account of any relief, allowances deduction, setting off credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

67.6 **Accrued Rights on Termination**

Notwithstanding any other provisions of this Contract, to the extent that any Asset transfers from the Contractor to the Councils on termination or expiry, such transferred Asset shall exclude any accrued rights of the Contractor.

68. **EXPIRY OF CONTRACT PERIOD**

68.1 At least 24 Months but not more than 36 Months before the Expiry Date or the Extended Expiry Date (as the case may be) or, in the case of an early termination of this Contract, as soon as reasonably practicable following the service of the relevant notice of termination (and in any event prior to the Termination Date), the Councils shall notify the Contractor of their intention concerning the Services after the Contract Period and whether they wish:

68.1.1 to retender the provision of the Services; or

68.1.2 the Contractor to transfer all of its right, title and interest in and to the Assets to the Councils.

68.2 The Contractor and the Councils shall thereafter together consult, agree, cooperate and implement an orderly and effective process for the smooth transfer of the items listed in **clause 68.3**, so that any continuation of the Services is achieved with the minimum of disruption and so as to prevent or mitigate any inconvenience or risk to health and safety of the employees of the Councils, the employees of an incoming contractor and/or members of the public.

68.3 In carrying out these obligations under **clause 68.1** the Parties shall agree detailed activities and timescales (having regard to the fact that following the end of the Contract Period the Contractor shall be under no obligation to perform the Works and Services including the maintenance of the Assets) to implement the following:

68.3.1 a transfer of the Assets;

68.3.2 a transfer of the Site; and

68.3.3 a novation or assignment of any third party contracts.

Where the Parties are unable to promptly agree the items detailed activities and/or timescales then the matter may be referred by either Party for determination under **clause 78** (Dispute Resolution).

68.4 Following the end of the Contract Period the Contractor shall transfer to the Councils or such other person as the Councils direct those items referred to in **clause 68.3** in accordance with the timescales agreed or determined pursuant to **clause 68.3** and in so doing the Parties shall each enter in to such agreements and execute such deeds and documents as may be reasonably necessary to execute such transfers.

68.5 **Surveys on termination**

68.5.1 18 Months prior to the Expiry Date or the Extended Expiry Date (as the case may be) the Councils shall be entitled to carry out a final survey of the Physical Assets to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under **clause 27** (Maintenance).

68.5.2 The Councils shall notify the Contractor in writing a minimum of 5 Business Days in advance of the date they wish to carry out the final survey and/or Remediation Survey. The Councils shall consider in good faith any reasonable request by the Contractor for the final survey and/or Remediation Survey to be carried out on a different date if such request is made at least 2 Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the relevant final survey and/or Remediation Survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

68.5.3 When carrying out any final survey, the Councils shall use reasonable endeavours to minimise disruption caused to the provision of the Service by the Contractor. The Contractor shall afford the Councils (free of charge) any reasonable assistance required by the Councils during the carrying out of the final survey. The cost of the final survey shall be borne by the Councils.

68.5.4 If the final survey shows that Physical Assets are not in the Handback Condition, the Councils shall:

68.5.4.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the relevant Assets to the Handback Condition;

68.5.4.2 specify a reasonable period within which the Contractor must carry out such work; and

68.5.4.3 recover the cost of the survey from the Contractor by means of a deduction from the next Monthly Payment.

68.5.5 If the Contractor has been notified under **clause 68.5.4.1** that rectification and/or maintenance work is required, 12 (twelve) months prior to the Expiry Date or the Extended Expiry Date (as the case may be) the Councils shall deduct the costs of that work as quantified by that survey from the next following instalment (or, if the amount of

such instalment is insufficient, the next instalment as necessary) of the Monthly Payment and pay such amount into an interest bearing account (the **"Retention Fund Account"**).

68.5.6 The Contractor shall carry out such rectification and/or maintenance work to the Handback Condition within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

68.5.7 If and to the extent that the Contractor carries out the necessary rectification and/or maintenance work to the Handback Condition within the specified period, the Councils shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account. If the amount in the Retention Fund Account is insufficient to cover the Contractor's costs, the Contractor shall bear the balance of its costs itself.

68.5.8 If and to the extent that the Contractor fails to carry out any of the necessary rectification and/or maintenance work to the Handback Condition within the specified period, the Councils shall be entitled to carry out, or procure, such rectification and/or maintenance works at the Contractor's expense and shall make withdrawals from the Retention Fund Account to pay for such work or, where there are insufficient funds in the Retention Fund Account, make deductions from the Monthly Payment to pay for such work and subject thereto recover any balance as a debt due from the Contractor.

68.5.9 If:

68.5.9.1 all the rectification and/or maintenance work identified by the Councils have been carried out to the Handback Condition; and

68.5.9.2 all such work has been paid for out of the Retention Fund Account or by the Contractor; and

68.5.9.3 no termination notice given in accordance with this Contract is outstanding,

then the Councils shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

PART IX GENERAL

69. INDEMNITY

69.1 Contractor Indemnities

69.1.1 The Contractor shall, subject to **clause 69.1.2**, be responsible for, and shall release and indemnify the Councils, its employees, agents and contractors on demand from and against, all liability for:

69.1.1.1 death or personal injury;

69.1.1.2 loss of or damage to property (including property belonging to the Councils or for which it is responsible the **"Councils Property"**) but excluding the land, buildings,

plant, equipment and other assets which are the responsibility of the Contractor to provide under this Contract and which form part of the Facilities;

69.1.1.3 third party actions, claims or demands brought or claimed against the Councils (including legal expenses on an indemnity basis) for breach of statutory duty, except where there is an express remedy available to the Councils under the main body of this Contract, **Schedule 3** (Payment Mechanism) or **Schedule 14** (Performance Framework); and

69.1.1.4 third party actions, claims, demands, costs, charges and expenses brought or claimed against the Councils (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the Assets or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Councils' Property of the Contractor, a sub contractor of the Contractor (of any tier), their employees or agents provided that the indemnity in relation to **clause 69.1.1.3** shall only apply to any breach of statutory duty caused by a breach by the Contractor of this Contract.

69.1.2 The Contractor shall not be responsible or be obliged to indemnify the Councils for:

69.1.2.1 any of the matters referred to in **clauses 69.1.1.1** to 69.1.1.4 inclusive above which arises as a direct result of the Contractor acting on the instruction of the Councils;

69.1.2.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Councils, their employees, agents or contractors or by the breach by the Councils of their obligations under this Contract;

69.1.2.3 any claims made under either:

(a) **clause 69.1.1.2**; or

(b) **clause 69.1.1.3**; or

(c) **clause 69.1.1.4**;

in each case, in excess of any amounts covered by the Required Insurances (whether due to such liabilities being uninsured, the liabilities exceeding the maximum amount or falling within the amount of excess or deductible or otherwise) except for claims in the aggregate up to:

(a) one million pounds (£1,000,000) (indexed) during the period from the Commencement Date until the NWTF Completion Date; and

(b) seven hundred and fifty thousand pounds (£750,000) (indexed) in the period from the NWTF Completion Date

until the date five (5) years after such date, and in each subsequent consecutive period of five (5) years; or

69.1.2.4 any contractual third party claims made or brought by any WCA against one or both of the Councils.

69.1.3 The Councils shall be responsible for, and shall release and indemnify the Contractor, its employees, agents and contractors on demand from and against, all liability for loss of or damage to the Facilities which may arise out of, or in consequence of, the act or omission of either of the Councils or a Council Related Party.

69.1.4 An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that party under any other provision of this Contract.

70. CONDUCT AND CONTROL OF CLAIMS

70.1 In this **clause 70**:

70.1.1 **"Beneficiary"** means, in relation to an indemnity, warranty, covenant, representation or undertaking, the Party receiving the benefit of the indemnity, warranty, covenant, representation or undertaking;

70.1.2 **"Claim"** means a claim by any person (including a trade union or Relevant Authority but excluding a Party) in respect of which the Beneficiary has (or claims to have) the benefit of an indemnity, warranty, covenant, representation or undertaking; and

70.1.3 **"Covenanter"** means in relation to an indemnity, warranty, covenant, representation or undertaking given in this Contract the Party giving the indemnity, warranty, covenant, representation or undertaking to the Beneficiary.

70.1A The Beneficiary shall at all times take all reasonable steps to minimise and mitigate any loss which is the subject of a Claim against the Covenanter pursuant to this Contract.

70.2 If the Beneficiary becomes aware of any matter which might give rise to a Claim, the following provisions shall apply:

70.2.1 the Beneficiary shall as soon as reasonably practicable and in any event within 5 Business Days give written notice to the Covenanter of the matter which might give rise to a claim under or pursuant to an indemnity, warranty, representation or undertaking (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Covenanter with respect to the matter. If the matter has become the subject of any proceedings the Beneficiary shall (so far as it is able) give the notice within sufficient time to enable the Covenanter to contest the proceedings before any first instance judgement in respect of such proceedings is given;

70.2.2 the Beneficiary shall:

70.2.2.1 take such action and institute such proceedings and give such information and assistance as the Covenanter or its

insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against any person (other than the Covenanter) the rights of the Beneficiary or its insurers in relation to the matter;

70.2.2.2 in connection with any proceedings related to the matter (other than against the Covenanter) use professional advisers nominated by the Covenanter or its insurers and, if the Covenanter or its insurers so request, allow the Covenanter or its insurers the exclusive conduct of the proceedings in each case on the basis that the Covenanter shall fully consult with the Beneficiary and keep the Beneficiary fully informed and the Covenanter shall fully indemnify the Beneficiary for all costs incurred as a result of any such request or nomination by the Covenanter or its insurers; and

70.2.2.3 not admit liability in respect of or settle the matter without the prior written consent of the Covenanter, such consent not to be unreasonably withheld or delayed.

70.3 If the Covenanter has notice of any actual or potential Claim it shall inform the Beneficiary and if the Covenanter has conduct of any litigation and negotiations in connection with a Claim, the Covenanter shall promptly take all proper action to deal with the Claim so as not, by any act or omission in connection with the Claim, to cause the Beneficiary's interests to be materially prejudiced.

70.4 If the Covenanter does not elect to have conduct of any litigation and negotiations in connection with a Claim by notice in writing to the Beneficiary within five (5) Business Days of the Beneficiary giving notice of the matter in accordance with **clause 70.2.1** the Beneficiary shall be at liberty to take such action in relation to that matter as it considers expedient to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter in question subject to a duty to use all reasonable endeavours to mitigate the liability of the Covenanter in respect of that Claim.

70.5 The Covenanter shall not pay or settle any claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed.

70.6 The Beneficiary shall be entitled at any time to give notice to the Covenanter that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any Claim (or of any incidental negotiations). On receipt of such notice the Covenanter shall promptly take all steps necessary to transfer conduct of such Claim to the Beneficiary and shall provide to the Beneficiaries all reasonable cooperation, access and assistance for the purposes of considering and resisting such Claim. Once the Beneficiary has taken over or retained (as the case may be) the conduct of any defence, dispute, compromise or appeal of any Claim it shall thereafter be solely responsible for any costs it incurs and shall not settle any claim or effect any compromise without the agreement of the Covenanter which approval will not be unreasonably withheld or delayed.

71. SET OFF

71.1 The Contractor shall not be entitled to retain or set off any amount due to the Councils by it, but the Councils may (subject to **clause 67.4** (Set-off on Termination) retain or set-off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.

71.2 If the payment or deduction of any amount referred to in **clause 71.1** is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with **clause 78** (Dispute Resolution).

72. CHANGE OF CONTROL OF CONTRACTOR

72.1 The Contractor shall inform the Councils as soon as reasonably practicable and, in any event, within 20 Business Days of any Change in Control occurring.

72.2 The Contractor shall obtain the Councils' prior written consent (which may be given subject to conditions) to any Restricted Share Transfer of the Contractor (other than where the Senior Lenders exercise their rights in respect of shares of the Contractor granted in any document conferring security over any of the shares of the Contractor).

72.3 For the purposes of **clause 72.2**:

72.3.1 any change in beneficial or legal ownership of any shares that are listed on a stock exchange;

72.3.2 any transfer of shares or of any interest in shares by a person to its Affiliate; and

72.3.3 any transfer of shares or of any interest in shares by a member of the Interserve Group to another member of the Interserve Group,

shall be disregarded.

72.4 The Councils may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, request that the Contractor inform it as soon as reasonably practicable and in any event within 30 days of receipt of the Councils' request for details of any Change of Control.

72.5 The Contractor's obligations under **clauses 68.1** and **68.4** above shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiry.

73. ASSIGNMENT AND SUB-CONTRACTING

73.1 Restriction on the Councils

The rights and obligations of the Councils under this Contract (and the Leases) shall not be assigned, novated or otherwise transferred (whether by virtue of Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Councils under this Contract being:

73.1.1 a Minister of the Crown pursuant to an Order under the Ministers of Crown Act 1975;

73.1.2 any local authority which has sufficient financial standing or financial resources to perform the obligations of the Councils under this Contract; or

73.1.3 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Councils or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Councils under this Contract.

73.2 **Restriction on the Contractor**

73.2.1 Subject always to the provisions of the Direct Agreement, the Contractor shall not give, bargain, sell, assign, underlet, charge, or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Councils.

73.2.2 Where the consent referred to in **clause 73.2.1** is given by the Councils despite any provision contained to the contrary in the Lease the Contractor shall where necessary be permitted to assign such Lease to the purchaser assignee or underlessee of the benefit of this Contract (as applicable) provided that such purchaser assignee or underlessee provides a direct covenant with the Councils to perform and observe the obligations conditions and other matters contained in such Lease.

73.2A The provisions of **clause 73.2** (Restriction on the Contractor) shall not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements.

73.3 **Exception**

73.3.1 Nothing in this Contract shall prohibit the Contractor from providing or procuring the provision of the Works or the Services from a sub contractor of sound financial standing and technical ability and whose identity has been notified to the Councils by the Contractor and approved by the Councils in writing prior to the appointment of such new sub contractor (such approval not to be unreasonably withheld or delayed) and provided that where the sub contractor is a replacement Construction Contractor or a replacement Operating Contractor collateral warranties on the same terms as contained in the Sub-Contractor Direct Agreement with such amendments as may be agreed by the Councils (such agreement not to be unreasonably withheld or delayed) are duly executed by any such new sub contractor and delivered to the Councils prior to the appointment of any such new sub contractor. The Councils shall have the right to require the Contractor to submit such information as the Councils shall reasonably require regarding the financial standing, technical ability and good repute of the sub contractor.

73.3.2 Notwithstanding the provisions of **clause 73.3.1** the Contractor shall remain primarily liable for the Contractor's obligations under this Contract and any act or omission of any of its sub-contractors (of any

tier) shall be or give rise to a breach of the Contractor's obligations under this Contract as if they had been the act or omission of the Contractor.

73.3.3 For the purposes of **clause 73.3.1**, the Councils hereby approve the sub contractors listed in the Services Delivery Plan and the Works Delivery Plan.

73.4 **Sub-Contractors**

Nothing in this Contract shall prohibit or prevent any sub contractor employed by the Contractor from being employed by the Councils at any establishments of the Councils.

73.5 **Replacement of Operating Contractor or the HWRC Contractor**

Subject to **clause 73.8**, on not more than:

73.5.1 one occasion on the termination of the employment of the HWRC Contractor in the Project in accordance with clause 57.1B;

73.5.2 two occasions on the substitution or replacement of the Operating Contractor; and

73.5.3 two occasions on the substitution or replacement of the HWRC Contractor (which, for the avoidance of doubt, shall be in addition to the Contractor's right in clause 73.5.1 above),

the Contractor may elect by written notice to the Councils at the time of proposing such replacement pursuant to **clause 73.3** (Exception) (where relevant) that:

73.5.4

73.5.4.1 any accrued warning notices or Final Warning Notices in respect of Persistent Breach shall be cancelled;

73.5.4.2 any accrued Monthly Performance Points shall be cancelled;

73.5.4.3 any failure to rectify a Performance Failure within the Remediation Period defined in the relevant Rectification Notice issued by the Councils in accordance with **Schedule 14** (Performance Mechanism) shall be permanently disregarded;

73.5.4.4 any periods of Unavailability in relation to any Delivery Point and/or the NWTF which have occurred shall be permanently disregarded for the purposes of limbs (p), (q) and (s) of the definition of Contractor Default;

73.5.4.5 for the purposes of the proviso to **paragraph 5.3** (Landfill Adjustment) of **Schedule 3** (Payment Mechanism) any amounts accrued towards the Landfill Adjustment in the current Contract Year at the time of the commencement of provision of the Services by the replacement or substitute

Operating Contractor or the HWRC Contractor shall be permanently disregarded; and

73.5.5 (subject to **clause 73.6** and **clause 73.7**) during a period of three (3) months from either the date on which the Services are first provided by the replacement or substitute Operating Contractor or HWRC Contractor or the date of termination of the employment of the original Operating Contractor or HWRC Contractor (at the Contractor's election and in either case being the **"Grace Period"**);

73.5.5.1 no warning notices or Final Warning Notices in respect of Persistent Breach shall accrue;

73.5.5.2 no Monthly Performance Points shall accrue for the purposes of limb (n) of the definition of Contractor Default;

73.5.5.3 any failure to rectify a Performance Failure within the Remediation Period defined in the relevant Rectification Notice issued by the Councils in accordance with **Schedule 14** (Performance Mechanism) shall be permanently disregarded;

73.5.5.4 no periods of Unavailability in relation to any Delivery Point and/or the NWTF shall accrue for the purposes of limbs (p), (q) and (s) of the definition of Contractor default; and

73.5.5.5 any failure by the Contractor to exceed 82% of the NWTF Diversion Tonnage Target for the purposes of limb (r) of the definition of Contractor Default during the Contract Year in respect of which the relevant Operating Contractor or HWRC Contractor is terminated (the Default Year) shall not be taken into account for the purposes of limb (r) of the definition of Contractor Default and:

(a) where the Default Year is the first Contract Year beginning after the NWTF Completion Date (Year 1), the NWTF Diversion Tonnage Target for the purposes of limb (r) of the definition of Contractor Default shall be calculated by reference to the Contractor's performance in respect of each of the following two Contract years following the Default Year; and

(b) where the Default Year falls after Year 1, the NWTF Diversion Tonnage Target for the purposes of limb (r) of the definition of Contractor Default shall be calculated by reference to each of the Contract Year prior to the Default Year and the Contract Year following the Default Year notwithstanding that they are not consecutive.

73.6 **Grace Period**

Subject to **clause 73.8**, where either the Operating Contractor or the HWRC Contractor (the **"Defaulting Party"**) has been terminated, or the Contractor or Operating Contractor is entitled to terminate the Defaulting Party, but the nature of the services provided by the Defaulting Party is such that there is a limited

market of prospective tenderers (including where due to the requirement for specific qualifications including but not limited to any permits or licences required, and/or due to the regulated nature of the activities provided), the Contractor may elect by written notice to the Councils that the Grace Period commences on the date when the Defaulting Party is terminated or the date when the entitlement to terminate the Defaulting Party arises and expires three (3) months from the date on which the Services are first provided by the replacement or substitute Operating Contractor or HWRC Contractor, provided that:

73.6.1 the Contractor shall use reasonable endeavours to procure a suitable replacement or substitute Operating Contractor or HWRC Contractor; and

73.6.2 pending the appointment of the replacement or substitute Operating Contractor or HWRC Contractor, the Contractor shall use reasonable endeavours to make alternative arrangements for the provision of the relevant services.

73.7 **Extension of Grace Period**

If the Contractor or the Operating Contractor (as applicable) is unable, using reasonable endeavours, to procure a replacement Operating Contractor or HWRC Contractor (as applicable) within a month following the date of termination of the employment of the original Operating Contractor or HWRC Contractor (as applicable), the Grace Period for the purposes of both **clause 73.5.3** and **clause 73.6** shall be extended to four (4) months.

73.8 **Carve Outs**

Any election by the Contractor pursuant to **clause 73.5** and/or **73.6** shall:

73.8.1 be without prejudice to the Councils' ability to continue to make Deductions from the Unitary Charge in accordance with **Schedule 3** (Payment Mechanism);

73.8.2 apply for the purposes of **clause 57** (Termination on Contractor Default) only; and

73.8.3 where such election relates to the termination or replacement of the HWRC Contractor, have effect only in relation those aspects of the Services for which the HWRC Contractor is or was responsible.

74. STATUTORY RESPONSIBILITIES

74.1 In carrying out its statutory duties the powers, duties, rights and obligations of the Councils shall not be fettered or otherwise affected save as provided by the terms of this Contract; and

74.2 Save to the extent that this Contract sets out a procedure for the application for or obtaining of any Necessary Consent, approval or consent the Contractor will apply for any Necessary Consent, approval or consent in the normal way.

75. CONFIDENTIALITY

75.1.1 The Parties agree the provisions of this Contract and each Project Document shall subject to **clause 75.1.2** below, not be treated as Confidential Information and may be disclosed without restriction.

75.1.2 **Clause 75.1.1** above shall not apply to provisions of this Contract or a Project Document designated as Commercially Sensitive Information and listed in **Schedule 12** (Commercially Sensitive and Confidential Information) to this Contract which shall, subject to **clause 75.2** below, be kept confidential for the periods specified in that Schedule.

75.1.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and Project Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of such Confidential Information.

75.2 **Clauses 75.1.2** and **75.1.3** and shall not apply to:

75.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;

75.2.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of breach of this **clause 75**.

75.2.3 any disclosure to enable a determination to be made under **clause 78** (Dispute Resolution) or in connection with a dispute between the Contractor and any of its subcontractors of any tier;

75.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

75.2.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by disclosing Party;

75.2.6 any provision of information to the Parties' own professional advisers or insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Contractor and/or Holdco in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

75.2.7 any disclosure by the Councils of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to:

75.2.7.1 any proposed new contractor, its advisers and lenders, should the Councils decide to retender the Contract; or

75.2.7.2 any person in connection with **clause 35** (Benchmarking and Market Testing);

75.2.8 any registration or recording of the Necessary Consents and property registration required;

75.2.9 any disclosure of information by the Councils to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Councils for any purpose related to or ancillary to the Contract;

75.2.10 any disclosure for the purpose of:

75.2.10.1 the examination and certification of the Councils' or the Contractor's accounts;

75.2.10.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Councils have used their resources;

75.2.10.3 complying with a proper request from either Party's insurance adviser, or insurer on placing or renewing any insurance policies; or

75.2.10.4 (without prejudice to the generality of **clause 75.2.4**) compliance with the FOIA and/or Environmental Information Regulations,

provided that, for the avoidance of doubt, neither **clause 75.2.10.4** nor **clause 75.2.4** above shall permit disclosure of Confidential Information otherwise prohibited by **clause 75.1.3** above where that information is exempt from disclosure under section 41 of the FOIA.

75.3 Where disclosure is permitted under **clause 75.2** other than **clauses 75.2.2**, **75.2.4, 75.2.5, 75.2.7** and **75.2.10** the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in the Contract.

75.4 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and Sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.

75.5 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Councils in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Councils.

75.6 Where the Contractor, in carrying out its obligations under the Contract, is provided with information relating to employees or users the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that person and has obtained the prior written consent of the Councils.

75.7 On or before the Expiry Date or the Extended Expiry Date (as the case may be), the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to service users including any documents in the possession, custody or control of a Sub-contractor, are delivered up to the Councils.

75.8 The Parties acknowledge that the Audit Commission has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

75.9 The provisions of this **clause 75** are without prejudice to the application of the Official Secrets Act 1911 to 1989.

76. FREEDOM OF INFORMATION

76.1 The Contractor acknowledges that the Councils are subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Councils' compliance with its Information disclosure requirements pursuant to the same in the manner provided for in **clauses 76.2** to **76.8** below.

76.2 Where the Councils receive a Request for Information that the Contractor is holding on its behalf and which the Councils do not hold themselves the Councils shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:

76.2.1 provide the Councils with a copy of all such Information in the form that the Councils require as soon as practicable and in any event within ten (10) Business Days (or such other period as the Councils acting reasonably may specify) of the Councils' request; and

76.2.2 provide all necessary assistance as reasonably requested by the Councils in connection with any such Information, to enable the Councils to respond to a Request for Information within time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

76.3 Following notification under **clause 76.2** and up until such time as the Contractor has provided the Councils with all the Information specified in **clause 76.2.1** the Contractor may make representations to the Councils as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the information requested, provided always that the Councils shall be responsible for determining at its absolute discretion:

76.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

76.3.2 whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly, or allow its Sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Councils.

76.4 The Contractor shall ensure that all information held on behalf of the Councils is retained for disclosure for at least six (6) years (from the date it is acquired) and shall permit the Councils to inspect such Information as requested from time to time.

76.5 The Contractor shall transfer to the Councils any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Business Days of receiving it.

76.6 The Contractor acknowledge that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Councils may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

76.7 In the event of a request from the Councils pursuant to **clause 76.2** above, the Contractor shall as soon as practicable, and in any event within five 5 Business Days of receipt of such request, inform the Councils of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Councils under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Councils' own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the **"Appropriate Limit"**) the Councils shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does not require the Contractor to comply with the request ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Councils are entitled to under Section 10 of the FOIA. In such case, the councils shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

76.8 The Contractor acknowledges that (notwithstanding the provisions of **clause 75**) the Councils may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the **"FOIA Code"**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or Project:

76.8.1 in certain circumstances without consulting with the Contractor; or

76.8.2 following consultation with the Contractor and having taken their views into account

provided always that where **clause 76.8.1** above applies the Councils shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

77. PUBLIC RELATIONS AND PUBLICITY

77.1 The Contractor shall not, by itself, its employees or agents and shall procure that its sub contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract without the prior written approval of the Councils.

77.2 No facilities to photograph or film in or upon any property used in relation to the Project shall be given or permitted by the Contractor unless the Councils have given its prior written approval.

77.3 The Contractor acknowledges that the Councils are entitled to put this Contract in the public domain as they so wish (including publication on either or both of the Councils' websites) provided that the Councils shall not publish any Commercially Sensitive Information.

78. DISPUTE RESOLUTION

78.1 Any dispute arising out of or in connection with the Contract (a **"Dispute"**) shall be resolved in accordance with this **clause 78** (Dispute Resolution).

78.2 Without prejudice to **clause 78.3** (Dispute Resolution), either Party may give written notice to the other referring to this **clause 78.2** (Dispute Resolution) and requiring the Chief Executives of each of the Contractor and the Councils to consult within 10 Days in good faith in an attempt to come to an agreement in relation to any Dispute.

78.3 Without prejudice to **clause 78.2** (Dispute Resolution), either Party may give the other written notice of intention to refer the Dispute to adjudication and the Adjudicator shall be selected in accordance with **clause 78.4** (Dispute Resolution).

78.4 The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of adjudicators appointed in accordance with the following:

78.4.1 there shall be three panels of adjudicators, one in respect of construction matters (**"Construction Panel"**), one in respect of operational and maintenance matters (**"Operational Panel"**) and one in respect of financial matters (**"Financial Panel"**). All the adjudicators on each panel shall be wholly independent of the Contractor, the Councils, the relevant Sub Contractor and any of the major competitors of the Contractor or relevant Sub Contractor;

78.4.2 the Construction Panel shall be comprised of three (3) adjudicators who shall be appointed jointly by the Contractor and the Councils. Such appointments shall take place within twenty (20) Business Days of the date of this Contract;

78.4.3 the Operational Panel shall be comprised of three (3) adjudicators who shall be appointed jointly by the Contractor and the Councils. Such appointments shall take place within twenty (20) Business Days of the Commencement Date;

78.4.4 the Financial Panel shall be comprised of three (3) adjudicators who shall be appointed jointly by the Contractor and the Councils. Such appointments shall take place within twenty (20) Business Days of the Commencement Date;

78.4.5 if any member of a panel resigns, dies, is declared bankrupt or otherwise ceases to be qualified or capable of acting as adjudicator during the term of the Contract, he shall forthwith cease to be a member of that panel and a replacement adjudicator shall be appointed by the Contractor and the Councils as soon as practicable;

78.4.6 if the Councils and the Contractor are unable to agree on the identity of the adjudicators to be appointed to the panel(s) or if at any time when a notice of adjudication is served under this clause there is for the time being no adjudicator on the relevant panel, the President for the time being of the Chartered Institute of Arbitrators shall appoint such adjudicators(s) within thirty (30) Days of any application for such appointment by either Party; and

78.4.7 within seven (7) Days of appointment in relation to a particular dispute, the Adjudicator shall require the Party which commenced the adjudication by giving notice of its intention to commence adjudication pursuant to **clause 78.3** (Dispute Resolution) (the "**Referring Party**") to provide its written submissions to (i) the Adjudicator and (ii) the responding party (the "**Responding Party**") and details of remedies sought together with supporting documents within seven (7) Days of the appointment of the Adjudicator in accordance with **clause 78.4** (Dispute Resolution). The Responding Party shall thereafter provide to the Adjudicator and the Referring Party its written response within seven (7) Days (not including the date of receipt) thereafter. The Adjudicator may, in his absolute discretion, determine whether a hearing is necessary in order to resolve the dispute and in such event shall give appropriate directions to the Parties accordingly.

78.5 In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty eight (28) days of referral (or such longer period as the Parties may agree after the reference, up to forty two (42) days from the date of reference if the Adjudicator so decides with the consent of the Party which referred the dispute). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. The Parties shall forthwith give effect to the decision. The Adjudicator's decision shall be binding on both Parties unless and until revised, cancelled or varied by the agreement of the Parties or the Courts of England and Wales in proceedings commenced pursuant to **clause 78.11**.

78.6 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

78.7 The Adjudicator shall be deemed not to be an arbitrator or expert but shall render his decision as an Adjudicator and the provisions of the Arbitration Act 1996 and the law relating to arbitration and the law relating to expert determination shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

78.8 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review

and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

78.9 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by **clause 75** (Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

78.10 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

78.11 If:

78.11.1 there is any dispute in respect of matters referred to in **clauses 28** (Changes to the Works or Services), **29** (Change in Law), 56 (Compensation on Council Default), **clause 35** (Benchmarking and Market Testing), **clause 58** (Compensation on Termination for Contractor Default), **clause 60** (Compensation on Termination for Force Majeure), **clause 62** (Compensation on Termination for Corrupt Gifts and Fraud), **clause 64** (Compensation on Voluntary Termination) or **92** (Financial Adjustments); or

78.11.2 either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with **clause 78** (Dispute Resolution); or

78.11.3 both Parties agree,

then either Party may (within twenty (20) Business Days of receipt of the Adjudicator's decision, where appropriate) notify the other Party in writing of its intention to refer the dispute for determination to the Courts of England and Wales.

78.12 If and to the extent that **clauses 78.3** to 78.11 fail to provide for any procedural issue which may arise in relation to any Adjudication, then the Model Adjudication Rules of the Centre for Effective Dispute Resolution as at the date shall apply (provided that if and to the extent that there is any inconsistency between the said Rules and this Contract, the terms of this Contract shall prevail).

78.13 If any dispute arising under this Contract raises issues which relate to:

78.13.1 any dispute between the Contractor and the Construction Contractor arising under the Construction Contract or otherwise affects the relationship or rights of the Contractor and/or the Construction Contractor under the Construction Contract (the **"Construction Contract Dispute"**); and/or

78.13.2 any dispute between the Contractor and the Operating Contractor arising under the Operating Contract or otherwise affects the

relationship or rights of the Contractor and/or the Operating Contractor under the Operating Contract (the **"Operating Contract Dispute"**);

then the Contractor may include as part of its submissions made to the Adjudicator, submissions made by the Construction Contractor or by the Operating Contractor as appropriate.

78.14 The Adjudicator shall not have jurisdiction to determine the Construction Contract Dispute or the Operating Contract Dispute but the decision of the Adjudicator shall, subject to **clause 78**, be binding on the Contractor and the Construction Contractor insofar as it determines the issues relating to the Construction Contract Dispute and on the Contractor and the Operating Contractor insofar as it determines the issues relating to the Operating Contract Dispute.

78.15 Any submissions made by the Construction Contractor or the Operating Contractor shall:

78.15.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and

78.15.2 concern only those matters which relate to the dispute between the Councils and the Contractor under this Contract.

78.16 Where the Construction Contractor or the Operating Contractor makes submissions in any reference before:

78.16.1 the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Councils and two thirds by the Contractor; and

78.16.2 the Courts, the costs shall be in the discretion of the Court.

78.17 The Councils shall have no liability to the Construction Contractor or the Operating Contractor arising out of or in connection with any decision of the Adjudicator or the Courts or in respect of the costs of the Construction Contractor or the Operating Contractor in participating in the resolution of any dispute under this Contract.

78.18 The Contractor shall not allow the Construction Contractor or the Operating Contractor access to any document relevant to the issues in dispute between the Councils and the Contractor save where:

78.18.1 the document is relevant also to the issues relating to the Construction Contract Dispute or the Operating Contract Dispute as the case may be; and

78.18.2 the Contractor has first delivered to the Councils a written undertaking from the Construction Contractor and/or the Operating Contractor (as appropriate) addressed to the Councils that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or the Courts or any professional adviser engaged by the Construction Contractor or the Operating Contractor (as appropriate) to advise in connection with the dispute.

78.19 **Sub-Contractor Losses**

Where:

78.19.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and

78.19.2 the Contractor subsequently makes a claim against the Councils under this Contract in relation to such compensation or relief,

the Councils waive any rights to defend the Contractors' claims on the ground that the Contractor is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that the same is recoverable from the Councils.

79. WAIVER

79.1 No term or provision of this Contract shall be considered as waived by either Party unless a waiver is given in writing by that Party.

79.2 No waiver under **clause 79.1** shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

80. SEVERABILITY

If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

81. COUNTERPARTS

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

82. RELATIONSHIP OF THE PARTIES

Each of the Parties is an independent contractor and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or (except as expressly provided in this Contract) of principal/agent or of employer/employee nor are the Parties engaging in a joint venture through participation in the Project. The Contractor shall not have any right to act on behalf of the Councils nor to bind the Councils by contract or otherwise, and the Councils shall not have any right to act on behalf of the Contractor nor to bind the Contractor by contract or otherwise, except to the extent expressly permitted by the terms of this Contract.

83. NOTICES

83.1 Form of Notice

Any demand, notice or other communication given in connection with or required by this Contract shall be made in writing (entirely in the English language) and shall be delivered to, or sent by pre-paid first class post to, the recipient at its address stated in this Contract (or such other address as may be notified in

writing from time to time) or sent by facsimile transmission to the recipient, in the case of:

83.1.1 the Councils, to the Chief Executives from time to time of each of the Councils; and

83.1.2 the Contractor, to Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU

and unless otherwise expressly stated in this Contract marked for the attention of the Councils' Authorised Officer in the case of the Councils, and the Contractor's Project Director in the case of the Contractor.

83.2 **Service**

Any such demand, notice or communication shall be deemed to have been duly served:

83.2.1 if delivered by hand, when left at the proper address for service; or

83.2.2 if given or made by pre-paid first class post, two Business Days after being posted; or

83.2.3 if sent by facsimile, on the day of transmission provided that a confirmatory copy is on the same day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in this **clause 83.2**,

provided in each case that if the time of such deemed service is either after 4.00 pm on a Business Day or on a day other than a Business Day service shall be deemed to occur instead at 10.00 am on the following Business Day.

84. ENTIRE AGREEMENT

84.1 This Contract and the Project Documents set forth the entire agreement between the Parties with respect to the subject matter covered by them and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the Parties. The Parties acknowledge they do not enter into this Contract or the Project Documents in reliance on any warranty, representation or undertaking by any other Party other than those contained in this Contract, or the Project Documents and that all its remedies for any breach of this Contract or the Project Documents are set out in this Contract or the Project Documents provided that this shall not exclude any liability:

84.1.1 which the Councils would otherwise have to the Contractor in respect of any statements made fraudulently or negligently by or on behalf of the Councils prior to the Amendment and Restatement Date; or

84.1.2 which the Contractor would otherwise have to the Councils in respect of any statements made fraudulently or negligently by or on behalf of the Contractor prior to the Amendment and Restatement Date.

85. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

85.1 **Certification Requirements**

The Certification Requirements are intended to be satisfied by the Councils with respect to this amended and restated Contract (as varied by deeds of variation dated 4 May 2011 and 31 March 2014 and as entered into by a deed of amendment and restatement executed on the Amendment and Restatement Date) and the Direct Agreement (executed on the Amendment and Restatement Date) before the end of the period relating to this Contract and the Direct Agreement within which the Certification Requirements must be satisfied for this Contract and the Direct Agreement to be certified contracts for the purposes of the Local Government (Contracts) Act 1997.

85.2 **Contractor's Consent**

The Contractor hereby consents to the issue by the Councils of a certificate under section 3 of the Local Government (Contracts) Act 1997 in respect of this amended and restated Contract and the Direct Agreement in each case as executed on the Amendment and Restatement Date.

85.3 **Failure to Issue a Certificate**

If a certificate is not issued by the Councils pursuant to **clause 85.1** (Certification Requirements) within six (6) weeks of the Amendment and Restatement Date then the Contractor shall be entitled by giving notice in writing to the Councils within five (5) Business Days of such date to terminate this Contract, whereupon the Councils shall pay to the Contractor an amount equal to the compensation that would be payable in accordance with **clause 56** (Compensation on Termination for Council Default).

85.4 **Relevant Discharge Terms**

The Relevant Discharge Terms within the meaning of Section 6 of the Local Government (Contracts) Act 1977 are set out in Schedule 7 (Relevant Discharge Terms).

86. AMENDMENTS

No amendment to or modification of this Contract shall be valid or binding on any Party unless it is made in writing, refers expressly to this Contract and is executed by the Parties concerned or their duly authorised representative.

87. THIRD PARTY RIGHTS

A person who is not a Party to this Contract has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

88. OWNERSHIP OF CONTRACT WASTE

As between the Councils and the Contractor all Contract Waste received by or in the possession of the Contractor or any of its sub contractors shall thereupon become and be deemed to be acquired by and in the ownership and at the risk of the Contractor who shall take full responsibility for it.

89. COMPLAINTS

The Contractor shall cooperate fully with the Local Ombudsman as defined in the Local Government Act 1974 and with the Councils in the investigation of a

complaint against the Councils which relates to the defective or non-performance of this Contract by the Contractor.

90. LAW OF CONTRACT AND JURISDICTION

The Contract and all non-contractual obligations in connection with the Contract shall be governed by the laws of England and Wales and subject to **clause 78** (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the courts of England and Wales in relation to all matters arising out of or in connection with this Contract and any non-contractual obligations.

91. QUALITY ASSURANCE

91.1 Quality Management Systems

91.1.1 The Contractor shall procure that all aspects of the Services are carried out in accordance with quality management systems.

91.1.2 The quality management systems referred to in **clause 91.1.1** shall be reflected in appropriate Quality Manuals and shall comply with:

91.1.2.1 BS EN ISO 9001 or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard, such other quality standard as the Parties may agree; and

91.1.2.2 Good Industry Practice.

91.1.3 The Contractor shall prepare and comply with the Quality Manuals.

91.1.4 The Councils acknowledge that the Quality Manuals required by this **clause 91** were provided to the Councils on or before the date hereof and such Quality Manuals are those contained in the Contractor's "Management System" file.

91.1.5 The Contractor shall be entitled but without prejudice to **clause 91.1.2.1** and **91.1.2.2** from time to time, to amend the Quality Manuals and shall submit to the Councils' Authorised Officer any proposed changes to any Quality Manual. The Councils may comment on any such proposed change prior to the same being adopted and the Contractor shall consider and take account of (but shall not be bound by) such comments, if any, prior to the same being adopted.

91.2 Additional Information

Notwithstanding any other provision of this **clause 91**, the Contractor shall provide to the Councils such information as it may reasonably require to demonstrate compliance with this **clause 91**.

92. FINANCIAL ADJUSTMENTS

Whenever a Relevant Event occurs or this Contract otherwise provides that clause 92 shall apply, the financial consequence shall (save where otherwise provided in this Contract or where the Parties mutually agree otherwise) be determined in accordance with **Schedule 21** (Unitary Charge Adjustment Protocol).

SCHEDULE 1

Specification

1. **GENERAL**

1.1 **Introduction**

1.1.1 This **Schedule 1** (Specification) defines the Councils' minimum requirements for the Works and Services.

1.1.2 The Contractor shall be required to develop, maintain and deliver the Works and Services in accordance with the Contractor's Proposals as required by this Specification.

1.1.3 If within this **Schedule 1** (Specification) there are separate provisions and requirements which relate to the same subject matter and if and to the extent that such provisions and/or requirements are inconsistent, the more specific provision or requirement created particularly to address the subject matter shall take priority over the provisions and requirements set out in any other part of this Schedule, unless the Contract requires otherwise.

1.2 **Scope of the Works and Services**

1.2.1 The Contractor shall develop and implement an integrated waste management system to manage Contract Waste in accordance with the requirements, Key Performance Indicators (**"KPIs"**) and Contract Targets set out in this Specification.

1.2.2 The Works and Services shall include the following:

Design and Construction

1.2.3 The design, construction and commissioning of the Works, relating to all initial and phased site and civil engineering works, mechanical, electrical and mobile plant and related activities as required to meet the requirements of the Specification.

Services Management

1.2.3.1 managing the smooth transition of the services from the existing contractors at the Initial Services Commencement Date and to new contractors at expiry or termination;

1.2.3.2 obtaining and maintaining relevant quality assurance standards for the Works and Services;

1.2.3.3 obtaining and maintaining relevant environmental management standards for the Works and Services;

1.2.3.4 maintaining Contractor's Proposals comprising a Works Delivery Plan (**"WDP"**), a Works Programme and a Services Delivery Plan (**"SDP"**) that detail how the requirements of this Specification shall be delivered;

1.2.3.5 providing an effective interface with the public and other service users, community groups and stakeholders including consultation, user feedback, complaints, re-use and recycling activities;

1.2.3.6 undertaking Customer Satisfaction Surveys related to the Services;

1.2.3.7 submitting and maintaining a method statement relating to the Councils' Best Value duty;

1.2.3.8 developing, operating and maintaining appropriate monitoring and reporting systems for the performance and payment of the Services;

1.2.3.9 subject to **clauses 18** (Monitoring and Inspection), 27 (Maintenance), **49** (Data Protection) and **75** (Freedom of Information and Confidentiality), providing the Councils with access, information and assistance necessary to monitor the Works and Services;

1.2.3.10 monitoring, managing and reducing Greenhouse Gas Emissions related to the Services in accordance with **paragraph 3.3** (Greenhouse Gas Emissions) of this **Schedule 1** (Specification);

1.2.3.11 manage health, safety and welfare requirements for the safe operation of the Services;

1.2.3.12 adequate contingency arrangements are in place;

as described more fully in section 3 of this Specification;

Contract Waste Reception and Transfer Services

1.2.3.13 the designation of Delivery Points for the acceptance of Contract Waste and the management and operation of other Facilities for the acceptance, storage, sorting and treatment of Contract Waste, and, if necessary, bulking and transport of Contract Waste to an appropriate waste management facility or treatment plant;

1.2.3.14 the receipt, storage, management and disposal of Clinical Waste;

1.2.3.15 the receipt of gully emptying Waste and street Litter, drying/draining of the Contract Waste and its delivery to a suitable disposal point;

described more fully in section 4 of this Specification;

New Waste Treatment Facility (NWTF) Services

1.2.3.16 obtaining and maintaining all Necessary Consents (including Environment Agency authorisations, permits, exemptions and/or licences) for the development,

management and operation of NWTF required to achieve the Councils' performance standards;

1.2.3.17 providing copies of all relevant Necessary Consents (including Environment Agency authorisations, permits, exemptions and licences) to the Councils;

1.2.3.18 operation and maintenance of NWTF comprising reception, weighing, processing, treatment, and recycling of Contract Waste, management of the installation, and the supply of labour, plant, equipment, utilities and other prerequisites;

1.2.3.19 provision of waste education and seminar facilities at the NWTF;

1.2.3.20 treatment of NWTF Residual Waste, in compliance with the NWTF Diversion Tonnage Target and the NWTF Re-use, Recycling and Composting Target;

1.2.3.21 Handling of all treatment outputs from the NWTF including where appropriate, transfer and sale of Recyclable Materials to reprocessors, recovery of combustion products and sale of any energy produced;

1.2.3.22 recovery and/or disposal of all post-treatment residues from the NWTF;

as described more fully in section 5 of this Specification;

HWRC Services

1.2.3.23 subject to **clause 7.1** (Grant of the Leases), enter into Leases with the Councils for the use of the Sites;

1.2.3.24 subject to **clause 11** (Necessary Consents), be responsible for obtaining and maintaining Necessary Consents to enable each HWRC to operate from the Initial Services Commencement Date;

1.2.3.25 incorporation into the Services of those items listed on the Councils' Asset Register;

1.2.3.26 receive Contract Waste which is Household Waste directly delivered by the public at HWRCs;

1.2.3.27 management, operation and maintenance of HWRCs in accordance with this Specification;

1.2.3.28 integrate the operation of the HWRCs with other Services and activities at the other Facilities, where appropriate;

1.2.3.29 transfer of segregated Compostable Waste for Composting and sale of Compost where appropriate,

1.2.3.30 provision of a service to Compost Compostable Waste collected at the HWRCs;

1.2.3.31 separation of Recyclable Materials and materials for Re-Use and their preparation for onward sale;

1.2.3.32 transfer, sale or disposal of Recyclable Materials and materials for Re-use to reprocessors;

1.2.3.33 transfer for treatment of all NWTF Residual Waste from HWRCs;

1.2.3.34 transfer for treatment and/or disposal of residual Household Waste (that is not NWTF Residual Waste) from HWRCs;

1.2.3.35 provision of facilities for the segregation of Waste Electrical and Electronic Equipment (WEEE);

1.2.3.36 receive, manage and dispose of Household Hazardous Waste delivered to or arising from HWRCs;

as described more fully in section 6 of this Specification;

Waste Disposal Services

1.2.3.37 provide and or develop, manage and operate Facilities and Services for the acceptance and disposal of Contract Waste not diverted from Landfill;

described more fully in section 7 of this Specification;

Waste Minimisation and Education Services

1.2.3.38 waste minimisation and communication activities and services;

1.2.3.39 education and seminar activities and services;

1.2.3.40 community sector integration activities;

described more fully in section 8 of this Specification;

Duty of Care

1.2.4 All Contract Waste Handled by the Contractor shall be sent to appropriately authorised facilities, and the Contractor shall comply with the requirements of the Environmental Protection (Duty of Care) Regulations 1991. The Contractor shall also provide all information to the Councils, as may reasonably be requested from time to time, for the Councils to ensure that it complies with its requirements under the Environmental Protection (Duty of Care) Regulations 1991 (as the same may be amended from time to time).

1.3 **Exclusions from the Services**

1.3.1 The Services shall not include the following:

1.3.1.1 Handling source segregated dry Recyclable Materials collected by the WCAs (other than bulky collections and Fly Tipped Waste);

1.3.1.2 Handling of source segregated Compostable Waste collected by the WCAs (other than Fly Tipped Waste);

1.3.1.3 Transport and disposal of abandoned vehicles; and

1.3.1.4 The management, operation or maintenance of the integrated waste management facility located at Waterswallows Industrial Estate, Waterswallows Road, Green Fairfield, Buxton, Derbyshire, SK17 7JB (comprising a household waste recycling centre and a waste transfer station) or any haulage of Waste to or from that integrated waste management facility.

1.4 **Waste Quantity and Composition**

1.4.1 Subject to **clause 25** and **Schedule 17**, the Councils give no guarantee or undertaking as to the quantity or composition of the Contract Waste. Subject to **clause 28.3.9** (Changes to the Works and Services) and **Schedule 17** (Waste Reception Protocol), the Contractor shall accept and make provision for potential changes in quantity and composition of the Contract Waste over the Contract Period.

1.4.2 The Contractor shall take into account possible future trends in Contract Waste quantity and composition and shall make allowances for these factors in the development of a waste management system with sufficient flexibility and capacity to meet the requirements of the Contract. To the extent that such data is gathered on the Contract Waste quantity and composition by the Contractor, it shall be made available to the Councils.

1.4.3 As a minimum the Contractor shall, from the Contract Year commencing 1 April 2016 and every fifth anniversary thereof, procure an independent survey for a four season, statistically valid analysis. The survey shall comprise taking samples from each WCA and at least two (2) HWRCs for analysis. The number, location and size of samples shall be chosen in consultation with the Councils to provide the maximum amount of useful information.

1.5 **Measurement of performance against Contract Diversion Tonnage**

1.5.1 The Contractor shall be able to demonstrate by means of a Defined Audit Trail the tonnage of Contract Waste that has been Recovered, Re-used, Beneficially Used, Recycled, Composted or otherwise diverted from Landfill.

1.5.2 Contract Waste which is Recycled will contribute to the Contractor's performance against the Contract Diversion Tonnage.

1.5.3 Contract Waste which is Composted will contribute to the Contractor's performance against the Contract Diversion Tonnage.

1.5.4 For the purposes of this Contract, Contract Waste shall be deemed to have been Diverted and thus count towards the Contractor's

performance against the Contract Diversion Tonnage, only if both of the following conditions are satisfied:

1.5.4.1 It is not disposed of by way of Landfill and is, therefore, not subject to Landfill Tax, and

1.5.4.2 It satisfies one or more of the criteria specified below:

(a) the definition for Recycling;

(b) the definition for Composting;

(c) the definition for Recovery;

(d) the definition of Beneficial Use;

(e) the definition of Re-use; or

(f) it constitutes moisture lost from the Contract Waste during processing,

provided always that for the purpose of measuring performance against the NWTF Diversion Tonnage Target any ash derived from the treatment of Contract Waste and which is Landfilled shall be deemed to have been Diverted.

1.5.5 Any NWTF Residual Waste which is treated but not incinerated by the Contractor and subsequently Landfilled shall be weighed and its weight deducted from the total weight of material deemed to have been Diverted.

1.5.6 Weight calculations on which the Contractor's performance will be calculated shall be subject to the following conditions:

1.5.6.1 No allowance shall be made for any moisture added after delivery.

1.5.6.2 Subject to **paragraph 1.5.6.3**, no Contract Waste shall be included in the calculation unless it has been weighed and recorded in accordance with this Specification;

1.5.6.3 In the case of Contract Waste which is subjected to a process of thermal treatment:

(a) no allowance shall be made for any gas or heat emitted or generated; and

(b) the weight of Contract Waste Diverted by thermal treatment shall be taken as the weight of Contract Waste subjected to the process of incineration or other thermal treatment less the weight of any cinder, non-combusted material or other residual substances resulting from or remaining after that process (other than bottom ash and fly ash),

provided always that no material (which for this purpose includes both Contract Waste and any product of or residue from it) shall count more

than once in the calculation of performance against Contract Diversion Tonnage.

1.5.7 Subject to **paragraph 1.5.4** above, Contract Waste that has been measured as being Re-Used, Beneficially Used, Recovered, Recycled, Composted or Diverted shall be reclassified as Landfilled if subsequently Landfilled by the Contractor and shall no longer be measured as Contract Waste which has been Re-Used, Beneficially Used, Recovered, Recycled, Composted or Diverted.

1.6 Branding

Branding of Assets

1.6.1 The Contractor shall adopt a system of logos and livery in consultation with the Councils to display a clear branding for all Facilities and other Assets used in delivering the Services.

Promotional Material

Subject to **clause 77** (Public Relations and Publicity),

1.6.2 All publicity issued by the Contractor in relation to the Works or Services shall have due regard to the provisions of the corporate style of each Council.

1.6.3 No material shall be published which includes the Councils' logos without the prior written consent of the Councils.

1.6.4 All publicity issued by the Councils in relation to the Works or the Services shall have due regard to the provisions of the Contractor's corporate style.

1.6.5 No material shall be published which includes the Contractor's logo without the prior consent of the Contractor.

2. DESIGN AND CONSTRUCTION

2.1 Summary of Service Requirement

The Contractor shall design and construct the NWTF and the Clover Nook Transfer Station in accordance with **paragraph 1.2**, the Basic Design Proposals and as further detailed below

2.2 Design Responsibilities

The Contractor shall be responsible for all aspects of the design and construction of the NWTF and the Clover Nook Transfer Station in accordance with this Contract.

2.3 Design

The design of the NWTF and the Clover Nook Transfer Station shall take into account the need to provide flexibility and contingency arrangements in the event of interruptions. Details of managing these interruptions shall be provided in the SDP.

2.4 Enclosed Facilities

2.4.1 In preparing the designs for the NWTF and the Clover Nook Transfer Station, the Contractor shall ensure that all unloading and discharge areas, processing areas and loading areas for Waste, reagents and treatment products capable of causing environmental nuisance to the extent required in order to comply with Necessary Consents and the Environmental Permit, shall be enclosed, including the vehicles when unloading and loading.

2.4.2 All buildings at the NWTF and the Clover Nook Transfer Station to be developed by the Contractor shall be of a suitable industrial standard and appropriate architectural design incorporating all necessary environmental controls consistent with Good Industry Practice.

2.4.3 Where the service area of NWTF is fully enclosed the waste reception and handling areas together with vehicle manoeuvring areas shall be operated with such environmental control measures as are necessary to prevent or minimise the environmental impact of dust odour and bioaerosols as may be required pursuant to any Necessary Consent.

2.5 Prohibited Materials

2.5.1 The Contractor shall not specify or use or permit to be used in the Works any products or materials which:

2.5.1.1 do not conform with relevant BSI British Standards or equivalent European or international standards; and/or

2.5.1.2 are generally known (having regard to the degree of knowledge and/or information generally available within the construction industry at the time of specification or use) to be deleterious, in the particular circumstances in which they are specified for use or used, to health and safety and/or the structural stability, performance, life expectancy and/or physical integrity of buildings or structures; and/or

2.5.1.3 are capable, by any reason of the quantity or concentrations involved, of causing harm to human health or any other living organisms supported by the Environment (save to the extent that such harm is a normal and intended consequence of the use of such products or materials); and/or

2.5.1.4 if used could cause a breach of Necessary Consents or Legislation.

3. MANAGEMENT OF THE WORKS AND SERVICES

3.1 Summary of Management Requirements

The Contractor shall develop, implement and operate an effective management system for the Works and Services in accordance with **paragraph 1.2** and as further detailed below.

3.2 Contractor's Proposals

3.2.1 The Contractor's Proposals shall contain a number of method statements as detailed in Appendix B to describe how all of the key components and activities of the Works and Services will be delivered over the Contract Period in accordance with this Specification.

3.2.2 The Contractor's Proposals shall be reviewed and updated as required and at least annually pursuant to the Review Procedure, including where necessary to incorporate the requirements of the Specification and any agreed changes proposed through the Annual Service Plan pursuant to **Schedule 4** (Reporting).

3.2.3 The updated Contractor's Proposals shall be submitted to the Councils on the Annual Service Report Date together with the Annual Services Plan.

3.2.4 All procedures in the WDP and SDP shall be developed in accordance with generally recognised and appropriate quality and environmental standards such as ISO9000 Quality Management Systems and ISO14000 Environmental Management Systems or equivalent respectively.

3.2.5 All relevant employees of the Contractor and Sub-Contractors shall be trained in all relevant aspects of operational procedures, site licence requirements and customer care. Where relevant, employees shall hold the relevant COTC certificates.

3.3 Greenhouse Gas Emissions

3.3.1 The Contractor shall implement the following procedure for monitoring and managing Greenhouse Gas Emissions related to the Services:

3.3.1.1 by 31st March 2010, develop a GHG Methodology for inclusion in the SDP, to measure Greenhouse Gas Emissions related to the Services. This shall be consistent with the Waste and Resources Assessment Tool for the Environment (WRATE) life cycle assessment methodology developed for the Environment Agency or such other methodology as may subsequently be agreed between the Parties;

3.3.1.2 between the Contract Year 1st April 2010 to 31st March 2011 to the NWTF Completion Date, the baseline Greenhouse Gas Emissions related to the Services, but excluding emissions from construction activities, shall be measured in accordance with the GHG Methodology;

3.3.1.3 in the first five (5) full Contract Years following the NWTF Completion Date, the Contractor shall demonstrate a continuous year on year improvement in reducing annual Greenhouse Gas Emissions (calculated as tonnes of carbon dioxide equivalents (CO2e) adjusted by pro rata for the total tonnage of Contract Waste in the respective Contract Year) that arise from the operation and delivery of the Services. The Greenhouse Gas Emissions Target for Contract Year $_y$ ($GHGT_y$) shall be expressed as:

$$\mathbf{GHGT_{ya} < GHGT_{ya-1} \times CW_{ya} \div CW_{ya-1}}$$

Where:

CW_{ya}	=	the total Tonnage of Contract Waste Handled by or on behalf of the Contractor in the relevant Contract Year
$GHGT_{ya}$	=	the total Tonnage of Greenhouse Gas Emissions arising from the operation and delivery of the Services

3.3.1.4 thereafter, in each Contract Year, the Contractor shall demonstrate a reduction in the average annual Greenhouse Gas Emissions (calculated as tonnes of carbon dioxide equivalents (CO2e) adjusted by pro rata for the total tonnage of Contract Waste excluding Contract Waste that is Landfilled and associated haulage in the respective Contract Years) in the five year period ending on 31st March in each Contract Year compared with the five year period ending on 31st March in the preceding Contract Year. The Greenhouse Gas Emissions Target for Contract Year y ($GHGT_{yb}$) shall be expressed as:

$$\mathbf{(\Sigma_{y-4}\ to\ _{y}\ GHGT_{yb}) \div {}_{5} < (\Sigma_{y-5}\ to\ _{y-1}(GHGT_{yb-1})\ x\ \Sigma_{y-4}\ to\ _{y}\ CW_{vh} \div \Sigma_{y-5}\ to\ _{y-1}\ CW_{yb-1})}$$

$$\mathbf{\div 5}$$

Where:

CW_{yb}	=	the total Tonnage of Contract Waste Handled by or on behalf of the Contractor in the relevant Contract Year which is not landfilled
$GHGT_{yb}$	=	the total Tonnage of Greenhouse Gas Emissions arising from the operation and delivery of the Services excluding landfill and associated haulage

3.3.2 For the avoidance of doubt, the provisions of **paragraph 3.3.1** shall not apply to the Works.

3.4 **Best Value**

Subject to **clauses 29** (Change in Law) and **38** (Best Value):

3.4.1 The Contractor shall prepare a method statement incorporating the following actions specified for assisting the Councils in their collation of information for any statement or report as set out in **clause 38.1.3.1**.

3.4.2 The Contractor shall work with and provide assistance to the Councils in meeting their Best Value Duty in respect of inspections.

Customer Satisfaction Surveys

3.4.3 The Contractor shall undertake (or procure the undertaking of) customer satisfaction surveys for each HWRC, the contents of which shall reflect the principles of the Best Value Duty and the purpose of which shall include assessing the level of satisfaction among the Service Users (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services (each being a **"Customer Satisfaction Survey"**).

3.4.4 The Customer Satisfaction Survey shall be carried out every year commencing within 12 months of the Initial Services Commencement Date and the survey results shall be available at least one month before the Annual Service Report Date.

3.4.5 The scope of the Customer Satisfaction Survey may include the whole of the Services or specific elements of the Service as determined by the Contractor and as agreed with the Councils.

3.4.6 The Customer Satisfaction Survey shall be undertaken using a statistically valid sample or other survey method and in a form as agreed with the Councils.

3.4.7 The content of the questionnaire, or the material to be used for any other survey method, and the method of undertaking the Customer Satisfaction Survey including coverage of all social groups within the Service Users shall comply with all applicable Legislation and Guidance, and shall be available to the Councils for audit. The content of the Customer Satisfaction Surveys shall be agreed with the Councils before being carried out and shall be in accordance with the standard guidelines for such surveys published by the Councils.

3.4.8 Within one month of the return date for the Customer Satisfaction Survey the Contractor shall prepare a summary of the results in such form as the Councils may reasonably require and promptly upon a written request from the Councils to provide such further details (including copies of all returned questionnaires and or other survey material used by the Contractor) as the Councils may reasonably require.

3.4.9 NOT USED

3.5 Contract Monitoring, Data Processing and Reporting

Contract Monitoring

Subject to **clause 39** (Performance Monitoring):

3.5.1 The Contractor shall be responsible for monitoring its own performance under the Contract in accordance with this **Schedule 1** (Specification) and **Schedule 14** (Performance Mechanism) and shall notify the Councils of any failure to comply with KPIs or any Unavailability and rectify such defaults in accordance with the procedures set out in the Contract.

3.5.2 The Councils shall be entitled to conduct random monitoring checks on any operational areas of the Contract in accordance with **clause 39** (Performance Monitoring).

3.5.3 The Contractor shall permit the Councils to have reasonable access to the Facilities and their records and, if so required, give such information and other assistance to the Councils to enable the Councils to verify compliance with the financial terms, performance requirements and other express provisions of this Contract.

3.5.4 The Contractor shall submit Monthly Reports and Annual Reports containing the information set out in **Schedule 4** (Reporting).

Records

Subject to **clauses 47** (Contractor's Records), 49 (Data Protection) and **75** (Freedom of Information and Confidentiality):

3.5.5 The Contractor shall maintain records and report to the Councils in accordance with this Specification for the purposes of:

3.5.5.1 comparison of the Contractor's performance against the Contract Targets;

3.5.5.2 verification of payment and operational data under this Contract;

3.5.5.3 comparison of the Contractor's performance against the KPIs set out in the Performance Mechanism, for determination of any relevant Performance Deductions in accordance with the Payment Mechanism;

3.5.5.4 completion of statistical returns (including CIPFA, DEFRA, WasteDataFlow);

3.5.5.5 NOT USED;

3.5.5.6 NOT USED;

3.5.5.7 compilation of the Monthly Reports and Annual Reports pursuant to the requirements of **Schedule 4** (Reporting).

3.5.6 The Contractor shall be required to preserve all records of Waste and financial transactions in an agreed electronic format for at least 7 years following the Expiry Date or the Termination Date as the case may be.

Management Information Systems

3.5.7 The Contractor shall install, implement and operate management information systems and equipment with a suitable maintenance and upgrade package consistent with Good Industry Practice to the reasonable satisfaction of the Councils throughout the Services Period. These systems shall seek to assist the Councils to meet any corporate information technology objectives. The Contractor's arrangements shall provide a Defined Audit Trail for Contract Waste through each stage of the process, from receipt to final processing or disposal.

3.5.8 Subject to **clause 75** (Freedom of Information and Confidentiality), data and reports shall be kept in electronic format and the system shall be designed to permit the transfer of data electronically between the Contractor and the Councils and for the transfer of relevant data as

required by Good Industry Practice between the Contractor and other parties (including the Environment Agency and the WCAs).

3.5.9 The electronic format shall be updated to ensure compatibility with the Councils' systems, always ensuring that all relevant historic data is still readable with any updated technology provided always that the Contractor shall not be required to update its management information system to be compatible with any revised Councils systems after the date of this Contract other than pursuant to a Council Change.

3.5.10 All relevant information and communication technologies arrangements shall be e-Gif compliant or equivalent and compatible where practicable with systems used by the Councils at the date of this Contract to enable direct transfer of information. The Councils may require the Contractor to complete an E-Gif questionnaire or its equivalent from time to time to confirm compliance.

3.5.11 The Contractor shall supply details in its SDP of the computerised recording and electronic transfer of data. The system shall be capable of being updated by the Contractor on a continuous basis and shall be capable of being interrogated remotely at any time via the internet by the Councils' Authorised Officer and a number of authorised users to be confirmed by the Councils. The Contractor shall permit remote access for each WCA, as an authorised user, to obtain the data specific to that WCA.

3.5.12 Subject to **clauses 47** (Contractor's Records), **49** (Data Protection) and **75** (Freedom of Information and Confidentiality) and **Schedule 4** (Reporting), the Contractor shall ensure that records will be such as to provide all the information required to make due payments under the Contract, to compare the Contractors performance against the KPIs, to assist the Councils in the management of the collection services (in conjunction with the WCAs), to monitor the Services provided to the public at the HWRCs and to ensure that the Councils can comply with its Waste data reporting obligations, for example, as required for input into the waste flow model, for the Audit Commission and CIPFA.

3.5.13 The Contractor shall provide appropriate training and support to users of the management information system.

3.5.14 The Contractor shall implement a working trial of the proposed management information system no later than three months before the Initial Services Commencement Date.

3.6 Enforcement

3.6.1 Subject to **clause 28** (Changes to the Works or Services), the Contractor shall use reasonable endeavours to provide evidence in order to co-operate with the Councils in respect of their respective policies of enforcement from time to time in respect of illegal depositing of Waste on the public highway in the control of the Councils, other public land and other relevant areas and at the HWRCs wherever it may occur throughout the Contract Area.

3.6.2 The Contractor may be required to co-operate with the Councils in this task by supporting education, awareness and publicity campaigns.

3.6.3 When reasonably requested by the Councils, the Contractor shall assist by providing evidence and statements in order to instigate legal proceedings against offenders.

3.6.4 The Contractor shall ensure that all relevant employees are aware of their responsibilities for supporting the Councils with this task and shall provide relevant training where necessary. The Councils shall notify the Contractor of any changes in policy and/or requirements in relation to enforcement.

3.7 **Safety and Security**

3.7.1 The Contractor shall be responsible for the security of the Facilities. Full details of all arrangements for dealing with security and the results of vandalism shall be provided in the SDP. Emergency procedures in the event of safety and/or security incidents shall also be detailed in the SDP.

3.7.2 Subject to **clause 29** (Change in Law), the Contractor shall comply with the relevant Councils' security regulations, and, where applicable ensure full compliance with its obligations under the Data Protection Act 1998 (as amended) and the Computer Misuse Act 1990 (as amended) in so far as they relate to the Contract.

3.7.3 The Contractor shall maintain all fences, walls, hedges and gates around the perimeter of each of the Sites, and effect a suitable temporary repair of any material damage to the perimeter within 24 hours.

3.7.4 The Contractor shall ensure that all visitors have left the Facilities before securing the Facilities at the end of each Business Day.

3.8 **Customer Care**

3.8.1 The Contractor shall provide the Councils with comprehensive customer care proposals in the method statements which shall be consistent with the Councils' customer care policies as at the date of this Contract. The proposals in the method statements shall include the Contractor's proposed methods for dealing with enquiries, complaints and the issue of public information to or by members of the public.

3.8.2 The Contractor shall work with the Councils to provide consistent information to the public regarding the Services.

3.8.3 A representative of the Contractor shall be available between 8.00am to 5.00pm each day to receive calls from the Councils.

3.8.4 The Contractor shall provide such information as the Councils may reasonably request regarding the Works and Services to be added to the Councils' websites.

3.8.5 The Contractor shall provide, manage and maintain a computerised complaint logging and recording system compatible with the Councils' relevant systems as at the date of this Contract. The Contractor shall log all complaints including those received by the Councils (and passed onto the Contractor) and those directly received by the Contractor.

3.8.6 This complaint logging and recording system shall be updated by the Contractor as calls are received, complaints are verified as being justified and when actions is taken as appropriate. The system shall be capable of being accessed at any time remotely via the internet by the Councils' Authorised Officer for monitoring purposes.

3.8.7 The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner in accordance with the terms of this Contract.

3.8.8 Should the Contractor receive complaints direct from the public or from the WCAs it shall no later than noon on the next Business Day, verify that the complaint is justified, inform the Councils of the details of the complaint and the action taken or to be taken with a timetable for completion.

3.8.9 Where the Contractor becomes aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services, it shall notify the Councils immediately by telephone and then confirm the report with full details within 24 hours by either email or written letter. Such notification shall include all relevant information to enable the Councils to investigate the matter fully.

3.8.10 The Contractor shall fully co-operate with and provide assistance and relevant information to the Councils and to the Commission for Local Administration (the **"Ombudsman"**) in enquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matters arising in connection with the provision of Services.

3.9 **Signage**

3.9.1 Any signs or notices erected at the Facilities shall be of a suitably durable material incorporating Recycled materials where available, and shall be in the corporate style of the Contractor and shall be agreed with the Councils. The number and types of signs shall be detailed in the SDP. Any signs to be erected within the highway boundary shall be designed in accordance with the Department for Transport's Traffic Signs Manual and erected in accordance with the requirements of the Highway Authority.

3.9.2 In addition, a sign shall be provided by the Contractor at each of the HWRCs, Project Transfer Stations and the NWTF in the corporate style of the Councils, commensurate with maintaining a positive public image stating that the relevant Facility is provided in partnership with the Councils and displaying all appropriate legally required information such as licence numbers and contact points.

3.10 **Emergency Services**

3.10.1 The Contractor shall provide cover 24 hours a day, every day of the year to respond to any emergency that may arise in connection with the Works and Services. An emergency call out procedure shall be provided, maintained and updated in accordance with the requirements of the Environment Agency, and shall be submitted to the Councils as part of the SDP.

3.10.2 The Contractor shall nominate one or more of its representatives who may be contacted outside normal working hours every single day of the year throughout the earliest Works Commencement Date, and in the event of an emergency, e.g. traffic, accident, spillage, that representative shall be required to be on the relevant Facility within one hour of being notified by the Councils. Should the Contractor for any reason fail to respond to call out within this time, the Councils shall arrange for another contractor to carry out such reasonable measures as are necessary to manage the emergency. Any reasonable cost to the Councils for such work shall be recovered from the Contractor as a debt.

3.10.3 The Contractor shall operate and maintain a suitable communication system for his operatives and managers that must be capable of being used by the Councils in the event of an emergency.

3.10.4 The Contractor shall provide two emergency delivery points, one in or near Derby the other in or near Chesterfield for the receipt and temporary storage of Contract Waste including Hazardous Waste.

3.10.5 The Contract Waste delivered to the emergency delivery points shall be disposed of by the Contractor in accordance with this Contract. For avoidance of doubt, the Contractor shall accept and manage Household Hazardous Waste deposited by the public at HWRCs as part of the normal Services under the Contract.

3.10.6 The Councils will not require the Contractor to carry out tasks needing specialist training for which available Staff are not trained. The Contractor shall inform the Councils if it is unable to provide available Staff with the appropriate training for tasks requested to deal with an emergency.

3.10.7 When the Councils advise the Contractor of an emergency the Contractor will immediately appoint a senior member of its management to act as a liaison. The Councils will similarly identify a senior member of its management to act as a liaison.

3.10.8 All instructions given by the person identified by the Councils under **paragraph 3.10.7** above shall be deemed to be instructions given by the Councils' Authorised Officer.

3.11 Environmental Management

3.11.1 The Contractor shall procure certification for the provision of the Works and Services in accordance with ISO14001 or equivalent standard, or similar environmental management accreditation system, through a certifying body accredited by the National Accreditation Council for Certifying Bodies, within 12 months of the Commencement Date in relation to the Works and within 12 months of the NWTF Completion Date in relation to the Services, and retain certification at an equivalent standard for the remainder of the Contract Period.

3.12 Quality Assurance

3.12.1 The Contractor shall procure certification for the provision of the Works and Services in accordance with ISO9001 or equivalent standard, or similar quality management system, through a certifying body

accredited by the National Accreditation Council for Certifying Bodies, within 12 months of the Commencement Date in relation to the Works and within 12 months of the NWTF Completion Date in relation to the Services, and retain certification at an equivalent standard for the remainder of the Contract Period.

3.13 **Management, Supervisory and Operational Employees**

3.13.1 The Contractor shall identify and employ adequate numbers of suitably trained Staff for all aspects of the Services.

3.13.2 The Contractor shall appoint competent management and supervisory Staff for the efficient management of the Services. Sufficient and appropriate COTC holders shall be clearly identified and the Contractor shall have sufficient additional COTC staff to provide cover for absences and Staff who may leave his service.

3.13.3 All employees including those employed by the Contractor's sub-contractors or those employed on a temporary or agency basis shall receive appropriate training and induction before commencing any operational activities. Training shall include all relevant aspects of operational procedures, requirements of the Necessary Consents and general customer care.

3.13.4 Further training shall be given at regular intervals in accordance with Good Industry Practice.

3.13.5 The Contractor shall comply with the "Equality Standard for Local Government" produced by the Improvement and Development Agency (IDEA), revised May 2007.

3.14 **Health, Safety and Welfare**

General Requirements

3.14.1 The Contractor shall at all times in providing Services or Works comply with the provisions of the Health and Safety at Work Act 1974 and provide evidence of doing so to as reasonably required by the Councils upon request.

3.14.2 The Contractor shall ensure that members of the public must not have any doubt that the HWRCs, the Project Transfer Stations and the NWTF are hazardous places and appropriate warning signs and information notices shall be prominently displayed at each Facility.

Health and Safety Plan

3.14.3 The Contractor shall carry out risk assessments and adopt safe working practices, to be detailed in the Health and Safety Plan within the SDP, as laid down in all current and, subject to **clause 28** (Changes to the Works and Services), future regulations, working rules and Legislation that apply to its activities under this Contract to ensure the appropriate standards of safety for all site users, visitors, and construction, management and operations personnel.

3.14.4 The Contractor shall supply copies of all risk assessments to the Councils as requested by the Councils in an appropriate format and keep the documents up to date with any amendments or additions.

3.14.5 The Contractor's Health and Safety Plan shall take note of and comply with all guidance published by the Health and Safety Executive (HSE) on "Health and Safety in Waste Management and Recycling Industries" and guidance on "Operating Civic Amenity Sites Safely".

3.14.6 Subject to **clause 28** (Changes to the Works and Services), the Contractor shall take full note of the Councils' corporate health and safety policies as amended from time to time.

3.14.7 The Contractor shall procure certification for the provision of the Works and Services in accordance with ISO18001 or equivalent standard, or similar health and safety management system, through a certifying body accredited by the National Accreditation Council for Certifying Bodies, within 12 months of the Commencement Date in relation to the Works and within 12 months of the NWTF Completion Date in relation to the Services, and retain certification at an equivalent standard for the remainder of the Contract Period.

Equipment

3.14.8 The Contractor shall be responsible for the suitable and safe use of the Equipment used in the provision of the Services and no Equipment shall be used which may be unsuitable, unsafe or liable to cause damage.

3.14.9 The Contractor must maintain in good working order all necessary guards, screens, fences and traffic control measures to give proper protection to the public and site operators.

3.14.10 All Equipment shall be operated by trained operatives who will be supplied and equipped with all proper safety wear and Equipment at the Contractor's expense to comply with the relevant clauses in the Health and Safety at Work Act 1974 (as amended).

3.14.11 Within the provision for visits to the Facilities by organised groups as contemplated by this Contract the Contractor shall supply appropriate safety equipment as necessary.

Employees

3.14.12 The Contractor shall procure that all Staff at all times while engaged in the provision of the Services are properly and presentably dressed in suitable uniforms, work wear, protective and reflective clothing accepted by the Councils in compliance with the Contractor's Health and Safety Plan. Staff shall wear a name badge where they come into contact with visitors or members of the public.

3.14.13 Special care shall be taken to protect the health and safety of operatives working in close proximity to the waste being processed.

Facilities

3.14.14 A copy of site 'rules and conditions' must be included with the Health and Safety Plan; and must be prominently displayed at each Site; and copies given to all Staff and visitors.

3.14.15 The Contractor shall provide all necessary fire-fighting, first aid, health and safety facilities with all Equipment used and at each of the Facilities provided for the Services, commensurate with the requirements of the fire authority and other statutory authorities.

3.14.16 The Contractor shall provide suitable toilets and washing facilities and to which reasonable access shall be given for authorised users to the Sites, including those undertaking statutory or partnership functions in respect of the performance of the Services.

3.14.17 The Contractor shall provide adequate first aid facilities and an appropriately trained first aider for treatment of Staff and users. This shall include, as appropriate, eye baths and de-contamination facilities for all authorised Staff and users.

3.14.18 All Facilities shall be provided with a full range of welfare facilities including changing rooms, running potable water, hand washing facilities, toilets, canteen/rest room, to which reasonable access shall be given to authorised users to the sites (excluding members of the public visiting HWRCs) including those undertaking statutory or client functions in respect of the performance of the Services provided that employees of the WCAs and their contractors shall only be entitled to use the toilets, wash rooms, hot and cold water and running potable water.

Records and Reporting

3.14.19 Subject to **clauses 47** (Contractor's Records), **49** (Data Protection) and 75 (Freedom of Information and Confidentiality), the Contractor shall maintain up to date records of health and safety training for Staff, and shall make these available to the Councils for inspection within one (1) Business Day of a written request to the Operating Contractor and the Contractor.

3.14.20 The Contractor shall maintain an accident book at all Facilities required for the Services and shall record any reportable incident and near misses in accordance with RIDDOR.

3.14.21 The Contractor shall maintain a site diary to record significant events in the operation of the Facilities. This shall include details of business and official visitors, unauthorised access incidents, transport movements, deliveries of materials, servicing contractors, weather, timing of orders, inspections and communications relating to operations.

3.14.22 The Contractor shall render such assistance as is practicable to persons involved in any accident, without making any prejudicial statement or comment and shall record all relevant details in the site diary and the accident book.

3.14.23 The Contractor shall notify the Councils' Authorised Officer as soon as practicable in the event of a reportable incident, and in any event:

3.14.23.1 Within two (2) hours from the time of the relevant incident involving a customer becoming known to the Contractor;

3.14.23.2 Within one (1) Business Day from the time of any other relevant incident reportable in accordance with RIDDOR.

3.14.24 The Contractor shall provide the Councils' Authorised Officer with any report forwarded to the HSE and inform the Councils' Authorised Officer of any action taken by the HSE. In addition, the Contractor shall provide the Councils' Authorised Officer with an updated SDP including the improvements made following the investigation of any accident or near miss. All documents referred to in this paragraph shall (as far as reasonably practicable) be sent to the Councils' Authorised Officer by the Contractor within ten (10) Business Days of receipt by the Contractor.

3.14.25 The Contractor shall include within the Monthly Report a summary of any such incidents and the corrective action taken thereafter.

3.15 **Contingency Plan**

3.15.1 The Contractor shall agree with the Councils a Contingency Plan, to be incorporated within the SDP as Method Statement 2. The Contingency Plan shall include arrangements for directing Contract Waste to alternative Delivery Points for the reception, treatment and disposal of Contract Waste, provision of a limited service and the establishment of temporary facilities. The Councils shall comply with the Contingency Plan and shall direct the WCAs to make deliveries in accordance with any Contingency Plan as may be reasonably required by the Contractor from time to time.

3.15.2 The Contingency Plan, and the alternative Delivery Points nominated therein, shall be updated through the Review Procedure as and when required but at least annually by the Contractor.

3.16 **Detailed Maintenance Plan**

3.16.1 The Contractor shall carry out all such refurbishment or maintenance to meet the requirements as set out in **clause 27** (Maintenance).

3.16.2 The Contractor shall provide and maintain a Detailed Maintenance Plan for each Site, which shall be agreed with the Councils and which shall include as a minimum, the items listed below. The Contractor shall provide suitable assurance that spare parts and other essential items are readily available:

3.16.2.1 Details of operational monitoring and predictive maintenance;

3.16.2.2 Schedule and procedures of planned preventative maintenance, replacement or upgrading of key items of plant and equipment at the Facilities (excluding Third Party Transfer Stations and Landfill Sites);

3.16.2.3 Schedule and procedures of operational and performance testing of items of plant and equipment;

3.16.2.4 Schedule and procedures of calibration and resetting of items of plant and equipment;

3.16.2.5 Procedures of maintenance, repair, replacement or upgrading of key items of plant and equipment to be implemented in the event of reduced performance, damage or failure of items of plant and equipment;

3.16.2.6 Details of back up and temporary operational procedures during maintenance;

3.16.2.7 Details of how maintenance will be scheduled to minimise disruption to WCA delivery of Contract Waste;

3.16.2.8 Detailed list of spare parts and equipment.

3.17 Handback Criteria

3.17.1 At the Expiry Date, all Facilities (excluding Third Party Transfer Stations and Landfill Sites) and Physical Assets excluding all mobile plant, Equipment and vehicles required to deliver the Services shall be in a condition capable of operating in compliance with all Necessary Consents and the Health and Safety Plan, this Specification and requiring no more than routine maintenance in accordance with the Detailed Maintenance Plan nor any additional lifecycle maintenance beyond that which a prudent or competent operator would properly expect to carry out in years 25 to 30 after the NWTF Planned Completion Date, subject to **paragraph 3.17.2**, for a period of no less than five (5) years.

3.17.2 In the event the Expiry Date is extended in accordance with the provisions of **clause 3.1.3** (Duration of Contract), the period of time pursuant to **paragraph 3.17.1** above shall be reduced by fifty per cent (50%) of the period of extension, provided that the period shall not be reduced below two (2) years.

3.17.3 In the event of termination of the Contract, at the Termination Date all Facilities (excluding Third Party Transfer Stations and Landfill Sites) and Physical Assets, excluding all mobile plant and vehicles required to deliver the Services shall be in a condition capable of operating in compliance with all Necessary Consents and the Health and Safety Plan, this Specification and in respect of the relevant Facilities only requiring no more than:

3.17.3.1 routine maintenance; and

3.17.3.2 lifecycle replacement which was planned to be carried out within a five year cycle assumed in the Base Case.

3.17.4 In the event of termination of the Contract, the Councils may elect by written notice that the mobile plant and vehicles delivering the Services at the Termination Date shall transfer to the Councils in their prevailing condition at a determined net book value, provided that to the extent that the Councils make such election, the Councils shall accept an assignment of any relevant leasing obligations or similar arrangements.

3.17.5 All Waste shall be treated or removed from the NWTF, the Project Transfer Stations and the HWRCs at the Expiry Date or the Termination Date as the case may be, subject to the Councils' requirements to maintain continuity of operation.

3.17.6 The Councils reserve the right to require the Contractor to surrender Environmental Permits as appropriate at the Expiry Date or the Termination Date as the case may be.

3.18 Sale and Marketing of recovered materials

3.18.1 Materials Recovered or Recycled as part of the performance of this Contract will be sent to Reprocessors either:

3.18.1.1 selected by the Contractor and listed in the SDP; or

3.18.1.2 selected by the Contractor through agreement and consultation with the Councils, whose agreement of which shall not be unreasonably withheld or delayed.

3.18.2 The Contractor shall secure the necessary agreements with Reprocessors for accepting any such Recovered or Recycled materials and arrange transportation to the Reprocessor. Wherever possible and subject to obtaining favourable commercial terms, the Contractor shall use local markets. Where Recovered or Recycled materials are exported then the Contractor shall provide all necessary documentation and certificates to satisfy the Environment Agency that the materials have been Recovered and or Recycled.

3.18.3 The Contractor shall identify the proposed Reprocessors for Recovered materials in the SDP. The Contractor shall submit details of any proposed changes to the identity of Reprocessors of Recovered materials through the Review Procedure. For the purposes of this **paragraph 3.18.3**, the Councils hereby approve the Reprocessors listed in the Services Delivery Plan as at the Amendment and Restatement Date.

4. CONTRACT WASTE RECEPTION AND TRANSFER SERVICES

4.1 Summary of Service Requirement

The Contractor shall develop, implement and operate a network of Services and Facilities for receiving, sorting, bulking and transporting Contract Waste in accordance with **paragraph 1.2** and as further detailed below.

4.2 Delivery Points

4.2.1 The Contractor shall provide Delivery Points for all Contract Waste during the Services Period.

4.2.2 Subject to **clause 27** (Maintenance), the Contractor shall ensure that all Delivery Points shall be capable of receiving Contract Waste regardless of weather conditions (other than in extreme conditions which prevent safe access to the Delivery Point).

4.2.3 The Contractor shall ensure that the Delivery Points have sufficient lighting to allow safe operation at all times during permitted operating hours.

4.2.4 The Contractor shall ensure that the reception areas at each Delivery Point for the acceptance of Contract Waste have adequate traffic control, safety barrier systems and signage.

4.2.5 The Contractor shall ensure that only vehicles authorised by the Councils or the Contractor's authorised transport contractors are allowed to unload Contract Waste at Delivery Points.

4.2.6 The Contractor shall provide a minimum of three Delivery Points (one of which shall be within the administrative boundary of the City of Derby) with facilities for receiving gully emptying waste.

4.2.7 The Contractor shall make allowance at all Delivery Points, (excluding Landfill Sites and except as otherwise agreed with the Councils), for receiving and storing deliveries of WEEE. The Councils shall, upon notice from the Contractor that WEEE needs to be removed from a Delivery Point, procure that their appointed contractor removes such WEEE accordingly.

4.2.8 The Contractor shall inform the Councils' Authorised Officer of any changes in the waste reception arrangements at a Delivery Point. The contingency arrangements shall be updated annually in the Contingency Plan through the Review Procedure and may be modified or amended more frequently by the Contractor as and when necessary through the Review Procedure.

4.2.9 The Contractor shall take all reasonable steps to ensure that only persons authorised in accordance with this Contract enter the Facilities. All vehicles and persons within the Facilities shall, for operational purposes, be subject to the directions of the Contractor who shall ensure that such vehicles and persons comply with the requirements of the Contract and that they exercise all due care.

4.2.10 The Contractor shall procure that the Delivery Points which are identified in the SDP as being capable of accepting Clinical Waste or Bulky Waste delivered by WCAs for disposal by the Contractor, are able to accept such waste. The Contractor shall provide for receiving bulk deliveries of Waste falling under European Waste Catalogue code 18.01.04 (or its future equivalent) at the Delivery Points as set out in the SDP and arrange for disposal. Waste falling under European Waste Catalogue codes 18.01.01, 18.01.02, 18.01.02* 18.01.03*, 18.01.04, 18.01.06*, 18.01.07, 18.01.08*, 18.01.09, 20.01.31* and 20.01.32, or their future equivalents, will normally be delivered direct to disposal by the WCAs. If the Contractor receives Waste in these categories, the Contractor shall store and arrange for the disposal of such Waste at any appropriate facility.

4.3 Waste Reception Criteria

The Waste Reception Criteria are set out in **Schedule 17** (Waste Reception Protocol) which comprise a detailed description of Contract Waste to be accepted at any Delivery Point.

4.4 Delivery Points

4.4.1 Location of Delivery Points

The Contractor shall throughout the Contract Period provide a network of Delivery Points in the locations specified in the remainder of this **paragraph 4.4.1**.

4.4.1.1 Derby City

The Contractor shall provide a minimum of one (1) Delivery Point for the purposes of receiving Contract Waste collected by Derby City Council, Erewash Borough Council, South Derbyshire District Council, Derbyshire Dales District Council and Amber Valley Borough Council within the administrative boundary of the City of Derby.

4.4.1.2 Erewash

The Contractor shall provide a minimum of one (1) Delivery Point for the purposes of receiving Contract Waste from Erewash Borough Council which shall be:

(a) within the administrative boundary of Erewash Borough Council; and/or

(b) within the administrative boundary of the City of Derby (which, for the avoidance of doubt, may be the same Delivery Point as provided pursuant to **paragraph 4.4.1.1** above).

4.4.1.3 South Derbyshire

The Contractor shall provide a minimum of one (1) Delivery Point for the purposes of receiving Contract Waste collected by South Derbyshire District Council which shall be:

(a) within a 10 mile radius of grid reference SK 301 198; and/or

(b) within the administrative boundary of the City of Derby (which, for the avoidance of doubt, may be the same Delivery Point as provided pursuant to **paragraph 4.4.1.1** above).

4.4.1.4 High Peak

The Contractor shall operate the existing integrated transfer station and HWRC at Melandra Road, Glossop as a Delivery Point for the purposes of receiving Contract Waste collected by High Peak Borough Council.

The Councils shall procure that Contract Waste collected by High Peak Borough Council which is not delivered to the transfer station at Melandra Road, Glossop, shall be delivered to a waste management facility operated by a

third party contractor on behalf of the Councils. The Councils shall procure that such third party contractor shall haul such Contract Waste to such Delivery Points identified by the Contractor from time to time in the Service Delivery Plan or implemented as a change to the SDPs in accordance with the Review Procedure.

4.4.1.5 **Derbyshire Dales**

The Contractor shall provide a minimum of two (2) Delivery Points for the purposes of receiving Contract Waste collected by Derbyshire Dales District Council which shall be:

(a) either at the Clover Nook Transfer Station or within a five (5) mile radius of Ordnance Survey Grid Ref SK 350 520; and

(b) within the administrative boundary of the City of Derby (which, for the avoidance of doubt, may be the same Delivery Point as provided pursuant to **paragraph 4.4.1.1** above).

The Councils shall procure that Contract Waste collected by Derbyshire Dales District Council which is not delivered to the Delivery Point provided pursuant to **paragraph 4.4.1** above, the Clover Nook Transfer Station or to a Delivery Point within a five (5) mile radius of Ordnance Survey Grid Ref SK 350 520, shall be delivered to a waste management facility operated by a third party contractor on behalf of the Councils. The Councils shall procure that such third party contractor shall haul such Contract Waste to Delivery Points identified by the Contractor from time to time in the Service Delivery Plan and implemented as a change to the SDPs in accordance with the Review Procedure.

4.4.1.6 **Chesterfield, Bolsover, North East Derbyshire**

The Contractor shall provide a minimum of one (1) Delivery Point for the purposes of receiving Contract Waste collected by Chesterfield Borough Council, Bolsover District Council and North East Derbyshire District Council within a five (5) mile radius of Ordnance Survey Grid Ref SK 390 710.

4.4.1.7 **Amber Valley**

The Contractor shall provide a minimum of two (2) Delivery Points for the purposes of receiving Contract Waste collected by Amber Valley Borough Council which shall be:

(a) either at the Clover Nook Transfer Station or within a five (5) mile radius of Ordnance Survey Grid Ref SK 350 520; and

(b) within the administrative boundary of the City of Derby (which, for the avoidance of doubt, may be the same Delivery Point as provided pursuant to **paragraph 4.4.1.1** above).

4.4.2 **Capacity Requirements of the WCAs**

The Contractor shall procure that the Delivery Points provided pursuant to this **paragraph 4.4** shall (unless otherwise changed pursuant to the Review Procedure):

4.4.2.1 in aggregate have sufficient capacity to accept all Contract Waste delivered by or on behalf of the WCAs to the Contractor throughout the Contract Period; and

4.4.2.2 as a minimum, have a capacity sufficient to meet the tonnage requirements of the individual WCAs delivering to the relevant Delivery Points as shown in the Base Case at the Amendment and Restatement Date, plus an additional 20% at each Delivery Point.

4.4.3 **Maximum Tonnages**

For the purposes of **paragraph 4.8.10** of the Specification and **paragraph 4.4.1** of the Payment Mechanism, the maximum capacity of each Primary Delivery Point from time to time shall be as set out in the Service Delivery Plan.

4.4.4 **Replacement Delivery Points**

4.4.4.1 The Parties agree that the Primary Delivery Points specified in the Services Delivery Plan as at the Amendment and Restatement Date meet the requirements of this **paragraph 4.4** and the Contractor shall continue operations at these Primary Delivery Points from the Amendment and Restatement Date.

4.4.4.2 Thereafter, the Contractor may nominate additional, replacement or alternative Delivery Points through the Review Procedure and the Councils shall direct the WCAs to deliver to any such additional, replacement or alternative Delivery Points implemented in accordance with the Review Procedure.

4.4.4.3 The Parties agree that the following shall not need to be implemented through the Review Procedure and shall become Delivery Points for the purposes of this Contract in accordance with the Services Delivery Plan:

(a) the replacement of the Delivery Point provided to satisfy **paragraph 4.4.1.1** above on the NWTF Completion Date as set out in the Services Delivery Plan; and

(b) the use of a Transfer Station operated by Briers Waste in Tamworth for the receipt of Contract Waste collected by South Derbyshire District Council to satisfy the requirements of paragraph 4.4.1.3 of this Schedule

(notwithstanding that the facility operated by Briers Waste in Tamworth does not meet the requirements of paragraph 4.4.1.3 of this Schedule);

(c) if the Contractor ceases to use the New Albion Landfill Site (Moira), its replacement with a Transfer Station operated by Willshees in Burton-on-Trent and/or the Derby Interim Transfer Station for the purposes of paragraph 4.4.1.3 of this Schedule; and

(d) if the Contractor ceases to use the Landfill Site at Erin, its replacement with a Transfer Station at Chesterfield for the purposes of paragraph 4.4.1.6 of this Schedule.

4.5 **Street Cleansing Waste**

A minimum of two Delivery Points shall be provided for receiving Street Cleansing Waste, one of which shall be in the administrative area of the city of Derby and one shall be within five (5) miles of Ordnance Survey Grid Ref SK 390 710.

4.6 **Delivery Point Opening Hours**

4.6.1 Subject to **paragraphs 4.6.2** and 4.6.3 below and the terms of the Necessary Consents, and save as may be otherwise agreed pursuant to **paragraph 4.4**, all Delivery Points shall be Available to receive all Contract Waste directed to it as follows:

4.6.1.1 Normal working week

Monday-Friday 0700hrs - 1700hrs daily

Saturday 0700hrs - 1300hrs (1700hrs on any Saturday reasonably requested before and after any week having collections reduced as a result of a bank, public or national holiday).

The exceptions to the above shall be Christmas Day, Boxing Day and New Year's Day when this falls on a Sunday, except that the Delivery Point identified pursuant to **paragraph 4.4.1.1** above, shall also be open on Boxing Day.

4.6.1.2 In addition, for Street Cleansing Waste only:

0700hrs - 0900hrs Sundays only

in any week,

to include all bank or public holidays except Christmas Day and Boxing Day.

4.6.1.3 The Derby Transfer Station shall be Available to receive all Contract Waste directed to it as follows:

Normal working week

Monday – Friday 0700 hrs – 1700 hrs daily

Saturday 0700 hrs – 1300 hrs

Sunday 0700 hrs – 0900 hrs

The exceptions to the above shall be Christmas Day and New Year's Day when this falls on a Sunday.

4.6.2 The Contractor shall notify the Councils where the opening hours for any Delivery Point which is located at a Third Party Transfer Station or a Landfill Site differs from the hours set out above.

4.6.3 The opening hours for Delivery Points located at Third Party Transfer Stations and Landfill Sites shall be as set out in the Contractor's Proposals.

4.6.4 Subject to all Necessary Consents, the Contractor shall accept deliveries of Contract Waste to Delivery Points set out in the SDPs outside the core hours described in **paragraphs 4.6.1**, **4.6.2** and **4.6.3** between 0630hrs and 2200hrs with no less than three (3) working hours' notice to the Contractor and the Operating Contractor, as required by the Councils.

4.6.5 A minimum of two (2) Delivery Points, one of which shall be in the administrative boundary of the City of Derby and the second at Clover Nook (or another location north of Clover Nook in the County) to be identified by the Contractor, shall have 24 hour availability for emergencies for which the Councils shall reimburse the Contractor its reasonably incurred costs. The identified sites shall be capable of receiving Contract Waste within one hour of the emergency being notified to the Contractor and the Operating Contractor.

4.7 Weighbridges and Waste Records

4.7.1 All Contract Waste received at Delivery Points shall be weighed by means of weighbridges. The Contractor shall weigh in and weigh out individual loads of the Contract Waste to obtain a net weight, unless otherwise agreed with the Councils' Authorised Officer to use agreed tare weights for the vehicles. The Contractor will not receive any payment for the processing of any Contract Waste not supported by a Defined Audit Trail.

4.7.2 All data shall be available electronically to the Councils as soon as reasonably practicable.

4.7.3 Data to be recorded by the Contractor for each delivery of Contract Waste shall comprise:

4.7.3.1 Date

4.7.3.2 Origin District (name) or HWRC (name) or other

4.7.3.3 Transaction number which shall be sequential for the Contract (weighbridge ticket if different)

4.7.3.4 Site name (and where applicable name of site diverted from)

4.7.3.5 Licence number

4.7.3.6 Waste description (in accordance with the European Waste Catalogue established by Commission decision 2000/532/EC) and extended when necessary e.g. to identify WEEE types and fly tipping.

4.7.3.7 Time weighed on

4.7.3.8 Vehicle registration number

4.7.3.9 Driver's name (to allow for surname and clock number format)

4.7.3.10 Transfer note number (where issued)

4.7.3.11 Gross weight

4.7.3.12 Nett weight

4.7.3.13 Tare weight

4.7.3.14 Time weighed off

4.7.3.15 Name of site where Contract Waste has been diverted from

4.7.3.16 Comments field

4.7.3.17 Round number

4.7.4 In respect of WCA vehicles and containers, the Contractor shall use an automated, computerised system for uniquely identifying vehicles authorised by the Councils to optimise speed of access for vehicles at each Project Transfer Station and the NWTF. Only vehicles that are pre-authorised by the Councils shall be entered on to the weighbridge system by the Contractor. The Councils will issue each vehicle with a unique identifier, which shall be compatible with the Contractor's system.

4.7.5 The Contractor shall ensure that the weighbridge system issues weighbridge tickets generated from secure computerised records and the system shall have been authorised by an inspector as fit for use in accordance with Section 11 of the Weights and Measures Act 1985. The Contractor shall ensure that weighbridges at all Delivery Points are at all times appropriately calibrated and tested and shall ensure that the same are independently certified at least annually.

4.7.6 In the event of a breakdown of any weighbridge installation, a valid and auditable manual recording system, in accordance with the SDP, shall be immediately instigated and maintained until the weighbridge is again in normal operation. In operating the weighbridge installations the Contractor shall have regard to all relevant Legislation, including

the obligations of the Duty of Care Code of Practice March 1996 issued under Section 34 of the EPA.

4.7.7 The Contractor shall agree a methodology for recording the weight of items of Bulky Waste or WEEE with the Councils to be set out in Method Statement 16 (Delivery Points and Waste Transfer). Where the weight of items of Bulky Waste or WEEE are not recorded directly, the recording methodology may be based on average weights listed on the Furniture Reuse Network's website: http://www.frn.org.uk/statistics.asp or its equivalent, and as updated and replaced from time to time.

4.8 **Collection Vehicle Turnaround Times**

4.8.1 The Contractor, in the operation of each Delivery Point, shall have regard to the specified turnaround time.

4.8.2 The Contractor shall state the available vehicle capacity for unloading at each Delivery Point in the SDP.

4.8.3 Subject to **paragraphs 4.8.4** and 4.8.9, the Contractor shall demonstrate that a maximum daily average turnaround time of 15 minutes, as measured over any Business Day, is achieved for vehicles delivering Contract Waste to Delivery Points (other than the Contractor's vehicles). The turnaround time shall be calculated from the time of arrival of the vehicles authorised by the Councils at the weighbridge to the time of departure from the weighbridge. This provision shall not apply to direct deliveries of Contract Waste to the Delivery Point located at Acidisation Co Ltd, Ireland Close, Staveley, Chesterfield S43 3PE for which the required maximum daily average turnaround time shall be 20 minutes and direct deliveries of Contract Waste to facilities providing Extra Diversion for which the required maximum daily average turnaround time shall be as set out in the Extra Diversion Plan.

4.8.4 Subject to **paragraph 4.8.9**, the Contractor shall demonstrate that Delivery Points located at any Landfill Site or Third Party Transfer Station achieve a maximum daily average turnaround time of no greater than 20 minutes as measured over any Business Day. The turnaround time shall be calculated from the time of arrival of the vehicles authorised by the Councils at the weighbridge to the time of departure from the weighbridge. This provision shall not apply to direct deliveries of Contract Waste to the New Albion Landfill Site (Moira) for which the required maximum daily average turnaround time shall be 25 minutes.

4.8.5 The Contractor shall ensure that each and every vehicle achieves a turnaround time of less than 30 minutes, as measured pursuant to **paragraph 4.8.3** or **4.8.4**, as appropriate.

4.8.6 The Contractor shall be relieved of any obligation to meet the vehicle turnaround requirements specified in **paragraphs 4.8.3**, 4.8.4 and 4.8.5 and the Councils shall not be entitled to make Monthly Performance Adjustments in relation to KPIs 18 and 19:

4.8.6.1 during the period from 1 January to 7 January (or such other period as the Parties may agree) in each Contract Year; and

4.8.6.2 where the same arises as a result of the implementation of any requirement of the Councils' Authorised officer pursuant to **clause 25.6.1** on the occurrence of an emergency where the implementation of such requirement interferes adversely with, or causes failure of, the performance of the Services in accordance with this Contract.

4.8.7 The Contractor shall use reasonable endeavours, in the operation of each Delivery Point, to minimise queuing on the public highway.

4.8.8 All vehicles shall be weighed in and out of the Delivery Point. The Contractor shall maintain sufficient records to enable effective monitoring of the actual turnaround times being achieved on at least a monthly basis.

4.8.9 In the event of a queue of collection vehicles occurring at the entrance weighbridge, which results in a complaint from a driver, the Contractor shall record the time and nature of the complaint in the site diary. The Contractor shall maintain sufficient records of the numbers of vehicles on site at any one time to demonstrate that over the period the complaint was made the available vehicle capacity as stated in the SDP was available and in use.

4.8.10 The Contractor shall be relieved of any obligation to meet the vehicle turnaround requirements specified in **paragraphs 4.8.3**, **4.8.4** and 4.8.5 in respect of any Delivery Point, if the tonnage of Contract Waste delivered to that Delivery Point in a given day exceeds the maximum capacity of that Delivery Point for that day as set out in the SDPs.

4.9 **Waste Transport**

4.9.1 The Contractor shall ensure that Contract Waste is transported in accordance with Good Industry Practice.

4.9.2 The Contractor's SDP shall include a Transport Plan as specified in paragraph 6.4 of Appendix B of this **Schedule 1** (Specification).

4.9.3 The Contractor shall execute all operations necessary for receiving and transferring Contract Waste efficiently and safely.

4.9.4 The Contractor shall procure that all drivers and other operatives are suitably trained and qualified for their tasks.

4.9.5 The Contractor shall ensure that all vehicles, containers and trailers used by the Contractor for the Services are kept in a clean and presentable condition.

4.9.6 Should any spillage occur during transit, the Contractor shall procure that the spillage is cleared as soon as reasonably practicable. In the event that the Contractor fails to comply with its obligations, the Councils may clear the spillage and the Contractor shall reimburse the

Councils, on demand, a sum equal to all costs reasonably incurred by the Councils in the clearance and disposal of such spillage.

4.10 **Unavailability of Delivery Points**

4.10.1 In the event of Unavailability of a Delivery Point, the Contractor shall make adequate arrangements to divert vehicles delivering Contract Waste away from a given Delivery Point to an alternative Delivery Point. The diversion procedures and alternative Delivery Points shall be identified in the Contingency Plan included in the SDP.

4.10.2 The Contractor shall give a minimum of twelve (12) weeks' notice of any closures or changes to the operation of Delivery Points as a result of planned maintenance.

4.10.3 At the first indication of the likelihood of the occurrence of Unavailability at any Delivery Point, the Contractor shall immediately notify the Councils and the relevant WCA by telephone and confirm by written notification within one hour, including details of the anticipated period of time that such a diversion shall be in place.

4.10.4 Where the Contractor provides an alternative Delivery Point pursuant to **paragraph 4.10.1**, then provided that the alternative Delivery Point satisfies the Delivery Point Availability Criteria and subject to the Contractor providing notice to the Councils pursuant to **paragraph 4.10.2** or **4.10.3** (as appropriate), the Delivery Point in respect of which the alternative Delivery Point is made available shall be deemed to be Available.

4.11 **Delivery Point Availability Criteria**

4.11.1 Each of the Delivery Points shall satisfy, on a continuing basis, all of the Delivery Point Availability Criteria set out below:

4.11.1.1 Lawful Operation

The Delivery Point is lawfully able to receive Contract Waste delivered by WCAs.

4.11.1.2 Staff

The presence at the Delivery Point of appropriately trained and competent staff in order to be able to manage reception of Contract Waste at the Delivery Point to the extent and to the standard required by health and safety Legislation and the relevant Necessary Consents.

4.11.1.3 Weighbridge and other recording equipment

A weighbridge and appropriate recording equipment or an alternative recording methodology (as set out in the SDP) is being used and is in an operating condition sufficient to satisfy the data recording requirements set out in this Specification.

4.11.1.4 Acceptance

The Contractor is accepting Contract Waste (other than Rejectable Waste) delivered to the relevant Delivery Point in accordance with this Contract provided that the Contractor shall not be obliged to accept Contract Waste to the extent that the relevant Delivery Point has exceeded its maximum capacity (as set out in the SDPs) on the relevant day.

5. NEW WASTE TREATMENT FACILITY SERVICES

Summary of Service Requirement

The Contractor shall provide and manage a New Waste Treatment Facility to treat NWTF Residual Waste to reduce the amount of Contract Waste disposed to Landfill in order to meet the NWTF Re-use, Recycling and Composting Target and the NWTF Diversion Tonnage Target in accordance with **paragraph 1.2** and as further detailed below.

5.1 Performance Standards

5.1.1 NWTF Diversion Tonnage Target

The NWTF Diversion Tonnage Target for each Contract Year shall be established as follows:

5.1.1.1 For the Contract Year in which the NWTF Planned Completion Date occurs (NWTFy) the NWTF Diversion Tonnage Target shall be:

$$\mathbf{NWTF_{DTTY} = DTT_{p1} \times D_{bp1} \div 365}$$

where:

$NWTF_{DTTY}$ = the NWTF Diversion Tonnage Target for the Contract Year in which the NWTF Planned Completion Date occurs

DTT_{p1} = the lesser of:

(a) 92% of NWTF Residual Waste delivered in Dbp1; and

(b) 175,480 tonnes

Db_{p1} = the number of days in the period commencing on (and including) the NWTF Planned Completion Date and ending on and including the last day of the Contract Year in which the NWTF Planned Completion Date occurs

5.1.1.2 For the Contract Year in which the first anniversary of the NWTF Planned Completion Date occurs (NWTFy+1) the NWTF Diversion Tonnage Target shall be:

$$\mathbf{NWTF_{DTTY\ +1} = (DTT_{p1} \times D_{bp2}\ \ 365) + (DTT_{p2} \times D_{bp3}\ \ 365)}$$

where:

$NWTF_{DTTY+1}$ = the NWTF Diversion Tonnage Target for the Contract Year in which the first anniversary of the NWTF Planned Completion Date occurs

DTT_{p1} = the lesser of:

(a) 92% of NWTF Residual Waste delivered in Dbp2; and

(b) 175,480 tonnes

D_{bp2} = the number of days in the period commencing on (and including) the first day of the Contract Year in which the first anniversary of the NWTF Planned Completion Date occurs and ending on (and including) the first anniversary of the NWTF Planned Completion Date

DTT_{p2} = the lesser of:

(a) 93.89% of NWTF Residual Waste delivered in Dbp3; and

(b) 179,080 tonnes

D_{bp3} = the number of days in the period commencing on (but not including) the first anniversary of the NWTF Planned Completion Date and ending on (and including) the last day of the Contract Year in which the first anniversary of the NWTF Planned Completion Date occurs

5.1.1.3 For the Contract Year in which the second anniversary of the NWTF Planned Completion Date occurs (NWTF y+2) the NWTF Diversion Tonnage Target shall be:

$$\mathbf{NWTF_{DTTY+2} = (DTT_{p2} \times D_{bp4} \div 365) + (DTT_{p3} \times D_{bp5} \div 365)}$$

where:

$NWTF_{DTTY+2}$ = the NWTF Diversion Tonnage Target for the Contract Year in which the second anniversary of the NWTF Planned Completion Date occurs

DTT_{p2} = the lesser of:

(a) 93.89% of NWTF Residual Waste delivered in Dbp4; and

(b) 179,080 tonnes

Db_{p4} = the number of days in the period commencing on (and including) the first day of the Contract Year in which the second anniversary of the NWTF Planned Completion Date occurs and ending on (and including) the second anniversary of the

NWTF Planned Completion Date

DTT_{p3} = the lesser of:

(a) 95.45% of NWTF Residual Waste delivered in Dbp5; and

(b) 182,050 tonnes

D_{bp5} = the number of days in the period commencing on (but not including) the second anniversary of the NWTF Planned Completion Date and ending on (and including) the last day of the Contract Year in which the second anniversary of the NWTF Planned Completion Date occurs

5.1.1.4 For the Contract Year in which the third anniversary of the NWTF Planned Completion Date occurs (NWTF y+3) the NWTF Diversion Tonnage Target shall be:

$$\mathbf{NWTF_{DTTY+3} = (DTT_{p3} \times D_{bp6} \div 365) + (DTT_{p4} \times D_{bp7} \div 365)}$$

where:

$NWTF_{DTTY+3}$ = the NWTF Diversion Tonnage Target for the Contract Year in which the third anniversary of the NWTF Planned Completion Date occurs

DTT_{p3} = the lesser of:

(a) 95.45% of NWTF Residual Waste delivered in Dbp6; and

(b) 182,050 tonnes

D_{bp6} = the number of days in the period commencing on (and including) the first day of the Contract Year in which the third anniversary of the NWTF Planned Completion Date occurs and ending on (and including) the third anniversary of the NWTF Planned Completion Date

DTT_{p4} = the lesser of:

(a) 96.72% of NWTF Residual Waste delivered in Dbp7; and

(b) 184,480 tonnes

D_{bp7} = the number of days in the period commencing on (but not including) the third anniversary of the NWTF Planned Completion Date and ending on (and including) the last day of the Contract Year in which the third anniversary of the NWTF Planned Completion Date occurs

5.1.1.5 For the Contract Year in which the fourth anniversary of the NWTF Planned Completion Date occurs and all subsequent Contract Years the NWTF Diversion Tonnage Target ($NWTF_{DTTY}$ +x) shall be:

$$\mathbf{NWTF_{DTTY\ +x} = (DTT_y \times D_y \div 365)}$$

where:

$NWTF_{DTTY\ +x}$ = the NWTF Diversion Tonnage Target for each Contract Year occurring after the Contract Year in which the third anniversary of the NWTF Planned Completion Date occurs

DTT_y = the lesser of:

(a) 96.72% of NWTF Residual Waste delivered in the relevant; and

(b) 184,480 tonnes

D_y = the number of days in the relevant Contract Year

5.1.2 Not used.

5.1.3 Not used.

5.1.4 Not used.

5.1.5 **NWTF Re-use, Recycling and Composting Target**

The Contractor shall Re-use, Recycle or Compost the NWTF Residual Waste as follows:

5.1.5.1 For any Contract Year (including the Contract Year in which the NWTF Planned Completion Date occurs) the NWTF Re-use, Recycling and Composting Target ($RRCT_{NWTFY}$+x) for NWTF Residual Waste shall be:

$$\mathbf{RRCT_{NWTFY+x} = (RRCT_y \times D_y \div 365)}$$

where:

$RRCT_{NWTFY+x}$ = the NWTF Re-use, Recycling and Composting Target for the relevant Contract Year

$RRCT_y$ = the lesser of:

(a) 7.4% of NWTF Residual Waste delivered in the relevant Contract Year; and

(b) 14,080 tonnes

D_y = the number of days in the relevant Contract Year (or, for the Contract Year in which the NWTF Planned Completion Date occurs, the number of

days in the period commencing on (and including) the NWTF Planned Completion Date and ending on and including the last day of the Contract Year in which the NWTF Planned Completion Date occurs)

Service Standards

5.2 **Number and Location of Facilities**

The Contractor shall provide the NWTF to treat NWTF Residual Waste.

5.3 **NWTF Capacity**

5.3.1 The Contractor shall provide tonnage capacity at the NWTF to Handle the tonnage capacity set out in **paragraph 1.2** of **Schedule 3** (Payment Mechanism).

5.3.2 The Contractor shall determine the waste input requirements for the NWTF to meet the NWTF Re-use, Recycling and Composting Target and the NWTF Diversion Tonnage Target.

5.4 **NWTF Availability and Operating Hours**

Without prejudice to and subject to the provisions of Schedule 3 (Payment Mechanism), the NWTF shall be Available from the NWTF Completion Date to receive Contract Waste in accordance with this Specification, the WDP and the requirements of all Legislation, Necessary Consents and in accordance with the Health and Safety Plan.

5.5 **NWTF Availability Criteria**

5.5.1 The NWTF shall satisfy the NWTF Availability Criteria set out below. The Availability Criteria shall be:

5.5.1.1 Lawful Operation

The NWTF is lawfully able to receive Contract Waste delivered by WCAs.

5.5.1.2 Staff

The presence at the NWTF of appropriately trained and competent staff in order to be able to manage reception of Contract Waste at the NWTF to the extent and to the standard required by health and safety Legislation and the relevant Necessary Consents.

5.5.1.3 Weighbridge and other recording equipment

A weighbridge and appropriate recording equipment or an alternative recording methodology (as set out in the SDP) is being used and is in an operating condition sufficient to satisfy the data recording requirements set out in this Specification.

5.5.1.4 Acceptance

The Contractor is accepting Contract Waste (other than Rejectable Waste) delivered to the NWTF in accordance with this Contract provided that the Contractor shall not be obliged to accept Contract Waste to the extent that the relevant Delivery Point or NWTF has exceeded its maximum capacity (as set out in the SDPs) on the relevant day.

5.6 **Education and Seminar Facilities**

5.6.1 The Contractor shall provide both seminar and educational facilities at the NWTF, suitable to accommodate up to a minimum of 40 people.

5.6.2 The Contractor shall procure safe access for permitted visitors to the NWTF education and seminar facilities as described in the Works Delivery Plan and Method Statement 6.

5.6.3 Provided that priority is given to uses in support of the Councils' requirements in accordance with this Contract, the Contractor may hire out the seminar facilities on an occasional basis by agreement with the Councils. The Contractor shall allow the Councils reasonable access for the use of the seminar facilities for other suitable uses on an occasional basis. The Contractor may make a reasonable charge to organisations other than the waste departments of the Councils to cover its opening and operating costs.

6. **HOUSEHOLD WASTE RECYCLING CENTRES SERVICES**

6.1 **Summary of Service Requirement**

The Contractor shall be responsible for managing, operating and maintaining the HWRCs in accordance with **paragraph 1.2** and as further detailed below.

6.2 **HWRC Re-Use, Recycling and Composting Target**

6.2.1 The mandatory performance standards for Re-Use, Recycling, and Composting at HWRCs are as set out in Table 6.2 below and relate to the percentage of Contract Waste (excluding Rubble, Specified Hazardous Waste and Clinical Waste) deposited at HWRCs by the public in the relevant Contract Year which is either Re-Used, Recycled or Composted. The targets are to be measured and reported for each Contract Year provided that no Contract Waste delivered or received at any HWRC which exceeds the licensed capacity of the HWRC shall be taken into account for the purpose of measuring performance against the targets.

Table 6.2 Performance Standards for HWRCs

Contract Year commencing 1 April	HWRC Re-Use, Recycling & Composting Target (excluding Rubble, Specified Hazardous Waste and Clinical Waste) (%)
2010	55
2011	57
2012	60
2013 and thereafter	60

6.2.2 No individual HWRC shall achieve a Re-Use, Recycling and Composting performance of less than 45% for the first five (5) Contract Years of the Services Period and 50% thereafter, except Raynesway which shall achieve no less than 50% in all Contract Years of the Services Period, except to the extent that the Contractor can demonstrate that there is an insufficient quantity of Contract Waste received at any HWRC which is capable of being Recycled.

6.2.3 NOT USED.

6.3 Recovery of Contract Waste for Re-Use

6.3.1 The separation of Contract Waste for Re-Use is permitted, but the Contractor shall ensure that the operating and safety standards (including the safety of the public) are not compromised.

6.3.2 The Contractor shall ensure that all Contract Waste which is Re-Used is legal and fit for its intended purpose.

6.3.3 The Contractor shall provide an audit trail for all Re-Used materials. Where the weight of items of Contract Waste which are Re-used are not recorded directly, the recording methodology may be based on average weights listed on the Furniture Reuse Network's website: http://www.frn.org.uk/statistics.asp or its equivalent, and as updated and replaced from time to time.

6.3.4 No resale of recovered materials shall take place on the HWRC Sites except at designated HWRC sites as agreed with the Councils.

6.4 Number and Location of HWRCs

6.4.1 The Contractor shall operate and maintain existing and new HWRCs for the reception of Household Waste in accordance with this Specification.

6.4.2 The Contractor shall operate the following existing HWRCs.

Site	**Site Owner**	**Site Address**	**Date of Service Commencement**
Glossop	Derbyshire County Council	Melandra Road, Glossop, SK13 6JQ (to be redeveloped by others)	1 April 2010
Stonegravels (Chesterfield)	Derbyshire County Council	Sheffield Road, Chesterfield, S41 7LF	1 April 2010
Loscoe	Derbyshire County Council	Taylor Lane, Loscoe, near Heanor, DE75 7TA	1 April 2010

Ilkeston	Derbyshire County Council	Manners Avenue, Ilkeston, DE7 8EF	1 April 2010
Ashbourne	Derbyshire County Council	Mayfield Road, Ashbourne, DE6 2BN	1 April 2010
Bolsover	Derbyshire County Council	Buttermilk Lane, Bolsover S44 6AE	1 April 2010
Northwood	Derbyshire County Council	Currently being developed	1 April 2010
Bretby	Derbyshire County Council	Main Street, Newhall, DE11 10TR	1 April 2010
Raynesway	Derby City Council	Raynesway Park Drive, Derby, DE21 7BA	1 April 2010

6.5 **HWRC Availability & Opening Hours**

6.5.1 The Contractor will operate HWRCs during such hours as are specified by the Councils subject to any constraints that may be imposed by a Necessary Consent for such HWRC. The opening hours for the HWRCs shall be:

Monday to Sunday inclusive 08h30 to 18h00, except that the HWRC at Raynesway shall open at 08h00.

HWRCs are closed on 25 December, 26 December and 1 January in each Contract Year only

6.5.2 The Contractor may propose alternative opening hours for HWRCs subject to the prior written approval of the Councils.

6.5.3 Wherever possible, the Contractor will be expected to perform maintenance, servicing and cleaning of equipment and plant outside these opening hours to minimise disruption to the Services.

6.6 **HWRC Availability Criteria**

6.6.1 Each HWRC shall satisfy the HWRC Availability Criteria set out below. The Availability Criteria shall be:

6.6.1.1 Lawful Operation

The HWRC is lawfully able to receive Household Waste deposited by the public.

6.6.1.2 Staff

The presence at the HWRC of appropriately trained and competent staff in order to be able to manage reception of Household Waste at the HWRC to the extent and to the

standard required by health and safety Legislation and the relevant Necessary Consents.

6.6.1.3 Operation of the HWRC

The HWRC shall be open during the HWRC Opening Hours to the public and fully functional such that the public can deposit Household Waste at the HWRC for segregation by placement within containers with sufficient capacity for reasonably anticipated Tonnages of each waste stream and which are suitable for the subsequent removal from the HWRC for Re-Use, Recycling, Composting, Recovery or disposal by the Contractor.

6.7 HWRC Operating Requirements

6.7.1 The HWRCs shall accept all Household Waste which is produced as a result of normal occupancy of a house on a day-to-day basis. This does not include Waste produced as a result of domestic building renovation or replacement or garden redesign or excavation.

6.7.2 The HWRC shall be capable of continuing to accept materials and tonnages at least equivalent to the current throughput.

6.7.3 The Contractor shall provide, as a minimum requirement at all HWRCs:

6.7.3.1 logical and clearly-defined site layout;

6.7.3.2 clear and unambiguous signage for directing traffic and pedestrians using the HWRCs. Any signs or notices erected at the HWRCs shall be of a suitable durable material. Such signs shall be maintained such that they are legible. Signs shall not be handwritten.

6.7.3.3 sufficient facilities for the reception of Contract Waste with sufficient capacity for all Contract Waste types listed in **paragraph 6.10.3** below;

6.7.3.4 safe, clean and practicable environment with minimal distances required for lifting and carrying materials to waste receptacles;

6.7.3.5 access control and advice at the site entrance, including helpful, proactive and adequate site supervision with sufficient employees for meeting and greeting customers;

6.7.3.6 method to prevent entry of unauthorised commercial vehicles and commercial waste depositors, which at Raynesway shall be consistent with the existing permit scheme operated by the City Council;

6.7.3.7 sufficient queuing space and car parking so as not to adversely impact on traffic outside the sites on public highways;

6.7.3.8 suitable, safe access for pedestrians to the extent permitted by the Councils;

6.7.3.9 site office serviced by electricity, water supply, telephone and sewerage;

6.7.3.10 adequate lighting;

6.7.3.11 safe and secure contingency area for deposit of flammable, toxic or other hazardous materials that may not immediately be placed in allocated areas without some initial treatment or containment;

6.7.3.12 traffic loops or other suitable measures for measuring the number of vehicle visits;

6.7.3.13 use of CCTV facilities with the ability to provide the Councils with suitable copies for a rolling period of up to three weeks;

6.7.3.14 measures to minimise energy use and promote high levels of energy efficiency;

6.7.3.15 a good standard of site landscaping to be maintained;

6.7.3.16 evidence of good practice in sustainable construction;

6.7.3.17 any other facilities as may be dictated by the Environmental Permit.

6.7.4 In addition, at Raynesway HWRC in Derby City:

6.7.4.1 the CCTV facility shall be available for remote viewing in real time;

6.7.4.2 a dedicated camera for automatic number plate recognition (ANPR) of all entering vehicles shall be provided. The camera shall be linked to appropriate software and operating systems and the images and data made available to Derby City Council in real time via an electronic link;

6.7.5 As far as reasonably practicable, the Contractor shall seek to standardise the facilities and services provided at all HWRCs, to provide a uniform level of service across each HWRC.

6.7.6 All HWRCs shall be arranged and managed so that members of the public are able to unload and deposit Household Waste safely. The Contractor's staff shall provide appropriate assistance when requested by the public and when necessary to ensure smooth and efficient operation of the HWRC to optimise traffic flows.

6.7.7 HWRCs shall provide safe traffic flows for the general public and other users of the HWRCs and this will include complete segregation of the public and waste Handling areas of each HWRC where practicable.

6.7.8 The Contractor shall provide adequate first aid facilities and a qualified first aider for treatment of site staff and the public.

6.7.9 Appropriate warning signs and information notices shall be displayed in the site office and at other locations on each HWRC. Children and pet animals must not be permitted to leave vehicles or to enter the site unaccompanied.

6.7.10 A fire emergency plan for each HWRC shall be drawn up and notified and agreed as necessary with the emergency services. The plan shall be displayed in the site office and at other suitable locations at the HWRC. If space allows, a separate fire bay shall be provided such that any smouldering materials brought into the HWRC can be isolated and dealt with.

6.7.11 The Contractor shall display instructions for the public for the correct methods and locations of Contract Waste disposal at each HWRC. The public should be encouraged to segregate and clean Recyclable Materials. Clear lists of permitted and excluded materials for each category shall be provided to prevent contamination and to maximise the value of Recyclable Materials. Reasonable access to suitable welfare facilities shall be provided if requested.

6.7.12 The SDP should include measures for minimising queuing and turnaround times at all HWRCs. Where queuing over spills on to the public highway, the Contractor shall advise the Councils accordingly and make proposals to eliminate the problem.

6.7.13 The Contractor shall submit proposals to the Councils for acceptance prior to implementing any changes in the layout and or method of operation of existing HWRCs or new HWRCs.

6.7.14 Derby City Council operates a permit system for the receipt of Contract Waste brought to the Raynesway HWRC in large vehicles and on trailers. The Contractor shall ensure compliance with the scheme.

6.8 HWRC Employees

6.8.1 The Contractor shall provide details of the staffing arrangements that they propose for HWRCs in the SDP.

6.8.2 All Staff shall be suitably qualified and trained and present at the HWRCs whenever they are in operation.

6.8.3 Numbers of Staff shall be determined by the Contractor taking into account the tonnage at the HWRCs, number of users and segregation of waste containers at the HWRC.

6.8.4 Staff at each HWRC shall be readily identifiable by means of name badges, in a suitable uniform, protective and reflective clothing and should be proactive and available to assist the public promptly as required. A sign shall be provided at each HWRC displaying the name of the site manager on duty.

6.8.5 The Contractor shall notify the Councils of the COTC holders for each HWRC.

6.8.6 The Contractor shall ensure sufficient Staff are provided to ensure the HWRCs are not misused for disposal of Third Party Waste and that

traders seeking to deposit such Third Party Waste are diverted to legitimate disposal facilities.

6.9 **Non-Household Waste**

6.9.1 At any HWRC where a member of the public wishes to deposit material that the Contractor considers to be non-household waste then the Contractor shall inform the member of the public that the Waste cannot be accepted and advise where such Waste can be deposited.

6.10 **Recycling and Re-Use of Contract Waste**

6.10.1 Subject to the Contract Targets, the Contractor shall endeavour to maximise the Re-Use, Recycling, Composting, and Recovery of Contract Waste deposited at an HWRC site in accordance with the Contractor's Proposals.

6.10.2 The Contractor is reminded that the HWRCs are provided for the acceptance of Household Waste only and not for Waste of a commercial or industrial nature.

6.10.3 The Contractor shall provide capacity to segregate the following non-exhaustive list of Contract Waste types for Re-Use, Recycling, Composting or Recovery:

6.10.3.1 Newspapers and magazines

6.10.3.2 Cardboard

6.10.3.3 Glass bottles and jars

6.10.3.4 Textiles

6.10.3.5 Scrap metal (incl. food, drink & aerosol cans)

6.10.3.6 Green garden Waste

6.10.3.7 Clean soils

6.10.3.8 Refrigerators, freezers, and other equipment containing ozone depleting substances

6.10.3.9 Plastic bottles (HDPE, PET, PVC)

6.10.3.10 Other plastic including film and carrier bags

6.10.3.11 Wood (untreated timber)

6.10.3.12 Chipboard, MDF and composite board

6.10.3.13 Furniture, fixtures and fittings

6.10.3.14 Bric-a-brac and tools

6.10.3.15 Bicycles

6.10.3.16 Car batteries

6.10.3.17 Engine oil

6.10.3.18 Tyres

6.10.3.19 Tetrapak and similar cartons

6.10.3.20 Hardcore and rubble

6.10.3.21 Waste Electrical and Electronic Equipment

6.10.3.22 Mobile phones

6.10.3.23 All dry cell batteries nickel/cadmium batteries

6.10.3.24 Fluorescent tubes/long life bulbs

6.10.3.25 Paint

6.10.3.26 Books

6.10.3.27 Metal foil

6.10.3.28 Sheet glass

6.10.3.29 Spectacles

6.10.3.30 Shoes

6.10.3.31 Vegetable oils

6.10.3.32 Oil filters

6.10.3.33 Carpets

6.10.3.34 Plasterboard

6.10.3.35 Gas bottles

6.10.4 The policy of the Councils is to discourage the deposit of hardcore and rubble at HWRCs. As a concession, the public may be permitted to deposit domestic hardcore, rubble and soil from domestic premises but limited to no more than two 25kg bags or equivalent per visitor per week at each HWRC. The Contractor shall use all reasonable endeavours to recover hardcore, rubble and soil.

6.10.5 The policy of the Councils is to accept no more than two bags per vehicle per week of pet Litter at any HWRC.

6.10.6 The Contractor shall make safe and temporary arrangements for storage of Recyclable Materials, Compostable Waste and Recovered Waste when containers are full or being serviced and shall not cease to segregate Contract Waste, or place Recyclable Materials or Compostable Waste in containers for NWTF Residual Waste, at any time unless agreed in advance by the Councils.

6.10.7 Subject to the Contract Targets, the Contractor shall actively seek potential markets for Recyclable Materials, provide containers and

receptacles for Recyclable Materials and encourage users to Recycle, Compost, recover and Re-Use Waste to the maximum extent practicable to remove potentially Recyclable Materials from Contract Waste at any HWRC, in each case in accordance with the Contractor's Proposals.

6.10.8 The Contractor shall be responsible for the marketing and transportation of Recyclable Materials from the HWRC, except for WEEE. The Councils shall, upon notice from the Contractor that WEEE needs to be removed from an HWRC, procure that its appointed contractor removes such WEEE accordingly.

6.10.9 The SDP shall include a list of proposed reprocessing facilities for each of those Contract Waste types listed in **paragraph 6.10.3** deposited at any HWRC.

6.10.10 For each HWRC, the Contractor shall provide and manage a tank for used engine oil to a design approved by the Environment Agency and in accordance with this Contract.

6.11 Waste Electrical and Electronic Equipment (WEEE)

6.11.1 The Contractor shall ensure that all items of WEEE, disposed of at the HWRCs are stored securely, tidily, safely and in accordance with the WEEE Regulations.

6.11.2 The Contractor shall ensure that all domestic WEEE delivered to the HWRCs are preserved intact until they are removed from the HWRCs by others;

6.11.3 The Councils shall:

6.11.3.1 register and maintain registration of its HWRCs as Designated Collection Facilities under the WEEE Regulations; and

6.11.3.2 register with an approved Producer Compliance Scheme for household WEEE categories identified in the Regulations.

6.12 Compostable Waste

6.12.1 The Contractor shall designate specific container(s) for Compostable Waste, unless notified otherwise by the Councils.

6.12.2 The Contractor shall ensure that the material placed in the container designated for Compostable Waste is acceptable for Composting. The Contractor shall use reasonable endeavours to seek to ensure that contamination is kept to a minimum.

6.12.3 The Contractor shall arrange for the prompt removal of any full Compostable Waste container from the HWRCs. No containers containing Compostable Waste once full shall remain at an HWRC for a period exceeding 72 hours or such shorter period as may be specified in the Environmental Permit.

6.12.4 The Contractor shall make his own arrangements for the Composting of Compostable Waste collected at the HWRC. The Contractor shall allow for selling or otherwise using the Compost in his rates for operating the HWRC.

6.12.5 The Contractor shall, where practicable, offer for sale bagged soil improver or Compost to users at a suitable location agreed with the Councils within the perimeter of the HWRCs. The Contractor shall be responsible for all expenditure and income accrued and issue sales receipts to users on request.

6.12.6 The Contractor shall be responsible for ensuring adequate stock of soil improver is available at each HWRC, where this is on sale, at any time, taking account of seasonal variations in demand. Security of all stocks and cash will be the responsibility of the Contractor. The selling price for bagged soil improver should reflect a suitable market price for compost and shall be agreed with the Councils, such agreement shall not be unreasonably withheld.

6.13 Lead Acid Batteries

6.13.1 Lead acid batteries shall be stored in a secure leak-proof container at all times. The leak-proof container must be provided with a cover to prevent ingress of rainwater.

6.14 Household Hazardous Waste

6.14.1 The Contractor shall provide a service for the identification, sorting, storage, transport and disposal of Household Hazardous Waste arising at each HWRC.

6.14.2 The Contractor shall make suitable arrangements for the receipt of cement bonded asbestos at each HWRC at all times during normal opening hours and arrange for the transportation and disposal of cement bonded asbestos at an appropriately licensed site.

6.14.3 The public are limited to delivering small quantities (two small sheets) of cement bonded asbestos, double bagged, from household use at each HWRC. The Contractor shall supply suitable bags upon request from customers.

6.15 Abandoned Vehicles

6.15.1 In the event of any vehicle being abandoned at or immediately outside an HWRC, the Contractor shall immediately advise the Councils of the fact and shall not remove any fittings from the vehicle.

6.16 Permitting

6.16.1 The Contractor shall co-operate fully to facilitate the transfer of the Environmental Permit for all HWRCs. The Contractor shall provide the technical competence requirements for all the HWRCs and manage the facilities at the HWRC (including transportation of recyclables and residuals) for the Services Period.

6.16.2 The Contractor shall provide the Councils with copies of all notices and correspondence between it and the Environment Agency relating to

any Environmental Permit or any other aspect of the service by a hard copy being sent by first class post or by email to a nominated officer of the Councils within one Business Day of such notice or correspondence being sent or received.

6.17 Vehicular access

6.17.1 Contract Waste will generally be delivered by motor car, small van, or trailer. Vehicles identifiable as commercial or business use shall not be allowed onto the HWRC unless the occupant confirms that the Waste is household in origin, to the satisfaction of the Contractor.

6.17.2 No vehicle that is above 3.5 tonne gvw shall be allowed on an HWRC to deliver Waste.

6.17.3 The Contractor shall set out in the SDP for each HWRC the proposed traffic arrangements including provision for parking, facilitating traffic flow and mitigating queuing.

6.17.4 To limit user queuing time and to generally minimise any inconvenience to users the Contractor shall use all reasonable endeavours to ensure sufficient capacity is available for the deposit and segregation of Household Waste at all times during normal working hours, particularly bank holidays and weekends.

6.17.5 The Contractor shall use all reasonable endeavours to ensure that queues of users vehicles at no time reach and cause an obstruction of the public highway.

6.18 HWRC Site Cleanliness

6.18.1 At all times each HWRC and the immediate vicinity of the HWRC to which the Contractor has access shall be kept as far as is practicable clean, tidy and orderly with any Litter being promptly removed whether arising within the HWRC or not, particularly when the HWRC is busy.

6.18.2 Any liquid spillages shall be promptly controlled and contained. Spillages of Waste shall be prevented from draining into any surface water gullies.

6.18.3 Steps and ramps shall be kept clear at all times.

6.18.4 The Contractor shall arrange for regular inspections and ensure steps are taken to control and eradicate vermin or other infestations and forward records on associated actions taken to the Councils. Any contractor appointed by the Contractor or any Sub-Contractor to carry out such regular inspections shall be approved in writing by the Councils.

6.18.5 The Contractor shall keep clear and provide and apply salt/grit to the accesses, fore-court(s) and walkways/access platforms in order to maintain safe access at each HWRC during winter weather.

6.18.6 The Contractor shall ensure that leaf-fall is cleared at regular intervals at each HWRC, but at least daily, and does not pose a hazard.

6.18.7 The Contractor shall maintain all landscaped areas at each HWRC to a good standard by carrying out grass cutting, pruning overhanging vegetation and killing weeds to an approved maintenance programme.

6.18.8 The Contractor shall implement measures to control dust and prevent nuisance to adjacent and properties nearby to each HWRC.

6.19 **Flytipping**

6.19.1 The Contractor shall ensure that any Fly-Tipped Waste deposited in the vicinity of each HWRC, up to 50 metres from the site boundary in areas which the Contractor can reasonably gain access and for the length of the relevant site access road is removed and delivered to a suitable disposal point within 4 hours during the normal hours of operation or by the end of the Business Day, whichever is the sooner, following its discovery by or reporting to the Contractor.

6.19.2 If the Fly-Tipped Waste deposited in the vicinity of any HWRC is reported out of normal operating hours, the Contractor shall clear the Fly-Tipped Waste within 4 hours of the start of the following Business Day.

7. DISPOSAL SERVICES

7.1 Summary of Service Requirement

7.1.1 The Contractor shall dispose of Contract Waste that has not been Re-Used, Recycled, Composted or diverted from Landfill in accordance with **paragraph 1.2** and as further detailed below.

7.2 Disposal Facilities Capacity

7.2.1 The Contractor shall make arrangements for sufficient disposal capacity for Contract Waste until, at any time, the next Landfill Market Testing Date, or the Expiry Date (as relevant), and to allow for a further 18 months capacity beyond such date in respect of each landfill operator (subject to a further contract period being entered into following the relevant Landfill Market Testing Date or the Expiry Date (as relevant)).

7.2.2 The Contractor shall Market Test Landfill Services in accordance with **clause 35** (Benchmarking and Market Testing).

7.2.3 The Contractor shall allow sufficient disposal capacity for Contract Waste to be transferred by contractors appointed by the Councils from the integrated waste management facility located at Waterswallows Industrial Estate, Waterswallows Road, Green Fairfield, Buxton, Derbyshire, SK17 7JB to an appropriate Delivery Point, as notified by the Contractor to the Councils from time to time.

7.3 Operating Standards

The Contractor shall procure that all Landfill Sites are operated in accordance with Necessary Consents and Good Industry Practice.

8. WASTE MINIMISATION AND EDUCATION SERVICES

8.1 **Summary of Service Requirement**

The Contractor shall develop, implement and operate Waste Minimisation and Education Services in accordance with **paragraph 1.2** and as further detailed below.

8.2 **Initiatives Fund**

8.2.1 In addition to the specific requirements set out at **paragraph 8.3** to 8.5 below, the Contractor shall following the Initial Services Commencement Date deliver waste minimisation and education services.

8.2.2 The Contractor and the Councils shall meet prior to the end of March in each Contract Year to discuss and agree:

8.2.2.1 the activities and initiatives to be undertaken by the Contractor and the objectives applicable to those activities and initiatives in the following Contract Year; and

8.2.2.2 the maximum amount payable by the Councils to the Contractor in consideration for performance of such activities and achievement of the agreed objectives.

8.2.3 Such activities, initiatives and objectives agreed pursuant to **paragraph 8.2.2** above shall form the Waste Minimisation and Education Plan for the following Contract Year.

8.2.4 The Contractor shall implement the Waste Minimisation and Education Plan agreed pursuant to **paragraph 8.2.2** but shall not undertake any activities or initiatives in the Waste Minimisation and Education Plan which require costs to be incurred in excess of the amounts agreed to be incurred during the Contract Year pursuant to **paragraph 8.2.2** above.

8.2.5 The Contractor shall provide details in each Monthly Report of:

8.2.5.1 the activities performed and the objectives achieved in implementing the Waste Minimisation and Education Plan during the preceding Payment Period; and

8.2.5.2 the amount properly spent by the Contractor in the preceding Payment Period in accordance with **paragraph 8.2.6**, such amounts being IFt for the purposes of **paragraph 2.8** of **Schedule 3** (Payment Mechanism).

8.2.6 The Contractor shall:

8.2.6.1 only be entitled to include in the amounts claimed from the Councils, expenses incurred in accordance with, and to deliver the activities specified in, the Waste Minimisation and Education Plan agreed between the Contractor and the Councils pursuant to **paragraph 8.2.2** above; and

8.2.6.2 not be entitled to claim any other costs, expenses or overheads (including travel, office space, subsistence,

management time, staff costs etc) that it may incur in delivering any such activities.

8.3 **Waste Minimisation and Communication**

8.3.1 Waste minimisation is a primary objective of waste management for the Councils and shall be throughout the Services Period. The Councils have a number of ongoing and planned initiatives that the Contractor will be required to assist with as instructed to deliver information to residents.

8.3.2 The Contractor will be required to work proactively with the Councils through co-operation with waste awareness and waste minimisation initiatives and engage in the promotion of Recycling and Composting within the Contract Area.

8.3.3 The Contractor shall nominate a suitable contact person for dealing with waste minimisation and community liaison. The Contractor shall provide at least one suitably qualified and experienced full time equivalent staff post responsible for waste minimisation/education activities in support of the Councils. A typical job description and person specification for this post is provided in Appendix A.

8.3.4 The manner in which the Contractor will engage with the Councils shall be as set out in the Services Delivery Plan.

8.3.5 The Contractor shall engage with charity, voluntary and not-for-profit organisations, local schools and other community groups to work in partnership to achieve sustainable waste management.

8.4 **Education and Seminar Activities and Services**

8.4.1 The Parties acknowledge that education and seminar facilities have or will be delivered as part of the Contract.

8.4.2 The Services Delivery Plan shall set out the aims of relevant promotional and waste awareness activities associated with the educational and seminar facilities, target audience, access arrangements and integration with the schools' curriculum.

8.4.3 The Contractor shall prepare and maintain a programme of visits and educational events at the seminar facilities and provide this and subsequent updates to the Councils at an appropriate frequency, which shall not be less than once per month.

8.4.4 The Contractor shall maintain records of visits and events at the seminar facilities and of any community liaison meetings that may be held at the education and seminar facilities.

8.4.5 The Contractor shall make allowance for educational visits to NWTF on an occasional basis assumed to be an average of three visits per week (averaged over a year) by groups of up to 40 people. Allowance shall be made for at least 10 of the visits to be made on Saturdays and 20 visits in the evenings up to 9.00pm. Educational visits shall be free of charge.

8.4.6 The Contractor shall provide refreshments as appropriate and all necessary personal protective equipment for permitted visitors.

8.5 Community Sector Integration

8.5.1 The Contractor shall develop and implement a Community Sector Integration Plan, which shall form part of the Services Delivery Plan.

8.5.2 The Contractor shall make specific proposals to engage with charity, voluntary and not-for-profit organisations, local schools and other community groups to work in partnership to achieve sustainable waste management. Such proposals shall address issues including but not limited to:

8.5.2.1 Mechanisms for working together;

8.5.2.2 Achieving broader project objectives;

8.5.2.3 Flexibility;

8.5.2.4 Development of 'partnership charters' and joint working;

8.5.2.5 Decision-making models and representation;

8.5.2.6 Employment and secondment opportunities;

8.5.2.7 Sharing of information and dissemination of good practice; and

8.5.2.8 Outline budgets.

8.5.3 The Contractor shall nominate a suitable contact for dealing with community liaison.

APPENDIX A – JOB DESCRIPTION AND PERSON SPECIFICATION FOR THE WASTE MINIMISATION AND EDUCATION SUPPORT OFFICER

Part I: Job Description

POST REF:	
POST:	Waste Minimisation and Education Support Officer
GRADE:	
DIVISION:	
SECTION:	
RESPONSIBLE TO:	Contract Director
POST OBJECTIVE:	Improving education and recycling awareness in conjunction with two partner authorities, Derbyshire County Council and Derby City Council, as part of the joint waste management Contract. The development and delivery of waste minimization, reuse, recycling, composting activities, resources, and campaigns as well as management of the 'Initiatives Fund' to deliver a comprehensive range of outreach activities across Derby and Derbyshire. To present the Contract in the best light at all times and use a range of skills to project a confident and successful image. From Spring 2017 the arrangement of visits to the Education Centre at the New Waste Treatment Facility ('NWTF') at Sinfin Lane will fall within this role
OTHER CONSIDERATIONS:	It will be necessary to work with information technology and associated systems and, where appropriate, existing technology agreements and consultative procedures will be applied in accordance with the Councils' policies.

Duties and Responsibilities

To develop a comprehensive programme of waste minimisation, reuse and recycling, and composting measures in association with the Councils and their partners the Waste Collection Authorities to make best use of the designated 'Initiatives Fund' and target key audiences of children, young people and households.

Conduct educational sessions using resources such as school visits, community campaigns and attend events in addition to community integration activities

Work closely with the Councils, households, local groups, children, and young people within schools and colleges to write, plan and deliver the Waste Minimisation Education Plan and Stakeholder Engagement Plan

Source and develop resources to support the work outlined within the plans

Conduct school visits including the development of sessions, resources, teacher training materials, and merchandise

Arrange college and university talks and support such establishments with waste minimisation, reuse, and recycling activities

Deliver community talks to groups such as the Women's Institute and Scouts on topics including recycling and the new waste treatment facility

Lead and assist with road shows and exhibition events to promote new waste schemes to reduce contamination or increase waste prevention, reuse, recycling or composting Develop targeted community campaigns to increase the quality and quantity of recycling. Provide input into the management, content, and development of both the Company and children's websites

Manage the 'Initiatives Fund' including assigning budgets to specific areas within the Waste Minimisation Education Plan

Monitor press coverage surrounding the Company and planned waste treatment facility

Prepare reports and chair the monthly Stakeholder Advisory Committee

Promote, upon completion of the site, the use of the Visitor Education Centre (VEC) to local community groups Arrange and deliver site visits to both schools and community groups.

Develop and manage the educational content of the VEC.

General Requirements

To undertake / receive training and attend briefing sessions associated with the post as necessary.

To understand and comply with the Councils' Equal Opportunity Policies and take positive action to ensure that the services are available to all.

To comply with all Health and Safety policy legislation in the performance of the duties of the post.

To give due regard to the Councils' environmental policies.

Part II: Person Specification

ESSENTIAL	DESIRABLE
A – SKILLS	
Excellent oral/presentational skills to a varying audience, especially to young people	Able to use spreadsheets and PowerPoint for presentations
Good written communication skills	Experience of working in partnership
Diplomatic approach to negotiations with stakeholders	

Creative thinker with the ability to put ideas into practice	
Ability to produce high quality work and projects on time	
Numeracy skills to ensure rigorous management of a budget	
Ability to work both on own initiative, and as part of a local team and especially in partnership with other organizations, particularly the two partner Councils	
Capable user of information technology	
B – KNOWLEDGE	
Some knowledge of waste treatment methods including minimisation reuse and recycling techniques	Some knowledge of UK waste management legislation, aims and targets.
An understanding of the need for a sustainable approach to waste management	
C – EXPERIENCE	
Experience of one or more of the waste industry, local government or the education system	Previous experience working in an environmental, waste management or educational discipline
Some knowledge of and interest in waste management and recycling issues	
D - QUALIFICATIONS	
A minimum of 5 GCSE passes	A levels and a degree or equivalent in Environmental Sciences or related subject
	Member of the Chartered Institute of Marketing or the Chartered Institute of Public Relations.
	Education qualifications including teaching, TA, HLTA
E - EQUAL OPPORTUNITIES	
A knowledge/awareness of the County Councils Equal Opportunities Policy	
F - OTHER REQUIREMENTS	
Full driving license, own car and willingness to travel throughout the county	

Flexible approach to working including regular evening and weekend working	

APPENDIX B - CONTRACTOR'S PROPOSALS CONTENTS

1. The Contractor shall set out within the Contractor's Proposals how the Services shall be delivered with documents comprising:

1.1 Works Delivery Plan

1.2 Works Programme

1.3 Services Delivery Plan

2. **Works Delivery Plan (WDP)**

2.1 The Contractor shall prepare a WDP for the NWTF to be provided for the Services to include:

2.1.1 The proposed approach to consulting with stakeholders including the general public during the planning and construction phases of the NWTF;

2.1.2 Proposals to demonstrate good practice in sustainable construction and for construction with stakeholders;

2.1.3 Management of construction waste;

2.1.4 Use of Re-used and Recycled materials in building materials;

2.1.5 Enabling Works (Japanese Knotweed, etc)

2.1.6 Approach to the relevant regulatory operational/licensing and permitting issues for the NWTF including certificates and authorisations in respect of the NWTF;

2.1.7 Health and Safety during construction;

2.1.8 The tendering process and evaluation criteria when selecting Sub-Contractors for any aspect of works;

2.1.9 Methods for incentivising Sub-Contractor(s), to meet set dates for completion;

2.1.10 Details of proposed forms of Sub-Contract;

2.1.11 Confirmation of the industry recognised standards for civil and building works specification and mechanical and electrical works specifications;

2.1.12 Plant & equipment to be installed;

2.1.13 Details of any Sub-Contractors and major suppliers;

2.1.14 Planning approvals and building consents required;

2.1.15 approach to and accordance with integrated pollution prevention and control, where relevant;

2.1.16 Availability of assignable warranties;

2.1.17 Approach to site design;

2.1.18 Specify planning and construction fall back and contingency arrangements;

2.1.19 Basic Design Proposals including architecture, landscape & design features to include:

2.1.19.1 Building and construction standards and finishes;

2.1.19.2 Use of Re-used and Recycled materials in building materials;

2.1.19.3 Fencing and security;

2.1.19.4 Drainage, including protection of ground and surface waters, impact on watercourses and assessment of flooding risk and incorporation of sustainable urban drainage systems where practicable;

2.1.19.5 Odour control;

2.1.19.6 Site lighting (external and internal);

2.1.19.7 Fire protection and fire fighting equipment;

2.1.19.8 Building services;

2.1.19.9 Utilities;

2.1.19.10 Energy use and efficiency;

2.1.20 Impact on biodiversity;

2.1.21 Impact on the historic landscape;

2.1.22 Design development procedure - engineering drawings for each of the NWTF and the Clover Nook Transfer Station;

2.1.23 Design Contract Schedules and Specifications;

2.1.24 Commissioning and acceptance tests and ready for use criteria, including details of technical adviser(s).

3. **Tests on Completion**

3.1 The Contractor shall detail in the WDP all commissioning tests and Acceptance Tests of the Works to be carried out by the Contractor for the NWTF to demonstrate that the Acceptance Tests can be achieved. The commissioning tests and Acceptance Tests shall be set out for the NWTF and shall include all procedures for carrying out tests, required standards of tests and procedures for assessment by the Councils that the requirements of **Schedule 5** (Construction Completion and Commissioning Tests) have been satisfied.

3.2 The Contractor shall include in the WDP the timetable for issuing notice to the Councils for conducting inspections of the NWTF in accordance with this Contract.

4. **Works Programme**

4.1 The Works Programme shall comprise a critical path analysis and appropriate Gantt charts, setting out the timetable for the obtaining of all Necessary Consents, and the design, building and or refurbishing, financing, commissioning, and achievement of full operational status for the waste management system as a whole and the dates by which the Performance Standards shall be met. The Works Programme shall include the following information:

4.1.1 programme showing the achievement of Performance Standards until the Expiry Date or Extended Expiry Date or Termination Date (as appropriate) and, as a minimum, including the following activities:

4.1.1.1 site acquisition;

4.1.1.2 carrying out surveys;

4.1.1.3 agreeing design standards;

4.1.1.4 submitting regulatory applications;

4.1.1.5 obtaining planning consents including periods of determination;

4.1.1.6 obtaining all Necessary Consents including periods of determination;

4.1.1.7 all Longstop Dates and deadline dates;

4.1.1.8 starting and finishing construction;

4.1.1.9 starting and finishing commissioning;

4.1.1.10 commencing operations; and

4.1.1.11 any other key deliverable dates or subsequent key events for the Services.

5. **Services Delivery Plan**

5.1 The Contractor shall provide a Services Delivery Plan in accordance with this **Schedule 1** (Specification) in two parts:

5.1.1 Overall Project Plan; and

5.1.2 Method statements.

6. **Overall Project Plan**

6.1 Overall Project Plan - The Contractor shall submit an Overall Project Plan for the integrated service as a whole, describing how it meets the performance standards stated in the Specification. The Overall Project Plan shall comprise:

6.2 The location of all Primary Delivery Points.

6.3 Completed waste flow models based on the Councils' standard waste flow models supplied.

6.4 A waste movements or Transport Plan indicating quantities and transport type for movement of Contract Waste to and from facilities and from facilities to final destination. The Transport Plan shall include details of the Contractor's proposals for:

6.4.1 optimising movement of Contract Waste,

6.4.2 avoiding or minimising double Handling of Contract Waste where possible;

6.4.3 allocation of vehicles and resources, including provision of spare capacity;

6.4.4 strategy for procurement of vehicles and other equipment;

6.4.5 types of vehicles;

6.4.6 minimising environmental impacts of transport

6.4.7 A master list of all plans and drawings submitted in the SDP.

Method Statements

There shall be a set of Method statements describing each Service or operational activity which sets out how and to what standard the services will be provided with reference to this Specification. The Method statements shall include as a minimum the following list of information:

1. **Service Output 1: Service Management**

1.1 **Method Statement 1: Service Commencement and Expiry Arrangements**

1.1.1 The Contractor shall submit a method statement including as a minimum:

1.1.1.1 a draft mobilisation plan setting out activities and timetables for all significant events from the Commencement Date up to and including full-scale Service delivery; to include:

(a) arrangements to ensure the efficient and effective takeover of the existing waste management service on the Initial Services Commencement Date, and the transfer of records and documents associated with the existing waste management service;

(b) Transition arrangements while new or upgraded facilities are unavailable

(c) Methods of minimising disruption to both the Councils and the public (e.g. in the case of HWRCs) when sites are completely or partially unavailable;

1.1.1.2 a draft contract expiry plan setting out activities and timetables for all significant events leading up to the hand-back of the Service to the Councils; to include:

(a) Arrangements for the return of Assets at contract completion to ensure continuation of operations thereafter;

(b) Detailed of the operational standards in which each item of equipment, plant and facility will be returned to the Councils;

(c) Residual life of all facilities, plant and equipment upon the expiry of the contract;

(d) Proposals for hand back of licenses;

(e) Proposals for dealing with any land interests;

(f) Proposals for dealing with any sub-contracts;

(g) Proposals to manage any ongoing liability (in this respect the Councils may require the Contractor to submit an aftercare plan);

(h) Provision of information;

(i) Proposals for dealing with any personnel issues.

1.2 **Method Statement 2: Contingency Plans**

1.2.1 The Contractor shall submit a contingency plan for the operation of each facility and deliver the service as identified in the SDP including, where relevant and as a minimum:

1.2.1.1 operator details;

1.2.1.2 location & address;

1.2.1.3 details of license restrictions and opening times;

1.2.1.4 letters of agreement with operator;

1.2.1.5 procedures for activating contingency plans;

1.2.1.6 arrangements for periodically checking the continued validity of the contingency arrangements.

1.2.1.7 Liaison with WCAs to minimise disruption to kerbside collections in the event of a Delivery Point being closed at short notice. To include details of how payments to WCAs for additional costs would be addressed.

1.3 **Method Statement 3: Strategic Reporting and Best Value**

1.3.1 The Contractor shall set out how they intend to work with and assist the Councils to meet its obligations as set out in the Specification for

strategic reporting. The Method statement should set out how the Contractor will monitor compliance with the Contract KPIs and performance standards as set out in the Payment Mechanism and how the results of such monitoring will be fed into the management information system in a convenient form, and how that information will be used in calculating any Adjustments under the draft Payment Mechanism. The Method statement should also include specific reference to the following issues:

1.3.1.1 NOT USED

1.3.1.2 how the Contractor will work with and assist the Councils to enable them to meet their strategic reporting obligations in respect of the Local Transport Plan and how it will produce the Annual Service Report (and Annual Service Plan if required);

1.3.1.3 a description of how the Contractor will produce the Monthly Report and the Annual Reports and the issues that will be covered in each. The description should incorporate the Councils' minimum requirements noted in the Specification;

1.3.1.4 a description of how the Contractor will assist the Councils to demonstrate a step change in the provision of the waste management service and continuous improvement in service delivery over the duration of the Contract term;

1.3.1.5 a description of the processes the Contractor will adopt to engage key stakeholders in consultation about service provision. Contractors are expected to put forward proposals as to how customer consultation exercises can best/most efficiently be undertaken and the frequency with which such exercises should be carried out over the course of the Contract term.

1.4 **Method Statement 4: Service Management**

1.4.1 The Contractor shall submit a method statement detailing the means by which the service will be managed, including as a minimum:

1.4.1.1 Client liaison protocols including the Implementing Electronic Government Agenda;

1.4.1.2 procedures for reviewing and updating the Services Delivery Plan;

1.4.1.3 proposals for the installation, implementation and operation of the management information system;

1.4.1.4 a detailed monitoring plan which shall include, as a minimum, the following (for each aspect the Contractor shall identify the person or role with key responsibility):

(a) method of identifying and recording amounts of Third Party Waste separate from Contract Waste;

(b) audit trail to ensure monitoring of Contract Waste and payment for Contract Waste only;

(c) arrangements for service performance monitoring -overall regime, inspection responsibilities, monitoring schedule, reporting protocols;

(d) extent and frequency of self monitoring, including:

(e) how this will verify performance and the rectification of failures;

(f) keeping of full and detailed records;

(g) proposed contents of Monthly Report;

(h) proposed contents of Annual Reports;

(i) proposed contents of an environmental report;

(j) management of the relationship between the Contractor and other service users and stakeholders;

(k) availability of information to the public including information on access to the services;

(l) Contractor's management and administration structure including named personnel together with details of experience, qualifications, duties and responsibilities;

(m) invoicing and payment arrangements, including means of reporting income from Third Party Waste

1.5 **Method Statement 5: Quality Assurance**

1.5.1 The Contractor shall submit a method statement which should include details of:

1.5.1.1 the quality management system (QMS) to be implemented, how the QMS will function in relation to each site and the contract as a whole; and how the QMS will be monitored to ensure adherence;

1.5.1.2 the environmental management system (EMS) to be implemented, how the EMS will function in relation to each site and the contract as a whole; and how the EMS will be monitored to ensure adherence.

1.6 **Method Statement 6: Interface with the Public and Waste Minimisation**

1.6.1 The method statement shall include, as a minimum:

1.6.1.1 proposed staffing and resourcing arrangements in order to carry out the role, including roles, responsibilities and availability;

1.6.1.2 a stakeholder engagement plan incorporating all waste minimisation, education and promotions initiatives as set out in the following items:

(a) identification of key stakeholders and means of identifying future stakeholders;

(b) waste minimisation proposals including policies and initiatives for minimising future waste growth. The Participant will be expected to introduce a series of measures designed to reduce the volume of waste to be collected. Examples may include the provision of home composting units, the provision of community composting centres, nappy re-use schemes and the promotion of a mailing preference scheme. The Contractor shall demonstrate use of innovation and best practise and include reference to results achieved in previous experience;

(c) education and promotions proposals for public relations, public awareness and education. The Contractor shall demonstrate use of innovation and best practise and include reference to results achieved in previous experience;

(d) proposals for engaging with charities, voluntary organisations and local schools;

(e) details of educational and seminar facilities

(f) procedures for providing adequate methods of communications to meet the needs of disabled people and people for whom English is an additional language, and for the publishing of all public documents and public reports in an electronic format suitable for inclusion on a website;

(g) detailed proposals and funding mechanisms to promote waste minimisation, re-use and recycling activities. Proposals should make clear how schemes will impact on the growth in waste as required under Best Value;

(h) means of monitoring the effectiveness of recycling awareness, education and minimisation programmes

(i) proposals for monitoring and responding to user-satisfaction

(j) procedures for acknowledging and responding to complaints from the public and staff;

(k) a copy of the staff code of conduct.

1.7 **Method statement 7: Community Sector Integration**

1.7.1 The method statement shall include, as a minimum:

1.7.1.1 community sector integration proposals, including a policy for media relations, public meetings and interaction with the voluntary/not-for-profit sector to be incorporated into the stakeholder engagement plan;

1.7.1.2 Furthermore, the Contractor shall identify key stakeholders and describe specific proposals to engage with key stakeholders including charity, voluntary and not-for-profit organisations, local schools and other community groups to work in partnership to achieve sustainable waste management. Such proposals shall address issues including but not limited to:

(a) Mechanisms for working together;

(b) Achieving broader project objectives;

(c) Flexibility;

(d) Development of 'partnership charters' and joint working;

(e) Decision-making models and representation;

(f) Employment and secondment opportunities;

(g) Exploration of other types of recyclable wastes that could be collected in partnership with other charitable/NGO bodies;

(h) Sharing of information and dissemination of good practice;

(i) Detailed budgets.

1.8 **Method Statement 8: Service Delivery in accordance with the Councils' Corporate Equality Plan**

1.8.1 The Contractor shall submit a method statement setting out how they intend to work with and assist the work of the Councils in meeting relevant obligations under their corporate equality plans and equal opportunities policies.

1.8.2 Specifically, the method statement should address the following:

1.8.2.1 How the Contractor will work proactively to ensure that all members of the public in Derbyshire, but specifically those within the ReGARDS categories are able to use and benefit from the services provided under the contract fairly and without disadvantage or discrimination.

1.8.2.2 Specify the proactive measures that will be taken to maximise the accessibility of services and information provided to the public and particularly the steps that will be taken to eliminate disadvantage or discrimination which may be faced by some members of Derbyshire's community.

1.8.2.3 The Contractor will detail how they will implement and monitor the relevant actions specified in the completed Partial Impact Needs Requirement Assessment (INRA) carried out by Derbyshire County Council for the waste management function.

1.8.3 The relevant actions are:

1.8.3.1 To review site infrastructure and layout at HWRCs at regular intervals to ensure the accessibility of sites for all members of the public, but particularly disabled people with visual impairments or mobility issues and for people who use English as a second language. Also produce regular reports to show that this has been done and publicise outcomes widely.

1.8.3.2 Communication and publicity will be used to maximise the take up of services, with a strong focus on ensuring engagement with hard to reach or seldom heard communities or the organisations who represent them.

1.8.3.3 Ensure that methods of communication with the public take account of the relevant guidelines and best practice specified in the Derbyshire County Council document "Making the Authority Easy to Reach - Accessible Formats and Community Languages".

1.8.4 The Contractor should provide evidence of how its own internal practices and policies meet the requirements of, and deal with the spirit of existing and intended equal opportunities legislation (much of the legislation is referred to in chapter 4 of the Derbyshire County Council Corporate Equality Plan).

1.8.5 Through reference to the County Council's corporate consultation strategy and the Council's corporate consultation group the Contractor will outline the approach they will adopt if required to lead on or work in partnership with the Councils in exercises involving both public consultation and engagement with specific seldom heard groups.

1.9 **Method Statement 9: Transfer of Staff**

1.9.1 The Contractor shall set out:

1.9.1.1 the assumptions that they have made in relation to TUPE transfers in calculating the Unitary Charge;

1.9.1.2 the assumptions that have been made in relation to pension provision and admitted body status.

1.10 **Method Statement 10: Employment and Staffing-**

1.10.1 The Contractor shall provide a detailed description of the management structures and arrangements that will be put in place for the implementation and service delivery phases of the Project, together with comprehensive organisation charts that set out all of the principal reporting lines within the structures proposed. The description shall include, as a minimum but not limited to:

1.10.1.1 assumptions regarding TUPE;

1.10.1.2 identification of the key management positions within the organisational structure;

(a) the operational responsibilities associated with each of these positions;

(b) full biographical details for each individual mentioned in the organisation charts, as well as for each executive and non-executive director of the Contractor;

1.10.1.3 the name and address of any other organisation associated with the Contractor's Proposals. In particular, the Contractor shall provide details of their appointed legal, technical and financial advisers, together with details of any other relevant contracts not set out above, that will be entered into by the Contractor or any other related undertakings;

1.10.1.4 staffing levels, both for the contract as a whole and for individual aspects, detailing how resources have been allocated in order to deliver the services in the Specification;

1.10.1.5 details of how the Contractor's equal opportunities policy will be applied to the Contract;

1.10.1.6 human resources policies and project specific proposals to ensure effective people management is applied to the Contract;

1.10.1.7 details of experience and qualifications required of key project personnel;

1.10.1.8 staff welfare policy;

1.10.1.9 job descriptions;

1.10.1.10 staff training, including requirements for operating staff to hold or have achieved relevant waste management NVQ Level 1 and 2 qualifications within 6 months of appointment;

1.10.1.11 backup arrangements in case of shortages, seasonal and exceptional staffing requirements;

1.10.1.12 staff identification, personal safety equipment provision and uniform issues.

1.10.1.13 performance regarding employment tribunals in the last 3 years, and details of any employee attitude survey results in the last 3 years;

1.10.1.14 performance regarding any equal pay claims;

1.10.1.15 arrangements for compliance with the duty to promote race and gender equality and UK and EU legislation relating to equality.

1.11 Method Statement 11: Health, Safety and Welfare

1.11.1 The Contractor shall submit a method statement that should include, as a minimum:

1.11.1.1 health & Safety policy:

(a) application of CDM Regulations;

(b) safety management systems;

(c) arrangements for inspections;

(d) health and safety resources;

(e) staff health and safety training and first aid policy;

(f) emergency notification procedures;

(g) records and reporting procedures;

1.11.1.2 contents of monthly health & safety report;

1.11.1.3 contents of service risk assessments;

1.11.1.4 contents of Health and Safety Plans in place that will be applicable to the Works.

1.12 Method statement 12: Markets for Recovered Materials and Energy

1.12.1 The Contractor shall submit a method statement outlining how they intend securing markets for materials produced as a result of their activities, in accordance with the Specification. The statement must include, where applicable, the following information:

1.12.1.1 description of the recovered materials and energy outputs from the Services;

1.12.1.2 nature of the materials: quantity & quality;

1.12.1.3 nature of the energy output: quantity & quality;

1.12.1.4 proposals for and experience in finding markets for each product;

1.12.1.5 a table linking the source of the product to the market outlet;

1.12.1.6 detailed heads and terms for each material market outlet;

1.12.1.7 the level of risk and contingency plans for:

(a) each identified material market not materialising; and

(b) the technology/service being unable to meet the quality requirements of the markets identified;

1.12.1.8 proposals for seeking continual improvement in the quality of recovered products;

1.12.1.9 proposals for seeking local markets and community involvement for the sale of recovered products, subject to the overriding requirements of sustainability and Best Value;

1.12.1.10 future vision for markets.

2. Service Output 2 - New Waste Treatment Facilities

2.1 Method Statement 13: NWTF

2.1.1 The Contractor shall submit a method statement for the treatment proposals, operation and maintenance of the NWTF. Each method statement must include, where applicable, the following information:

2.1.2 Design Development

2.1.2.1 An overview of the proposals for NWTF to include a detailed schematic showing internal layout;

2.1.2.2 Description of performance standards and how they are achieved;

2.1.2.3 The role and function of the facility within the overall delivery of the service, including how the proposed treatment solution fits with the waste hierarchy or reduce, Re-use, Recycle, and the overall integrated waste management service;

2.1.2.4 A site plan and drawings showing the location, likely boundaries, means of access, a six figure Ordinance Survey grid reference, general appearance, visualisations, layouts, sections and elevations of the whole site and facilities within the boundary;

2.1.2.5 Total land requirements (hectares) and statement of land ownership (referred against the site plan where applicable);

2.1.2.6 Description of how the NWTF shall be operated and fulfil its operating capacity;

2.1.2.7 The total site capacity and a breakdown of individual capacities for each process (this shall demonstrate that this capacity is sufficient to deal with the materials identified in the mass balance sheets) and shall include details of the maximum, minimum and normal operating throughputs;

2.1.2.8 The Health and Safety principles incorporated into the design of NWTF;

2.1.2.9 Arrangements for:

(a) Signage and traffic control systems to ensure no vehicles which can reasonably be expected to use the facility under normal operating conditions will queue on the public highway.

(b) Complying with turnaround time performance standards;

(c) Vehicle storage;

(d) Weighing equipment to be used on site;

(e) Vehicle entry and exit;

(f) Monitoring of Contract Waste;

(g) Facilities for Contractor's operations staff, Visitors and Refuse Collection Vehicle crews;

2.1.3 Treatment Process

2.1.3.1 A justification that the choice of technology represents the Best Available Technique (BAT);

2.1.3.2 Number of stages in process - detailed description of each stage and purpose with regard to treating Contract Waste;

2.1.3.3 Specific process descriptions and flow diagrams for each process at the NWTF to include:

(a) The source, breakdown and definition of the types of Contract Waste to be accepted and Handled at the NWTF (including classification, e.g. hazardous, non-hazardous, etc.);

(b) The nature, extent, management, classification and destination of process residues and products, including their contribution towards diversion targets;

(c) Residence time during each phase of the process;

(d) Limiting factors and how these are allowed for/ controlled within the process:

(i) quality/ composition of feedstock;

(ii) particle size at each stage;

(iii) temperature range/ means of maintaining profile throughout the mass.

(e) Description of any post treatment phases such as dewatering, aerobic maturation, etc required to "finish" a product intended for recycling or recovery, including location, area, residence time and Handling arrangements;

(f) Quality of treatment output materials produced (including accreditation that the Contractor will achieve) and reasoned justification based on its ultimate use;

(g) Biogas, electricity, syngas and fuel production, if applicable.

(h) Demonstration that all opportunities for recycling have been considered first and that the arrangements proposed will not produce a barrier to the longer-term development of additional recycling.

(i) Details of research into opportunities for the generation of electricity, heat or combined heat and power (in accordance with the provisions of Schedule 23 (Combined Heat and Power (CHP) Protocol), if applicable.

(j) Flexibility for the possible improvement in regulatory standards over time.

2.1.3.4 Description and quantified levels of all emissions from the facility, including, but not restricted to:

(a) gaseous emissions to air (all figures should be converted to grammes per tonne), including as a minimum, but not limited to;

(b) bio-aerosols and particulates;

(c) emissions to water;

(d) emissions to land;

2.1.4 Operation

2.1.4.1 Facility opening hours, working hours and shift patterns;

2.1.4.2 Description of skilled and unskilled labour, duties, responsibilities and their supervision, number of supervisors and training arrangements;

2.1.4.3 Use of sub-contractors;

2.1.4.4 Health and Safety during operation, to include training provisions and the means of limiting employees exposure to process emissions;

2.1.4.5 Contract Waste reception and transfer to include:

(a) Delivery of Contract Waste;

(b) Inspection of incoming loads;

(c) Safe manoeuvring and discharge in NWTF by the WCA refuse collection vehicles;

2.1.4.6 Weighbridge operation, to include:

(a) Audit trail to ensure monitoring of Contract Waste and payment for management of Contract Waste only; measures for ensuring the weight of all Contract Waste is recorded in and out of the facility;

(b) Waste Reception Criteria and acceptance procedures for the NWTF for vehicles delivery Contract Waste other than those of the Contractor;

2.1.4.7 Operation procedures to include:

(a) Operational criteria;

(b) Health and Safety proposals;

(c) Routine inspections and checks of equipment;

(d) Cleaning and cleanliness standards of Facilities;

2.1.4.8 Management systems, operational control and monitoring systems including reporting systems abatement systems;

2.1.4.9 Methods and timing of analysing Contract Waste for information purposes only (save as provided for in this Contract, the risk of changes in composition of Contract Waste rests with the Contractor);

2.1.4.10 Continuity of Service in the event of breakdown, servicing or repair to include;

(a) Contract Waste storage capacity and contingency for plant downtime;

(b) Contingency arrangements for weighbridge breakdown;

(c) Details of any activities that are dependent upon that of another and the contingency arrangements for non-performance of the NWTF that are in place to ensure continuous service;

(d) Proposals for continuous operation including "catch up" procedures;

(e) Back and emergency arrangements.

2.1.5 Maintenance

2.1.5.1 The life expectancy of and a maintenance and replacement plan for each facility, building, piece of plant and equipment;

2.1.5.2 Maintenance standards, inspection schedules and structured maintenance plan;

2.1.5.3 The Contractor shall provide an outline Detailed Maintenance Plan containing:

(a) Maintenance requirements and consideration of whole life costs;

(b) Details of operational monitoring and predictive maintenance

(c) Schedule and procedures of planned preventative maintenance, replacement or upgrading of key items of plant and equipment at the NWTF;

(d) Schedule and procedures of operational and performance testing of items of plant and equipment;

(e) Schedule and procedures of calibration and resetting of items of plant and equipment;

(f) Procedures of maintenance, repair, replacement or upgrading of key items of plant and equipment to be implemented in the event of reduced performance, damage or failure of items of plant and equipment;

(g) Details of back up and temporary operational procedures during maintenance;

(h) Proposals and timetables for both scheduled and unscheduled closures of all or part of the facility;

(i) Details of how maintenance will be scheduled to minimise disruption to WCA delivery of Contract Waste;

(j) Detailed list of spare parts and equipment.

2.2 **Method Statement 14 - Commissioning**

2.2.1 The Contractor shall submit the following method statement:

2.2.1.1 proposed identity of the Independent Certifier;

2.2.1.2 proposed terms and conditions for the appointment of the Independent Certifier (the Contractor may provide a draft appointment for this purpose);

2.2.1.3 particulars of the duty of care warranty that the Independent Certifier will owe to the Councils in the appointment and confirmation that the Councils must have no liability under or in connection with the Independent Certifier's appointment;

2.2.1.4 confirmation that the level of the Independent Certifier's insurance cover will be no less than £10m for any one occurrence.

2.2.2 Any appointment under this element of the Contract must be strictly independent. Appointments shall not be made to any member of the Contractor's corporate group, nor have financial or ownership interest in the consortia, and the consortia shall not have a financial or

ownership interest in the Independent Certifier or any member of its corporate group.

3. **Service Output 3 - Disposal Service**

3.1 **Method Statement 15 - Disposal / Landfill**

3.1.1 The Contractor shall submit:

3.1.1.1 Full details of the landfill and/or disposal sites to be used, and copies of all applicable licences and permits. This should include any licence limitation on waste quantities or types, and the types of Contract Waste to be consigned to each site.

3.1.1.2 Landfill / disposal site capacity

3.1.1.3 Term of initial agreement for the Landfill Site to accept Contract Waste

3.1.2 Operating Procedures

3.1.2.1 Facility opening hours, working hours and shift patterns;

3.1.2.2 Delivery vehicle turn-around times;

3.1.2.3 Weighing equipment to be used on site and contingency arrangements for weighbridge breakdown;

4. **Service Output 4 - Waste Reception and Transfer**

4.1 **Method Statement 16 - Contract Waste reception and Waste Transfer**

4.1.1 The Contractor shall provide details of the following:

4.1.2 Provision of Delivery Points

4.1.2.1 The compatibility of Delivery Point(s) with collection and street cleansing services;

4.1.2.2 Details of vehicle and transport arrangements, including the environment impact of the Transport Plan;

4.1.2.3 Number of traffic movements per hour, per day and per year;

4.1.2.4 A critique of how the Contractor has taken into account sustainability principles when designing and locating the Delivery Point(s).

4.1.3 Design of new Project Transfer Stations

The Contractor shall provide details of the following:

4.1.3.1 The proposed approach to consulting with stakeholders including the general public;

4.1.3.2 A site plan and drawings showing the location, likely boundaries, means of access, a six figure Ordinance Survey grid reference, general appearance, visualisations, layouts, sections and elevations of the whole site and facilities within the boundary;

4.1.3.3 An detailed schematic showing internal layout;

4.1.3.4 Total land requirements (hectares) and statement of land ownership (referenced against the site plan where applicable);

4.1.3.5 Proposals to demonstrate good practice in sustainable construction and for consultation with stakeholders;

4.1.3.6 Description of how the transfer station shall be developed, commissioned and operated and fulfil its operating capacity;

4.1.3.7 Confirmation of the industry recognised standards for civils and building works specifications and mechanical and electrical works specifications.

4.1.3.8 Arrangements for :

(a) Safety during construction and operation;

(b) Signage and traffic control systems to ensure no vehicles which can reasonably be expected to use the facility under normal operating conditions will queue on the public highway.

(c) Weighbridges;

(d) Inspection of incoming loads;

(e) safe manoeuvring and discharge in the facility by refuse collection vehicles.

(f) Continuity of service in the event of breakdown, servicing or repair.

(g) Contract Waste storage capacity and contingency for plant downtime.

(h) Vehicle parking arrangements;

(i) Building and construction standards and finishes;

(j) Use of Re-used and Recycled materials in building materials;

(k) Fencing and security;

(l) Drainage, including protection of ground and surface waters, impact on watercourses and assessment of

flooding risk and incorporation of sustainable urban drainage systems, where practicable;

(m) site lighting (external and internal);Fire protection and fire fighting equipment;

(n) Building Services;

(o) Maintenance requirements and consideration of whole life costs;

(p) Energy use and efficiency;

(q) Water use and efficiency;

(r) Impact on biodiversity;

(s) Impact on the historic landscape

(t) Management of construction waste.

(u) Cleaning and cleanliness standards of Facilities;

4.1.4 Operating Procedures

4.1.4.1 Facility opening hours, working hours and shift patterns;

4.1.4.2 Delivery vehicle turn-around times;

4.1.4.3 Weighing equipment to be used on site and contingency arrangements for weighbridge breakdown;

4.1.4.4 Method for weighing and recording all Waste, materials and product leaving NWTF;

4.1.4.5 A schedule of all Wastes to be separately received; and transferred;

4.1.4.6 Arrangements for bulking and loading Waste for onward transport for treatment and or disposal;

4.1.4.7 Means of dealing with delivered Household Hazardous Waste;

4.1.4.8 A procedure for identifying and recording Third Party Waste;

4.1.4.9 Details of plant and equipment to be used at the Delivery Points (excluding Third Party Transfer Stations and Landfill Sites) including a maintenance and replacement plan for key plant and equipment;

4.1.4.10 Maintenance standards, inspection schedules and structured maintenance plan;

4.1.5 Staff

4.1.5.1 Description of skilled and unskilled labour, duties, responsibilities and their supervision, number of supervisors and training arrangements;

4.1.5.2 Use of sub-contractors;

4.1.6 Operational Criteria

4.1.6.1 The Contractor shall define operational criteria for each of the Delivery Points.

4.2 Method Statement 17 - HWRCs

4.2.1 The Contractor shall provide details of the following:

4.2.2 Operating Procedures

4.2.2.1 Opening hours;

4.2.2.2 Measures to promote Re-Use;

4.2.2.3 What Contract Waste and Recyclable Materials will be collected at each HWRC and what type and size of containers will be used;

4.2.2.4 Arrangements for sorting, segregating and storing Contract Waste;

4.2.2.5 Arrangements for emptying containers and collecting Recyclable Materials, including frequency of collections, numbers and type of vehicles and staff and vehicle resources to be used to empty the waste receptacles at each HWRC. Details of how the work is to be scheduled to ensure continuous adequate space for residents to dispose of their waste during the opening hours with particular reference to weekends when access to disposal facilities may be limited;

4.2.2.6 Which of the containers will be supplied and serviced by the Contractor and which of the containers will be supplied and serviced by third parties/charities;

4.2.2.7 Arrangements for traffic access, queuing and car parking for each site;

4.2.2.8 Arrangements for suitable, safe access for pedestrians;

4.2.2.9 Details of site offices serviced by electricity, water supply, telephone and sewerage;

4.2.2.10 Details of adequate lighting;

4.2.2.11 Details of any other facilities as may be dictated by any Necessary Consent;

4.2.2.12 Arrangements for totting;

4.2.2.13 Provision of automatic number plate recognition at Raynesway, Derby

4.2.2.14 Remote site monitoring (television) at Raynesway, Derby

4.2.2.15 Arrangements for service users to dispose of boxes and plastic bags used to carry Contract Waste to HWRCs;

4.2.2.16 Details of method to prevent entry of unauthorised commercial vehicles and commercial waste depositors consistent with the existing permit scheme operated by Derby City Council at Raynesway, Derby;

4.2.2.17 Arrangements for dealing with Hazardous Waste deposited at each HWRC including details of safe and secure contingency area for deposit of flammable, toxic or other Hazardous Waste;

4.2.2.18 Proposals for segregating Hazardous Waste from public and other Household Waste;

4.2.2.19 Arrangements to be provided on site for assisting service users having difficulty in either source separating their Waste or placing it into the waste receptacles at HWRCs;

4.2.2.20 A procedure for identifying and recording Third Party Waste;

4.2.2.21 Protocols for dealing with those suspected of illicitly depositing Third Party Waste;

4.2.3 Contingency Procedures

4.2.3.1 Emergency arrangements;

4.2.3.2 Proposals for temporary or permanent closure of HWRCs, if appropriate, including contingency arrangements;

4.2.4 Staff

4.2.4.1 Details of the number of Staff to be employed at each HWRC to cover the opening hours, the requirement for a seven-day week operation including the shift profile;

4.2.4.2 Staff and vehicle resources to be used to maintain the cleanliness of the containers and HWRC sites to the standards as specified in the Code of Practice on Refuse and Litter within the EPA;

4.3 **Method Statement 18: Replacement or Refurbishment of existing HWRCs and Project Transfer Stations**

4.3.1 The following additional information is required in respect of proposals for each planned Facility, replacement Facility or refurbishment of existing Facilities, to be provided as part of a service solution (except that the Contractor shall not be obliged to provide information to the extent that the Facility to which it relates is the Councils' responsibility

pursuant to **Schedule 16** (Minor Facilities Protocol) or is a Third Party Transfer Station or Landfill Site:

4.3.1.1 proposals demonstrating how each of the HWRCs and Project Transfer Stations and associated Services will be developed during the Contract Period to ensure continuous improvement;

4.3.1.2 evidence that allowance has been made for lifecycle costs for developing, maintaining and replacing plant, equipment and other assets at the HWRCs and Project Transfer Stations;

4.3.1.3 a plan with an identifying letter;

4.3.1.4 site details (introduction, location, size, land ownership control and availability);

4.3.1.5 plant & equipment to be installed;

4.3.1.6 details of any Sub-Contractors;

4.3.1.7 the proposed approach to consulting with stakeholders;

4.3.1.8 building consents and other Necessary Consents required;

4.3.1.9 site licenses;

4.3.1.10 approach to and accordance with integrated pollution prevention and control, where relevant;

4.3.1.11 availability of assignable warranties;

4.3.1.12 approach to site design; and

4.3.1.13 specify planning and construction fall back and contingency arrangements.

SCHEDULE 2

Contractor and Holdco

1. **Registered Name of Contractor:**

   Resource Recovery Solutions (Derbyshire) Limited

2. **Registered Office of Contractor:**

   Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU

3. **Company Registration Number of Contractor:**

   6835759

4. **Directors of Contractor:**

   Rajan Goyal

   Christopher Field

   Peter Eglinton

   David Mulligan

5. **Shareholders of Contractor (with respective shareholdings):**

   Resource Recovery Solutions (Derbyshire) Holdings Limited - 100%

6. **Registered Name of Contractor's Holding Company:**

   Resource Recovery Solutions (Derbyshire) Holdings Limited

7. **Registered Office of Contractor's Holding Company:**

   Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU

8. **Company Registration Number of Contractor's Holding Company:**

   06887587

9. **Directors of Contractor's Holding Company:**

   Rajan Goyal

   Christopher Field

   Peter Eglinton

   David Mulligan

10. **Shareholders of Contractor's Holding Company (with respective shareholdings):**

Shanks PFI Investments Limited (company registration number 03158125) – 50%

Interserve Developments No. 4 Limited (company registration number 07659845) – 50%

SCHEDULE 3

Payment Mechanism

1A GENERAL

1A.1 Rebasing for IX2 in the Period between the Commencement Date and the Amendment and Restatement Date

As at the Amendment and Restatement Date, the rates and prices contained within this Schedule 3 (Payment Mechanism) (save for those related to the NWTF Fixed Payment and Electricity Revenues) have been uplifted from a price base date of 1 April 2008 to the revised Price Base Date of 1 April 2011 and have therefore been increased by 12.115% (being the increase in IX2 in the period from 1 April 2008 to 31 March 2011).

1A.2 Part-Year Provisions

The anticipated commencement of operations at the NWTF now coincides with the beginning of a Contract Year (1 April 2017) and the Expiry Date coincides with the end of a Contract Year (31 March 2042), therefore the part-year provisions in the version of the Payment Mechanism as at the Commencement Date are no longer applicable and, for clarity, have as at the Amendment and Restatement Date been deleted. Relevant time-related rates and prices included in this Payment Mechanism therefore equate to the payments which are due in respect of a full Contract Year or a full Payment Period, as applicable. In the event that any component of payment is due over a period which is less than the full applicable period (for example due to the impact of a Relevant Event or Relief Event), payments shall be pro-rated as appropriate.

1. UNITARY CHARGE

1.1 Principal Formula

The Unitary Charge (UC_y) for each Contract Year following the Initial Services Commencement Date shall be calculated using the following formula:

$$\mathbf{UC_y = NWTF_y + HWRC_y + LF_y + NNDR_y + HCW_y + SPS_y - ER_y}$$

Where:

UC_y	=	the Unitary Charge for the relevant Contract Year
$NWTF_y$	=	the amount payable in respect of the New Waste Treatment Facility in the relevant Contract Year calculated in accordance with **paragraph 1.2** of this **Schedule 3**
$HWRC_y$	=	The amount payable in respect of HWRCs and Contract Transfer Stations in the relevant Contract Year calculated in accordance with **paragraph** 1.3 of this **Schedule 3**

LF_y	=	the amount payable in respect of Landfill in the relevant Contract Year calculated in accordance with **paragraph 1.4** of this **Schedule 3**
$NNDR_y$	=	the reimbursement to the Contractor of any NNDR properly payable in respect of the facilities referred to in **paragraph 1.5** of this **Schedule 3** in the relevant Contract Year
HCW_y	=	the amount payable in respect of Specified Hazardous Waste and/or Clinical Waste disposed of by the Contractor in the relevant Contract Year calculated in accordance with **paragraph 1.6** of this **Schedule 3**
SPS_y	=	the amount payable in respect of Strategic Partnering Services in the relevant Contract Year calculated in accordance with **paragraph 1.7** of this **Schedule 3**
ER_y	=	baseline electricity revenues in the relevant Contract Year calculated in accordance with **paragraph 1.8** of this **Schedule 3**

1.2 **New Waste Treatment Facility**

From the day after the NWTF Planned Completion Date, payment for NWTF in respect of each full Contract Year ($NWTF_y$) shall comprise a fixed payment (in respect of fixed costs) and a tonnage-related payment (in respect of variable costs) and shall be calculated as follows:

$$\mathbf{NWTF_y = \{[(NWTFFPI \times IX1_y) + NWTFFPNI]\} + [(NWTFCap_y \times NWTFR \times RPIXC_y)]}$$

Where:

$NWTF_y$	=	the payment in respect of NWTF in the relevant Contract Year
NWTFFPI	=	the fixed payment subject to indexation in respect of NWTF, being £9,325,465 in each Contract Year
$IX1_y$	=	the Indexation Factor for the relevant Contract Year y calculated in accordance with paragraph **6.1** of this **Schedule 3**
NWTFFPNI	=	the fixed payment not subject to indexation in respect of NWTF, being £ in each Contract Year
$NWTFCap_y$	=	the tonnage capacity of NWTF being 190,731
NWTFR	=	the tonnage rate for the treatment of Contract Waste at NWTF being £2.66 per Tonne
$RPIXC_y$	=	the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with

paragraph 6.3 of this **Schedule 3**

1.3 **HWRCs and Contract Transfer Stations**

Payment for management of HWRCs and Contract Transfer Stations (including the associated Composting and haulage) in each Contract Year following the Initial Services Commencement Date (HWRCy) shall comprise fixed payments and Tonnage-related payments and shall be calculated as follows:

$$\mathbf{HWRC_y = \{[HWRCFP_y + (HWT_y \times HWR_y) + (HWC_y \times HWCR_y) + TSFP_y + ((TST_y - TSTIS_y) \times TSR_y)] \times IX2_y + [(TSTIS_y \times TSRIS_y) \times RPIXC_y]\}}$$

Where:

$HWRCFP_y$	=	the total fixed payments in respect of HWRCs in the relevant Contract Year, calculated in accordance with **paragraph 1.3.1** of this **Schedule 3**
HWT_y	=	the total Tonnage of Household Waste deposited by members of the public at HWRCs in the relevant Contract Year excluding Rubble, Specified Hazardous Waste and Clinical Waste
HWR_y	=	the Tonnage rate for HWRCs being £18.88 per Tonne
HWC_y	=	the total Tonnage of Compostable Waste deposited by members of the public at HWRCs in the relevant Contract Year which is then Composted
$HWCR_y$	=	the extra-over Tonnage rate for HWRC Compostable Waste being £47.58 per Tonne
$TSFP_y$	=	the total fixed payments in respect of certain Contract Transfer Stations in the relevant Contract Year, calculated in accordance with **paragraph 1.3.2** of this **Schedule 3**
TST_y	=	the total Tonnage of Contract Waste delivered to Contract Transfer Stations by or on behalf of WCAs in the relevant Contract Year, excluding any Contract Waste delivered to the Derby Transfer Station from the day after the NWTF Planned Completion Date
TSR_y	=	the Tonnage rate for Contract Transfer Stations being £13.38 per Tonne
$TSTIS_y$	=	the total Tonnage of Contract Waste delivered to any Contract Transfer Stations which satisfy the requirements of paragraph 4.4.1.3 or paragraph 4.4.1.6 of Schedule 1 by or on behalf of WCAs in the relevant Contract Year up to the NWTF Planned Completion Date after which it will be zero
$TSRIS_y$	=	the reduced initial services Tonnage rate being £8.00 per Tonne

IX2y = the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.2** of this **Schedule 3**

$RPIXC_y$ = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with paragraph 6.3 of this Schedule 3

1.3.1 **HWRC Fixed Payment**

The total fixed payment for HWRCs in respect of each full Contract Year following the Initial Services Commencement Date ($HWRCFP_y$) shall be the aggregate of the fixed payments for each HWRC and shall be calculated as follows:

$$\mathbf{HWRCFP_y = HAsh_y + HBol_y + HChes_y + HGlos_y + HIlk_y + HLos_y + HNor_y + HRay_y + HBret_y}$$

Where:

$HAsh_y$ = the fixed payment in respect of the HWRC at Ashbourne in the relevant Contract Year being £209,685, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

$HBol_y$ = the fixed payment in respect of the HWRC at Bolsover in the relevant Contract Year being £192,412, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

$HChes_y$ = the fixed payment in respect of the HWRC at Stonegravels (Chesterfield) in the relevant Contract Year being £196,659, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

$HGlos_y$ = the fixed payment in respect of the HWRC at Glossop in the relevant Contract Year being £190,578, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

$HIlk_y$ = the fixed payment in respect of the HWRC at Ilkeston in the relevant Contract Year being £178,889, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

$HLos_y$ = the fixed payment in respect of the HWRC at Loscoe in the relevant Contract Year being £194,519, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

$HNor_y$ = the fixed payment in respect of the HWRC at Northwood in the relevant Contract Year being £190,206, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

$HRay_y$ = the fixed payment in respect of the HWRC at Raynesway in the relevant Contract Year being £253,692 subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

$HBret_y$ = the fixed payment in respect of the HWRC at Bretby in the relevant Contract Year being £193,736, subject to Benchmarking pursuant to **clause 35.3** (Benchmarking)

1.3.2 **Contract Transfer Station Fixed Payment**

The total fixed payment for Contract Transfer Stations in respect of each full Contract Year following the Initial Services Commencement Date ($TSFP_y$) shall be the aggregate of the fixed payments for those Contract Transfer Stations listed below and shall be calculated as follows:

$$\mathbf{TSFP_y = TClover_y + TGlos_y + TDer_y}$$

Where:

$TClover_y$ = the fixed payment in respect of the Clover Nook Transfer Station in the relevant Contract Year being £408,243

$TGlos_y$ = the fixed payment in respect of the Glossop Transfer Station in the relevant Contract Year being £408,243

$TDer_y$ = the fixed payment in respect of the Derby Interim Transfer Station in the relevant Contract Year being £1,121,012 up to and including the Contract Year ending on 31 March 2015 after which it shall be zero.

1.4 **Landfill**

Payment for Landfill (which, for the avoidance of doubt, shall include Diversion from Landfill contemplated in this **paragraph 1.4**) shall comprise a performance-related Tonnage payment (LFy), intended to cover Landfill costs and Landfill Tax for achieving the level of performance in accordance with the Contract Targets, and shall be calculated at all times during the Contract Period as set out in this **paragraph 1.4** as follows:

$$\mathbf{LF_y = [(CW_y - CDT_y - Rub_y - HCWT_y) \times (LFR_y + LFT_y)] - LDS_y}$$

Where:

LF_y = the payment for Landfill in the relevant Contract Year commensurate with the Contractor performing the Services in accordance with the Contract Targets

CW_y = the total Tonnage of Contract Waste Handled by or on behalf of the Contractor in the relevant Contract Year

CDT_y = the Contract Diversion Tonnage in the relevant Contract Year calculated in accordance with **paragraph 1.4.1** of this **Schedule 3**

Rub_y = the total Tonnage of Rubble segregated from Household Waste at HWRCs by the Contractor in the relevant Contract Year

$HCWT_y$ = the total Tonnage of Specified Hazardous Waste and/or Clinical Waste delivered by users to HWRCs or delivered to Delivery Points by or on behalf of WCAs in the relevant Contract Year

LFR_y = the Tonnage rate for Landfill calculated in accordance with **paragraph 1.4.3** of this **Schedule 3**

LFT_y = the prevailing rate of Landfill Tax per Tonne for the type of Waste being Landfilled

LDS_y = the Landfill diversion saving in respect of each Contract Year up to and including the Contract Year commencing on 1 April 2017, calculated in accordance with **paragraph 1.4.4** of this **Schedule 3**

1.4.1 **Contract Diversion Tonnage**

The Contract Diversion Tonnage in each Contract Year following the Initial Services Commencement Date shall be calculated as follows:

$$\mathbf{CDT_y = HWRC_{ert} + NWTF_{dtt}}$$

Where:

$HWRC_{ert}$ = the HWRC Enhanced Recycling Tonnage Target in the relevant Contract Year as calculated in accordance with **paragraph 1.4.2** of this **Schedule 3**

$NWTF_{dtt}$ = the NWTF Diversion Tonnage Target in the relevant Contract Year as calculated in accordance with **paragraph 5.1.1** of **Schedule 1** (Specification)

1.4.2 **HWRC Enhanced Recycling Tonnage Target**

The HWRC Enhanced Recycling Tonnage Target shall be calculated as follows:

$$\mathbf{HWRC_{ert} = (HWT_y \times \{HWRC_{rat} + HWRC_{add}\})}$$

Where:

HWT_y = the total Tonnage of Household Waste deposited by members of the public at HWRCs in the relevant Contract Year, excluding Rubble, Specified Hazardous Waste and Clinical Waste

$HWRC_{rat}$ = the HWRC Re-Use, Recycling and Composting Target in the relevant Contract Year as set out in paragraph 6.2 of the Specification

$HWRC_{add}$ = the HWRC additional diversion target being:

(a) from the Initial Services Commencement Date up to and including the Contract Year ending on 31 March 2015, zero; and

(b) for each Contract Year commencing on 1 April 2015 up to the earlier of the Termination Date or the Expiry Date or the Extended Expiry Date (as the case may be), 7%

1.4.3 **Tonnage Rate for Landfill**

The Tonnage rate for Landfill shall be calculated as follows:

$$\mathbf{LFR_y = LFGF \times RPIXC_y}$$

Where:

LFGF = the Landfill Gate Fee being:

(a) £18.66 from the Initial Services Commencement Date to 31st March 2015;

£21.19 from 1st April 2015 to 31st March 2016;

£21.05 from 1st April 2016 to 31st March 2017;

£20.91 from 1st April 2017 to 31st March 2018;

£20.77 from 1st April 2018 to 31st March 2019; and

£20.64 from 1st April 2019 to 31st March 2020

(b) from the 1st April 2020 up to the earlier of the Termination Date or the Expiry Date or the Extended Expiry Date (as the case may be) the Deflated Market Tested Landfill Rate determined adjusted and deflated in accordance with **paragraph 6.6** of this

RPIXCy = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of this **Schedule 3**

1.4.4 **Landfill Diversion Saving**

Up to and including the Contract Year commencing on 1st April 2017, the amount which would otherwise be payable by the Councils for Landfill shall be reduced by an amount equal to LDS_y, as set out in this **paragraph 1.4.4**.

$$\mathbf{LDS_y = (GLDS_y \times RPIXC_y) - ED_y}$$

Where:

$GLDS_y$ = (i) in respect of the Contract Year commencing on 1 April 2015, an amount equal to the lower of:

(a) £854,759; and

(b) £6.11 x (the tonnage of NWTF Residual Waste arising in the relevant Contract Year less 50,000 tonnes);

(ii) in respect of the Contract Year commencing on 1 April 2016, an amount equal to the lower of:

(a) £1,664,574; and

(b) £23.47 x (the tonnage of NWTF Residual Waste arising in the relevant Contract Year less 50,000 tonnes); and

(iii) in respect of the Contract Year commencing on 1 April 2017, an amount equal to the lower of:

(a) £1,620,812; and

(b) £23.47 x (the tonnage of NWTF Residual Waste arising in the Contract Year commencing on 1 April 2016 less 50,000 tonnes) less the value of GLDSy for the Contract Year commencing on 1 April 2016; and

(iv) in all other Contract Years, zero

$RPIXC_y$ = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of this **Schedule 3**

ED_y = (i) in respect of the Contract Years commencing on 1 April 2011, 1 April 2012, 1 April 2013 and 1 April 2014 only, the Contractor's share of any additional costs or savings associated with Extra Diversion in the relevant Contract Year where:

(a) if the aggregate costs incurred for the purpose of Extra Diversion (including haulage) are greater than those Landfill and haulage costs which would have been incurred in the relevant Contract Year had the Extra Diversion not taken place (i.e. if ED_y is positive) and the Councils have agreed to the relevant Extra Diversion pursuant to **clause 25.9**:

$$\mathbf{ED_y = ACED_y - [(LFR_y + LFT_y) \times EDT_y] + ACEDH_y}$$

(b) if the aggregate costs incurred for the purpose of Extra Diversion (including haulage) are less than those Landfill and haulage costs which would have been incurred in the relevant Contract Year had the Extra Diversion not taken place (i.e. if ED_y is negative):

$$\mathbf{ED_y = 50\% \times \{(ACED_y + ACEDH_y) - [(LFR_y + LFT_y) \times EDT_y)]\}}$$

Where:

ACEDy = the actual costs (excluding haulage costs) incurred by the Contractor in the relevant Contract Year for the purpose of any Extra Diversion in accordance with **clause 25.9** (Guaranteed Diversion and Extra Diversion) as set out in the Rebate Report required by **Schedule 4** (Reporting)

ACEDHy = haulage costs, additional to those which would have been incurred by the Contractor in the absence of the relevant Extra Diversion, incurred for the purpose of any Extra Diversion in accordance with **clause 25.9** (Guaranteed Diversion and Extra Diversion) as set out in the Rebate Report required by **Schedule 4** (Reporting)

EDTy = the tonnage of Contract Waste which is Extra Diversion in accordance with **clause 25.9.2** (Guaranteed Diversion and Extra Diversion) as set out in the Rebate Report required by **Schedule 4** (Reporting)

LFRy = the Tonnage rate for Landfill calculated in accordance with **paragraph 1.4.3** of this **Schedule 3**

LFRy = the prevailing rate of Landfill Tax per Tonne

(ii) in all other Contract Years, zero.

1.5 **National Non-Domestic Rates**

1.5.1 In respect of each Contract Year following the Initial Services Commencement Date, where the Contractor (and/or its subcontractors) is liable for and has paid NNDR in respect of the HWRCs, Project Transfer Stations and the New Waste Treatment Facility, $NNDR_y$ shall equal the amount properly paid by the Contractor (and/or its subcontractors) in respect of NNDR in the relevant Contract Year.

1.5.2 If directed by the Councils, the Contractor shall appeal the quantum of NNDR. All costs reasonably incurred by the Contractor in pursuing such an appeal shall be reimbursed at cost by the Councils, provided that the Contractor's invoice relating to the same is supported by satisfactory documentary evidence that such costs have been incurred and properly calculated.

1.6 **Hazardous Waste and Clinical Waste**

1.6.1 In respect of each Contract Year, where the Contractor is required to dispose of Specified Hazardous Waste and/or Clinical Waste accepted at HWRCs or delivered by or on behalf of WCAs to Delivery Points, except where such Waste is mixed with other Waste such that it is visually indistinguishable, payment in respect of the disposal of Specified Hazardous Waste and Clinical Waste (HCW_y) shall equal the sum of all Demonstrably Reasonable and Proper Costs (excluding VAT but including Landfill Tax (if applicable)) invoiced to the Contractor in the relevant Contract Year by third parties for transporting, Recycling, treating and/or disposing of the relevant Specified Hazardous Waste and/or Clinical Waste.

1.6.2 For the purposes of this **paragraph 1.6**, costs incurred by the Contractor shall only be Demonstrably Reasonable and Proper Costs where:

1.6.2.1 they represent a reasonable market price (in the relevant circumstances) for the services provided; and

1.6.2.2 the Contractor's invoice relating to such Demonstrably Reasonable and Proper Costs is supported by satisfactory documentary evidence (including details of the total Tonnage of Specified Hazardous Waste and Clinical Waste), showing that such costs have been incurred and properly calculated.

1.6.3 No payment shall be made by the Councils in respect of Specified Hazardous Waste and/or Clinical Waste other than in respect of Demonstrably Reasonable and Proper Costs.

1.7 **Strategic Partnering Services**

1.7.1 **Principal Formula**

The payments made to the Contractor for delivering Strategic Partnering Services (including Waste Minimisation and Education Services) in respect of each Contract Year y following the Initial Services Commencement Date (SPSy) shall be calculated using the following formula:

$$\mathbf{SPS_y = (WMESP_y \times IX1_y) + IF_y}$$

Where:

SPS_y = payments for Strategic Partnering Services in the relevant Contract Year.

$WMESP_y$ = the annual Waste Minimisation and Education Services Payment being £44,846.

IF_y = the aggregate of amounts payable in respect of the Initiatives Fund pursuant to **paragraph 2.8** of this **Schedule 3** (Payment Mechanism).

$IX1_y$ = the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.1** of this **Schedule 3**.

1.8 **Electricity Revenues**

From the day after the NWTF Planned Completion Date a reduction in the Unitary Charge associated with energy revenues (ERy) shall be calculated as follows:

$$\mathbf{ER_y = \Sigma\, ER_t}$$

Where:

$\Sigma\, ER_t$ = The aggregate of baseline electricity revenues deducted during the Contract Year through the Monthly Payment calculated pursuant to **paragraph 2.6** of this **Schedule 3**.

2. **MONTHLY PAYMENT**

The Monthly Payment represents a payment on account to the Contractor in respect of each Payment Period, payable on the last Business Day of that Payment Period, which shall be subject to the reconciliation annually in accordance with **paragraph 3** below of this **Schedule 3.** To the extent that it becomes apparent that the tonnage forecasts used to calculate the Monthly Payment in respect of any Contract Year are or are likely to be at a material variance to the actual tonnages for the relevant element of the Monthly Payment, the Parties shall (acting reasonably) agree whatever changes may be necessary to the tonnage forecasts in order to minimise such variance and the

Monthly Payment shall be recalculated accordingly (subject to reconciliation annually in accordance with paragraph 3 below of this Schedule 3). Such recalculation shall be subject to agreement by the Operating Contractor, whose agreement the Contractor shall procure is not unreasonably withheld or delayed.

2.1 **Principal Formula**

The Monthly Payment (MPt) for each Payment Period (except for the third Payment Period in each Contract Year other than the first Contract Year) shall be calculated using the following formula:

$$\mathbf{MP_t = NWTF_t + HWRC_t + LF_t + NNDR_t - ER_t + HCW_t + SPS_t - MA_{t-1}}$$

The Monthly Payment (MPt) for the third Payment Period in each Contract Year shall be calculated using the following formula:

$$\mathbf{MP_t = NWTF_t + HWRC_t + LF_t + NNDR_t - ER_t + HCW_t + SPS_t - MA_{t-1} + ARA_{y-1}}$$

Where in each case:

MP_t = the Monthly Payment payable for the relevant Payment Period

$NWTF_t$ = the amount payable in respect of NWTF in the relevant Payment Period in accordance with **paragraph 2.2**

$HWRC_t$ = The amount payable in respect of HWRC Services in the relevant Payment Period in accordance with **paragraph 2.3** of this **Schedule 3**

LF_t = The amount payable in respect of Landfill in the relevant Payment Period in accordance with **paragraph 2.4** of this **Schedule 3**

$NNDR_t$ = the reimbursement to the Contractor of any NNDR properly payable in respect of the Facilities referred to in **paragraph 2.5** of this **Schedule 3**

ER_t = the amount payable in respect of electricity revenues calculated in accordance with **paragraph 2.6** of this **Schedule 3**

HCW_t = the amount payable in respect of Specified Hazardous Waste and/or Clinical Waste Handled by the Contractor in the relevant Contract Year calculated in accordance with **paragraph 2.7** of this **Schedule 3**

SPS_t = the amount payable in respect of Strategic Partnering Services in the relevant Payment Period in accordance with **paragraph 2.8** of this **Schedule 3**

MA_{t-1} = subject to **paragraph 4.1A** of this **Schedule 3**, Monthly Adjustments in respect of the preceding Payment Period, calculated in accordance with **paragraph 4** of this **Schedule 3**

ARA_{y-1} = the Annual Reconciliation Amount for the preceding Contract Year calculated in accordance with **paragraph 3.1** of this **Schedule 3**

2.2 **New Waste Treatment Facility**

From the day after the NWTF Planned Completion Date, payment for each full Payment Period shall be calculated as follows:

$$\mathbf{NWTF_t = NWTF_y \div 12}$$

Where:

$NWTF_t$ = The payment in respect of NWTF in the relevant Payment Period

$NWTF_y$ = The payment in respect of NWTF in the relevant Contract Year calculated in accordance with **paragraph 1.2** of this **Schedule 3**

2.3 **HWRCs and Contract Transfer Stations**

Payment for management of HWRCs and Contract Transfer Stations (including the associated Composting and haulage) in each full Payment Period (HWRCt) shall be calculated as follows:

$$\mathbf{HWRC_t = \{[(HWRCFP_y + (HWTF_y \times HWR_y) + (HWCF_y \times HWCR_y) + TSFPy + ((TSTF_y - TSTFIS_y) \times TSR_y)) \times IX2y + (TSTFIS_y \times TSRIS_y) \times RPIXC_y] \div 12\}}$$

Where:

$HWRCFP_y$ = the total fixed payments in respect of HWRCs in the relevant Contract Year, calculated in accordance with **paragraph 1.3.1** of this **Schedule 3**

$HWTF_y$ = the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste), calculated in accordance with **paragraph 2.3.1** of this **Schedule 3**

HWR_y = the Tonnage rate for HWRCs being £18.88 per Tonne

$HWCF_y$ = the total Tonnage of Compostable Waste forecast to be deposited by members of the public at HWRCs and be Composted in the relevant Contract Year calculated in accordance with **paragraph 2.3.2** of this **Schedule 3**

$HWCR_y$ = the extra-over Tonnage rate for HWRC Compostable Waste being £47.58 per Tonne

$TSFP_y$ = the total fixed payments in respect of certain Contract Transfer Stations in the relevant Contract Year, calculated in accordance with **paragraph 1.3.2** of this **Schedule 3**

$TSTF_y$ the total Tonnage of Contract Waste forecast to be delivered to Contract Transfer Stations by or on behalf of WCAs in the relevant Contract Year calculated in accordance with **paragraph 2.3.3** of this **Schedule 3**

TSR_y = the Tonnage rate for Contract Transfer Stations being £13.38 per Tonne

$TSTFIS_y$ = the total Tonnage of Contract Waste forecast to be delivered to any Contract Transfer Stations which satisfy the requirements of paragraph 4.4.1.3 or paragraph 4.4.1.6 of Schedule 1 by or on behalf of WCAs in the relevant Contract Year as set out in the Base Case up to the NWTF Planned Completion Date or as otherwise agreed between the Parties acting reasonably

$TSRIS_y$ = the reduced initial services Tonnage rate being £8.00 per Tonne

$IX2_y$ = the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.2** of this **Schedule 3**

$RPIXC_y$ = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with paragraph 6.3 of this Schedule 3

2.3.1 **Forecasting the Tonnage of Household Waste delivered by users to HWRCs**

2.3.1.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste) shall be as set out in the Base Case.

2.3.1.2 In subsequent Contract Years, the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste) shall be calculated as follows:

$$\mathbf{HWTF_y = HWTC_y \times (CWB_y \div CWB_{y-1})}$$

Where:

$HWTF_y$ = the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste)

$HWTC_y$ = the total Tonnage of Household Waste (less Rubble, Specified Hazardous Waste

and Clinical Waste) actually deposited by members of the public at HWRCs during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year

CWB_y = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

CWB_{y-1} = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

2.3.2 **Forecasting the Tonnage of Compostable Waste arising at HWRCs**

2.3.2.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Compostable Waste forecast to arise at HWRCs in the relevant Contract Year and be Composted shall be as set out in the Base Case.

2.3.2.2 In subsequent Contract Years, the total Tonnage of Compostable Waste forecast to arise at HWRCs and be Composted in the relevant Contract Year shall be calculated as follows:

$$\mathbf{HWCF_y = HWCC_y \times (CWB_y \div CWB_{y-1})}$$

Where:

$HWCF_y$ = the total Tonnage of Compostable Waste forecast to be deposited by members of the public at HWRCs and be Composted in the relevant Contract Year

$HWCC_y$ = the total Tonnage of Compostable Waste actually arising at HWRCs and which was Composted during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year

CWB_y = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

CWB_{y-1} = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

2.3.3 **Forecasting the Tonnage of Contract Waste to be delivered to Contract Transfer Stations**

2.3.3.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Contract Waste forecast to be delivered to Contract Transfer Stations by or on behalf of WCAs shall be as set out in the Base Case.

2.3.3.2 In subsequent Contract Years, the total Tonnage of Contract Waste forecast to be delivered to Contract Transfer Stations by or on behalf of WCAs in the relevant Contract Year shall be calculated as follows:

$$\mathbf{TSTF_y = TSTC_y \times (CWB_y \div CWB_{y-1})}$$

Where:

$TSTF_y$ = the total Tonnage of Contract Waste forecast to be delivered to Contract Transfer Stations by or on behalf of WCAs in the relevant Contract Year

$TSTC_y$ = the total Tonnage of Contract Waste actually delivered to Contract Transfer Stations by or on behalf of WCAs during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year

CWB_y = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

CWB_{y-1} = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

2.4 Landfill

Payment for Landfill (LFt) in each Payment Period shall be calculated as follows:

$$\mathbf{LF_t = \{[CWF_y - [(HWTF_y \times (HWRC_{rat} + HWRC_{add})) + RubF_y + HCWTF_y + NWTF_{dtt}] \div 12] \times (LFR_y + LFT_y)\} - (GLDS_y \times RPIXC_y / 12)}$$

Where:

CWF_y = the total Tonnage of Contract Waste forecast to be Handled by or on behalf of the Contractor in the relevant Contract Year, calculated in accordance with **paragraph 2.4.1** of this **Schedule 3**

$HWTF_y$ = the total Tonnage of Household Waste forecast to be deposited by members of the public at HWRCs in the relevant Contract Year (less Rubble, Specified Hazardous Waste and Clinical Waste), calculated in accordance with

paragraph 2.3.1 of this **Schedule 3**

$RubF_y$	=	the total Tonnage of Rubble forecast to be segregated from Household Waste at HWRCs by the Contractor in the relevant Contract Year, calculated in accordance with **paragraph 2.4.2** of this **Schedule 3**
HWRCrat	=	the HWRC Re-Use, Recycling and Composting Target (expressed as a percentage) in the relevant Contract Year as set out in paragraph 6.2 of the Specification
$HWRC_{add}$	=	the HWRC additional diversion target being: up to and including the Contract Year ending on 31 March 2015, zero from the Contract Year commencing on 1 April 2015, 7%
NWTFdtt	=	the NWTF Diversion Tonnage Target in the relevant Contract Year as calculated in accordance with **paragraph 5.1.1** of **Schedule 1** (Specification)
$HCWTF_y$	=	the total Tonnage of Specified Hazardous Waste and/or Clinical Waste forecast to arise at HWRCs or delivered by or on behalf of WCAs in the relevant Contract Year calculated in accordance with **paragraph 2.4.3** of this **Schedule 3**
LFR_y	=	the Tonnage rate for Landfill in the relevant Payment Period calculated in accordance with **paragraph 1.4.3** or of this **Schedule 3**
LFT_y	=	the prevailing rate of Landfill Tax per Tonne in the relevant Payment Period for the type of Waste being Landfilled
$GLDS_y$	=	the relevant amount set out in **paragraph 1.4.4** of this **Schedule 3**
$RPIXC_y$	=	the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with paragraph 6.3 of this Schedule 3

2.4.1 **Forecasting the Tonnage of Contract Waste**

2.4.1.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Contract Waste forecast to be Handled by or on behalf of the Contractor shall be as set out in the Base Case.

2.4.1.2 In subsequent Contract Years, the total Tonnage of Contract Waste forecast to be Handled by or on behalf of the Contractor shall be calculated as follows:

$$\mathbf{CWF_y = CWC_y \times (CWBy \div CWB_{y-1})}$$

Where:

CWF_y = the total Tonnage of Contract Waste forecast to be Handled by or on behalf of the Contractor in the relevant Contract Year

CWC_y = the total Tonnage of Contract Waste actually Handled by or on behalf of the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year

CWB_y = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

CWB_{y-1} = the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

2.4.2 **Forecasting the Tonnage of Rubble arising at HWRCs**

2.4.2.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Rubble forecast to be segregated from Household Waste at HWRCs by the Contractor in the relevant Contract Year shall be as set out in the Base Case.

2.4.2.2 In subsequent Contract Years, the total Tonnage of Rubble forecast to be segregated from Household Waste at HWRCs by the Contractor in the relevant Contract Year shall be calculated as follows:

$$\mathbf{RubF_y = RubT_y \times (CWB_y \div CWB_{y-1})}$$

Where:

$RubF_y$ = the total Tonnage of Rubble forecast to be Handled by or on behalf of the Contractor in the relevant Contract Year

$RubT_y$ = the total Tonnage of Rubble actually Handled by or on behalf of the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year

CWB_y = the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case

CWB_{y-1} = the total Tonnage of Contract Waste forecast to be arising in the preceding

Contract Year in the Base Case

2.4.3 **Forecasting the Tonnage of Hazardous Waste and Clinical Waste**

2.4.3.1 In the first three Contract Years commencing on the Initial Services Commencement Date, the total Tonnage of Specified Hazardous Waste and Clinical Waste forecast to be Handled by the Contractor shall be as set out in the Base Case.

2.4.3.2 In subsequent Contract Years, the total Tonnage of Specified Hazardous Waste and Clinical Waste forecast to be Handled by the Contractor in the relevant Contract Year shall be calculated as follows:

$$\mathbf{HCWTF_y = HCWT_y \times (CWB_y \div CWB_{y-1})}$$

Where:

$HCWTF_y$	=	the total Tonnage of Specified Hazardous Waste and Clinical Waste forecast to be Handled by the Contractor in the relevant Contract Year
$HCWT_y$	=	the total Tonnage of Specified Hazardous Waste and Clinical Waste actually Handled by the Contractor during the full calendar year (between 1st January and 31st December) immediately preceding the relevant Contract Year
CWB_y	=	the total Tonnage of Contract Waste forecast to be arising in the relevant Contract Year in the Base Case
CWB_{y-1}	=	the total Tonnage of Contract Waste forecast to be arising in the preceding Contract Year in the Base Case

2.5 National Non-Domestic Rates

In respect of each Payment Period (t), payment to the Contractor in respect of National Non-Domestic Rates (NNDRt) in respect of the Facilities identified in **paragraph 1.5** shall equal the amount properly paid by the Contractor (and/or its subcontractors) in respect of NNDR in the preceding Payment Period (t-1).

2.6 Electricity Revenues

The payment for electricity revenues in each Payment Period (ERt) (which shall be applied through the Monthly Payment from the day after the NWTF Planned Completion Date) shall be calculated as follows:

$$ER_t = (ELECRev / 12) \times IXElec$$

Where:

ER_t = Payment for electricity revenues in each Payment Period

ELECRev = The baseline electricity revenue to be produced by NWTF calculated as follows:

(a) from the Initial Services Commencement Date up to and including the NWTF Planned Completion Date, being £0.00;

(b) from the day after the NWTF Planned Completion Date up to and including the day which is 12 months following the NWTF Planned Completion Date, being £3,547,896 per Payment Period;

(c) from the day after the day which is 12 months following the NWTF Planned Completion Date up to and including the day which is 24 months following the NWTF Planned Completion Date, being £ 3,645,098 per Payment Period;

(d) from the day after the day which is 24 months following the NWTF Planned Completion Date up to and including the day which is 36 months following the NWTF Planned Completion Date, being £3,725,290 per Payment Period ; and

(e) from the day after the day which is 36 months following the NWTF Planned Completion Date up to and including the Expiry Date being £3,790,902 per Payment Period.

IXElec = the electricity indexation factor for the preceding Payment Period calculated in accordance with **paragraph 6.5** of this **Schedule 3**

2.7 **Hazardous Waste and Clinical Waste (HCW_t)**

Payment for Handling Specified Hazardous Waste and Clinical Waste (HCWt) in each Payment Period shall be calculated as follows:

$$HCW_t = HCWPF_y \div 12$$

Where:

HCW_t = payment for Handling Specified Hazardous Waste and Clinical Waste in the relevant Payment Period

$HCWPF_y$ = the Payment for Specified Hazardous Waste and Clinical Waste forecast to be Handled by the Contractor in the relevant

Contract Year being:

(a) £80,000 (indexed in accordance with **clause 2.1.11**) in the first three Contract Years commencing on the Initial Services Commencement Date; and

(b) in subsequent Contract Years, the Payment in respect of Specified Hazardous Waste and Clinical Waste actually Handled by the Contractor during the full calendar year (between 1st January and 31 December) immediately preceding the relevant Contract Year

2.8 Strategic Partnering Services

2.8.1 Principal Formula

The payments made to the Contractor for delivering Strategic Partnering Services (including Waste Minimisation and Education Services) in respect of each Payment Period t (SPSt) shall be calculated using the following formula:

$$\mathbf{SPS_t = (WMESP_y \div 12) + IF_t}$$

Where

SPS_t = payments for Strategic Partnering Services in the relevant Payment Period

$WMESP_y$ = payments for annual Waste Minimisation and Education Services in the relevant Contract Year, calculated in accordance with **paragraph 1.7** of this **Schedule 3**

IF_t = payments made to the Contractor for implementing and achieving the objectives set out in the Waste Minimisation and Education Plan, being the Initiatives Fund calculated in accordance with **paragraph 8.2** of **Schedule** 1 (Specification)

3. ANNUAL RECONCILIATION AMOUNT

The Annual Reconciliation Amount represents an amount added to (where the Annual Reconciliation amount is positive), or deducted from (where the Annual Reconciliation Amount is negative), the payment otherwise due to the Contractor on the last Business Day of the third Payment Period in each Contract Year (in accordance with **paragraph 2.1** above), in order to reconcile differences between payments which should have been made to the Contractor during the relevant Contract Year and payments actually made through Monthly Payments during the relevant Contract Year. No interest for late payment shall be due from either Party to the other in respect of any period occurring before such due date for payment.

3.1 Principal Formula

The Annual Reconciliation Amount (ARAy) for each Contract Year shall be calculated using the following formula:

$$\mathbf{ARA_y = UC_y - MA_y - AA_y - MP_y}$$

Where:

ARA_y = the Annual Reconciliation Amount

UC_y = the Unitary Charge payable for the relevant Contract Year calculated in accordance with **paragraph 1** of this **Schedule 3**

AA_y = the Annual Adjustments incurred during the relevant Contract Year, calculated in accordance with **paragraph 5** of this **Schedule 3**

MA_y = the aggregate of Monthly Adjustments accrued in respect of the relevant Contract Year, calculated in accordance with **paragraph 4** of this **Schedule 3**

MP_y = the aggregate of Monthly Payments made to the Contractor in respect of the relevant Contract Year, calculated in accordance with **paragraph 2** of this **Schedule 3**

3.2 **The Final Contract Year**

The Annual Reconciliation Amount for the final Contract Year shall be payable in accordance with **clause 32.12** (Final Reconciliation).

4. **MONTHLY ADJUSTMENTS**

Monthly Adjustments shall comprise Unavailability Deductions in respect of HWRCs and Contract Transfer Stations not being Available in accordance with the requirements of the Specification, calculated in accordance with **paragraph 4.2** of this **Schedule 3**, Monthly Performance Adjustments in respect of the Services not being delivered in accordance with Key Performance Indicators, calculated in accordance with **paragraph 4.3** of this **Schedule 3**, and Tipping Away Payments in respect of costs incurred by WCAs as a result of diversion of Contract Waste from Primary Delivery Points, calculated in accordance with **paragraph** 4.4 of this **Schedule 3**.

4.1 **Principal Formula**

The Monthly Adjustment (MA_t) applicable in respect of each Payment Period (which shall be applied through the Monthly Payment one Payment Period in arrears and as part of the Annual Reconciliation) shall be calculated using the following formula:

$$\mathbf{MA_t = UD_t + MPD_t + TAP_t + RFD_t}$$

Where:

MAt = the Monthly Adjustment applicable in respect of the relevant Payment Period

UD_t = Unavailability Deductions applicable in respect of the relevant Payment Period, calculated in accordance with **paragraph 4.2** of

this **Schedule 3**

MPD_t = Monthly Performance Adjustments applicable in respect of the relevant Payment Period, calculated in accordance with **paragraph 4.3** of this **Schedule 3**

TAP_t = Tipping Away Payments applicable in respect of the relevant Payment Period, calculated in accordance with **paragraph 4.4** of this **Schedule 3**

RFD_t = Reporting Failure Deductions applicable in respect of the relevant Payment Period calculated pursuant to **Schedule 14** (Performance Mechanism)

4.1A **Monthly Adjustments in Excess of the Monthly Payment**

In respect of any Payment Period, the Councils may not make Monthly Adjustments which in aggregate exceed the amount of the Monthly Payment for the relevant Payment Period calculated in accordance with **paragraph 2.1** (Principal Formula) of this **Schedule 3** but without deductions for Monthly Adjustments (the "Pre-Adjustment Amount"). To the extent that the Monthly Adjustments in respect of any Payment Period do exceed the relevant Pre-Adjustment Amount, the amount of any excess Monthly Adjustments shall be deducted from the Pre-Adjustment Amount in respect of the next following Payment Period, and each subsequent Payment Period until such Monthly Adjustments have all been deducted from amounts due to the Contractor. For the avoidance of doubt, this **paragraph 4.1A** shall not apply to Annual Adjustments.

4.2 **Unavailability Deductions**

Unavailability Deductions in respect of each Payment Period shall be calculated using the following formula:

$$\mathbf{UD_t = [\Sigma\ (HUH_t \times HUR) + \Sigma\ (TSUH_t \times TSUR)] \times IX2_y}$$

Where:

UD_t = Unavailability Deductions applicable in respect of the relevant Payment Period

HUH_t = the number of hours (or part thereof) within the specified HWRC Opening Hours that each HWRC failed to meet the HWRC Availability Criteria in the relevant Payment Period

HUR = the HWRC Unavailability Rate set out in **Table 4.2.1** below for each HWRC subject to Benchmarking

$TSUH_t$ = the number of hours (or part thereof) within the specified Delivery Point Opening Hours that any Primary Delivery Point listed in **Table 4.2.2** failed to meet the Delivery Point Availability Criteria in the relevant Payment Period. For the avoidance of doubt, to the extent that the Contractor has provided an alternative Delivery Point which meets the Delivery Point Availability Criteria, then no failure will have

arisen

TSUR = The Transfer Station Unavailability Rate set out in **Table 4.2.2** below for each Contract Transfer Station

$IX2_y$ = the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.2** of this **Schedule 3**

Table 4.2.1: HWRC Unavailability Rates

Site Name	**Rate per hour £ (HUR)**
Glossop;	55.42
Stonegravels (Chesterfield);	57.19
Loscoe;	56.57
Ilkeston;	52.02
Ashbourne;	60.98
Raynesway	70.09
Bolsover;	55.96
Northwood; and	55.32
Bretby.	56.34

Table 4.2.2: Transfer Station Unavailability Rates

Site Name	**Rate per hour £ (TSUR)**	**Applicable from**	**Applicable to**
Clover Nook Transfer Station	141.08	Initial Services Commencement Date	Expiry Date
Glossop Transfer Station	141.08	Initial Services Commencement Date	Expiry Date
Derby Interim Transfer Station	432.09	Initial Services Commencement Date	31 March 2015
Derby Transfer Station	29.06	the later of the day after the NWTF Planned Completion Date and the day after the actual NWTF Completion Date	Expiry Date

4.3 **Monthly Performance Adjustments**

Monthly Performance Adjustments in respect of each Payment Period shall be calculated using the following formula:

$$\mathbf{MPD_t = MPP_t \times PPR \times IX1y}$$

MPD_t	=	Monthly Performance Adjustments applicable in respect of the relevant Payment Period
MPP_t	=	the number of Monthly Performance Points levied in respect of the relevant Payment Period, determined in accordance with **Schedule 14** (Performance Mechanism)
PPR	=	the performance point rate being £1.12
$IX1_y$	=	the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.1** of this **Schedule 3**

Monthly Performance Deductions shall only be capable of being levied in relation to the Services provided at the NWTF in the period following the Planned NWTF Completion Date.

4.4 **Tipping Away Payments**

Where a WCA delivers, at the direction of the Contractor, Contract Waste to a Delivery Point which is not a Primary Delivery Point for such WCA, the Contractor shall be liable to a deduction according to the following formula:

$$\mathbf{TAP_t = TAPT_t \times TAPM_t \times TAPR \times IX1_y}$$

TAP_t	=	Tipping Away Payments applicable in respect of the relevant Payment Period
$TAPT_t$	=	the Tonnage of Contract Waste diverted from the Primary Delivery Points in the relevant Payment Period as a result of the relevant Primary Delivery Point being Unavailable and/or as instructed by the Contractor
$TAPM_t$	=	the distance in miles from the relevant Primary Delivery Point to the alternative Delivery Point travelling along the most direct adopted highway that provides a safe and legal route from the relevant Primary Delivery Point to the relevant alternative Delivery Point
TAPR	=	the Tipping Away Payment mileage rate being £1.46 per tonne per mile
$IX1_y$	=	the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.1** of this **Schedule 3**

provided always that the Contractor shall not be liable to pay Tipping Away Payments:

4.4.1.1 if a WCA delivers to a Delivery Point which is not a Primary Delivery Point as a result of a WCA having delivered Rejectable Waste, or Contract Waste to that Primary Delivery Point in excess of the maximum capacity of that Primary Delivery Point as set out in the SDPs; and/or

4.4.1.2 in respect of each Primary Delivery Point which is a Landfill Site, for any period of Unavailability in excess of 18 days in aggregate (excluding Sundays and bank holidays) during any Contract Year; and/or

4.4.1.3 when the location of the alternative Delivery Point complies with the location requirement for the relevant Primary Delivery Point as set out in **paragraph 4.4** of **Schedule 1** (Specification) and that alternative Delivery Point is Available at the material time and the Contractor has given reasonable notice to the Councils that the alternative Delivery Point should be used.

5. ANNUAL ADJUSTMENTS

Annual Adjustments shall comprise: Annual Performance Deductions in respect of the Services not being delivered in accordance with Annual KPIs, calculated in accordance with **paragraph 5.2** of this **Schedule 3**; a Landfill adjustment to reflect variance between the Actual Diversion Tonnage and the Contract Diversion Tonnage and the Councils' share of excess Third Party Income.

5.1 Principal Formula

The Annual Adjustment (AAy) applicable in respect of each Contract Year (which shall be applied as part of the Annual Reconciliation) shall be calculated using the following formula:

$$\mathbf{AA_y = APD_y + TLFA_y + TPI_y}$$

Where:

AAy = the Annual Adjustments incurred during the relevant Contract Year

APDy = Annual Performance Deductions applicable in respect of the relevant Contract Year, calculated in accordance with **paragraph 5.2** of this **Schedule 3**

TLFAy = the aggregate of:

a) the Landfill Adjustment (LFA_y) calculated in accordance with paragraph 5.3.1 of this Schedule 3; and

b) the Council's share of savings associated with the use of offtakers to Divert Contract Waste from Landfill, over and above the Contract Diversion Target, calculated in accordance with paragraph 5.3.2 of this Schedule 3

TPIy = the Councils' share of Third Party Income in respect of the relevant Contract Year calculated in accordance with **paragraph 5.4** of this

5.2 **Annual Performance Deductions**

Annual Performance Deductions in respect of each Contract Year shall be calculated using the following formula.

$$\mathbf{APD_y = APP_y \times PPR \times IX1_y}$$

Where:

APD_y	=	Annual Performance Deductions applicable in respect of the relevant Contract Year
APP_y	=	the number of Annual Performance Points levied in respect of the relevant Contract Year, determined in accordance with **Schedule 14** (Performance Mechanism)
PPR	=	the performance point rate being £1.12
IX1y	=	the Indexation Factor for the relevant Contract Year y calculated in accordance with **paragraph 6.1** of this **Schedule 3**

5.3 **Landfill Adjustment**

5.3.1 **Diversion from HWRCs and NWTF**

This limb of the Landfill Adjustment (LFA_y) provides the Councils with a share of savings where the Actual Diversion Tonnage is greater than the Contract Diversion Tonnage in the relevant Contract Year due to:

a) the Diversion at HWRCs exceeding the HWRC Enhanced Recycling Tonnage Target (defined in paragraph 1.4.2 of this Schedule 3); and/or

b) the Diversion at NWTF exceeding the NWTF Diversion Tonnage Target;

5.3.1.1 From the Initial Services Commencement Date to the NWTF Planned Completion Date:

$$\mathbf{LFA_y = 0}$$

5.3.1.2 From the day after the NWTF Planned Completion Date:

(a) If the Actual Diversion Tonnage is greater than the Contract Diversion Tonnage but less than the Maximum Contract Diversion Tonnage (i.e. MCDTy > ADTy > CDTy)

$$\mathbf{LFA_y = (ADT_y - CDT_y) \times (LFR_y + LFT_y)}$$

or

(b) If the Actual Diversion Tonnage is greater than the Maximum Contract Diversion Tonnage (i.e. ADTy > MCDTy)

$$\mathbf{LFA_y = \{(MCDT_y - CDT_y) \times (LFR_y + LFT_y)\} + \{(ADT_y - MCDT_y) \times (LFR_y + LFT_y) \times 50\%\}}$$

Where:

LFA_y = the Landfill Adjustment in the relevant Contract Year

CDT_y = the Contract Diversion Tonnage in the relevant Contract Year calculated in accordance with **paragraph 1.4.1** of this **Schedule 3**

$MCDT_y$ = the Maximum Contract Diversion Tonnage being the Contract Diversion Tonnage which would apply in the relevant Contract Year corresponding to an NWTF Diversion Tonnage Target specified at **paragraph 5.1.1.5** of **Schedule 1** (Specification)

ADT_y = the Tonnage of Contract Waste which was actually Diverted by the Contractor in the relevant Contract Year as a result of the operation of the HWRCs and/or the Diversion of NWTF Residual Waste which was treated at the NWTF (excluding any Tonnage of Contract Waste Diverted via delivery to third party offtakers where the cost savings of such Diversion have been shared with the Councils under paragraph 5.3.2)

LFR_y = the tonnage rate for Landfill as if the Waste had been Landfilled calculated in accordance with **paragraph 1.4.3** of this **Schedule 3**;

LFT_y = the prevailing rate of Landfill Tax per Tonne;

provided always that if LFA_y calculated in accordance with the formula above is less than zero, LFA_y shall be deemed to be zero.

To the extent that the effect of the calculations set out in paragraph 5.3.1.2 above is to rebate to the Councils more than 50% of the landfill diversion savings achieved at the HWRCs, the calculated value of LFA_y shall be amended

so as to ensure that only 50% of HWRC landfill diversion savings are rebated to the Councils.

5.3.2 **Diversion via Offtakers**

If, from the NWTF Planned Completion Date, the Contractor Diverts NWTF Residual Waste from Landfill by delivery to third party offtakers (excluding, for the avoidance of doubt, delivery of fly ash and bottom ash to third party offtakers) then to the extent that such Diversion:

a) results in the tonnage of NWTF Residual Waste which is Landfilled being less than the tonnage which would have been Landfilled had the Contractor achieved the Contract Diversion Tonnage in the relevant Contract Year calculated in accordance with paragraph 1.4.1 of this Schedule 3; and

b) results in a cost saving over and above the cost of treating 12,000 Tonnes per annum of RDF tonnage as included in the Base Case at a rate of £52.21 (indexed by the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with paragraph 6.3 of this Schedule 3) per Tonne compared with the alternative costs had the relevant NWTF Residual Waste been landfilled (taking into account the cost of such Diversion but excluding any recycling revenues, the alternative cost of Landfill set out in paragraph 1.4.3 of this Schedule 3 and associated transfer/haulage costs which accrue or would have accrued in each instance, by reference to rates and prices in this Schedule 3 and costs in the Base Case as appropriate)

the associated cost savings shall be shared 50:50 between the Councils and the Contractor.

5.4 **Third Party Income**

Subject to **clause 25.3** (Third Party Waste), where the Contractor generates Third Party Income in relation to the Services provided under this Contract in excess of that assumed in the Base Case from those activities referred to below, the Councils shall be entitled to a share of the excess income. The Contractor shall calculate the share of such Third Party Income due to the Councils in the relevant Contract Year according to the following formula:

$$\mathbf{TPI_y = [(RRA_y - (RRB_y \times RPIXC_y)) \times 50\%] + [(TSR_y + CTR_y) \times 80\%] + POWER_y \times POWER_{\%}}$$

Where:

TPI_y = the Councils' share of Third Party Income in respect of the Contract Year which shall never be less than zero

RRA_y = the actual nominal revenue from the sale of Recyclable Materials from NWTF generated by the Contractor in the relevant Contract Year

RRB_y = the revenue forecast to be generated by the Contractor from the sale of Recyclable Materials from NWTF in the relevant Contract Year being zero up to and including that in which the NWTF Planned Completion Date occurs and £737,072 per annum thereafter.

TSR_y = Revenue (net of reasonably incurred associated costs) from the receipt of Third Party Waste at Project Transfer Stations and NWTF in the relevant Contract Year (excluding any Third Party Waste accepted by the Contractor to make up a shortfall in accordance with **clause 25.4.1**)

CTR_y = Revenue (net of reasonably incurred associated costs) from carbon trading in the relevant Contract Year

$RPIXC_y$ = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of this **Schedule 3**

$POWER_y$ = Revenue from the sale of power generated at the NWTF

$POWER_{\%}$ = The Councils' share of revenue from the sale of power generated at the NWTF up to and including the NWTF Planned Completion Date being 50% up to and including the NWTF Planned Completion Date and zero thereafter

6. INDEXATION

All rates and prices in this Payment Mechanism are at the Price Base Date of 1 April 2011. Indexation where applicable, shall be applied annually from 1 April in each Contract Year as follows:

6.1 Indexation Factor – New Waste Treatment Facility

The Indexation Factor ("IX1y") for the relevant Contract Year shall be calculated as follows:

$$\mathbf{IX1_y = (RPIXC_y \times 77.54\%) + (AWEIC_y \times 22.46\%)}$$

Where:

$RPIXC_y$ = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of this **Schedule 3**

$AWEIC_y$ = the Average Weekly Earnings Indexation Factor – Cumulative ("AWEICy") for the relevant Contract Year calculated in accordance with **paragraph 6.4** of this **Schedule 3**

6.2 Indexation Factor – HWRCs and Contract Transfer Stations

The Indexation Factor ("IX2y") for the relevant Contract Year shall be calculated as follows:

$$\mathbf{IX2_y = (RPIXC_y \times 91.9\%) + (AWEIC_y \times 8.1\%)}$$

Where:

$RPIXC_y$	=	the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** of this **Schedule 3**
$AWEIC_y$	=	the Average Weekly Earnings Indexation Factor – Cumulative ("AWEICy") for the relevant Contract Year calculated in accordance with **paragraph 6.4** of this **Schedule 3**

6.3 **Retail Prices Indexation – Cumulative**

The Retail Prices Indexation Factor – Cumulative ("RPIXC") for the relevant Contract Year shall be calculated as follows:

$$\mathbf{RPIXC_y = RPIX_{y-1} \div RPIX_0}$$

Where:

$RPIXC_y$	=	the Retail Prices Indexation Factor Cumulative for the relevant Contract Year
$RPIX_{y-1}$	=	the published RPIX for the January immediately preceding the relevant Contract Year; and
$RPIX_0$	=	the RPIX published for January 2011 being 228.2

6.4 **Average Weekly Earnings Indexation – Cumulative**

The Average Weekly Earnings Indexation Factor – Cumulative ("AWEIC") for the relevant Contract Year shall be calculated as follows:

$$\mathbf{AWEIC_y = AWEI_{y-1} \div AWEI_0}$$

Where:

$AWEIC_y$	=	the Average Weekly Earnings Indexation Factor – Cumulative ("AEICy") for the relevant Contract Year
$AWEI_{y-1}$	=	the Average Weekly Earnings Index (Whole Economy not seasonally adjusted excluding bonuses and including arrears Reference KA5H) for the January immediately preceding the relevant Contract Year
$AWEI_0$	=	the Average Weekly Earnings Index (Whole Economy not seasonally adjusted excluding bonuses and including arrears Reference KA5H) published for January 2011 being 143.4.

6.5 **Electricity Indexation**

The electricity indexation factor ("IXElec") shall be calculated as follows:

$$\mathbf{IXElec = IXElecP_m \div IXElec_0}$$

Where:

IXElec = The electricity indexation factor for the relevant Payment Period

$IXElecP_m$ = the average (mean) (in pounds) of the:

(a) London Energy Brokers Association "Working Days (07:30 - 5:00pm)" baseload index for (and which shall be applied in respect of) each Business Day;

(b) London Energy Brokers Association "Day Ahead Weekend (07:30am - 5:00pm)" baseload index for (and which shall be applied in respect of) each Saturday and Sunday; and

(c) London Energy Brokers Association "1st Bank Holiday Working Days (07:30 am - 5:00pm)" index or "2nd Bank Holiday Working Days Index (07:30 am - 5:00pm)" baseload index as the case may be for (and which shall be applied in respect of) each bank holiday,

in respect of each day (between the day after the NWTF Planned Completion Date and the Expiry Date) in the relevant Payment Period (including where the relevant Payment Period is the final Payment Period).

$IXElec_0$ = the base index for electricity, being the average (mean) (in pounds) of the London Energy Brokers Association "All Days" UK Power Index (Trade Date), (including, where relevant, the relevant "All Days" index in respect of a Saturday, Sunday or bank holiday) for each day in the 12 month period ending on 30 September 2008, being £65.47141.

6.6 **Calculating the Deflated Market Tested Landfill Rate**

Pursuant to **paragraph 1.4.3** of this **Schedule 3**, the Deflated Market Tested Landfill Rate shall be calculated as follows:

$$\mathbf{DMTLR = AMTLR \div RPIXC_y}$$

Where:

DMTLR = the Deflated Market Tested Landfill Rate

AMTLR = the Adjusted Market Tested Landfill Rate, determined in accordance with **paragraph 6.6.1** below

$RPIXC_y$ = the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** above

6.6.1 **Calculating the Adjusted Market Tested Landfill Rate**

The Adjusted Market Tested Landfill Rate shall be calculated as follows:

AMTLR = BLR + EMLR

Where:

AMTLR = the Adjusted Market Tested Landfill Rate

BLR = The base Landfill rate being the lower of:

(a) the average (mean, weighted as appropriate based on forecast tonnages of Contract Waste expected to be disposed of at each Landifll site) nominal market tested tonnage rate for Landfill for the relevant Contract Year, determined in accordance with **clause 35**; and

(b) the product of £20.41 and the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** above for the relevant Contract Year.

EMLR = the Excess Market Landfill Rate being:

(a) the average (mean, weighted as appropriate based on forecast tonnages of Contract Waste expected to be disposed of at each Landfill site) nominal market tested tonnage rate for Landfill for the relevant Contract Year, determined in accordance with **clause 35**; less

(b) the product of £28.15 and the Retail Prices Indexation Factor Cumulative for the relevant Contract Year calculated in accordance with **paragraph 6.3** above for the relevant Contract Year,

provided always that EMLR shall not be less than zero

SCHEDULE 4

Reporting

1. **REPORTS**

1.1 Subject to the provisions of **clause 32** and this **Schedule 4**, the Contractor shall provide:

1.1.1 Monthly Reports in respect of each Payment Period, submitted at the same time as and in support of the invoice referred to in **clause 32** (Report and Invoicing); and

1.1.2 Annual Reports in respect of each Contract Year commencing on and after the Initial Services Commencement Date, submitted within 46 Days of the end of each Contract Year.

1.2 Failure to provide such reports within the timescales set out above, may result in Performance Deductions as described under KPIs 4, 5, 20 and 21 of **Schedule 14** (Performance Mechanism).

2. **MONTHLY REPORTS**

2.1 Pursuant to **clause 32.1**, the Contractor shall deliver, or shall procure that there is delivered, to the Councils for each Payment Period a report as one hard copy and an electronic copy, comprising:

2.1.1 a waste data report for the Payment Period (in accordance with **paragraph 3** of this **Schedule 4** (the **"Waste Data Report"**);

2.1.2 an operational report (in accordance with **paragraph 4** of this **Schedule 4** (the **"Operational Report"**);

2.1.3 a payment report for the Payment Period (in accordance with **paragraph 5** of this **Schedule 4** (the **"Payment Report"**); and

2.1.4 a Performance and Availability monitoring report for the preceding Payment Period (in accordance with **paragraph 6** of this **Schedule 4** (the **"Performance Monitoring Report"**),

together, the **"Monthly Report"**.

3. **WASTE DATA REPORT**

3.1 **Weighbridge Records**

3.1.1 The Contractor shall in each Monthly Report pursuant to **paragraph 2** of this **Schedule 4**, provide summaries of weighbridge data in accordance with the requirements of **paragraph 4.7** of **Schedule 1** (Specification) and retain all weighbridge records, both electronic and manual as set out in **paragraph 3.5.6** of **Schedule 1** (Specification).

3.2 **Data Processing and Reporting**

3.2.1 The Contractor shall in each Monthly Report pursuant to **paragraph 2** of this **Schedule 4**, provide to the Councils comprehensive data

relating to all Waste Handled in the relevant Payment Period in two formats:

3.2.1.1 electronic - on spreadsheet (Microsoft Excel database, Microsoft Access or similar or as agreed with the Councils) which can also be interrogated but not directly altered remotely by the Councils; and

3.2.1.2 two paper copies.

3.2.2 Each waste data report referred to in **paragraph 3.2.1** above, shall include the following:

3.2.2.1 separate records of the tonnages of Contract Waste by material type accepted by the Contractor at each HWRC and Delivery Point, and sub-totals by category of Facility and broken down by WCA where applicable;

3.2.2.2 separate records of the tonnages of Contract Waste Recycled, Re-used, Beneficially Used, Composted, Diverted and disposed to Landfill by the Contractor and in balance with the tonnages in **paragraph 3.2.2.1** above and broken down by WCA where applicable;

3.2.2.3 Separate records of the tonnage of recovery of metals and bottom ash from Contract Waste;

3.2.2.4 Separate records of the percentage of BMW content of the Contract Waste managed by the Contractor, including:

(a) the BMW content (measured as a percentage) of the NWTF Residual Waste (calculated in accordance with the MBEAM Methodology); and

(b) the BMW content of Contract Waste disposed to Landfill (measured as a percentage) by the Contractor based on test data as appropriate;

3.2.2.5 separate records of the tonnage of NWTF Residual Waste Diverted from Landfill at the New Waste Treatment Facility in comparison with the NWTF Diversion Tonnage Target;

3.2.2.6 separate records to enable compliance with **clause 38** (Best Value);

3.2.2.7 separate records of separately treated Contract Waste tonnages and rates agreed by the Councils;

3.2.2.8 separate records of Third Party Waste if Handled by the Contractor at the Facilities;

3.2.2.9 copies of the Contractor's regular returns to the Environment Agency regarding landfill operations and to HM Revenue & Customs regarding landfill tax and other environmental taxes;

3.2.2.10 any quarterly WasteDataFlow (or equivalent scheme) reports due in the relevant Payment Period compiled from the relevant monthly reports;

3.2.2.11 any other information reasonably requested by the Councils, including any additional data required for the quarterly WasteDataFlow (or equivalent scheme) submission that has not previously been reported in the monthly reports;

3.2.2.12 copies of inspection reports from the Environment Agency for all Facilities. The copies to be supplied at the end of the month that the inspection reports were received by the contractor; and

3.2.2.13 any other information reasonably requested by the Councils.

3.2.3 Contract Waste records sent to the Councils pursuant to this **Schedule 4** may be used by the Contractor to comply with the provisions of any Environmental Permit and Environment Agency authorisation. Subject to **clauses 32**, 47, 49, **76** and **77**, the Contractor shall keep any additional Contract Waste records that might reasonably be requested by the Environment Agency.

3.3 **Waste Flow Forecasts**

3.3.1 The Contractor shall maintain a waste flow schedule, projecting the anticipated tonnages of Contract Waste.

3.3.2 Within each Monthly Report, the Contractor shall submit to the Councils the waste flow schedule prepared in accordance with **paragraph 3.3.1** above projecting the tonnages of Contract Waste likely to be received covering the 12 months starting from the next Payment Period for information purposes only.

3.3.3 The waste data report prepared in accordance with **paragraph 3.2.2** above for the Payment Period of January (submitted in February) of each Contract Year commencing on and after the Initial Services Commencement Date shall include a calculation of forecast Tonnages of Contract Waste for the following Contract Year pursuant to **Schedule 3** (Payment Mechanism).

4. **OPERATIONAL REPORT**

4.1 Each Monthly Report shall include information on the operation of the Services in respect of the Payment Period to which that report relates and, where appropriate, in respect of the Contract Year up to the end of that Payment Period. Such information shall include:

4.1.1 health, safety and welfare incidents and reports;

4.1.2 incidences of non-compliance with the Method Statement prepared in response to **paragraph 1.5** of **Schedule 1** (Specification);

4.1.3 incidences of Environmental Management System non-compliances, and;

4.1.4 all incidences of plant, vehicle and equipment failures and any other issues affecting the provision of the Services in accordance with the Services Delivery Plan.

provided that if the Contractor fails to report minor issues in relation to **paragraphs 4.1.2**, 4.1.3 and 4.1.4 above, it shall be deemed not have failed to meet KPIs 5 (Monthly Reporting Errors) and 21 (Annual Reporting Errors).

4.2 For each of the incidents above, the following information should be provided:

4.2.1 whether it was in breach of any regulatory requirement;

4.2.2 the time and date the incident first came to the attention of the Contractor or any relevant sub-contractor;

4.2.3 the location of the incident;

4.2.4 the time and date at which action was initiated to remedy the incident.

4.2.5 the time and date at which the incident was remedied, and;

4.2.6 whether the incident resulted in a Performance Failure or Unavailability, and where this is the case appropriate reference to the Performance Monitoring Report.

5. PAYMENT REPORT

5.1 Each Monthly Report shall contain a payment report which shall include the following:

5.1.1 an invoice detailing the Monthly Payment, calculated in accordance with **Schedule 3** (Payment Mechanism);

5.1.2 a detailed breakdown of the components of the Monthly Payment, as set out in **Schedule 3** (Payment Mechanism), including payment in respect of:

5.1.2.1 the New Waste Treatment Facility;

5.1.2.2 NNDR;

5.1.2.3 Clinical Waste and Specified Hazardous Waste;

5.1.3 a detailed breakdown of all Deductions in respect of:

5.1.3.1 Performance Deductions;

5.1.3.2 Unavailability Deductions; and

5.1.3.3 Tipping Away Payments.

5.1.4 a table showing invoices submitted (including reference number, date and amount), cumulative payments made to date and a corresponding payment that would have been made if actual tonnages had been used in lieu of forecast tonnage, table to cover the previous 15 Months;

5.1.5 reconciliation of disputed amounts from previous Payment Periods; and

5.1.6 a schedule of Small Works and Council Change as instructed by the Councils;

5.2 The payment report, prepared in accordance with **paragraph 5.1** above for the month of January (submitted in February) shall include a calculation of the Indexation Factor to be applied in the forthcoming Contract Year, determined in accordance with **paragraph 6** of **Schedule 3** (Payment Mechanism).

6. PERFORMANCE MONITORING REPORTS

6.1 The Performance Monitoring Report shall include:

6.1.1 Complete, factually correct, accurate and contemporary records of performance against each of the KPIs for the preceding Payment Period;

6.1.2 All Performance Failures for the preceding Payment Period, comprising:

6.1.2.1 the time and date the event first came to the attention of the Contractor or any Contractor Related Party;

6.1.2.2 whether the Performance Failures were monitored by the Contractor or brought to the attention of the Contractor by the Councils;

6.1.2.3 for each failure to meet a KPI, an explanation as to why the KPI was not met, what efforts were taken to rectify it and the outcome of those efforts;

6.1.2.4 the time and date at which action was initiated to effect rectification of the KPI;

6.1.2.5 the time and date at which rectification has been effected;

6.1.2.6 the score for each KPI calculated in accordance with **Schedule 14** (Performance Mechanism).

6.1.2.7 in respect of each Payment Period, a total of the Monthly Performance Points incurred;

6.1.2.8 in respect of the Payment Period ending on 31st March each Contract Year, a total of the Monthly Performance Points incurred;

6.1.2.9 for annual KPIs a calculation of the year to date performance in the Contract Year in which the Payment Period occurs and a forecast of the out-turn for that Contract Year, with supporting explanatory information in the event that the forecast levels of performance are significantly at variance from the performance over the that Contract Year to date.

6.1.2.10 all Reporting Failures identified and not previously reported;

6.1.3 Total hours that any HWRC, Delivery Point and/or the NWTF was Unavailable, comparing this with the hours that such Facility should have been Available, including;

6.1.3.1 detail of the time and date the period of Unavailability commenced and finished for each Facility;

6.1.3.2 the reason for the Unavailability; and

6.1.3.3 a calculation of the cumulative Unavailability for each facility during the relevant Contract Year;

6.1.4 details of incidences where vehicles from WCAs delivering Contract Waste to Delivery Points were diverted to alternative Delivery Points (or otherwise), including:

6.1.4.1 details of the time and date of the diversion;

6.1.4.2 details of the location of the alternative Delivery Point and the distance between the Delivery Point and the alternative Delivery Point, calculated in accordance with **Schedule 3** (Payment Mechanism);

6.1.4.3 the Tonnage of each load of Contract Waste diverted.

7. ANNUAL REPORTS

7.1 Pursuant to **paragraph 1.1.2**, the Contractor shall submit to the Councils:

7.1.1 an Annual Service Report, reviewing the Service over the previous Contract Year;

7.1.2 an Annual Payment Reconciliation Report (including a Rebate Report as described in **paragraph 7.3.3A** below), and

7.1.3 an Annual Service Plan, describing the Services to be performed in the current Contract Year. This shall be the agreed final Annual Service Plan, a first draft of which shall be submitted to the Councils no later than 28 February in the preceding Contract Year.

7.2 The Annual Service Report shall include the following:

7.2.1 a review of the performance and delivery of the Services during the period of twelve months prior to the Annual Service Report Date;

7.2.2 NOT USED;

7.2.3 sufficient data reasonably required to allow for the calculation of locally derived Key Performance Indicators as may be agreed between the Contractor and the Councils;

7.2.4 a summary of payments made by the Councils over the previous Contract Year;

7.2.5 a summary of the corrected payments that should have been made for each Payment Period over the previous Contract Year;

7.2.6 a copy of the latest available unaudited annual management accounts (followed by a copy of the statutory annual audited management accounts before the 30th September in each Contract Year);

7.2.7 annual summaries of the waste flow information detailed in **paragraph 3** above for the previous Contract Year;

7.2.8 annual summaries of performance of monthly KPIs as set out in **Schedule 14** (Performance Mechanism) for the previous Contract Year;

7.2.9 performance against Contract Targets for the previous Contract Year;

7.2.10 performance against annual KPIs, providing all of the information detailed in **paragraph 6.1** above for the previous Contract Year;

7.2.11 for any Contract Waste disposed of by Landfill, the current rate of infill of void space, remaining void space, remaining engineered capacity and projected remaining life (to the extent that the Contractor, having used reasonable endeavours, has been able to obtain such information);

7.3 The Annual Payment Reconciliation Report shall include the following:

7.3.1 a detailed calculation of the Unitary Charge for the immediately preceding Contract Year in accordance with **Schedule 3** (Payment Mechanism), providing a clear audit trail to the source of the relevant waste flow information;

7.3.2 a summary of Monthly Adjustments applied in respect of the immediately preceding Contract Year, comprising:

7.3.2.1 the sum of Unavailability Deductions determined in accordance with **paragraph 4.2** of **Schedule 3** (Payment Mechanism), including the information listed in **paragraph 6.1.3** above;

7.3.2.2 the sum of Monthly Performance Adjustments determined in accordance with **paragraph 4.3** of **Schedule 3** (Payment Mechanism);

7.3.2.3 the sum of Tipping Away Payments determined in accordance with **paragraph 4.4** of **Schedule 3** (Payment Mechanism), including the information listed in **paragraph 6.1.4** above.

7.3.3 A summary of Annual Adjustments applied in respect of the immediately preceding Contract Year, comprising:

7.3.3.1 the sum of Annual Performance Deductions determined in accordance with **paragraph 5.2** of **Schedule 3** (Payment Mechanism), including the information listed in **paragraph 6.1.1** above;

7.3.3.2 a calculation of the Landfill Adjustment, determined in accordance with **paragraph 5.3** of **Schedule 3** (Payment Mechanism);

7.3.3.3 a calculation of the Third Party Income adjustment, determined in accordance with **paragraph 5.3.2** of **Schedule 3** (Payment Mechanism), including the following:

(a) a summary of Third Party Income received by the Contractor in the previous Contract Year, broken down by summary type (energy revenue, revenue from the sale of Recyclable Materials, revenue from the receipt of Third Party Waste at Delivery Points, other revenue received by the Contractor;

(b) a statement signed by the Contractor confirming that the information provided in paragraph (a) above represents the total revenue received by the Contractor in the immediately preceding Contract Year; and

(c) a comparison of the Third Party Income summarised in accordance with paragraph (a) above with the Base Case;

7.3.3A The Rebate Report shall contain the following information:

7.3.3A.1 a summary of the costs actually incurred by the Contractor in the relevant Contract Year in delivering any Extra Diversion; and

7.3.3A.2 a statement signed by the Contractor confirming that the information provided pursuant to **paragraph 7.3.3A.1** represents an accurate summary of the costs actually incurred in delivering any Extra Diversion in the Relevant Contract Year together with such supporting information, on an open book basis, as the Councils may reasonably require in order to verify that information.

7.3.4 the sum of Monthly Payments made in respect of the immediately preceding Contract Year

7.3.5 a breakdown of the Unitary Charge, the Monthly Adjustments and the Annual Adjustments relating to each Site.

7.4 The Annual Service Plan shall contain the following information where reasonably required:

7.4.1 The Contractor's proposals for changing the provision, performance and delivery of the Services to ensure they will be more efficient, effective and economic having regard to the Annual Service Report.

7.4.2 The Contractor's proposals for measuring the improvement to the Services by means of appropriate performance indicators.

8. REPORTING ERRORS

8.1 Any errors or discrepancies identified by the Councils in Monthly or Annual Reports submitted by the Contractor shall be verified and corrected as appropriate by the Contractor and the relevant Annual Report or Monthly Report shall be resubmitted within (10) Business Days following receipt of notification by the Councils.

SCHEDULE 5

Construction Completion and Acceptance Tests

1. **Construction completion**

1.1 Not less than 10 Business Days prior to undertaking any Acceptance Tests relevant to the New Waste Treatment Facility, the Contractor or the Construction Contractor shall provide to the Independent Certifier the following documents for the various systems or parts of the New Waste Treatment Facility:

1.1.1 as constructed general arrangement, section and elevation drawings;

1.1.2 as constructed process & instrumentation drawings (**"P & IDs"**);

1.1.3 process operating standards; as agreed with the Independent Certifier; and

1.1.4 as constructed electrical single line diagrams.

2. **Waste for commissioning**

Prior to commencement of the Acceptance Tests of any part of the New Waste Treatment Facility, the Contractor shall ensure that:

2.1.1 the Sinfin Site is properly secure and the weighbridge has been installed and operational and authorised by an inspector as fit for use in accordance with Section 11 of the Weights and Measures Act 1985;

2.1.2 the relevant part of the New Waste Treatment Facility is capable of receiving Contract Waste in accordance with the conditions stated in the Necessary Consents; and

2.1.3 the relevant part of the New Waste Treatment Facility is capable of treating Contract Waste in accordance with the process operating standards.

2.2 The commissioning shall be carried out as part of the Construction Contractor's scheduled orderly commissioning process, and prior to any commissioning the Contractor shall submit to the Independent Certifier for review full details of the commissioning programme and associated commissioning procedures and tests.

2.3 The Contractor shall notify the Councils of any requirement it may have for the Contract Waste to be delivered in accordance with **Schedule 17** (Waste Reception Protocol) to the New Waste Treatment Facility no less than 10 Business Days prior to requiring delivery of such Contract Waste. Such notification shall comprise, as a minimum a schedule of required tonnages and dates of delivery for the period up to the NWTF Completion Date.

3. **Acceptance Tests**

3.1 The Contractor shall notify the Councils no less than 20 Business Days prior to the proposed date for any Acceptance Test, that the relevant part of the New Waste Treatment Facility will be in a condition to proceed with the Acceptance Tests, providing such evidence to the Independent Certifier as is reasonably necessary to demonstrate that the conditions at **paragraphs 2.1.1** to **2.1.3** of

this **Schedule 5** have been met. When the Independent Certifier is satisfied that the conditions are met then the Independent Certifier shall confirm this in writing within 1 (one) Business Day to the Contractor and the Contractor shall proceed with the Acceptance Tests from the proposed date.

3.2 The Contractor shall conduct Acceptance Tests in relation to the following relevant parts of the New Waste Treatment Facility, and provide evidence to the satisfaction of the Independent Certifier to demonstrate that the requirements of each of the relevant Acceptance Tests have been met:

3.2.1 reception hall and other aspects of the New Waste Treatment Facility which are necessary for the operation of the reception hall, including the Weighbridge;

3.2.2 MBT Facility incorporating the Entsorga Technology;

3.2.3 ACT Facility incorporating the Energos Technology, including pre-processing lines and recyclable recovery; and

3.2.4 education facility.

3.3 The Acceptance Tests for each part of the New Waste Treatment Facility (excluding the education facility) are as follows:

3.3.1 Lawful operation:

3.3.1.1 the relevant part of the New Waste Treatment Facility complies with all applicable Legislation and Planning Permission (relevant to the New Waste Treatment Facility) has been granted and remains valid; and

3.3.1.2 the relevant part of the New Waste Treatment Facility is entitled to operate lawfully and accept Contract Waste (subject to **Schedule 17** (Waste Reception Protocol)) such that an appropriate Permit for the nature and the scale of the New Waste Treatment Facility is in place.

as determined in accordance with Tests 3 and 9 of Annex 1 to this **Schedule 5**.

3.3.2 Emissions:

3.3.2.1 Emission levels shall be limited to those stated in Necessary Consents, as determined in accordance with Test 3 of Annex 1 to this **Schedule 5**.

3.4 The Acceptance Tests for the education facility are as follows:

3.4.1 the facility complies with all applicable Legislation and Planning Permission (relevant to the education facility) has been granted and remains valid as determined in accordance with Test 9 of Annex 1 to this **Schedule 5**; and

3.4.2 the facility has been completed in accordance with the Works Delivery Plan as determined in accordance with Test 8 of Annex 1 to this **Schedule 5**.

3.5 In addition the following Acceptance Tests shall subject to **clause 21.3** (Turbine Delay) be run following completion of all parts of the New Waste Treatment Facility:

3.5.1 the New Waste Treatment Facility shall be capable of achieving the NWTF Diversion Tonnage Target, as determined in accordance with Tests 1, 2, 5, 6 and 7 of Annex 1 to this **Schedule 5**;

3.5.2 the New Waste Treatment Facility shall be capable of achieving the NWTF Recycling and Composting target, as determined in accordance with Tests 5 and 7 of Annex 1 to this **Schedule 5**;

3.5.3 the Turbine shall be capable of producing and exporting electricity to the grid, as determined in accordance with Test 4 of Annex 1 to this **Schedule 5**.

In the event of any Turbine Delay the tests detailed in **paragraphs 3.5.1** and **3.5.2** above may proceed ahead of the completion of the Turbine.

3.6 If any of the Acceptance Tests are not satisfied because of the presence of heavy metal gaseous emissions in excess of the requirements stipulated by any applicable Legislation, Necessary Consents or the requirements of the Environment Agency (Excess Heavy Metal), then the Independent Certifier shall request from the Contractor provision of appropriate evidence to demonstrate that the failure was not related to either:

3.6.1 a failure in the operation of the NWTF; or

3.6.2 a technical failure in any element of the NWTF.

3.7 If the Independent Certifier is satisfied that the information provided reasonably demonstrates that the NWTF was not the cause of Excess Heavy Metal the Independent Certifier shall issue the Completion Certificate.

4. Completion

When the Acceptance Tests in relation to the New Waste Treatment Facility have been met to the satisfaction of the Independent Certifier, the Independent Certifier shall, subject to **clause 21.3** (Turbine Delay) issue a Completion Certificate in accordance with **clause 21**.

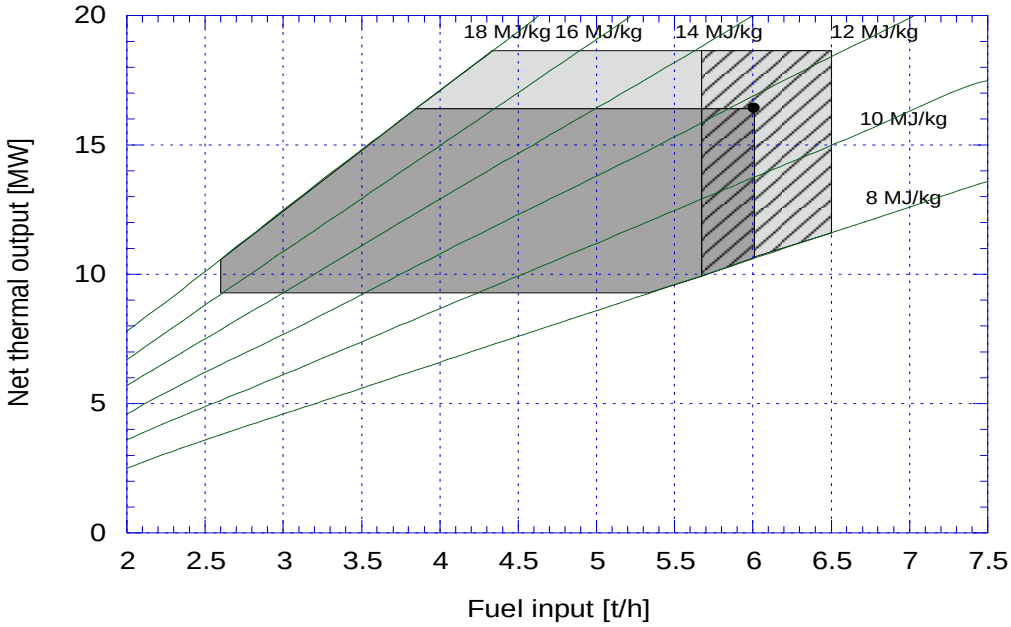
ANNEX 1 – ACCEPTANCE TESTS

The following tests must be satisfied during a 14 day period of operation of the NWTF (the **"14 Day Period"**):

Test Number	**Details of Test**
1	The average waste throughput for each ACT line must be >90% of the designed maximum feed rate of 6te/hr (ie, 5.4te/hr) or if CV>11.7MJ/kg such lower feed rate (x90%) as interpolated from the firing diagram attached at Annex 2 to this **Schedule 5**. For a continuous period of 8 hours during the 14 Day Period each line must operate simultaneously and to the satisfaction of the IC at 6 t/hr. Throughput to be measured via load cells on the grab cranes feeding the ACT. The load cells will be calibrated before and after the test period (using calibration weights that can be brought into the ACT Hall by lorry) to ensure accuracy of measurement.
2	Each ACT line must run for a total of 299 hours in the 14 Day Period (89% of total hours in 14 days). Continuous readings of the ACT availability and performance will be provided by the control system.
3	Subject to **paragraphs 3.6** and **3.7** of **Schedule 5**, emissions must be within limits required by the Industrial Emissions Directive, the Environmental Permit and Necessary Consents. For compounds not sampled by the plants standard emissions monitoring system (Continuous Emissions Monitoring System (CEMS)), each line will be sampled during the first 3 days of the 14 Day Period. Results will be sent for analysis by an appropriately accredited independent laboratory. Compliance with all other requirements set out in the Environmental Permit must also be demonstrated by this test.
4	The IC must be satisfied that the turbine has demonstrated that it has generated electricity using steam from the ACT modules and has exported it to the grid.
5	Pre-processing and MBT equipment will have to demonstrate performance in excess of the following levels: Overband magnets – aggregate of 79.2% of ferrous material (being objects with >60% ferrous content by weight) removed by weight from the aggregate ferrous metal content of input waste presented to overband magnets. Eddy current separators - aggregate 73.8% of non ferrous metal removed by weight from the aggregate non ferrous metal content of input waste presented to eddy current separators. NIRs – aggregate of 72% of targeted dense plastics material (being objects with >60% targeted dense plastics content by weight, and >50mm in two dimensions) removed by weight from the aggregate targeted dense plastics content of input waste presented to NIRs (excluding non-detectable black coloured materials).
6	The moisture of material leaving the biodrying hall shall be no greater than 75% of the moisture content of material entering the biodrying hall, to be

	demonstrated by comparison of the average moisture content of three input and three output samples, (some of which may be taken prior to the 14 Day Period), such sampling being repeated as necessary on any failure of the test. As an example of the test result calculation: the average moisture content of three 1 kg samples of input material is 300g and the same for three corresponding 1kg output material samples 14 days later is 225g, then the moisture content of the output material is 75% (225/300) of the input material and passes this test.
7	Availability of pre-processing and MBT equipment to be: 95% for MBT based on 24/7 operation; and 92% for preprocessing equipment being 124hrs of the total 135hrs of planned operational time at 13.5hrs per day for 10 days (whether consecutive or not) of the 14 Day Period. This measurement of planned operational time excludes time for routine cleaning, start up and shutdown procedures (2.5 hours per day out of 16 hour day), but shall include time for interruptions due to equipment failure. Where for the purposes of this Schedule 5: "MBT" shall mean all fixed equipment downstream of the trommel and upstream of the dried material outlet hopper necessary for the bio-drying of Waste, including, but not limited to, the overhead cranes, fans and associated ventilation system, bio-filter, control system, and leachate system; and "Preprocessing equipment" shall mean all fixed equipment necessary for the processing of Waste into fuel and the recovery and export of targeted recyclates, including, but not limited to, the trommel upstream of the MBT, the fuel export equipment, control system, and associated dust management system.
8	The education facility must be complete in accordance with the Works Delivery Plan. If required, the IC will be able to carry out the inspection of the education facility prior to the 14 Day Period.
9	The IC must be satisfied that the NWTF, including the education facility, has been granted an appropriate Planning Permission and Environmental Permit, which both remain valid, and that relevant conditions have been discharged. The IC must also be satisfied that the NWTF complies with requirements set out in the relevant Planning Permission and Environmental Permit, and otherwise complies with applicable Legislation.

ANNEX 2 – FIRING DIAGRAM



Maximum fuel moisture content is 60% for a fuel consumption less than 5.67 t/h.
The maximum fuel moisture content decrease linear from 60% at 5.67t/h to 35% at 6.5t/h.

Normal operating area

Margin for transient operation only.

SCHEDULE 6

Change in Law - Contractor’s Share

Cumulative Capital Expenditure	Contractor's Share
£0 £200,000 (inclusive)	100%
£200,001 £400,000 (inclusive)	80%
£400,001 £600,000 (inclusive)	60%
£600,001 £800,000 (inclusive)	40%
£800,001 £1,000,000 (inclusive)	20%
£ >£1,000,001	0%

SCHEDULE 7

Relevant Discharge Terms

1. The sums referred to in **paragraph 2.1** below and the adjustment between the Parties of the rights and liabilities relating to the Assets referred to in paragraph 2.1 below shall be relevant discharge terms in relation to this Contract for the purposes of section 6 of the Local Government (Contracts) Act 1997.

2. In the event of making a determination or order by a court of final jurisdiction on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997), the result of which is that this Contract ceases to have effect or is otherwise unenforceable, then:

2.1 the Councils shall pay to the Contractor the sum equivalent to the amount of compensation payable by the Councils to the Contractor pursuant to clause 56 (Compensation on Council Default) calculated as at the date of such determination or order;

2.2 the Councils shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets (excluding any accrued rights of the Contractor) to the Councils or as directed by the Councils.

3. the Councils shall pay the Contractor the sums referred to in **paragraph 2.1** above within 40 Business Days of the determination or order of the court referred to in **paragraph 2** above.

4. Any payment of compensation in accordance with this **Schedule 7** shall be in full satisfaction of any claim of the Contractor in relation to the termination of this Contract and shall be the sole remedy of the Contractor against the Councils in the circumstances contemplated by **paragraph 2** above.

SCHEDULE 8

Environmental Provisions

For the purposes of this Schedule, the following provisions shall have the meanings set out below:

"Action" any criminal, civil, judicial, regulatory or administrative proceeding, suit, action, written claim, order, requirement or written notice by a Relevant Authority or third party which could reasonably be expected to result in Environmental Liabilities being suffered or incurred in relation to Contamination at or escaping from any Site

"Aggravated Contamination" the escape, release or migration of Existing Contamination and Known Tannery Contamination at or from an Existing Site or a New Site after:

(a) the Works Commencement Date in relation to the Minor Facility A and the NWTF; and

(b) the Initial Services Commencement Date in relation to any other Minor Facility;

to the extent that such escape, release or migration arises or is increased, accelerated or exacerbated by or as a result of any Contractor Act (but only in the case of Unknown Tannery Contamination or Atkins Default Contamination to the extent that the Contractor knew or ought reasonably to have known (acting as a Reasonable and Prudent Person) of the Unknown Tannery Contamination or Atkins Default Contamination in question)

"Appointment" the appointment of the Remediation Handback Consultant in the form previously approved by the Councils in accordance with **paragraph 1.7.2**

"Atkins Report" the report dated March 2007 and commissioned by Derby City Council (pursuant to the appointment (as amended by a letter) in the Agreed Form dated 6 September 2006) from Atkins Limited relating to the site conditions at the Sinfin Site in the Agreed Form

"Atkins Default Contamination" any Contamination at, in, on, under or migrating from the Sinfin Site not revealed, but which should have been revealed, by the Atkins Report had Atkins Limited performed their services in all respects in accordance with their terms of appointment

"Closure Report" the closure report referred to in **paragraph 1.12.2**

"Closure Statement" the closure statement referred to in **paragraph 1.12.1**

"Collateral Warranty" a warranty to be executed as a deed in favour of the Councils:

(a) by the Remediation Handback Consultant who has prepared the Environmental Condition Survey, the Remediation Handback Specification and who certifies Remediation Handback Completion in accordance with the Remediation Handback Specification and issues the Closure Report and Closure Statement;

(b) by the Remediation Handback Contractor in relation to the Remediation Handback Works; and

(c) by any environmental consultant who undertakes Investigative Works

"Contamination" the presence, retention or accumulation of any Hazardous Substances

"Contractor Environmental Report" any environmental report or reports prepared by environmental consultants commissioned by the Contractor relating to the presence of Contamination at the Sinfin Site as approved in writing by the Councils prior to the Commencement Date identified as an Agreed Form document;

"Contractor Act" any act or omission or activity of the Contractor or Contractor Related Party including without limitation:

(a) any negligent act or omission of the Contractor or any Contractor Related Party;

(b) any act outside the ordinary course of business or Good Industry Practice by the Contractor or any Contractor Related Party after the Commencement Date;

(c) any non-compliance with the terms of this Contract; or

(d) the surrender or variation of any Necessary Consents.

"Emergency" an imminent or continuing risk of harm to the environment or human health

"Environmental Condition Survey" a Phase II environmental audit and such further audits as are recommended by the Remediation Handback Consultant to establish what Remediation Works are required and the related costs to ensure that the Sites are Environmentally Acceptable.

"Environmental Legal Requirements" Legal Requirements relating directly or indirectly to the Environment

"Environmental Liabilities" losses, liabilities (including without limitation liability for or a requirement to carry out Remediation Works and/or Investigative Works and/or Monitoring), fines, damages, penalties, costs and expenses (including legal and

professional fees) of any kind whatsoever, save for any indirect or consequential loss or damages or pure economic loss (and "indirect" and "consequential" loss or damages shall include but not be limited to, loss of anticipated profits, loss of revenue loss of use cost of capital, loss of permits, loss of revenue or other loss including in respect of business interruption) in each case as a result of Existing Contamination, and/or New Contamination and/or Atkins Default Contamination (as the case may be). For the avoidance of doubt, the indemnity in **paragraph 1.1.1** shall include any Deductions, loss of revenue and/or additional landfill costs incurred by the Contractor arising in connection with the Environmental Liability and any such losses or increased costs shall not be construed as indirect, consequential or pure economic loss

"Environmentally Acceptable"

(a) in relation to the Sinfin Site in such a condition so as to be suitable for use as a waste management facility and for the provision of the Services and in no worse condition than the baseline condition delineated in the Atkins Report and Contractor Environmental Report but for the avoidance of doubt after Remediation Works have been carried out so as to make the Sinfin Site suitable for use as a waste management facility and for the provision of the Services and such that there is no New Contamination in, at, on or under the Sinfin Site which is causing significant harm or with a significant possibility of causing such harm or causing or likely to cause pollution of controlled waters (as defined in the EPA) and otherwise in such a condition as to comply with Environmental Legal Requirements and any Necessary Consents (subject to **clause 29** (Change in Law)) relating to the pollution or protection of the Environment. For the avoidance of doubt such condition shall relate to the whole of the Sinfin Site and not just any operational part of the Sinfin Site; and

(b) in relation to the Sites other than the Sinfin Site in such a condition so as to be suitable for use as a waste management facility and for the provision of the Services such that there is no New Contamination in, at, on or under the relevant Site which is causing significant harm or with a significant possibility of causing such harm or causing or likely to cause pollution of controlled waters (as defined in the EPA) and otherwise in such a condition as to comply with Environmental Legal Requirements and any Necessary Consents (subject to **clause 29** (Change in Law) relating to the pollution or protection of the Environment. For the avoidance of doubt such condition shall relate to the whole of each such Site and not just any operational part of any Site

"Existing

(a) in relation to any Existing Sites, other than the Sinfin

Contamination" Site, any Contamination present at, in, on or under such Existing Sites at any time prior to:

(i) the Initial Services Commencement Date in relation to any Minor Facility (excluding any Minor Facility A);

(ii) the Works Commencement Date in relation to any Minor Facility A;

(b) any Unknown Tannery Contamination; or

(c) any escape, release or migration of any such Contamination mentioned in sub-paragraph (a) above or of any Known Tannery Contamination or of any Unknown Tannery Contamination from the Existing Sites at any time before or after:

(i) the Initial Services Commencement Date in relation to any Minor Facility (excluding the Minor Facility A);

(ii) the Works Commencement Date in relation to the Minor Facility A;

(iii) the Works Commencement Date in relation to the NWTF;

"Existing Sites" (a) the Sinfin Site;

(b) the Sites of each HWRC;

(c) the Sites of each Project Transfer Station,

but excluding any Third Party Transfer Station or Landfill Site used by the Contractor in performing the Services;

"Expert" an environmental consultant or such other appropriately qualified professional agreed between the Parties but in default of agreement within 5 Business Days of one Party notifying the other of its wish to refer any matter to an Expert then such environmental consultant or such other appropriately qualified professional as shall be nominated by the President for the time being of the Institute of Environmental Management and Assessment

"Hazardous Substances" any substance, whether alone or in combination with any other substance capable of causing material harm to human health or the Environment

"Indemnity Claim" any claim made under **paragraph 1.1**

"Investigative Works" inspections, investigations, assessments, audits, sampling or Monitoring of the presence or effects of any Contamination at the Sites or any adjoining or adjacent land

"Known Tannery any Contamination at, in, on, under or migrating from the

Contamination" Sinfin Site that is:

(a) revealed by the Atkins Report;

(b) Atkins Default Contamination; and/or

(c) revealed by any Contractor Environmental Report or which should have been revealed by any Contractor Environmental Report had the consultants who prepared such report performed their services in all respects in accordance with their respective terms of appointment;

"Monitoring" the carrying out of any monitoring including without limitation landfill gas monitoring, leachate monitoring and groundwater monitoring to monitor the effects of any Existing Contamination and/or New Contamination (as the case may be)

"New Contamination"

(a) any Contamination (other than Existing Contamination and Known Tannery Contamination) present at, in, on, under or migrating from the Existing Sites and/or New Sites after the:

(i) Initial Services Commencement Date in relation to any Minor Facility (excluding the Minor Facility A);

(ii) the Works Commencement Date in relation to the Minor Facility A; and/or

(iii) the Works Commencement Date in relation to the NWTF; and/or

(b) any Aggravated Contamination;

"New Sites" any Site on which a Facility is located (other than any Landfill Site or Third Party Transfer Station) from time to time, but excluding any Existing Sites;

"Proposed Contractors" the proposed remediation hand back contractors to whom the Tender is submitted by the Remediation Handback Consultant pursuant to **paragraph 1.8**;

"Reasonable and Prudent Person" a person exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator or construction contractor in substantial compliance with all applicable Environmental Legal Requirements engaged in carrying out works of the same or similar type to the Works or providing services of the same or similar type to the Services

"Remediation Handback Completion" the date on which all the Remediation Handback Works or the Further Remediation Handback Works are properly completed and any defects have been corrected or maintenance carried out in accordance with the Remediation Handback Contract

	as certified by the Remediation Handback Consultant or determined by the Expert in accordance with **paragraph 1.15**
"Remediation Handback Contract"	the remediation contract or contracts to be in the form of deeds and to be entered into between the Contractor (or a subcontractor) and the Remediation Handback Contractor with regard to the carrying out and completion of the Remediation Handback Works, such contract or contracts in the form approved by the Councils in accordance with **paragraph 1.8.2**
"Remediation Handback Contractor"	the remediation contractor or contractors employed by the Contractor (or a subcontractor) to undertake the Remediation Handback Works (or any replacement remediation contractor employed by the Contractor (or a subcontractor) to undertake the Remediation Handback Works)
"Remediation Completion Date"	the date stated in the last of the Remediation Completion Certificate or the Further Remediation Completion Certificate or the date determined by the Expert as being the date upon which Remediation Handback Completion occurred (as the case may be)
"Remediation Completion Certificate"	the certificate issued by the Remediation Consultant in accordance with **paragraph 1.11** certifying Remediation Handback Completion
"Remediation Handback Consultant"	such environmental consultant as is nominated by the Councils and agreed by the Contractor (acting reasonably) and appointed pursuant to the provisions of **paragraph 1.7**
"Remediation Handback Period"	the period recommended by the Remediation Handback Consultant for the completion of the Remediation Handback Works and/or the Further Remediation Handback Works
"Remediation Handback Specification"	the final specification for the Remediation Handback Works to ensure the relevant Site is Environmentally Acceptable as recommended by the Remediation Handback Consultant or determined by the Expert pursuant to **paragraph 1.15**
"Remediation Handback Works"	the actions or works as specified in the Remediation Handback Specification
"Remediation Works"	the carrying out of works to prevent, minimise, remedy or mitigate the effects of any Existing Contamination and/or New Contamination (as the case may be) and which includes all Monitoring
"Sites"	for the purposes of this Schedule only, Sites shall mean any New Sites and Existing Sites and Site shall mean any one of them
"Tender"	for the purposes of this Schedule only, a tender for the Remediation Handback Works in such form as is approved by the Councils (such approval not to be unreasonably withheld or delayed) or the Expert in accordance with **paragraph**

1.15

"Trigger Condition"	(a)	an Action having been made, commenced, served or threatened in writing by a Relevant Authority or a third party; or
	(b)	a Reasonable and Prudent Person would carry out Investigative Works and/or Remediation Works and/or Monitoring in relation to any Contamination at or escaping from any Site within a period of 6 Months of becoming aware of such Contamination (or sooner, acting with all due diligence in the event of an Emergency) in order to avoid or mitigate harm to the Environment or harm to human health
"Unknown Tannery Contamination"	any Contamination at, in, on or under the Sinfin Site present at or prior to the Works Commencement Date other than Known Tannery Contamination	

1. **CONTAMINATION**

1.1 **Indemnities**

The following provisions of this **paragraph 1.1** shall apply subject to **paragraph 1.5** of this **Schedule 8**:

1.1.1 Subject to **paragraph 1.1.2**, the Councils shall be solely responsible for and shall indemnify the Contractor from and against any Environmental Liabilities arising from or in connection with Existing Contamination and/or Atkins Default Contamination at any time.

1.1.2 The Contractor shall be solely responsible for and shall indemnify the Councils from and against any Environmental Liabilities suffered or incurred by the Councils arising from or in connection with New Contamination at any time.

1.1.3 To the extent that any Environmental Liabilities incurred or suffered by the Councils or the Contractor cannot be proved to be covered by the indemnities in **paragraphs 1.1.1** and 1.1.2 such Environmental Liabilities shall be borne between the Councils and the Contractor on a fair and equitable basis and the provisions of **paragraph 1.1.4** shall apply.

1.1.4 Where **paragraph 1.1.3** applies, the Parties shall first seek to agree what proportions of the Environmental Liabilities each of them shall bear. If agreement cannot be reached between the Parties within 20 Business Days then either Party shall be entitled to refer the matter to the Expert and the provisions of **paragraph 1.1.5** shall apply.

1.1.5 The Councils shall use reasonable endeavours to provide such information and assistance as the Contractor may reasonably request in relation to ascertaining whether any Contamination constitutes Atkins Default Contamination.

1.2 **Joint Responsibilities**

1.2.1 If either Party becomes aware of a Trigger Condition having been satisfied it shall give written notice to the other Party of the matter as soon as reasonably practicable.

1.2.2 Save for an Action which relates to Existing Contamination in relation to which the Councils shall have exclusive conduct of any such Action, the Contractor shall have exclusive conduct of any Action.

1.2.3 In connection with any Action, both Parties shall:

1.2.3.1 retain and preserve all relevant documents, records and information within their power, possession or control which are relevant in connection with any Action for so long as any Action remains outstanding;

1.2.3.2 at their own cost, be entitled to copies of any relevant documents or records and to relevant photographs of any premises or assets;

1.2.3.3 give to the other Party and its consultants and other advisers all such information (including copies of relevant documents) with regard to the Action as they may reasonably require;

1.2.3.4 consult with the other Party as to whether and how any Action should be avoided, resisted, construed, defended, compromised or otherwise dealt with;

1.2.3.5 permit the other Party and any representative of the other Party to attend any meetings with any Relevant Authority or third party with regard to the Action; and

1.2.3.6 not make any admission of liability, agreement or compromise with any Relevant Authority or third party in relation to the Action without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

1.2.4 In the event that either Party proposes to undertake any Investigative Works and/or Remediation Works and one Party is liable to indemnify the other in respect of the cost thereof under **paragraph 1.1** the Parties shall as soon as reasonably practicable consult in all good faith to agree the type and scope of the Investigative Works and/or Remediation Works and/or Monitoring required to be undertaken.

1.2.5 In the event of a dispute between the Parties as to the type and scope of the Investigative Works and/or Remediation Works and/or Monitoring the matter shall be referred to the Expert for determination of the type and scope of the Investigative Works and/or Remediation Works and/or Monitoring and the provisions of **paragraph 1.1.5** shall apply and the Investigative Works and/or Remediation Works and/or Monitoring shall be implemented in accordance with the recommendations of the Expert.

1.2.6 Where either Party has paid monies to the other in respect of any Indemnity Claim (the **"Indemnifying Party"**) and the other Party recovers from a third party any payment, saving or benefit which is

referable to a fact, matter, event or circumstance giving rise to that Indemnity Claim, the other Party shall:

1.2.6.1 notify the Indemnifying Party as soon as reasonably possible; and

1.2.6.2 shall pay to the Indemnifying Party an amount equal to the amount that the other Party will save by virtue of the payment, saving or benefit by or from a third party (less any reasonable costs incurred in recovering or obtaining such payment, saving or benefit and any tax actually suffered thereon by the other Party (including but not limited to any increase in insurance premium or excess as a consequence of the claim against insurance)) (the **"Benefit"**) to the extent that the amount of the Benefit does not exceed the aggregate payments previously made by the Indemnifying Party to the other Party in respect of that Indemnity Claim.

1.3 **Contractor Responsibilities**

1.3.1 The Contractor covenants not to carry out or permit to be carried out at the Existing Sites any of the following:

1.3.1.1 not used;

1.3.1.2 any Investigative Works after the date of this Contract without the prior written consent of the Councils except where required pursuant to any Environmental Legal Requirements provided that in such case such Investigative Works are properly required for such purpose and the scope of such Investigative Works have been approved by the Councils (such approval not to be unreasonably withheld or delayed) and in the event of any such Investigative Works being carried out the Contractor shall ensure that the Councils are provided with a copy and has the benefit of a Collateral Warranty from the consultant who carries out such Investigative Works.

1.4 **Further Joint Responsibilities**

1.4.1 Each Party covenants to supply the other Party with copies of all notices, directions, reports or correspondence received by it and which concern any Contamination in, on or under the Sites or any escape, release or migration of any Contamination at or from the Sites at any time and which are likely to result in a Trigger Condition applying.

1.4.2 In each case, save where:

1.4.2.1 required under any Necessary Consents or Environmental Legal Requirements; or

1.4.2.2 required in order to properly comply with any requirement under this Contract.

the Parties each covenant:

1.4.2.3 not to notify or report or disclose to any Relevant Authority any information regarding the environmental state and condition of the Sites or of the presence, accumulation, escape, release or migration of any Contamination in, on, under, at or from the Sites without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed; and

1.4.2.4 not to do or permit to be done anything which would or is reasonably likely to result in any requirement for Remediation Works at or in relation to the Sites or which would or is reasonably likely to result in an Action.

1.5 **Limitation on Claims**

1.5.1 Each Party will only be entitled to make an Indemnity Claim if and to the extent that a Trigger Condition has been satisfied in relation to the matter giving rise to the relevant claim.

1.5.2 In the event that Trigger Condition (a) is satisfied a Party will only be entitled to be paid pursuant to an Indemnity Claim if and to the extent that the Liabilities suffered or incurred are as a result of the Action in question.

1.5.3 The Contractor shall not be entitled to claim or recover from the Councils pursuant to **paragraph 1.1.1** of this **Schedule 8** in respect of Atkins Default Contamination any amount in excess of five million pounds (£5,000,000) in aggregate.

1.5.4 Nothing in this Contract shall require the Councils to bear any Environmental Liability or carry out any Remediation Works which arise or relate to New Contamination at any time.

1.5.5 Nothing in this Contract shall in any way restrict or limit the common law duty of either Party to mitigate its loss.

1.6 **Agreement on Liabilities**

The Parties hereby agree that the provisions hereof constitute an agreement on liabilities for the purposes of Part IIA of the EPA and the statutory guidance issues in respect of it (including without limitation paragraph D38 of DEFRA Circular 01/2006) and the Parties acknowledge that either may show it to any Relevant Authority for the purposes of establishing any allocation of liability in relation to the Sites in the event of any enforcement under Part IIA of the EPA.

1.7 **Appointment of Remediation Handback Consultant**

1.7.1 At any time within 18 Months before the Expiry Date or the Extended Expiry Date (as the case may be) or following a Termination Notice being issued in relation to any Contractor Default, the Councils may require the carrying out of an Environmental Condition Survey and if so, the Councils shall at the same time nominate the Remediation Handback Consultant.

1.7.2 The Contractor shall submit a draft deed of appointment of the Remediation Handback Consultant to the Councils for its approval (such approval not to be unreasonably withheld or delayed) and shall

confirm its agreement or otherwise to the nominated Remediation Handback Consultant (acting reasonably) within 10 Business Days of the Councils nominating the Remediation Handback Consultant pursuant to **paragraph 1.7.1**.

1.7.3 the Councils shall then notify the Contractor whether it approves or rejects the draft appointment within 10 Business Days of receiving it. Where the Councils approve the draft appointment the Contractor shall proceed to appoint the Remediation Handback Consultant in accordance with **paragraph 1.7.5**.

1.7.4 If the Councils do not approve the draft appointment in accordance with **paragraph 1.7.3** or the Parties cannot agree on the proposed Remediation Handback Consultant nominated by the Councils then within 5 Business Days the matter shall be referred to an Expert for determination in accordance with **paragraph 1.15**.

1.7.5 The Contractor shall at its sole cost appoint the Remediation Handback Consultant on the terms of the Appointment (and will supply a completed copy to the Councils within 5 Business Days of receiving it):

1.7.5.1 to carry out an Environmental Condition Survey;

1.7.5.2 to prepare a draft of the Remediation Handback Specification;

1.7.5.3 to recommend a reasonable Remediation Handback Period in respect of each of the Sites;

1.7.5.4 require that the Remediation Handback Consultant provides a Collateral Warranty to the Councils in favour of the Councils and such other third party as is reasonably requested by the Councils; and

1.7.5.5 to provide a reasonable estimate of the cost of the Remediation Handback Works

1.7.6 The Contractor shall procure that in preparing the draft of the Remediation Handback Specification that the Remediation Handback Consultant shall:

1.7.6.1 take into account the requirement to put each Site into a condition which is Environmentally Acceptable;

1.7.6.2 take into account all matters which a skilled and diligent remediation consultant experienced in matters of this nature would take into account including (without limitation) all Environmental Legal Requirements and/or all relevant Necessary Consents existing at the date of the appointment of the Remediation Handback Consultant pursuant to **paragraph 1.7.3**;

1.7.6.3 submit the Remediation Handback Specification in draft (together with any supporting documentation necessary) to any Relevant Authority to the extent that this is required to obtain (as soon as reasonably practicable) any

Necessary Consents needed for the carrying out of the Remediation Handback Works;

1.7.6.4 ensure that the Remediation Handback Specification meets the requirements of any Relevant Authority as applicable;

1.7.7 The Contractor shall procure that the Remediation Handback Consultant shall submit:

1.7.7.1 the results of the Environmental Condition Survey to the Contractor and the Councils (together with a reasonable estimate of the cost of the Remediation Handback Works) within 5 Days of the Remediation Handback Consultant completing such survey;

1.7.7.2 the Remediation Handback Specification for approval by the Contractor and the Councils (such approval not to be unreasonably withheld or delayed) within 20 Days of the Remediation Handback Consultant completing the Environmental Condition Survey or such longer time as the Parties shall agree (acting reasonably and taking into account the extent of the Environmental Condition Survey).

1.7.8 The Councils and the Contractor shall notify each other in writing whether they approve or reject the Remediation Handback Specification within 28 Days of receiving it from the Remediation Handback Consultant.

1.7.9 Where either the Contractor or the Councils does not approve or rejects the Remediation Handback Specification in accordance with **paragraph 1.7.8** then within 10 Business Days the matter shall be referred to an Expert within 10 Business Days for determination in accordance with **paragraph 1.15**.

1.7.10 The Contractor shall procure that in accordance with its Appointment the Remediation Handback Consultant seeks to obtain (without any obligation to do so before submitting the final Remediation Handback Specification to the Parties) any Necessary Consents required for the carrying out of the Remediation Handback Works before submitting the final Remediation Handback Specification to the Parties.

1.8 **The Tender Process**

1.8.1 Within 20 Business Days of the later of the Remediation Handback Specification being provided to the Parties and the obtaining of all Necessary Consents required for the carrying out of the Remediation Handback Works the Parties shall agree the names of at least 3 Proposed Contractors and the proposed form of the Remediation Handback Contract.

1.8.2 Where the Parties cannot agree the names of the Proposed Contractors and/or the proposed form of the Remediation Handback Contract in accordance with **paragraph 1.8.1** then within 5 Business Days the matter shall be referred to an Expert for determination in accordance with **paragraph 1.15**.

1.8.3 Following agreement (or determination by the Expert) of the Proposed Contractors and the Remediation Handback Contract, the Contractor shall issue the Tender to the Proposed Contractors. The Tender shall have attached to it the Remediation Handback Contract and shall specify that responses to the Tender must be received by the Contractor within 20 Business Days of issue of the Tender.

1.8.4 No Tender shall be accepted by the Contractor without the prior written approval of the Councils (such approval not to be unreasonably withheld or delayed).

1.8.5 The Councils shall be entitled (prior to giving approval pursuant to **paragraph 1.8.4**) to require the Contractor to procure reasonable further details or information from any Proposed Contractor as to any aspect of its Tender. The Contractor shall in any event provide the Councils with a copy of any tender acceptance report relating to a Proposed Contractor so as to assist the Councils in assessing and approving any Tender pursuant to **paragraph 1.8.4**.

1.8.6 If agreement cannot be reached between the Contractor and the Councils as to which Tender should be accepted within 20 Business Days of the Contractor sending all Tenders to the Councils then within a further 5 Business Days the matter shall be referred to an Expert in accordance with **paragraph 1.15**.

1.8.7 The Contractor shall accept the Tender agreed with the Councils or determined by the Expert (as the case may be) within 5 Business Days of such agreement or determination (as the case may be).

1.8.8 As soon as reasonably practicable following acceptance of a Tender in accordance with **paragraph 1.8.7** the Contractor (or a sub-contractor) shall enter into the Remediation Handback Contract with the Remediation Handback Contractor and shall supply a copy of the completed Remediation Handback Contract to the Councils within a further 5 Business Days.

1.9 **Remediation Handback Works**

1.9.1 The Contractor shall procure at its own cost that the Remediation Handback Works shall be carried out and completed by the Remediation Handback Contractor in accordance with the Remediation Handback Contract (including without limitation in accordance with the Remediation Handback Specification).

1.9.2 In respect of the Remediation Handback Works:

1.9.2.1 the Parties agree and acknowledge that if and to the extent that the CDM Regulations apply to the Remediation Handback Works the Councils will be deemed to have hereby appointed the Contractor to act as the only client in respect of such Works subject to **clause 17** (CDM Regulations);

1.9.2.2 the Contractor shall ensure that the Remediation Handback Contract contains an obligation on the Remediation Handback Contractor to comply with all Environmental Legal Requirements applicable at the date

of the Remediation Handback Contract and all relevant Legal Requirements and Guidance of any Relevant Authority;

1.9.2.3 the Contractor shall ensure that the Remediation Handback Contract shall grant the Councils any necessary step in rights;

1.9.2.4 ensure that the Remediation Handback Contract contains a provision requiring the Remediation Handback Contractor to complete the Remediation Handback Works within the Remediation Handback Period;

1.9.2.5 the Contractor shall at the request of the Councils keep it informed as to the progress of the Remediation Handback Works and supply to the Councils such information as the Councils shall reasonably require in relation to any aspect of the Remediation Handback Works or the Remediation Handback Contract;

1.9.2.6 the Contractor shall permit the Councils (and/or its advisers or consultants) access to any Site (or any part of it) to inspect and/or monitor the Remediation Handback Works upon reasonable prior written notice and subject to complying with the Remediation Handback Contractor's reasonable safety and security requirements (as may be updated from time to time but provided that such access and inspection and/or monitoring does not impede the progress of the Remediation Handback Works or the Services and that the Councils (and/or its advisors or consultants) are not permitted to provide any instructions to the Remediation Handback Contractor (or any sub-contractor of any tier);

1.9.2.7 the Contractor shall take into account any reasonable representations of the Councils in relation to the Remediation Handback Works (but on the basis that the Councils will be under no duty to monitor the Remediation Handback Works or to make representations);

1.9.2.8 the Contractor shall ensure that under the Remediation Handback Contract the Remediation Handback Consultant shall be responsible for obtaining all Necessary Consents required for carrying out the Remediation Handback Works;

1.9.2.9 subject to **clauses 47** (Contractor's Records), 49 (Data Protection) and 75 (Freedom of Information), the Contractor shall maintain as confidential and not disclose at any time to any person or body any information of a confidential nature including (without limitation) concerning the operations, processes or dealings of the other Party or any information of whatsoever nature concerning the organisation, business, financial arrangements, transactions or affairs of the other Party which have come or may come to the knowledge of the Contractor as a result of the carrying out of the

Remediation Handback Works save as required by Law or as necessary to enable the Contractor to comply properly with its obligations under this Contract or as may be expressly authorised in writing by the Councils;

1.9.2.10 the Contractor shall ensure that the Councils are notified of and has the right to attend any site meetings with any Relevant Authority concerning the Remediation Handback Works and to receive on request copies of all correspondence with all such authorities in relation to the Remediation Handback Works and the minutes and other records of all such meetings (where received by the Contractor);

1.9.2.11 at any time prior to the date of the issue of the Remediation Completion Certificate the Contractor shall notify the Councils as soon as reasonably practicable after the Contractor becomes aware that any Hazardous Substances are discovered at or escaping from any Site which are not taken into account in the Remediation Handback Specification and which should be so taken into account;

1.9.2.12 on discovery of such Hazardous Substances pursuant to **paragraph 1.9.2.11** the Contractor shall procure that the Remediation Handback Consultant considers the same and if necessary in its professional opinion recommends a variation to the Remediation Handback Specification to ensure that the Site is put into a condition which is Environmentally Acceptable and the Contractor shall notify the Councils in writing of such recommendation (if any);

1.9.2.13 the Contractor shall not make any change or variation to the Remediation Handback Specification pursuant to **paragraph 1.9.2.12** without the prior written agreement of the Councils (such agreement not to be unreasonably withheld or delayed). If the Councils give their prior written agreement to any such recommendation, the Parties shall seek to agree the variation to the Remediation Handback Specification acting in good faith and failing such agreement within 10 Business Days the matter shall be referred to an Expert within 5 Business Days for determination in accordance with **paragraph 1.15**.

1.10 Collateral Warranties

Within 10 Business Days of entering into the Remediation Handback Contract, the Contractor shall use all reasonable endeavours to provide to the Councils the Collateral Warranties from the Remediation Handback Contractor.

1.11 Remediation Handback Completion

1.11.1 When the Contractor is of the opinion that Remediation Handback Completion has occurred and following receipt of confirmation from any Relevant Authority that they are satisfied with the Remediation

Handback Works it shall forthwith notify the Remediation Handback Consultant and the Councils of the same.

1.11.2 The Contractor shall procure that the Remediation Handback Consultant shall within the period of 10 Business Days of its receipt of the Contractor's notice given under **paragraph 1.11.1** either:

1.11.2.1 issue the Remediation Completion Certificate stating the date upon which in its opinion Remediation Handback Completion has occurred; or

1.11.2.2 notify the Councils and the Contractor that Remediation Handback Completion has not been achieved together with a report setting out the respects in which it considers that the same had not been achieved.

1.11.3 If the Remediation Handback Consultant provides a report pursuant to **paragraph 1.11.2.2**, the Contractor shall, when it is of the opinion that each of the respects referred to in the Remediation Handback Consultant's report have been satisfied, notify the Remediation Handback Consultant and the Councils of the same and thereafter the procedures set out in **paragraphs 1.11.1** and 1.11.2 shall be repeated until the Remediation Completion Certificate is issued or it is determined by the Expert pursuant to **paragraph 1.15** that the Remediation Completion Certificate should have been issued.

1.11.4 If:

1.11.4.1 the Councils disagree with the issuance of the Remediation Completion Certificate; or

1.11.4.2 the Remediation Handback Consultant fails to issue the Remediation Completion Certificate in accordance with **paragraph 1.11.2** and the Contractor wishes to challenge the same; or

1.11.4.3 there are any aspects of the Remediation Handback Consultant's report provided pursuant to **paragraph 1.11.2.1** which either Party wishes to challenge;

then the relevant Party shall be entitled to refer the matter within 20 Business Days for determination by an Expert in accordance with **paragraph 1.15**.

1.11.5 If the Parties agree or the Expert decides (as the case may be) that further works need to be carried out in order to fulfil the Handback Specification (**"Further Remediation Handback Works"**), then it shall also specify a further Remediation Handback Period (**"Further Remediation Handback Period"**) and the Contractor will procure at its own expense that the Further Remediation Handback Works are carried out within the Further Remediation Handback Period.

1.11.6 When the Contractor is of the opinion that Remediation Handback Completion of the Further Remediation Handback Works has occurred the Contractor shall forthwith notify the Remediation Handback Contractor and the Councils of the same and the provisions of **paragraph 1.11.1** and 1.11.6 (inclusive) shall then apply mutatis

mutandis (but replacing the words "Remediation Completion Certificate" by "Further Remediation Completion Certificate") and there shall be no restriction on the number of times that these provisions may apply.

1.11.7 The Parties agree that the relevant Remediation Completion Certificate or Further Remediation Completion Certificate shall be final and binding on the Parties unless the matter is referred for determination by an Expert in accordance with **paragraph 1.15** and is so referred within 20 Business Days of receipt of the relevant Remediation Completion Certificate or Further Remediation Completion Certificate.

1.12 **Documents to be Provided on Remediation Handback Completion**

On Remediation Handback Completion the Contractor shall procure that there is provided to the Councils (or in the event that the Councils exercises any step in rights and the Remediation Handback Works are completed by a contractor appointed by the Councils) at the cost and expense of the Contractor the following information and documents (all of which shall be addressed to both the Contractor and to the Councils):

1.12.1 three copies of a statement by either the Remediation Handback Consultant or Remediation Handback Contractor of not more than two A4 pages in length which shall:

1.12.1.1 describe the project in very brief form, including its objectives and the Remediation Handback Works;

1.12.1.2 make specific reference to the Closure Report;

1.12.1.3 detail the extent of regulatory liaison;

1.12.1.4 detail the regulatory approval obtained (if any) and reference key documentation; and

1.12.1.5 include a summary statement that the goals of the project have been achieved

(the **"Closure Statement"**); and

1.12.2 three copies of the a report by either the Remediation Handback Contractor or Remediation Handback Consultant or the contractor appointed by the Councils (following any step in), containing the following information and documents:

1.12.2.1 a section concerning the pre existing conditions including:

(a) the history of the site including any historical plans;

(b) site investigation activities; and

(c) pre remediation ground conditions; and

1.12.2.2 a section concerning the management of the Remediation Handback Works including:

(a) parties involved;

(b) management structure;

(c) project management; and

(d) contract procurement, management and site supervision; and

1.12.2.3 a section concerning the Remediation Handback Works carried out including:

(a) site management including health and safety, environmental protection and waste management;

(b) remedial strategy and methods;

(c) detailed description of the works carried out; and

(d) selected photographs; and

1.12.2.4 a section on validation of the Remediation Handback Works including:

(a) the project remediation validation criteria;

(b) the risk assessment process by which the criteria were derived;

(c) the approval (if any) as supplied of the regulatory authorities of the derived validation criteria;

(d) the process of validation during the Remediation Handback Works;

(e) the detailed results of the validation;

(f) any approval provided by any Regulatory Authority of the validation results; and

(g) a summary statement on the results of the validation; and

1.12.2.5 a section on the final as-built condition of the site including a discussion and detailed survey quality plans in hard copy and CAD format of the final site conditions including excavations and backfilled areas, areas investigated and areas not investigated. The excavation plans should include depths, batters, extracted and remaining buried obstructions and soil validation samples; and

1.12.2.6 a section concerning any regulatory liaison process including:

(a) an outline discussion of the liaison process;

(b) a summary of all written submissions, presentations, meetings and correspondence;

(c) details of any licensing and permitting requirements and how they were fulfilled; and

(d) copies of any appropriate Relevant Authorities' approvals and copies of any written conclusion issued to the Remediation Handback Contractor or Remediation Handback Consultant or the contractor appointed by the Councils by any Relevant Authorities on the final condition of the Site; and

(e) one copy of the health and safety file required by the CDM Regulations where applicable to the Remediation Handback Works

(the **"Closure Report"**); and

1.12.3 one hard copy of as built drawings and plans relating to the Remediation handback Works in such format as are reasonably available and as the Councils may reasonably specify.

1.13 **Costs**

For the avoidance of doubt, the cost of the Remediation Handback Works and any Further Remediation Handback Works and any Monitoring following Remediation Handback Completion shall be reimbursed to the Contractor out of the Retention Fund Account and to the extent that the sums in the Retention Fund Account are inadequate carried out at the sole cost and expense of the Contractor.

1.14 **Permits**

1.14.1 The Contractor shall take all reasonable steps to assist the Councils in the transfer as soon as practicable of any Necessary Consents relating to the Remediation Handback Works to the Contractor and/or the Remediation Handback Contractor.

1.14.2 The Contractor shall use all reasonable endeavours to ensure that upon the Expiry Date or the Extended Expiry Date (as the case may be) or the Termination Date that all Necessary Consents relating to the Remediation Handback Works are, as soon as reasonably practicable, either (i) transferred to any third party nominated by the Councils; or (ii) surrendered, both in accordance with the lawful requirements of the Relevant Environmental Authority and any relevant Environmental Legal Requirements, at the sole cost of the Contractor.

1.15 **Expert Determination**

1.15.1 Any dispute about the provisions of this Schedule are to be determined by an Expert.

1.15.2 The following provisions apply to the Expert:

1.15.2.1 he is to act as an expert and not as an arbitrator;

1.15.2.2 he is to give the Councils and the Contractor an opportunity to make written representations and to comment on each other's representations;

1.15.2.3 another expert may replace him if he dies, becomes unwilling or incapable of acting or it becomes apparent for any other reason that he will be unable to determine the matter referred to him within a reasonable time;

1.15.2.4 he will be instructed to make his determination within 20 Business Days of the matter being referred to him;

1.15.2.5 his decision (in the absence of manifest error) is to be final and binding on the Councils and the Contractor; and

1.15.2.6 his fees, including those of his appointment, are to be borne between the Councils and the Contractor as determined by the Expert or, in the absence of a determination, shared equally between the Parties.

SCHEDULE 9

Review Procedure

1. **Review Procedure**

1.1 The provisions of this **Schedule 9** (Review Procedure) shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed by the Councils' Authorised Officer on behalf of the Councils in accordance with the Review Procedure.

1.2 The Contractors shall submit Reviewable Design Data to the Councils' Authorised Officer in accordance with this **Schedule 9** (Review Procedure).

1.3 The Councils shall act reasonably in approving, commenting on or otherwise considering any Submitted Item in accordance with this **Schedule 9** (Review Procedure).

1.4 Each submission under the Review Procedure shall be accompanied by a copy of the document to be reviewed (including, where applicable, any Reviewable Design Data) or a statement of the proposed course of action (the entire contents of a submission being referred to in the Schedule as a "Submitted Item"). In relation to each Submitted Item, the following procedure shall apply:

1.4.1 :

1.4.1.1 subject to **paragraph 1.4.1.2**, the Councils' Authorised Officer shall review, approve or otherwise process a Submitted Item within ten (10) Business Days of receipt of a Submitted Item (or re-submission as the case may be) (or such other period as the Parties may agree).

1.4.1.2 without prejudice to **clause 5.8** (Authority of the Councils' Authorised Officer), whereas between the Councils and the Councils' Authorised Officer, the Councils' Authorised Officer does not have sufficient authority to review, approve or otherwise process a Submitted Item it shall notify the Contractor as soon as reasonably practicable and the Councils shall review, approve or otherwise process such a Submitted Item within twenty (20) Business Days of receipt of a Submitted Item (or re-submission as the case may be) (or such other period as the Parties may agree).

1.4.2 as soon as reasonably practicable and within the period applicable in accordance with **paragraph 1.4.1** of this **Schedule 9** (Review Procedure), the Councils' Authorised Officer shall return one copy of the relevant Submitted Item to the Contractor endorsed:

1.4.2.1 "no comment" or

1.4.2.2 (subject to and in accordance with **paragraph 3** (Grounds of Objection) below) "objects" or,

1.4.2.3 except in respect of Reviewable Design Data, where the Councils' Councils' Authorised Officer has comments which

are not grounds of objection set out in **paragraph 3** of this **Schedule 9**, "comments"

as appropriate provided that, if the Councils' Councils' Authorised Officer fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with this **paragraph 1.4.2**, then the Councils' Authorised Officer shall be deemed to have returned the Submitted Item to the Contractor endorsed "no comment".

1.5 If the Councils object to any Submitted Item in accordance with **paragraph 3** (Grounds of Objection) below the Councils' Authorised Officer shall state the grounds upon which such objection is based and the evidence or other information necessary to substantiate those grounds. To the extent that the Councils' Authorised Officer comments on or objects to a Submitted Item other than in accordance with this **Schedule 9** (Review Procedure) or fails to comply with the provisions of **paragraphs 1.4.1** and 1.4.2, the Contractor may either:

1.5.1 request written clarification of the basis for such grounds or comments and, if clarification is not received from the Councils' Authorised Officer within 10 (ten) Business Days of any such request by the Contractor, refer the matter for determination in accordance with the Dispute Resolution Procedure; or

1.5.2 at its own risk, and without prejudice to **clause 14.3** (No Construction Prior to Review), proceed with further design or construction disregarding such comments.

2. Further Information

2.1 The Contractor shall within 5 (five) Business Days (or such longer period as the Parties may agree) from the date of receipt of the Councils' Authorised Officer's request submit any further or other information, data and documents that the Councils' Authorised Officer reasonably requires in order to enable the Councils to consider the Submitted Item properly and determine whether it has a basis for raising comments or making objections to any Submitted Item in accordance with this **Schedule 9** (Review Procedure).

2.2 If further or other information is requested and received by the Councils, the Councils shall review the information as quickly as reasonably practicable and in any event within ten (10) Business Days (or such longer period as the Parties may agree) of receipt thereof.

2.3 If the Contractor does not submit any such information, data or documents in accordance with **paragraph 2.1**, the Councils shall be entitled to:

2.3.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or

2.3.2 object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Councils' Authorised Officer to determine whether he has a legitimate basis for commenting or objecting in accordance with this **Schedule 9** (Review Procedure).

3. Grounds of Objection

3.1 The expression "raise comments" in this paragraph shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. The Councils may raise comments in relation to any Submitted Item on the grounds set out in **paragraph 2.3** of this **Schedule 9** (Review Procedure) or on the grounds that the Submitted Item would (on the balance of probabilities) breach any Law or not be in accordance with any relevant Necessary Consent or would result in any increase in the Unitary Charge, but otherwise may raise comments in relation to a Submitted Item only as follows:

3.1.1 in relation to any Submitted Item:

3.1.1.1 the Contractor's ability to perform its obligations under this Contract would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or

3.1.1.2 the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Councils under this Contract or its ability to enforce any such right;

3.1.2 in relation to any Submitted Item submitted pursuant to Clause 6.3 (Delivery of Initial and Changed Project Documents and Financing Agreements):

3.1.2.1 the Councils' ability to perform their obligations under this Contract would be adversely affected by the proposed course of action;

3.1.2.2 either Councils' ability to carry out any of its statutory functions a waste disposal authority or in relation to its waste management duties would (on the balance of probabilities) be adversely affected by the proposed course of action;

3.1.2.3 the proposed course of action would be likely to result in an increase to the Councils' liabilities or potential or contingent liabilities under this Contract;

3.1.2.4 the proposed course of action would adversely affect any right of the Councils under this Contract or their ability to enforce any such right; or

3.1.2.5 the Contractor's ability to perform its obligations under this Contract would be materially and adversely affected by the proposed course of action;

3.1.3 in relation to amendments to the Contractor's Proposals generally, on the grounds that:

3.1.3.1 the Submitted Item is not in accordance with the Specification or Good Industry Practice;

3.1.3.2 the performance of the relevant Service in accordance with the proposal would (on the balance of probabilities):

(a) be less likely to achieve compliance with **Schedule 1** (Specification);

(b) have an adverse effect on the safety of any users of the Facilities;

3.1.3.3 implementation of the Submitted Item would (on the balance of probabilities) result in an inferior standard of performance of the relevant Service compared with the standard of performance achievable in accordance with the Contractor's Proposals before such proposed revision or substitution;

3.1.3.4 implementation of the Submitted Item would be contrary to the Councils' policy at the date of this Contract or subject to **clause 28** (Changes to the Works and Services) at any later date;

3.1.3.5 implementation of the Submitted Item would have an adverse impact on the services provided by the WCAs in their capacity as waste collection authorities and/or principal litter councils;

3.1.3.6 implementation of the Submitted Item would have an adverse impact on the ability of the Facilities to meet Handback Condition.

3.1.4 in particular relation to Reviewable Design Data submitted pursuant to **clause 14** (Design Development):

3.1.4.1 the Submitted Item is not in accordance with Good Industry Practice;

3.1.4.2 the Submitted Item is not in accordance with the Specification; or

3.1.4.3 the Submitted Item is not in accordance with the Basic Design Proposals;

3.1.5 in specific relation to a Submitted Item concerning any revised Works Programme on the ground that the revised Works Programme:

3.1.5.1 would not (on the balance of probabilities) enable any part of the Works to be completed by the NWTF Planned Completion Date (to the extent that such part is required to be completed in order for the Independent Certifier to issue any relevant Completion Certificate) in circumstances where the Construction Contractor is not entitled to an extension of time under the Construction Contract; or

3.1.5.2 would materially increase disruption to the Councils and/or the WCAs;

provided that the Councils shall not be entitled to object in relation to a Submitted Item where, and to the extent that, the submission of revised dates set out in Works Programme arises as a direct result of a

Compensation Event, Relief Event, Force Majeure Event, Change in Law or as a direct consequence of a Councils' Change or Contractor Change pursuant to **clause 28.1** or 28.3 where the Parties have agreed pursuant to the relevant provisions in this Contract or it has been determined pursuant to the Dispute Resolution Procedure that such an event or change has arisen.

3.1.6 in relation to the submission of any maintenance programme or any revision to any maintenance programme on the grounds that:

3.1.6.1 carrying out the programmed maintenance in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Councils and/or the WCAs and such interference could be avoided or mitigated by the Contractor rescheduling the programmed maintenance without incurring additional cost and/or risk; or

3.1.6.2 the Facilities would be less likely (on the balance of probabilities) to achieve compliance with relevant parts of **Schedule 1** (Specification) and/or Deductions under **Schedule 3** (Payment Mechanism) (on the balance of probabilities) would be more likely;

3.1.6.3 the safety of permitted users of the Facilities would (on the balance of probabilities) be adversely affected; or

3.1.6.4 the period for carrying out the programmed maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works; or

3.1.6.5 the Submitted Item would have an adverse impact on the ability of the Facilities to meet the relevant Handback Condition,

3.1.7 in relation to the submission of a proposal for an alternative replacement or additional Delivery Point and any associated changes to the minimum or maximum tonnages of Contract Waste which may be delivered on a daily, weekly, monthly and/or annual basis to each Delivery Point (a "**Delivery Point Change**") on the grounds that:

3.1.7.1 the Delivery Point Change is not in accordance with the requirements of **paragraph 4.4** of **Schedule 1** (Specification); or

3.1.7.2 where the proposed Delivery Point Change is a change from a Landfill Site to a Transfer Station, such change would result in any increase in the Unitary Charge.

For the avoidance of doubt, the grounds of objection in the remainder of this **paragraph 3.1** shall not apply to a submission by the Contractor of a proposal for a Delivery Point Change under this **paragraph 3.1.7**.

4. **Effect of Review**

4.1 Any Submitted Item which is returned or deemed to have been returned by the Councils' Authorised Officer endorsed "no comment" may be complied with or implemented (as the case may be) by the Contractor.

4.2 Any comments made by the Councils' Authorised Officer in respect of a Submitted Item which is returned with "comments" shall be taken into account as appropriate by the Contractor. Following such consideration, the Submitted Item may be implemented by the Contractor at its own risk and cost.

4.3 In the case of any Submitted Item other than Reviewable Design Data, if the Councils' Authorised Officer returns the Submitted Item to the Contractor endorsed "objects", the Contractor shall not proceed with implementing Submitted Item unless it has taken into account the Grounds of Objection.

4.4 To the extent the Contractor disputes that any such objection is on grounds permitted by this Schedule, in which case the Contractor or the Councils' Authorised Officer may refer the matter for determination in accordance with the Dispute Resolution Procedure and if the Contractor acts on the Submitted Item prior to the matter being determined or otherwise agreed it shall do so entirely at its own risk and cost.

4.5 In the case of a Submitted Item comprising Reviewable Design Data, if the Councils' Authorised Officer returns the Submitted Item endorsed "no comment", pursuant to **clause 14** the Submitted Item shall be considered to be an Approved RDD Item.

4.6 If the Contractor acts on the Submitted Item prior to the matter being determined or otherwise agreed it shall do so entirely at its own cost and risk.

4.7 No review, comment or approval by the Councils shall operate to:

4.7.1 exclude or limit the Contractor's obligations or liabilities under the Contract;

4.7.2 exclude or limit the Councils' rights under the Contract;

4.7.3 increase the Unitary Charge payable by the Councils; or

4.7.4 cause the Councils to incur additional cost and/or expense.

4.8 Any Delivery Point Change (including any associated changes to the minimum or maximum tonnages of Contract Waste which may be delivered on a daily, weekly, monthly and/or annual basis to each Delivery Point) which is changed in accordance with this Review Procedure shall have effect from the date of such approval (or deemed approval in accordance with paragraph 1.4 of this Schedule 9) and shall be deemed to be incorporated in, or to amend, the Contractor's Services Delivery Plans.

5. Document Management

5.1 The Contractor shall issue three (3) copies of all Submitted Items (including any accompanying documents) to the Councils' Authorised Officer.

5.2 The Contractor shall compile and maintain a register of the contents and date of the submission of all Submitted Items.

5.3 The Contractor shall compile and maintain a register, which shall be open to the inspection of the Councils on request (with reasonable prior notice), of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Councils' Authorised Officer.

6. **Changes**

6.1 Subject to **paragraph 1.4.2** of this Schedule, no approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute a Council Change save to the extent provided in this **Schedule 9** (Review Procedure).

6.2 If, having received comments from the Councils' Authorised Officer, the Contractor considers that compliance with those comments would amount to a Council Change, the Contractor shall, before complying with the comments, notify the Councils of this and, if it is agreed by the Parties or determined pursuant to the Dispute Resolution Procedure that a Council Change would arise if the comments were complied with, the Councils may, if they wish, implement the Council Change and it shall be dealt with in accordance with **clause 28** (Changes to the Works or Services).

6.3 Subject to **clause 28** (Changes to the Works and Services), no alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall be construed or regarded as a Council Change.

6.4 If the Councils consider that any Submitted Item amounts to a Contractor Notice of Change pursuant to **clause 28.3** (Contractor Changes in the Works or Services) the Councils shall notify the Contractor accordingly whereupon the provisions of **clause 28.3** (Contractor Changes in the Works or Services) shall apply and not this **Schedule 9** (Review Procedure).

7. **Advance Discussions to Mitigate Delay**

In relation to any Submitted Item and to mitigate the risk of delay in relation to design development, the Contractor shall:

7.1 use all reasonable endeavours to engage in proactive and meaningful discussions in relation to design development in advance of any Submitted Item; and

7.2 in accordance with the milestones in the Works Programme, to give the Councils a minimum of 20 Business Days advance notice of any Reviewable Design Data Submitted Items to enable the Councils' Authorised Officer to assess the time and resources required to complete a review and prepare for such Submitted Item accordingly. The Contractor shall use all reasonable endeavours to keep the Councils informed of any alterations to the proposed Submitted Item date and each Party shall act reasonably in relation to any delays to the timetable notified.

8. **Reviewable Contractor's Proposals**

8.1 The Parties acknowledge that, subject to **paragraph 10** in relation to Reviewable Design Data, the following elements of the Contractor's Proposals are not in their final form at the date of this Contract (the **"Reviewable Contractor's Proposals"**):

8.1.1 waste composition survey proposals required pursuant to **paragraph 1.4.3** of **Schedule 1** (Specification);

8.1.2 a Greenhouse Gas methodology required pursuant to **paragraph 3.3.1.1** of **Schedule 1** (Specification);

8.1.3 a Contingency Plan required pursuant to **paragraph 3.15.1** of **Schedule 1** (Specification);

8.1.4 HWRC satisfaction survey proposals required pursuant to **paragraph 3.4.4** of **Schedule 1** (Specification);

8.1.5 a Health and Safety Plan and risk assessments required pursuant to **paragraph 3.14.3** of **Schedule 1** (Specification);

8.1.6 a Detailed Maintenance Plan required pursuant to **paragraph 3.16.1** of **Schedule 1** (Specification);

8.1.7 a Transport Plan required pursuant to **paragraph 4.9** of **Schedule 1** (Specification);

8.1.8 a Waste Minimisation and Education Plan required pursuant to **paragraph 8.2.3** of **Schedule 1** (Specification);

8.1.9 a Community Sector Integration Plan required pursuant to **paragraph 8.5.1** of **Schedule 1** (Specification);

8.1.10 details of the management and administration structure. Confirmation shall be provided on the identities and responsibilities of personnel once identified; and

8.1.11 details of key management positions. Managerial structure to be confirmed or amended as Contract progresses.

8.2 Pursuant to **paragraph 1.2**, such Reviewable Contractor's Proposals shall be submitted to the Councils for review pursuant to this **Schedule 9** (Review Procedure) no less than forty (40) Business Days before the commencement of the relevant parts of the Works or Services to which they relate.

9. **Amendments to the Contractor's Proposals**

Subject to **clause 28** (Changes to the Works and Services), the Parties acknowledge that this Review Procedure shall apply to any changes, additions or substitutions to the Contractor's Proposals, excluding the Basic Design Proposals.

10. **Reviewable Design Data**

10.1 The Parties acknowledge that the following elements of the design are not in their final form at the date of this Contract and comprise the **"Reviewable Design Data"**:

10.1.1 layout of, and fittings for, the Education Centre and associated car parking;

10.1.2 layout of the gatehouse, weighbridges and site road layout including autotracking of vehicle manoeuvres;

10.1.3 layout of the covered bays for loading the reception pit;

10.1.4 details of combustion conditions comprising a firing diagram for the NWTF.

10.2 Pursuant to **paragraph 10.1**, such Reviewable Design Data shall be submitted to the Councils for comment no less than twenty (20) Business Days before the commencement of the Works to which they relate.

11. **Design Visibility Information**

11.1 Design visibility information ("Design Visibility Information" or "DVI") shall be information relating to the design of the NWTF that is not included in the Works Delivery Plan or within **paragraph 10.1** (Reviewable Design Data) of this **Schedule 9** (Review Procedure) and which is listed in **paragraph 11.5** below.

11.2 The Councils' Authorised Officer shall be entitled to view (but not review in accordance with **paragraphs 1** to **10** of this **Schedule 9** (Review Procedure) all DVI.

11.3 The Parties acknowledge that certain elements of the DVI shall be held on the computerised design database established or maintained by the Contractor or the Construction Contractor in accordance with **clause 14.6** (Design Database) and the computerised design database shall be set up to notify the Councils' Authorised Officer via email when any item of DVI is added to the computerised design database or subsequently updated or amended.

11.4 The Contractor shall notify the Councils' Authorised Officer of any elements of DVI that are not available on the computerised design database and shall issue such element of DVI in electronic data format or, where the document cannot be sent electronically, shall issue two (2) hard copies of such element to the Councils' Authorised Officer within ten (10) Business Days if it becoming available to the Contractor.

11.5 The Parties agree that the following shall comprise Design Visibility Information under this Contract:

11.5.1 supplementary information submitted to the Planning Authority or Environment Agency in discharge of Planning Permission conditions for the NWTF; and

11.5.2 drawings and associated specifications for the NWTF at the Sinfin Site including all plans, sections, general arrangements, elevations, design details, process and instrumentation (P&ID) drawings.

SCHEDULE 10

Employee Information

PART 1 - FIRST EMPLOYEE LIST

TUPE Regulations - Base Data of Staff Who Would Transfer as at 1st July 2006													
	Emp. Ref	**Designation**	**Contract Type (Permanent/ Temporary/ Casual)**	**Basic Wage £**	**Basic Bonus £**	**Total Basic £**	**£ O/Time Hours**	**Additional Payments £**	**Basic Hours**	**Date of Birth**	**Age on 01.06.06**	**Service start date**	**Service on 01.06.06**
1.	wrg	loading shovel driver	Permanent	267.03pw		13885.00	307.26 average pw			29.12.49		26.7.05	
2.	wrg	weighbridge clerk	Permanent	13895.64 pa		13895.64	920.29 average pa			8.11.67		2.2.04	
3.	wrg	manager	Permanent	30000 pa	675		0		37	2.2.53		4.12.95	
4.	wrg	supervisor	Permanent	23336.4 pa	656		0		45	27.06.49		1.03.95	
5.	wrg	manager	Permanent	25387 pa	714		0		39	7.08.81		7.06.99	
6.	wrg	manager	Permanent	29000 pa	425		0		37	25.09.52		1.03.95	
7.	wrg	weighbridge clerk	Permanent	15142 pa	425		737 average p/month		43	30.04.84		5.07.04	
8.	wrg	operator	Permanent	331 pw	390		160 average pw		39	18.10.77		3.05.04	
9.	wrg	weighbridge clerk	Permanent	240 pw	259		123 pw		39	11.09.75		6.06.05	
10.	wrg	weighbridge clerk	Permanent	241 pw	259		124 pw		39	5.01.77		7.03.05	
11.	wrg	supervisor	Permanent	371 pw	244		235 pw		39	28.04.64		29.01.96	

12.	wrg	operator	Permanent	342 pw	266		150 pw		39	27.01.63		15.05.95	
13.	wrg	operator	Permanent	409 pw	266		185 pw		39	24.06.81		15.03.04	
14.	wrg	operator	Permanent	360 pw	172		208 pw		39	15.02.66		23.11.98	
15.	wrg	operator	Permanent	364	172		181 pw		39	2.10.52		31.03.99	
16.	wrg	weighbridge clerk	Permanent	397	206		195 pw		39	31.05.49		22.05.86	
17.	raynsway		Permanent	n/a	n/a	n/a	0	0	n/a	14.03.64	42	n/a	n/a
18.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	10.04.56	50	01.01.04	2y6m
19.	raynsway	ca attendant	Permanent	5.35/hr	0	145	0	0	30	05.10.55	51	01.03.06	3m
20.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	14.10.53	53	19.11.01	4y7m
21.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	11.03.81	25	01.11.05	7m
22.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	23.03.84	22	01.11.00	5y6m
23.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	19.03.66	40	01.01.90	16y
24.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	20.09.61	45	02.01.90	16y
25.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	01.02.66	40	01.01.03	3y5m
26.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	01.12.84	22	01.01.06	5m
27.	raynsway	ca attendant	Permanent	5.35/hr	0	126	0	0	30	14.03.86	20	01.02.04	2y4m
28.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	06.07.64	42	01.09.03	3y5m
29.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	16.11.63	43	01.01.02	4y6m
30.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	23.03.80	26	01.01.03	3y6m
31.	raynsway	ca attendant	Permanent	5.35/hr	0	126	0	0	30	18.06.86	20	01.06.05	1y

32.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	04.08.80	26	01.01.03	2y6m
33.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	09.07.60	46	01.01.90	16y
34.	raynsway	ca attendant	Permanent	5.35/hr	0	126	0	0	30	19.07.85	21	01.01.04	2y6m
35.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	24.01.51	55	01.01.05	1y6m
36.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	09.04.61	45	01.09.06	
37.	raynsway	ca attendant	Permanent	5.35/hr	0	126	0	0	30	01.03.87	21	01.04.06	4m
38.	raynsway	ca attendant	Permanent	5.35/hr	0	144	0	0	30	22.07.86	20	01.05.06	3m
39.	hargreaves drivers	driver	Permanent	541.42 pw	0	541.42 pw	0	0	?	07.12.51		01.03.05	
40.	hargreaves drivers	driver	Permanent	541.42 pw	0	541.42 pw	0	0	?	08.12.65		01.03.05	
41.	hargreaves drivers	driver	Permanent	541.42 pw	0	541.42 pw	0	0	?	26.06.67		01.03.05	
42.	hargreaves drivers	driver	Permanent	541.42 pw	0	541.42 pw	0	0	?	16.11.77		01.03.05	
43.	hargreaves drivers	driver	Permanent	541.42 pw	0	541.42 pw	0	0	?	27.06.55		14.09.05	
44.	hargreaves drivers	driver	Permanent	541.42 pw	0	541.42 pw	0	0	?	30.08.69		05.12.05	
45.	hargreaves drivers	driver	Permanent	541.42 pw	0	541.42 pw	0	0	?	08.07.58		12.12.05	
46.	hargreaves drivers	driver	Permanent	541.42 pw	0	541.42 pw	0	0	?	28.09.61		20.04.06	
47.	hargreaves drivers	driver	Permanent	9.0/hr	0		13.5/hr	0	48	13.09.76		19.04.06	
48.	hargreaves drivers	driver	Permanent	9.0/hr	0		13.5/hr	0	48	18.09.61		26.04.06	
49.	hargreaves drivers	driver	Permanent	9.0/hr	0		13.5/hr	0	48	02.09.45		30.04.06	
50.	hargreaves drivers	driver	Permanent	9.0/hr	0		13.5/hr	0	48	02.12.53		01.05.06	
51.	hargreaves drivers	driver	Permanent	9.0/hr	0		13.5/hr	0	48	31.03.75		08.05.06	

PART 2 - PROPOSED WORKFORCE, REMUNERATION COSTS AND REORGANISATION COSTS

1. **Staffing of NWTF**

The total fulltime personnel required for NWTF will be 31 this is made up as follows:

1.1 **Salaried Staff**

Operations Director	1
Treatment Manager	1
Senior Shift Controllers	2
Maintenance Manager	1
Waste Composition Technician	1
Administration	3

1.2 **Waged Staff**

Weighbridge Operator	2
Reception Hall Operators	4
Crane Operators	2
MBT Operators	2
Maintenance Fitters	2
ACT Operators	10

2. **Staffing, Welfare, Working hours and Shift Patterns**

Working hours will vary depending on the role of the individual operatives the pattern of operational hours will typically be as follows:

2.1 **Weighbridge**

2.1.1 Mon - Fr: 7am to 5pm

2.1.2 Sat - 7am to 1pm*

2.1.3 Sun - 7am - 9am (street cleansing waste only)

* Additional opening times required in accordance with Schedule 1 (Specification) will be complied with.

2.2 **Waste Reception area:**

2.2.1 Mon - Fr: 6am to 10pm (2 shifts)

2.2.2 Sat - 7am to 3pm

2.2.3 Sun - 7am - 9am (street cleansing waste only)

2.3 **Pre-Processing lines:**

2.3.1 Mon - Fr: 6.30am to 10.30pm (2 shifts)

2.4 **MBT:**

2.4.1 Mon - Fr: 6am to 10pm (2 shifts)

2.5 **ACT:**

2.5.1 Mon - Fri: 24 hour (2 shifts)

2.5.2 Sat and Sun: 24 hour (2 shifts)

3. **Staffing of Transfer Stations**

3.1 **Working Hours and Shift Patterns**

The following tables provides a summary of typical working hours:

Across ALL WTS sites	**Mon**	**Tues**	**Wed**	**Thurs**	**Fri**	**Sat**	**Sun**	**Total**
WTS Supervisor	8	8	8	8	8	6	0	46

Clover Nook WTS	**Mon**	**Tues**	**Wed**	**Thurs**	**Fri**	**Sat**	**Sun**	**Total**
Weighbridge Operator	10	10	10	10	10	0	2	52
Loading Shovel Driver	10	10	10	10	10	6	0	56
Site Operative	10	10	10	10	10	0	2	52

Glossop WTS	**Mon**	**Tues**	**Wed**	**Thurs**	**Fri**	**Sat**	**Sun**	**Total**
Weighbridge Operator	10	10	10	10	10	0	2	52
Loading Shovel Driver	10	10	10	10	10	6	0	56
Site	10	10	10	10	10	0	2	52

Operative								

4. **Staffing of HWRCs**

4.1 **Number of Staff**

The table below provides a summary of the minimum staffing levels for the HWRC's. These levels are not expected to remain constant, and will be increased to reflect increased seasonal usage in the summer and for temporary increases over bank holidays.

	Mon	**Tues**	**Wed**	**Thurs**	**Fri**	**Sat**	**Sun**	**Total**
Ashbourne	4	3	3	3	3	4	5	25
Bolsover	4	3	3	3	3	4	5	25
Chesterfield	7	5	5	5	5	6	7	40
Derby	8	6	6	6	6	9	9	50
Ilkeston	5	4	3	3	3	6	6	30
Loscoe	7	5	5	5	5	6	7	40
Northwood	4	3	3	3	3	4	5	25
Swadlincote	4	3	3	3	3	4	5	25
Glossop	4	3	3	3	3	4	5	25

4.2 **Management Deployment**

	Mon	**Tues**	**Wed**	**Thurs**	**Fri**	**Sat**	**Sun**
National Ops Manager	√	√	√	√	√		
Contract Manager	√	√	√	√	√		
Contract Sup 1	√	√	√	√		√	
Contract Sup 2		√	√		√	√	
Transport Manager	√	√	√	√	√	√	
Transport Foreman	√	√	√			√	√
Total no. of staff	5	5	6	4	4	3	2

4.3 **Seven Day Week Shift Profile**

The shift profiles will vary from site to site but as a general rule, site attendants will work five shifts per week, with 2 days' rest. The deployment system will be rolling to give employees the equal opportunity to have weekends off. The table below provides a typical example of how a seven day shift profile would work.

	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Individual profile	A	A	A	A			A
	B	B			B	B	B
			C	C	C	C	C
	D	D	D			D	D
	E			E	E	E	E
Total no. of staff	4	3	3	3	3	4	5

4.4 **Transportation**

In addition to the above, Bulker and skip wagon drivers will be employed on the project in sufficient numbers, on days and at times as required in order that the Contractor can move Waste as required by the Contract and delivery schedules.

4.5 **Reorganisation Costs**

These are expected to be £0.00.

SCHEDULE 11

Insurance

This Schedule 11 comprises of six Parts as follows:

PART 1: Required Insurances to be taken out by the Contractor and maintained in the period up to the NWTF Completion Date (save in circumstances where there is a Turbine Delay in which case the period up to the issue of a certificate by the Independent Certifier pursuant to clause 21.3.3.2 (Turbine Delay))

PART 2: Required Insurances to be taken out by the Contractor and maintained during the Services Period

PART 3: Environmental Impairment Liability Insurance

PART 4: Endorsements

PART 5: Broker's Letter of Undertaking

PART 6: Insurance Premium Risk Sharing

PART 1 - REQUIRED INSURANCES TO BE TAKEN OUT BY THE CONTRACTOR AND MAINTAINED IN THE PERIOD UP TO THE NWTF COMPLETION DATE (SAVE IN CIRCUMSTANCES WHERE THERE IS A TURBINE DELAY IN WHICH CASE THE PERIOD UP TO THE ISSUE OF A CERTIFICATE BY THE INDEPENDENT CERTIFIER PURSUANT TO CLAUSE 21.3.3.2 (TURBINE DELAY))

1. **Insureds:**

Common to each insurance specified in this Part 1 (unless stated otherwise):

1.1.1 Councils

1.1.2 Contractor

1.1.3 Construction Contractor

1.1.4 Operating Contractor

1.1.5 Sub-contractors of the Construction Contractor of any tier

1.1.6 Senior Lenders

1.1.7 Subordinated Lenders

1.1.8 consultants and suppliers - for their site activities only

each for their respective rights and interests

2. **Contractors' 'All Risks' Insurance ("CAR")**

2.1 **Insured Property**

All permanent and temporary works, materials (including but not limited to equipment supplied by the Councils), goods, plant and equipment for incorporation in the Works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Construction Contractor or the Construction Contractor's sub-contractors of any tier) and all other property used or for use in connection with the Works.

2.2 **Coverage**

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

2.3 **Sum Insured**

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, plus provision to include extensions as appropriate.

2.4 **Maximum Deductible**

£250,000 each and every loss in respect of claims for defective design, materials and workmanship, £250,000 each and every loss in respect of claims for testing and commissioning, but in respect of all other claims not to exceed £50,000 each and every loss.

2.5 **Territorial Limits**

European Union including offsite storage and during inland transit including Channel Tunnel and transit by scheduled ferry service.

2.6 **Period of Insurance**

In respect of each site on which Works are to be carried out: From the commencement of any Works and throughout until the Completion of all Works at that site, and thereafter for 24 months in respect of defects liability.

2.7 **Cover Features and Extensions**

2.7.1 Terrorism

2.7.2 Munitions of war clause

2.7.3 Additional costs of completion clause

2.7.4 Professional fees clause

2.7.5 Debris removal clause

2.7.6 72 hour clause

2.7.7 European Union local authorities clause

2.7.8 Free issue materials clause

2.7.9 10% escalation clause

2.7.10 Automatic reinstatement of sum insured clause

2.7.11 Loss minimisation

2.7.12 Marine 50/50 clause

2.7.13 Extended maintenance

2.7.14 Plans and Documents

2.7.15 Fire Joint Code of Practise

2.7.16 Payments on account

2.7.17 Temporary repairs

2.7.18 Increased costs of constructing incomplete or unbuilt Works

2.7.19 Testing and commissioning

2.8 **Principal Exclusions**

2.8.1 War and related perils (UK market agreed wording)

2.8.2 Nuclear/radioactive risks (UK market agreed wording)

2.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds

2.8.4 Wear, tear and gradual deterioration

2.8.5 Consequential financial losses

2.8.6 Cyber risks

2.8.7 Inventory losses, fraud and employee dishonesty

2.8.8 Piling conditions

2.8.9 Design exclusion DE5 (1995) Design Improvement or LEG3/06 design exclusion

2.8.10 Fuel/waste fuel quality clause (not to apply to inadvertent or accidental acceptance of inappropriate waste composition).

3. **Delay in Start Up Insurance ("DSU")**

3.1 **Insureds**

3.1.1 Contractor

3.1.2 Senior Lenders

3.1.3 Subordinated Lenders

each for their respective rights and interests

3.2 **Indemnity**

In respect of:

3.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Works as a result of loss or damage covered under the Contractors 'All Risks' Insurance specified at **paragraph 2** of Part 1 of this **Schedule 11**, including loss or damage which would be indemnifiable but for the application of any deductible;

3.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place during the Minimum Indemnity Period; and

3.2.3 additional increased costs of working.

3.3 **Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

3.4 **Maximum Excess**

60 days waiting period

3.5 **Minimum Indemnity Period**

Sinfin Site - 30 months

All other Sites - 6 months

3.6 **Period of Insurance**

As per the Contractors' "All Risks" insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**, excluding defects liability periods.

3.7 **Cover Features and Extensions**

3.7.1 Denial of access

3.7.2 Utilities

3.7.3 Terrorism

3.7.4 Automatic reinstatement of sum insured

3.7.5 Specified manufacturers and suppliers

3.7.6 Professional fees

3.8 **Principal Exclusions**

3.8.1 As per the Contractors 'All Risks' Insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**, other than for consequential financial losses

3.8.2 Fines, penalties and liquidated damages

3.8.3 Non-availability of funds

3.8.4 Delayed response by a public body or state authority

4. Construction Third Party Liability Insurance

4.1 Interest

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

4.1.1 death, or bodily injury, illness, death, disease contracted by any person;

4.1.2 loss or damage to property;

4.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause

happening during the Period of Insurance and arising out of or in connection with the Works.

4.2 Limit of Indemnity

Sinfin Site: Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

All other Sites: Not less than £25,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

4.3 Maximum Deductible

£20,000 for each and every occurrence of property damage (personal injury claims will be paid in full).

4.4 Territorial Limits

United Kingdom (and elsewhere in the world in respect of non manual visits)

4.5 Jurisdiction

Worldwide jurisdiction (subject to North American Conditions); Applicable law for the policy: English law.

4.6 Period of Insurance

As per the Contractors 'All Risks' Insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**, including all defects liability periods (maintained throughout on a losses occurring basis)

4.7 Cover Features and Extensions

4.7.1 Munitions of war

4.7.2 Cross liability clause

4.7.3 Legal defence costs

4.7.4 Contractual liability

4.7.5 Health and Safety at Work Act

4.7.6 Data Protection Act

4.7.7 Defective Premises Act

4.7.8 Contingent motor cover

4.8 **Principal Exclusions**

4.8.1 War and related perils (UK market agreed wording)

4.8.2 Nuclear/radioactive risks (UK market agreed wording)

4.8.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured.

4.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

4.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insureds.

4.8.6 Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion is not to apply to any property belonging to the Councils which is in the care, custody and control of another Insured.

4.8.7 Events more properly covered under a professional indemnity policy.

4.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

4.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

4.8.10 Losses indemnified under the CAR or DSU insurances specified in this Part 1 of this **Schedule 11**

4.8.11 Cyber risks

4.8.12 Other Council liabilities (being those not arising from the Project Works)

4.8.13 Liability arising from toxic mould

4.8.14 Liability arising from asbestos

5. **Marine Cargo Insurance**

5.1 **Insured Property**

All property and interest of every description for all transits of critical items only by sea or air of all goods intended for the Works where such items are carried for the account and interest of the Insured from risk attachment at factory premises to Site, including offsite storage.

5.2 **Coverage**

"All Risks" of physical loss or damage to the Insured Property unless otherwise excluded.

5.3 **Limit of Indemnity**

CIF plus 10% for any one sending/any one voyage.

5.4 **Maximum Deductible**

Not to exceed £50,000 each occurrence except nil for general average claims.

5.5 **Territorial Limits**

Anywhere in the world.

5.6 **Period of Insurance**

On an 'Open' cover basis, from the commencement of the first relevant transits until the completion of unloading of the last shipment plus any deferred unpacking period.

5.7 **Cover Features and Extensions**

5.7.1 Terrorism not to be excluded

5.7.2 Institute Cargo clauses (A) and (Air)

5.7.3 Institute War clauses (Cargo) and (Air Cargo)

5.7.4 Institute Strikes clauses (Cargo) and (Air Cargo)

5.7.5 Institute war cancellation clauses (Cargo)

5.7.6 Replacement by air extension

5.7.7 Waiver of insufficiency packing

5.7.8 50 / 50 clause in relation to Construction All Risk (CAR) losses

5.7.9 Accumulation clause (200%)

5.7.10 delayed unpacking clause (90 days)

5.7.11 Overland transit to the extent it is not covered under the Contractors' 'All Risks' Insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**

5.7.12 Marine Survey Warranty.

5.8 **Principal Exclusions**

5.8.1 Ordinary leakage ordinary loss in weight or volume or ordinary wear and tear of the subject matter insured

5.8.2 Inherent vice or nature of the subject matter insured

5.8.3 Insolvency or financial default of the owners managers charterers or operators of the vessel or aircraft, unless not material to the claim

5.8.4 Un-seaworthiness of the vessel or craft, etc but only where the Insured is aware of the unseaworthiness

5.8.5 Delay

5.8.6 Vessel not ISM Code certified/SOLAS Convention

5.8.7 War and radioactivity on land

6. **Marine Cargo Delay in Start Up Insurance**

6.1 **Insureds**

6.1.1 Contractor

6.1.2 Senior Lenders

6.1.3 Subordinated Lenders

each for their respective rights and interests

6.2 **Indemnity**

In respect of:

6.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Works as a result of loss or damage covered under the Marine Cargo Insurance specified at **paragraph 5** of Part 1 of this **Schedule 11**, including loss or damage which would be indemnifiable but for the application of any deductible;

6.2.2 the economic additional expenditure necessary and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place during the Minimum Indemnity Period; and

6.2.3 Additional cost of working

6.3 **Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

6.4 **Maximum Excess**

60 days waiting period

6.5 **Minimum Indemnity Period**

15 months

6.6 **Period of Insurance**

As per the Marine Cargo Insurance specified at **paragraph 5** of Part 1 of this **Schedule 11**.

6.7 **Cover Features and Extensions**

As per the Marine Cargo Insurance specified at **paragraph 5** of Part 1 of this **Schedule 11**.

6.8 **Principal Exclusions**

6.8.1 As per the Marine Cargo Insurance specified at **paragraph 5** of Part 1 of this **Schedule 11** plus;

6.8.2 Cargo ISM forwarding charges clause

6.8.3 Professional fees

6.8.4 Delay resulting from loss or damage to the transporting device

6.8.5 Delay resulting from the transporting device being involved in general average salvage or lifesaving operation

6.8.6 Additional increased costs of working

6.8.7 Payments on account

6.9 **Territorial Limits**

As per the Marine Cargo Insurance specified at paragraph 5 of Part 1 of this Schedule 11.

6.10 **Principal Exclusions**

As per the Marine Cargo Insurance specified at paragraph 5 of Part 1 of this Schedule 11

PART 2 – REQUIRED INSURANCES TO BE TAKEN OUT AND MAINTAINED BY THE CONTRACTOR DURING THE SERVICES PERIOD

1. **Insureds:**

Common to each insurance specified in this Part 2 (unless stated otherwise):

1.1.1 the Councils

1.1.2 Contractor

1.1.3 Operating Contractor

1.1.4 any immediate sub-contractor of the Operating Contractor to whom the Operating Contractor has subcontracted control and responsibility in respect of the HWRCs, the Project Transfer Stations or the NWTF

1.1.5 Senior Lenders

1.1.6 Subordinated Lenders

each for their respective rights and interests

2. **Property Damage Insurance**

2.1 **Insured Property**

The Project assets which are the property of the Contractor or for which the Contractor is responsible and/or has care, custody and/or control of from time to time, being the NWTF, the HWRCs and the Project Transfer Stations.

2.2 **Coverage**

"All risks" of physical loss or damage to the Insured Property from any cause not excluded, including engineering breakdown in respect of specified property and computer breakdown in respect of appropriate equipment.

2.3 **Sum Insured**

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus an amount sufficient to cater for the Principal Extensions as appropriate, provided that Facilities at the HWRCs and Transfer Stations shall be insured on an "estimated maximum loss" basis.

2.4 **Maximum Deductible**

£250,000 each and every claim for fire, explosion and engineering and computer breakdown, £50,000 each and every other claim.

2.5 **Territorial Limits**

United Kingdom plus elsewhere whilst in inland transit.

2.6 **Period of Insurance**

2.6.1 In respect of the Sinfin Site and the Clover Nook Transfer Station and associated Insured Property:

From the completion of works at the site and throughout the remainder of the Contract Period (renewable on an annual basis unless agreed otherwise by the Parties).

2.6.2 In respect of each HWRC and the Glossop Transfer Station and associated Insured Property:

From 1 April 2010 and throughout the remainder of the Contract Period (renewable on an annual basis unless agreed otherwise by the Parties).

2.7 **Cover Features and Extensions**

2.7.1 Terrorism

2.7.2 Automatic reinstatement of sum insured

2.7.3 Capital additions clause

2.7.4 72 hour clause

2.7.5 European Union local authorities clause

2.7.6 Professional fees

2.7.7 Debris removal

2.7.8 Engineering breakdown for critical items on the Sinfin Site

2.7.9 Repair / reinstatement basis of claims settlement with cash option for non reinstatement

2.7.10 Temporary repairs

2.8 **Principal Exclusions**

2.8.1 War and related perils (UK market agreed wording).

2.8.2 Nuclear/radioactive risks (UK market agreed wording).

2.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

2.8.4 Wear, tear and gradual deterioration, latent defect, defective design, materials or workmanship, however, not excluding consequential loss or damage

2.8.5 Consequential financial losses

2.8.6 Cyber risks

2.8.7 Unexplained shortages

2.8.8 Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded

2.8.9 Refractory linings

2.8.10 Fuel/waste fuel quality clause (not to apply to inadvertent or accidental acceptance of inappropriate waste composition)

2.8.11 Losses recovered under the CAR insurance specified in **paragraph 2** of Part 1 of this **Schedule 11**

3. **Business Interruption Insurance**

3.1 **Insureds**

3.1.1 Contractor

3.1.2 Senior Lenders

3.1.3 Subordinated Lenders

each for their respective rights and interests

3.2 **Indemnity**

In respect of:

3.2.1 loss of Revenue during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under the Property Damage Insurance specified at **paragraph 2** of Part 2 of **Schedule 11** including physical loss or damage which would be indemnifiable but for the application of any deductible;

3.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place during the Minimum Indemnity Period; and

3.2.3 additional costs of working

3.3 **Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

3.4 **Maximum Excess**

As per Property Damage Insurance specified in **paragraph 2** of Part 2 of **Schedule 11**

3.5 **Minimum Indemnity Period**

Sinfin Site - 30 months

All other Sites - 6 months

3.6 **Period of Insurance**

As per Property Damage Insurance specified in **paragraph 2** of Part 2 of **Schedule 11**

3.7 **Cover Features & Extensions**

3.7.1 Denial of access

3.7.2 Terrorism

3.7.3 Utilities

3.7.4 Accountants clause

3.7.5 Engineering breakdown

3.7.6 Payments on account

3.7.7 Suppliers' premises extension

3.7.8 Customers' premises extension

3.7.9 Additional increased cost of working

3.8 **Principal Exclusions**

3.8.1 As per the Property Damage Insurance specified in **paragraph 2** of Part 2 of **Schedule 11**, other than for consequential financial losses.

3.8.2 Delayed response by a public body or state authority

4. **Third Party Public and Products Liability Insurance**

4.1 **Interest**

To indemnify the Insureds in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

4.1.1 death, or bodily injury, illness, death, disease contracted by any person;

4.1.2 loss or damage to property;

4.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause

happening during the Period of Insurance and arising out of or in connection with the Services.

4.2 **Limit of Indemnity**

Following the completion of the Works on the Sinfin Site: Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

Prior to the completion of Works on the Sinfin Site: Not less than £25,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

4.3 **Maximum Deductible**

£25,000 for each and every occurrence of property damage (personal injury claims will be paid in full).

4.4 **Territorial Limits**

United Kingdom (and elsewhere in the world in respect of non manual visits)

4.5 **Jurisdiction**

Worldwide jurisdiction (subject to North American Conditions); Applicable law for the policy: English law

4.6 **Period of Insurance**

From the date on which the Property Damage Insurance specified in **paragraph 2** of Part 2 of **Schedule 11** is first required in accordance with the terms of **paragraph 2** of Part 2 of **Schedule 11** and throughout the remainder of the Contract Period (renewable on an annual basis unless otherwise agreed by the Parties and maintained on a losses occurring basis throughout).

4.7 **Cover Features and Extensions**

4.7.1 Munitions of war

4.7.2 Cross liability clause

4.7.3 Contingent motor

4.7.4 Legal defence costs

4.7.5 Contractual liability

4.7.6 Health and Safety at Work Act

4.7.7 Data Protection Act

4.7.8 Defective Premises Act

4.8 **Principal Exclusions**

4.8.1 War and related perils (UK market agreed wording)

4.8.2 Nuclear radioactive risks (UK market agreed wording)

4.8.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured

4.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles

4.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insureds

4.8.6 Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion is not to apply to any property belonging to the Councils which is in the care, custody and control of another Insured

4.8.7 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property

4.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel

4.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence

4.8.10 Losses indemnified under the Property Damage or Business Interruption insurances specified in this Part 2 of **Schedule 11**

4.8.11 Cyber risks

4.8.12 Liability arising from asbestos

4.8.13 Liability arising from toxic mould

4.8.14 Other Council liabilities (being those not arising out of or in connection with the Services)

PART 3 – ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE

Common to each insurance specified in this Part 3 (unless stated otherwise):

1. **INSUREDS:**

1.1.1 the Councils

1.1.2 Contractor

1.1.3 Operating Contractor

1.1.4 any immediate sub-contractor of the Operating Contractor to whom the Operating Contractor has subcontracted control and responsibility in respect of the HWRCs, the Project Transfer Stations or the Sinfin Site as applicable

1.1.5 Construction Contractor (for the period of works and defects liability period only)

1.1.6 Senior Lenders

1.1.7 Subordinated Lenders

each for their respective rights and interests

2. **Contractor's Pollution Liability Insurance (CPL)**

2.1 **Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay and/or clean up costs following action by a Regulatory Authority (Local Authority, Environmental Agency, judicial authority) or a third party, including the Councils, consequent to a pollution incident which has been caused by the act or omission of the Contractor and/or its sub-contractors. A pollution incident relates to either pollution in existence at the Commencement Date disturbed or in some way aggravated, released or made worse by the Contractor and/or its sub-contractors or pollution caused by the Contractor and/or its sub-contractors in connection with the Project subsequent to the Commencement Date.

2.2 **Limit of Indemnity**

Not less than £5,000,000 in respect of any one loss, the number of losses being unlimited and not less than £15,000,000 in the aggregate during the policy period, the policy period not to exceed three years. The limit of indemnity specified here and the limit of indemnity specified under the Environmental Impairment Liability Insurance (EIL) for the Sinfin Site in **paragraph 3.2** below to be linked.

2.3 **Maximum Deductible**

£100,000 for each and every loss.

2.4 **Territorial Limits**

United Kingdom

2.5 **Jurisdiction**

English law and jurisdiction

2.6 **Period of Insurance**

From the Commencement Date and throughout the Contract Period (the policy period not to exceed three years)

2.7 **Cover Features and Extensions**

2.7.1 Regulatory or third party claims for on site clean-up of pre-existing and new conditions arising from the act or omission of the Insured.

2.7.2 Regulatory or third party claims for off-site clean-up of pre-existing and new conditions arising from the act or omission of the Insured.

2.7.3 Third party claims for on-site and off-site property damage from pre-existing and new conditions arising from the act or omission of the Insured.

2.7.4 Third party claims for on-site and off-site bodily injury from pre-existing and new conditions arising from the act or omission of the Insured.

2.7.5 Legal costs.

2.7.6 Costs incurred under the Environmental Damages Regulations 2009.

2.7.7 Retroactive date, policy inception.

2.7.8 Liability arising from any works.

2.8 **Principal Exclusions**

2.8.1 War and related perils (UK market agreed wording).

2.8.2 Nuclear/radioactive risks (UK market agreed wording).

2.8.3 Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).

2.8.4 Intentional, wilful or deliberate non-compliance with any EU Authority decision or any UK or EU regulation.

2.8.5 Criminal fines and penalties

2.8.6 Known Conditions.

3. **Environmental Impairment Liability Insurance (EIL) for the Sinfin Site only**

3.1 **Interest**

To indemnify the Insured Parties in respect of all sums that they may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (e.g. Local Authority or Environment Agency or a judicial

authority) or a third party, including the Councils, and resulting in a claim or claims first made against an Insured or the Insured Parties and reported to the insurer during the policy period. A pollution incident relates to pre-existing pollution (at the Commencement Date) at or emanating from the Sinfin Site.

3.2 **Limit of Indemnity**

Not less than £5,000,000 in respect of any one loss, the number of losses being unlimited and not less than £15,000,000 in the aggregate during the policy period, the policy period not to exceed three years. The limit of indemnity specified here and the limit of indemnity specified under the Contractors' Pollution Liability Insurance in **paragraph 2.2** above to be linked.

3.3 **Maximum Deductible**

£100,000 for each and every loss.

3.4 **Territorial Limits**

Sinfin Site and off site migration of contamination from this site

3.5 **Jurisdiction**

English law and jurisdiction

3.6 **Period of Insurance**

From the Commencement Date and throughout the Contract Period (the policy period not to exceed three years).

3.7 **Cover Features and Extensions**

3.7.1 Regulatory claims or third party claims for on-site clean-up of pre-existing and new conditions following completion of site remediation to the satisfaction of the insurer.

3.7.2 Regulatory or third party claims for off-site clean-up of pre-existing and new conditions.

3.7.3 Third party claims for on-site and off-site property damage from pre-existing and new conditions.

3.7.4 Third party claims for on-site and off-site bodily injury from pre-existing and new conditions.

3.7.5 Legal costs.

3.7.6 Costs incurred under the Environmental Damages Regulations 2009.

3.7.7 No retroactive date.

3.7.8 Liability arising from any works.

3.8 **Principal Exclusions**

3.8.1 War and related perils (UK market agreed wording).

3.8.2 Nuclear/radioactive risks (UK market agreed wording).

3.8.3 Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).

3.8.4 Intentional, wilful or deliberate non-compliance with any EU Authority decision or any UK or EU regulation.

3.8.5 Criminal fines and penalties

3.8.6 Known Conditions.

PART 4 - ENDORSEMENTS

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Contract.

Endorsement 1

Cancellation

Other than in respect of war, strikes or terrorism cover under the marine cargo insurance (which shall be in accordance with standard insurance market practice), this policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Councils:

(a) at least 30 Days (or such shorter period in respect of war, strikes or terrorism cover under the marine cargo insurance in accordance with standard insurance market practice) before any such cancellation or termination is to take effect;

(b) at least 30 Days (or such shorter period in respect of war, strikes or terrorism cover under the marine cargo insurance in accordance with standard insurance market practice) before any reduction in limits or coverage or any increase in deductibles is to take effect; and

(c) of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple Insured/Non-Vitiation Clause

Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party except in the case of a breach of marine survey warranty where the indemnity stated under such marine survey warranty shall be paramount.

It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "Vitiating Act") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act except in the case of a breach of marine survey warranty where the indemnity stated under such marine survey warranty shall be paramount.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

(a) no party other than the Councils have any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Councils;

(b) where any warranty, disclosure or representation is required from the Councils in connection with this policy insurers will contact the Councils in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Councils (regarding itself); and

(c) save as set out in a request from insurers to the Councils in accordance with (2) above, the Councils shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Councils not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Endorsement 3

Communications

All notices or other communications under or in connection with this policy shall be given to each insured (and the Councils) in writing or by facsimile. Any such notice will be deemed to be given as follows:

(a) if in writing, when delivered;

(b) if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

The address and facsimile number of the Councils for all notices under or in connection with this policy are those notified from time to time by the Councils for this purpose to the Contractor at the relevant time. The initial address and facsimile number of the Councils are as follows:

The Councils:	Derby City Council and Derbyshire County Council Long Term Waste Management Project
Address:	County Hall Matlock DE4 3AG

Facsimile No: 01629 533295

Attention: The Contract Manager

It is further agreed that a notice of claim given by the Councils or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

Endorsement 4

Loss Payee (applicable only to the Physical Damage Policies)

Subject to the provision of **clause 41.15.2** all proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.

Endorsement 5

Primary Insurance

For all policies procured other than in respect of the Contractor's Pollution Liability and Environmental Impairment Liability insurances set out in Part 3 of this **Schedule 11**:

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

For all policies procured in respect of the Contractor's Pollution Liability and Environmental Impairment Liability insurances set out in Part 3 of this **Schedule 11**:

This policy is primary except in relation to sudden and accidental pollution cover afforded by any third party liability policy, where this policy will act in excess of any claims monies paid by that policy.

Endorsement 6

Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

PART 5 - BROKER'S LETTER OF UNDERTAKING

To: The Councils

Dear Sirs

Agreement dated [DATE] entered into between Resource Recovery Solutions (Derbyshire) Limited (the "Contractor") and Derby City Council and Derbyshire County Council (the "Authority") (the "Agreement")

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.

2. We act as insurance broker to the Contractor in respect of the Required Insurances (which are defined in **clause 1** and **Schedule 11** of the Agreement attached hereto as Appendix A) evidenced by the cover notes attached hereto as Appendix B ("Required Insurances") and in that capacity we confirm that the Required Insurances:

2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;

2.2 are, to the best of our knowledge and belief (after making all reasonable enquiries), as at today's date, in full force and effect; and that

2.3 all premiums due as at today's date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that

2.4 the endorsements set out in Part 4 to **Schedule 11** of the Agreement attached hereto as Appendix C are to the best of our knowledge and belief as at today's date in full force and effect.

3. We further confirm that the cover notes attached hereto as Appendix B confirm this position.

4. Pursuant to instructions received from the Contractor and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Required Insurances:

4.1 **Notification Obligations**

4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor to negotiate renewal and in the event of our receiving instructions to renew, to advise you as soon as reasonably practicable, of the details thereof;

4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to the Contractor unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as reasonably practicable; and

4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind or for any reason, all payments in respect of a single event (or series of related events) in excess of £500,000 (indexed) received by us from insurers in relation to the Physical Damage Policies

4.2 **Advisory Obligations**

4.2.1 to notify you as soon as reasonably practicable, of any default in the payment of any premium for any of the Required Insurances;

4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least 30 (thirty) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 30 (thirty) days before it is to take effect;

4.2.3 to notify you as soon as reasonably practicable of any act or omission, breach or default of the Contractor of which those of our employees directly involved with the placement or administration of the Required Insurances becomes actually aware in their capacity as brokers to the Contractor which acting reasonably they consider may invalidate or render unenforceable in whole or in part any of the Required Insurances or which may otherwise materially impact on the extent of cover provided under the Required Insurances; and

4.2.4 in accordance with our duty to the Contractor, to advise the Contractor of its duties of disclosure to insurers including:

4.2.4.1 the types of facts, circumstances and beliefs that should generally be disclosed to insurers; and

4.2.4.2 the obligation not to misrepresent any facts, matters or beliefs to insurers.

4.3 **Disclosure Obligations**

4.3.1 subject to the prior written consent of the Contractor (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information made available to those of our employees directly involved with the placement of the Required Insurances in their capacity as brokers to the Contractor and any fact, change of circumstances or occurrence made known to such employees which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers (in accordance with the Contractor's duty of disclosure to insurers) as soon as practicable after we are in receipt of such information, and become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise ; and

4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Contractor or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances in

discharge of our obligation set out at **clause 4.3.1** of this letter. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 **Administrative Obligations**

4.4.1 to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;

4.4.2 subject to our lien over the Policies for premiums and/or commissions due, to supply to the Authority and/or its insurance advisers (or the Authority's authorised representatives) as soon as reasonably practicable, on written request copies of the documents set out in **clause 4.4.1** of this letter, and to the extent available, to make available to such persons as soon as reasonably practicable, upon the Authority's request the originals of such documents;

4.4.3 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate cleared funds from the Contractor, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;

4.4.4 to administer the payment of claims from insurers in respect of the Required Insurances (the "Insurance Claims") including:

4.4.4.1 negotiating settlement of Insurance Claims presented in respect of the Required Insurances;

4.4.4.2 collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and

4.4.4.3 insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout the settlement, payment and administration of such Insurance Claims.

4.4.5 to advise the Authority as soon as reasonably practicable upon receipt of notice of any material changes from the Contractor which we are instructed to make in the terms of the Required Insurances and which, if effected, in our reasonable opinion as insurance brokers would result in any material reduction in limits or coverage or in any material increase in deductibles, exclusions or exceptions; and

4.4.6 to advise the Authority in advance, to the extent we are actually aware of in advance, of any material change to the terms of, or any lapse, non-renewal and/or cancellation of Required Insurances.

4.5 **Insurance Cost Reporting Procedures**

4.5.1 to prepare following request, at the expense of the Contractor, a Joint Insurance Cost Report on behalf of both the Contractor and the

Authority in accordance with the Insurance Review Procedure as set forth in Part 6 of **Schedule 11** of the Agreement attached hereto as Appendix E. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

5. **Notification Details**

5.1 Our obligations at **clause 4** of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

The Authority:	The Contract Manager, Derby City Council and Derbyshire County Council Long Term Waste Management Project
Address:	County Hall, Matlock, DE4 3AG
Facsimile No:	01629 533295

The undertakings given and obligations set out in this letter are given subject to any liability we may incur to you arising out of or in connection with this letter whether in contract, tort (including but not limited to negligence) or otherwise being limited in aggregate to £5,000,000.

All liability we may incur to you, whether in contract, tort (including but not limited to negligence) or otherwise for loss of profit, loss of savings, loss of opportunity or any indirect or consequential loss is hereby expressly excluded.

No limit of liability shall apply in the case of death or personal injury caused by our negligence, or in respect of any loss caused by our fraud.

The undertakings given and obligations set out in this letter are given subject to insurers right to cancel the Required Insurances, are given solely in our capacity as broker to the Contractor, relate only to the Required Insurances and are subject to our continuing appointment as broker to the Contractor. Following termination of such appointment, we are, for the avoidance of doubt and without prejudice to your accrued rights, released from all our ongoing obligations set out in this letter.

You may not rely on any advice which we have given to the Contractor and we do not represent that any of the Required Insurances are suitable or sufficient to meet your needs and you must take steps and advice of your own as you consider necessary in order to protect your own position.

In the event that this letter is disclosed to any third party, any and all liability howsoever arising to such third party is hereby expressly excluded to the extent permitted in law.

No person, except you, has any rights arising out of this letter under the Contract (Rights of Third Parties) Act 1999.

This letter shall be governed by and construed in all respects in accordance with the laws of England and Wales.

This letter is given by us at the request of the Contractor and with the Contractor's full knowledge and consent as to its terms, who confirms that we are authorised to give and comply with the undertakings and acknowledges that compliance with the undertakings may be in conflict with the interests of the Contractor, as evidenced by the Contractor's signature below.

Yours faithfully

For and on behalf of the Contractor’s Broker

For and on behalf of the Contractor

PART 6 - INSURANCE PREMIUM RISK SHARING MECHANISM

1. **Definitions**

For the purposes of this Part 6 of this **Schedule 11** (Insurance) and in addition to the definitions set out at **clause 1**, the following words and expressions shall bear the following meanings:

ACT Commissioning Commencement Date means the date on which testing and commissioning (involving Waste) of the advanced conversion technology facility comprising part of the NWTF commences (or, if earlier, the date on which such facility first receives Waste);

Actual Relevant Insurance Cost means the aggregate of the insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance in respect of the Insurance Review Period but excluding insurance premium tax and all broker's fees and commissions;

Base Cost means £893,846 being the sum of:

(a) £862,139.00 (in respect of the Relevant Insurance save for EIL) as agreed at the Bid Date and expressed in real terms as at the Bid Date; and

(b) £31,707.00 (in respect of EIL) as agreed no later than the date of Financial Close and expressed in real terms as at Financial Close

as set out in the Base Case which represents the insurance costs (which excludes amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the ACT Commissioning Commencement Date;

Base Relevant Insurance Cost means, the aggregate of the Base Costs which were at Bid Date (in respect of the Relevant Insurances save for EIL) and at Financial Close (in respect of EIL) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPIx from the Bid Date (in respect of the Relevant Insurances save for EIL) and from Financial Close (in respect of EIL) up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction;

Base Relevant Insurance Reduction means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:

(a) the amount by which the Base Relevant

Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (in respect of the Relevant Insurances save for EIL) or at Financial Close (in respect of EIL) (which amount, for the avoidance of doubt, can be £0); or

(b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:

(i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term of condition becoming unavailable (the **"Actual Reduction"**);

(ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and

(iii) the effects of RPIx since the Bid Date (in respect of the Relevant Insurances save for EIL) or since Financial Close (in respect of EIL);

Bid Date means 1 April 2011;

Business Interruption Cover shall mean the insurance specified in **paragraph 2** of Part 2 of **Schedule 11** (Insurance);

Construction Period Insurance means the Required Insurances to the extent maintained in respect of the period from the date of the Contract to the ACT Commissioning Commencement Date;

Contract Period means the period from and including the date of the Contract to the Expiry Date, or if earlier, the Termination Date;

EIL means the contractors pollution liability insurance and environmental impairment liability insurance set out at Part 3 of **Schedule 11** (Insurance);

Exceptional Cost means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;

Exceptional Saving	means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;
First Insurance Review Date	means the first Business Day following the first anniversary of the Relevant Insurance Inception Date;
Insurance Cost Decrease	means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;
Insurance Cost Differential	shall, subject to the Insurance Review Procedure, be determined as follows: Insurance Cost Differential = (ARIC - BRIC) - (+/- PIC) where: ARIC is the Actual Relevant Insurance Cost BRIC is the Base Relevant Insurance Cost PIC is any Project Insurance Change;
Insurance Cost Increase	means the Insurance Cost Differential if the value thereof is greater than zero;
Insurance Cost Index	means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of the Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;
Insurance Review Date	means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period;
Insurance Review Procedure	means the procedure set out in **paragraph 2** of this Part 6;
Insurance Review Period	means a two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period;
Joint Insurance Cost Report	shall bear the meaning ascribed to it in **paragraph 2.2** of this Part 6;

PFI Insurance Market means the insurance market which insures the majority of all PFI projects across all PFI sectors (as determined by the number of PFI projects, but excluding all waste PFI projects). At the date of the Contract the PFI Insurance Market is in the United Kingdom;

Portfolio Cost Saving means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a stand alone project specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;

Power and Engineering Insurance Market means the insurance market that insures the majority of all European based Relevant Assets. At the date of the Contract the Power and Engineering Insurance Market is in Europe;

Project Insurance Change means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

(a) the claims history or re-rating of the Contractor or any Contractor Related Party;

(b) the effect of any change in deductible unless the following applies:

(i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and

(ii) the deductible, further to such change, is either greater than or equal to the maximum set out in Parts 2 or 3 of this **Schedule 11** (Insurance);

(c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving;

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value;

Relevant Assets means assets in European Member States insured in the Power and Engineering Insurance Market, including:

(a) municipal solid waste technology and other

renewable technology;

(b) coal fired plants;

(c) oil fired plants;

(d) gas turbine power plants;

(e) coal/oil refineries;

(f) chemical plants;

(g) petrochemical plants;

(h) gas plants; and

(i) overhead transmission lines and underground cabling;

Relevant Insurance means the Required Insurances and any other insurances as may be required by law other than:

(a) Construction Period Insurance; and

(b) Business Interruption Cover except to the extent that it relates to Unavoidable Fixed Costs;

Relevant Insurance Inception Date means the date on which the Relevant Insurance is first providing active insurance cover to the Contractor, being a date no earlier than the ACT Commissioning Commencement Date;

Relevant Insurance Market means:

(a) in respect of the third party public and products liability insurance set out in **paragraph 3** of **Part 2** of **Schedule 11** (Insurance) and in respect of EIL: the PFI Insurance Market; and

(b) in respect of the property damage insurance set out in **paragraph 1** of **Part 2** of **Schedule 11** (Insurance) and the business interruption insurance set out at **paragraph 2** of **Part 2** of **Schedule 11** (Insurance): the Power and Engineering Insurance Market;

Required Insurance shall bear the meaning ascribed to it in the Contract;

RPIx shall bear the meaning ascribed to it in the Contract;

2. Insurance Review Procedure

2.1 This procedure shall be used to determine whether the Councils shall bear any increase or benefit from any decrease in Relevant Insurance costs.

2.2 The Contractor's insurance broker shall prepare a report on behalf of both the Contractor and the Councils (the **"Joint Insurance Cost Report"**). The Joint Insurance Cost Report is to be prepared at the Contractor's expense and should, as a minimum, contain the following information for the relevant Insurance Review Period:

2.2.1 A full breakdown of the Actual Relevant Insurance Cost;

2.2.2 A full breakdown of the Base Relevant Insurance Cost;

2.2.3 A spreadsheet (the **"Insurance Summary Sheet"**) detailing separately:

2.2.3.1 the sum(s) insured/limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;

2.2.3.2 the premium rate for each of the Relevant Insurances;

2.2.3.3 the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);

2.2.3.4 the deductible(s) for each Relevant Insurance;

2.2.3.5 details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £50,000 (indexed), being the amount stated in **clause 41.7.1.1**;

2.2.4 An assessment and quantification of each Project Insurance Change together with the reasons therefore;

2.2.5 Full details of any Portfolio Cost Saving;

2.2.6 Any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Cost) in the Actual Relevant Insurance Cost;

2.2.7 The opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above. To the extent such information is available and having used all reasonable endeavours to obtain such information, the Contractor's insurance broker's assessment should include:

2.2.7.1 an assessment of the magnitude of, and reasons for, insurance rate movement generally prevailing in the Power and Engineering Insurance Market, including full details of the information underpinning the assessment. This should include:

(a) feedback received further to discussions with at least three lead underwriters at each insurance renewal or placement during the relevant Insurance Review Period;

(b) premium rate change information broadly corresponding to the same period further to a review of insurance cost

data for a representative sample of Relevant Assets in various European Member States for which the Relevant Insurance has been renewed by the Contractor's insurance broker during the six (6) Months prior to the relevant Insurance Review Date;

(c) all additional available evidence of any changes to circumstances generally prevailing in the Power and Engineering Insurance Market that are deemed to have contributed to any Insurance Cost Differential. This should include details of movements in any other index which both Parties agree is relevant to the Power and Engineering Market which is or becomes available;

2.2.7.2 an assessment of the magnitude of, and reasons for insurance rate movements generally prevailing in the PFI Insurance Market, including all available evidence of changes to circumstances generally prevailing in the PFI Insurance Market that are deemed to have contributed to any Insurance Cost Differential. This should include details of movements in the CBS Private Capital non-marine index, plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole; and

2.2.7.3 the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation.

2.2.8 The Contractor shall, as soon as is reasonably practicable, notify the Councils if the Contractor's insurance broker is unable to obtain any of the information required under **paragraph 2.2.7**. The Councils shall be entitled to provide the Contractor's insurance broker with any such information for inclusion in the Joint Insurance Cost Report and the Contractor shall reimburse the Councils' costs that have been reasonably and properly incurred in obtaining and providing such information.

2.3 The Contractor shall procure that the Broker, no later than the date which is twenty five (25) Business Days after the Insurance Review Date, delivers to the Councils at the same time as it delivers to the Contractor at least two copies of the Joint Insurance Cost Report. At the same time the Contractor should send a copy of the Insurance Summary Sheet to HM Treasury private finance unit or its nominee. Following receipt of the Joint Insurance Cost Report the Councils shall notify the Contractor in writing within twenty five (25) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Councils do not provide such notification and/or details of any disagreement to the Contractor within twenty five (25) Business Days, the Councils shall be deemed to have accepted the Joint Insurance Cost Report. If the Councils disagree with any item in the Joint Insurance Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within forty five (45) Business Days from the date it was delivered to the Councils, the matter shall be resolved in accordance with **clause 78** (Dispute Resolution Procedure), provided always that references in **clause 78** (Dispute Resolution Procedure) to an Adjudicator shall be construed as references to an independent insurance Adjudicator agreed

by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.

2.4 The Councils may make the Joint Insurance Cost Report available to any of its or HM Treasury's agents or advisers or other body or bodies nominated by HM Treasury for insurance cost verification, benchmarking or similar purpose.

3. **Sharing of Exceptional Cost and Exceptional Saving**

3.1 If, following the implementation and completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Councils shall within twenty (20) Business Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor equal to 85% of the Exceptional Cost.

3.2 If, following the implementation and completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within twenty (20) Business Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Councils equal to 85% of the Exceptional Saving.

3.3 Following the completion of the Insurance Review Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the Contractor.

4. **Insurance Cost Index**

If at any time an Insurance Cost Index is published and intended for use in PFI contracts of a similar nature to the Contract, the Parties shall meet with a view to agreeing:

4.1 its application to the Project, taking into account any relevant guidance issued by HM Treasury; and

4.2 how a Portfolio Cost Saving may be accounted for when the index is in use.

SCHEDULE 12

Commercially Sensitive and Confidential Information

The information listed in **Parts 1** and **2** of this **Schedule 12** (Commercially Sensitive and Confidential Information) is information that both parties acknowledge is Commercially Sensitive Information for the purposes of this Contract.

The column on the left describes the Information and the column on the right sets out the length of time for which the Information should be considered Commercially Sensitive Information.

PART 1 - COMMERCIALLY SENSITIVE CONTRACTUAL PROVISIONS

Commercially Sensitive Contractual Provisions	**Time period for which they remain confidential**
Definition of Contractor Default and the figures contained in limbs (n), (p), (q), (r) and (s)	Until the earlier of the Termination Date and the Expiry Date
Clause 25.4.1 (Minimum Waste Delivery Obligations)	Until the earlier of the Termination Date and the Expiry Date
Clause 25.9 (Guaranteed Additional Diversion and Extra Diversion)	Until the earlier of the Termination Date and the Expiry Date
Clause 33.3B and **33.3C** (Capital Contribution)	Until the earlier of the Termination Date and the Expiry Date
Clause 41 (Insurance) - amounts referred to in pounds sterling (£) in any or all of: (i) **clause 41.7.1.1**; (ii) **clause 41.14.1**; (iii) **clause 41.15.2**; or (iv) **clause 41.15.3**.	Until the earlier of the Termination Date and the Expiry Date
The event of default level referred to in **clause 41.16.2** and **clause 41.16.3**	Until the earlier of the Termination Date and the Expiry Date
Clause 57.1B (Councils' Right to Require Termination of the HWRC Contractor's Engagement in the Project)	Until the earlier of the Termination Date and the Expiry Date
The limits on the Contractor's liability in **Clause 69.1.2.3**	Until the earlier of the Termination Date and the Expiry Date
Paragraph 4.8.10 of **Schedule 1** (Specification). The figure for the Maximum Contract Waste Delivery Capacity	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Contractual Provisions	**Time period for which they remain confidential**
(tonnes/day) for Derby Transfer Station only.	
Paragraph 5.1.1 (NWTF Diversion Tonnage Target) of **Schedule 1** (Specification). The percentage figures and tonnage figures in **paragraphs 5.1.1.2** to 5.1.1.5 only.	Until the earlier of the Termination Date and the Expiry Date
Paragraph 5.1.5 (NWTF Re-Use, Recycling and Composting Target) of **Schedule 1** (Specification). The percentage figures and tonnage figures only.	Until the earlier of the Termination Date and the Expiry Date
Paragraph 6.2 (HWRC Re-Use, Recycling and Composting Target) of **Schedule 1** (Specification). The percentage figures and tonnage figures only.	Until the earlier of the Termination Date and the Expiry Date
All formulas in **Schedule 3** (Payment Mechanism) but excluding the definitions of the terms used in the formulas	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.2 (New Waste Treatment Facility) of **Schedule 3** (Payment Mechanism) all references to amounts in tonnes and to the amount in pounds sterling contained in the definition of NWTFR	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.3 (HWRC and Contract Transfer Stations) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.3.1 (HWRC Fixed Payment) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.3.2 (Contract Transfer Station Fixed Payment) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
All references to the amount (in tonnes) of the GAD in **paragraph 1.4** (Landfill) of **Schedule 3** (Payment Mechanism)	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.4.2 (HWRC Enhanced Recycling Tonnage Target) in **Schedule 3** (Payment Mechanism) – all percentage figures	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Contractual Provisions	**Time period for which they remain confidential**
Paragraph 1.4.3 (Tonnage Rate for Landfill) of **Schedule 3** (Payment Mechanism) all the amounts in pounds sterling contained in the definition of LFGF at (a)	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.4.4 (Landfill Diversion Saving) of **Schedule 3** (Payment Mechanism) all the amounts in pounds sterling and tonnages	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.7 (Strategic Partnering Services) of **Schedule 3** (Payment Mechanism) the amount in pounds sterling contained in the definition of IFy	Until the earlier of the Termination Date and the Expiry Date
Paragraph 1.8 (Electricity Revenues) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 2.3 (HWRCs and Contract Transfer Stations) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
References to LDSFy in **paragraph 2.4** (Landfill) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 2.7 (Hazardous Waste and Clinical Waste (HCWE)) of **Schedule 3** (Payment Mechanism) the amount in pounds sterling contained in the definition of HCWPFy at (a)	Until the earlier of the Termination Date and the Expiry Date
Paragraph 4.1A (Monthly Adjustments in Excess of the Monthly Payment) of **Schedule 3** (Payment Mechanism)	Until the earlier of the Termination Date and the Expiry Date
Table 4.2.1 (HWRC Unavailability Rates) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Table 4.2.2 (Transfer Station Unavailability Rates) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 4.3 (Monthly Performance Adjustments) of **Schedule 3** (Payment Mechanism) the amount in pounds sterling	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Contractual Provisions	**Time period for which they remain confidential**
contained in the definition of PPR	
Paragraph 4.4 (Tipping Away Payments) of **Schedule 3** (Payment Mechanism) the amount in pounds sterling contained in the definition of TAPR	Until the earlier of the Termination Date and the Expiry Date
Paragraph 5.2 (Annual Performance Deductions) of **Schedule 3** (Payment Mechanism) the amount in pounds sterling contained in the definition of PPR	Until the earlier of the Termination Date and the Expiry Date
Paragraph 5.3 (Landfill Adjustment) of **Schedule 3** (Payment Mechanism) all references to amounts in pounds sterling	Until the earlier of the Termination Date and the Expiry Date
Paragraph 6.5 (Electricity Indexation) of **Schedule 3** (Payment Mechanism) the amount in pounds sterling contained in the definition of $IXElec_0$	Until the earlier of the Termination Date and the Expiry Date
Schedule 6 (Change in Law - Contractor's Share)	Until the earlier of the Termination Date and the Expiry Date
Schedule 8 (Environmental Provisions) - **paragraph 1.5.3**	Until the earlier of the Termination Date and the Expiry Date
Part 2 (Proposed Workforce, Remuneration Costs and Reorganisation Costs of **Schedule 10** (Employee Information)	Until the earlier of the Termination Date and the Expiry Date
Schedule 11 (Insurance), **Part 6** (Insurance Premium Risk Sharing Mechanism), **paragraph 1**, definition of Base Cost - references to amounts in pounds sterling (£)	Until the earlier of the Termination Date and the Expiry Date
Schedule 12 (Commercially Sensitive and Confidential Information)	Until the earlier of the Termination Date and the Expiry Date
Schedule 14 (Performance Mechanism): (i) Table 1; (ii) **paragraph 6.2**; and (iii)Table 2 (Repeated Failure Multipliers)	Until the earlier of the Termination Date and the Expiry Date
Schedule 17 (Waste Reception Protocol),	Until the earlier of the Termination Date

Commercially Sensitive Contractual Provisions	Time period for which they remain confidential
paragraph 5 (Contract Waste Composition Protocol)	and the Expiry Date
Schedule 20 (Compensation on Termination for Planning Failure)	Until the earlier of the Termination Date and the Expiry Date
Schedule 21 (Unitary Charge Adjustment Protocol)	Until the earlier of the Termination Date and the Expiry Date
Equivalent commercially sensitive contractual positions in the Sub-Contracts.	Until the earlier of the Termination Date and the Expiry Date

PART 2 - COMMERCIALLY SENSITIVE MATERIAL

Part A – General

Commercially Sensitive Material	**Time period for which that material remains confidential**
Base Case	Until the earlier of the Termination Date and the Expiry Date
Contractor's Proposals	Until the earlier of the Termination Date and the Expiry Date
Service Delivery Plan	Until the earlier of the Termination Date and the Expiry Date
Works Delivery Plan	Until the earlier of the Termination Date and the Expiry Date
Works Programme	Until the earlier of the Termination Date and the Expiry Date
Construction Documents	Until the earlier of the Termination Date and the Expiry Date
Entsorga Licence Agreement	Until the earlier of the Termination Date and the Expiry Date
Energos Licence Agreement	Until the earlier of the Termination Date and the Expiry Date
Base Case Output Sheet	Until the earlier of the Termination Date or the Expiry Date
The Settlement Agreement	Until the earlier of the Termination Date and the Expiry Date
Technical Support Agreement between Energos and the Operating Contractor	Until the earlier of the Termination Date and the Expiry Date
All contracts entered into by each of the Operating Contractor and the Construction Contractor with subcontractors in relation to the Project	Until the earlier of the Termination Date and the Expiry Date
Information relating to the Contractor's (or where relevant, any Sub-Contractor of any tier's) price including any build-up or breakdown of total cost or any element thereof including profit margins, contract sum analysis, overheads, overhead and profit element, pricing of project risks, preliminaries and payment terms, amount of borrowing of both senior and subordinated debt	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Material	**Time period for which that material remains confidential**
Such elements of the Contractor's bid (together with clarifications and correspondence during the bid process) to the extent that such material contains details of the Contractor's bid response to any of the Contract provisions set out in **Part 1** above	Until the earlier of: (i) the earlier of the Termination Date or the Expiry Date; and (ii) (where the relevant section of the Contract is referred to in **Part 1** above, the time period specified in **Part 1** in relation to such section of the Contract.
Assessment and evaluation information relating to the Contractor's bid where such material contains details of the Contractor's bid response to any of the Contract provisions set out in Part 1 above	Until the earlier of: (i) the earlier of the Termination Date and the Expiry Date; and (ii) where the relevant section of the Contract is referred to in **Part 1** above, the time period specified in **Part 1** in relation to such section of the Contract.
Information on the Contractor's approach to and manner of performing the Works/Services including design information, method statements and programme analysis together with any equivalent information concerning any Sub-Contractor and the Contractor's negotiations with any Sub-Contractor	Until the earlier of the Termination Date and the Expiry Date
Information relating to the Contractor's response to any Council Change proposed by the Councils, and relating to any Contractor Notice of Change, or proposal following a Change in Law, Relief Event, Compensation Event or a Force Majeure Event, response to a request from the Councils pursuant to **Schedule 23** (CHP Protocol) or similar event (including correspondence, meeting minutes, emails, contract change notices, presentation materials, models etc), but only to the extent relating to: (i) financial matters, including the breakdown of the Contractor's or any sub-contractor's price and the terms and any amount of borrowing or financing proposed; (ii) details of the impact of the relevant event on the Contractor's or any sub-contractor's performance of the Works and/or the Services; and	Until the earlier of the Termination Date and the Expiry Date.

Commercially Sensitive Material	**Time period for which that material remains confidential**
(iii) details of the Contractor's or any sub-contractor's technical proposals for carrying out the relevant matters, including timetables and programming for performance of the Works and Services and any variations or additions to the Works and Services.	
Information on sums recovered from the Contractor (but not the fact that sums have been recovered) such as damages, insurance claims, deductions and sums recovered under indemnities or warranties	3 years from when sums were due and payable.
Any invoices or reports pursuant to **clause 32**, **Schedule 4** (Reporting) and/or **Schedule 14** (Performance Mechanism), unless the Contractor agrees otherwise.	Until the earlier of the Termination Date and the Expiry Date.
Information in relation to insurance premia and deductibles	Until the earlier of the Termination Date and the Expiry Date.
Joint Insurance Account - account details (including number and name of bank) and the level of funds held in the account at any time	Until the earlier of the Termination Date and the Expiry Date.
Information in relation to warning notices, except for the fact that a warning notice has been served	Until the earlier of the Termination Date and the Expiry Date.
The Financing Agreements, including the Shareholders Agreement and all documents in relation to subordinated lending and equity investment but excluding the Direct Agreement	Indefinitely.
Information provided to the Councils pursuant to any of the following: (i) **clause 36.2** (Provision of Information); (ii) clauses 38.3.1 and/or 38.3.2; (ii) **clause 47.1.4**; (iv) **paragraph 1.5.1** of **Schedule 1** (Specification); (v) **paragraph 3.4.7** and/or **paragraph 3.4.8** of the Specification; (vi) **paragraph 6.3.3** of the Specification.	Until the earlier of the Termination Date and the Expiry Date.

Commercially Sensitive Material	**Time period for which that material remains confidential**
Information provided to the Councils pursuant to **clause 43.2** (Incidents)	Until the earlier of the Termination Date and the Expiry Date.
Site security and methodology reports	Until the earlier of the Termination Date and the Expiry Date.
Information relating to and including the Energos Licence Agreement and the Entsorga Licence Agreement	Indefinitely.
Any future product information, research plans, service development proposals, or information relating to the development of new equipment or processes which amount to trade secrets or which could reasonably be considered to provide a commercial advantage to the Contractor's competitors.	Indefinitely unless otherwise coming into the public domain (except where entry into the public domain arises from breach of a duty of confidentiality by the disclosing party)
Information contained in any of: (i) the form and content of the Operating Contractor Parent Company Guarantees in favour of both the Contractor and the Construction Contractor, including the identity of the guarantor or replacement guarantor; (ii) the form and content of Construction Contractor Parent Company Guarantees in favour of both the Contractor and the Operating Contractor including the identity of the guarantor or replacement guarantor; (iii) the definition of Required Period in the Direct Agreement; Any future proposals or agreements relating to the sale of shares, companies, or businesses of the Contractor which are not in the public domain.	Until in the public domain. Indefinitely
Quotations for undertaking works and/or services and forecasts.	3 years from date of quotation or forecast.
Benchmarking and Market Testing Results	3 Years from the completion of the Market Testing or Benchmarking (as appropriate)
Technical drawings provided by Sub-Contractors and any Key Sub-Contractors to the extent Intellectual Property Rights exist in such materials	Indefinitely.
Board minutes and resolutions, but	Until the earlier of the Termination Date

Commercially Sensitive Material	Time period for which that material remains confidential
excluding: (i) items lodged with Companies House, (ii) information already held by the Councils (other than where such information is otherwise covered by this **Schedule 12**) (iii) any information the disclosure of which would not cause commercial prejudice to the Contractor and/or the Councils.	and the Expiry Date.

Section B: Operating Sub-Contract: Commercially Sensitive Contractual Provisions

Commercially Sensitive Material	Time periods for which that material remains confidential
Definition of Contractor Default	Until the earlier of the Termination Date and the Expiry Date
Definition of Guarantor	Until the earlier of the Termination Date and the Expiry Date
Definition of Indirect Losses	Until the earlier of the Termination Date and the Expiry Date
Definition of Material Adverse Effect	Until the earlier of the Termination Date and the Expiry Date
Definition of Operating Contractor Default	Until the earlier of the Termination Date and the Expiry Date
Definition of Operating Contractor Breakage Costs	Until the earlier of the Termination Date and the Expiry Date
Definition of Operating Contractor Persistent Breach	Until the earlier of the Termination Date and the Expiry Date
Definition of Replacement Guarantor	Until the earlier of the Termination Date and the Expiry Date
Definition of Replacement Security	Until the earlier of the Termination Date and the Expiry Date
Clause 25.4 (Minimum Waste Delivery Obligation)	Until the earlier of the Termination Date and the Expiry Date
Clause 25A (Documents and Cooperation)	Until the earlier of the Termination Date and the Expiry Date
Clause 27A (Lifecycle Works)	Until the earlier of the Termination Date

Commercially Sensitive Material	Time periods for which that material remains confidential
	and the Expiry Date
Clause 27B (Defects)	Until the earlier of the Termination Date and the Expiry Date
Clause **37** (Renewables Obligation Certificate Regime)	Until the earlier of the Termination Date and the Expiry Date
Clauses 54 (Direct Agreements) to 68 (Expiry of Service Period) inclusive	Until the earlier of the Termination Date and the Expiry Date
Clause 69 (Indemnity)	Until the earlier of the Termination Date and the Expiry Date
Clause 92 (Financial Adjustments)	Until the earlier of the Termination Date and the Expiry Date
Clause 93 (Equivalent Project Relief) and Clause 94 (Parallel Claims)	Until the earlier of the Termination Date and the Expiry Date
Clause 96 (Interfaces with the Councils and other Contractor Subcontractors)	Until the earlier of the Termination Date and the Expiry Date
Clause 101 (Guarantees)	Until the earlier of the Termination Date and the Expiry Date
Clause 103 (Collateral Warranties and Direct Agreements)	Until the earlier of the Termination Date and the Expiry Date
Clause 104 (Limitation of Liability)	Until the earlier of the Termination Date and the Expiry Date
Clause 108 (Contractor Pursuit of Vertical Interface Claims)	Until the earlier of the Termination Date and the Expiry Date
Clause 109 (Letter of credit in first two years of operations)	Until the earlier of the Termination Date and the Expiry Date
Clause 110 (Net Worth Test)	Until the earlier of the Termination Date and the Expiry Date
Schedule 1 (Specification)	Until the earlier of the Termination Date and the Expiry Date
Commercial details as to exclusions or limits on liability, indemnities and warranties, level of pricing, caps or damages contained within the Contract which departs from standard drafting.	Until the earlier of the Termination Date and the Expiry Date
Schedule 3 (Payment Mechanism)	Until the earlier of the Termination Date and the Expiry Date
Part 2 (Proposed Workforce, Remuneration	Until the earlier of the Termination Date

Commercially Sensitive Material	Time periods for which that material remains confidential
Costs and Reorganisation Costs of Schedule 10 (Employee Information)	and the Expiry Date
Schedule 14 (Performance Mechanism)	Until the earlier of the Termination Date and the Expiry Date
Schedule 17 (Waste Reception Protocol), paragraph 5 (Contract Waste Composition Protocol)	Until the earlier of the Termination Date and the Expiry Date
Schedule 25 (Direct Agreements)	Until the earlier of the Termination Date and the Expiry Date
Schedule 26 (Parent Company Guarantees)	Until the earlier of the Termination Date and the Expiry Date
Schedule 28 (The HWRC Contractor Direct Agreement)	Until the earlier of the Termination Date and the Expiry Date
Schedule 29 (Lifecycle)	Until the earlier of the Termination Date and the Expiry Date

Section C: Construction Contract: Commercially Sensitive Contractual Provisions

Commercially Sensitive Material	Time periods for which that material remains confidential
Definition of Contractor Default	Until the earlier of the Termination Date and the Expiry Date
Definition of Contract Sum	Until the earlier of the Termination Date and the Expiry Date
Definition of Defect	Until the earlier of the Termination Date and the Expiry Date
Definition of Guarantor	Until the earlier of the Termination Date and the Expiry Date
Definition of ICL Default	Until the earlier of the Termination Date and the Expiry Date
Definition of Indirect Losses	Until the earlier of the Termination Date and the Expiry Date
Clause 11A (ROC Accreditation)	Until the earlier of the Termination Date and the Expiry Date
Clause 11B (Grid Connection)	Until the earlier of the Termination Date or

Commercially Sensitive Material	Time periods for which that material remains confidential
	the Expiry Date
Clause 21.3 (Diversion Target Default)	Until the earlier of the Termination Date or the Expiry Date
Clause 22A (Defects)	Until the earlier of the Termination Date or the Expiry Date
Clause 22B (Reliability Test)	Until the earlier of the Termination Date or the Expiry Date
Clause 22C (Availability Tests)	Until the earlier of the Termination Date or the Expiry Date
Clause 22D (Performance Tests)	Until the earlier of the Termination Date or the Expiry Date
Clause 22E (Performance Tests Default)	Until the earlier of the Termination Date or the Expiry Date
Clause 22F (Defects Losses)	Until the earlier of the Termination Date and the Expiry Date
Clause 22G (Deductions)	Until the earlier of the Termination Date and the Expiry Date
Clause 23 (Turbine Delay)	Until the earlier of the Termination Date or the Expiry Date
Clause 30.1 (Works Payment)	Until the earlier of the Termination Date or the Expiry Date
Clause 30.10 (Property in Goods, Material and Plant)	Until the earlier of the Termination Date or the Expiry Date
Clause 30.11 (Payment of Outgoings)	Until the earlier of the Termination Date or the Expiry Date
Clause 30.11A (Income During Commissioning)	Until the earlier of the Termination Date and the Expiry Date
Clause 30.12 (Payment of Retention)	Until the earlier of the Termination Date or the Expiry Date
Clause 34 (Interest on Late Payment)	Until the earlier of the Termination Date or the Expiry Date
Clauses 54 (Direct Agreements) to 67B (Consequences of Termination) inclusive	Until the earlier of the Termination Date and the Expiry Date
Clause 69 (Indemnity) and Clause 69A (Limits on ICL's Liability)	Until the earlier of the Termination Date and the Expiry Date

Commercially Sensitive Material	**Time periods for which that material remains confidential**
Clause 69B (Limitation Period)	Until the earlier of the Termination Date or the Expiry Date
Clause 93 (Equivalent Project Relief) and Clause 94 (Parallel Claims)	Until the earlier of the Termination Date and the Expiry Date
Clause 97 (Guarantee and Bonds)	Until the earlier of the Termination Date or the Expiry Date
Clause 99 (Collateral Warranties and Direct Agreements)	Until the earlier of the Termination Date or the Expiry Date
Clause 100 (Interface Agreement)	Until the earlier of the Termination Date and the Expiry Date
Clause 102 (Compensation for Delayed Completion)	Until the earlier of the Termination Date and the Expiry Date
Clause 104 (Parallel Loan Agreement)	Until the earlier of the Termination Date and the Expiry Date
Clause 105 (Look-Forward Termination Test)	Until the earlier of the Termination Date or the Expiry Date
Schedule 1 (Contractor Requirements)	Until the earlier of the Termination Date or the Expiry Date
Commercial details as to exclusions or limits on liability, indemnities and warranties, level of pricing, caps or damages contained within the Contract which departs from standard drafting.	Until the earlier of the Termination Date and the Expiry Date
Schedule 3 (ICL's Proposals)	Until the earlier of the Termination Date and the Expiry Date
Schedule 5 (Test Protocol)	Until the earlier of the Termination Date and the Expiry Date
Schedule 8 (Environmental Provisions)	Until the earlier of the Termination Date and the Expiry Date
Schedule 17 (Waste Reception Protocol), paragraph 5	Until the earlier of the Termination Date or the Expiry Date
Schedule 24 (Milestone and Maximum Payment Schedule)	Until the earlier of the Termination Date or the Expiry Date
Schedule 25 (Parent Company Guarantee)	Until the earlier of the Termination Date or the Expiry Date
Schedule 26 (Bonds)	Until the earlier of the Termination Date or the Expiry Date

Commercially Sensitive Material	**Time periods for which that material remains confidential**
Schedule 27 (Direct Agreements)	Until the earlier of the Termination Date or the Expiry Date
Schedule 28 (Key Sub-Contractor Collateral Warranty)	Until the earlier of the Termination Date and the Expiry Date
Schedule 30 (Parallel Loan Agreement)	Until the earlier of the Termination Date or the Expiry Date

SCHEDULE 13

Waste Law List

All policies and proposals contained in the following documents shall be deemed to be listed on the Waste Law List for the purposes of limb (h) of the definition of Qualifying Change in Law.

1.	**WASTE LAW AND POLICY**
1.1	Waste Prevention Programme for England dated December 2013.
1.2	Government Review of Waste Policy in England 2011 and resulting Action Plan.
1.3	Regulatory position statement 017 The regulation of materials under consideration for an end of waste Quality Protocol dated January 2014.
1.4	Europe 2020 Strategy (COM 2010); EU Commission Flagship Initiative "A resource efficient Europe" (COM 2011); EU Commission – Progress Report SWD (2014)
1.5	7th Environment Action Programme "Living well within the limits of our planet" January 2014, OJ L354 (adopted Roadmap)
1.6	DEFRA Waste Management Plan for England, 30 December 2013.
1.7	DEFRA Refuse-Derived Fuel Market in England: Call for Evidence, 12 March 2014.
1.8	European Commission: Proposal for a Directive to amend Directives 2008/98/EC on Waste, 94/62/EC on Packaging v Packaging Waste, 1999/31/EC on the Landfill of Waste, 2000/53/EC on End of Life Vehicles, 2006/66/EC on Batteries and Accumulators and Waste Batteries and Accumulators, and 2012/19/EU on Waste Electrical and Electronic Equipment / COM/2014/0397 Final – 20140210 (COD), 2 July 2014.
1.9	European Commission Communication: "Towards a Circular Economy: A Zero Waste Programme for Europe and Annex", 2 July 2014.
2.	**LICENSING AND PERMITTING**
2.1	Environment Agency H1 Environmental Risk Assessment Consultation dated October 2013, only to the extent that it is not included in the existing published documents dated 2nd April 2014 (https://www.gov.uk/government/collections/horizontal-guidance-environmental-permitting)
2.2	Consultation on draft Materials Recovery Facility (MRF) Regulations for insertion into Environmental Permitting (England and Wales) (Amendment) Regulations 2013, 12th February 2014
2.3	Environment Agency: Environmental Permitting Material Recovery Facilities Changes, published 25 April 2014
2.4	Environment Agency: Hazardous Waste: Interpretation of the Definition and Classification of Hazardous Waste (WM2) and Waste Sampling (Appendix D), 2 April 2014 and future consultation
3.	**SOIL AND LAND PROTECTION**
3.1	Thematic Strategy for Soil Protection (COM (2006) 231 final), and The Implementation of the Soil Thematic Strategy and ongoing activities (COM/2012/046 final)

4.	**AIR QUALITY**
4.1	DEFRA report on Fine Particulate Matter (PM2.5) in the United Kingdom dated December 2012.
4.2	EU Consultation on EU air quality legislation dated 30 June 2011.
4.3	Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A Clean Air Programme for Europe (COM/2013/0918 final) dated 18 December 2013 and Proposal for a Directive of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC (COM/2013/0920 final – 2013 0443 (COD)) dated 18 December 2013.
4.4	EU Report: The Final Policy Scenarios of the EU Clean Air Policy Package dated February 2014.
4.5	DEFRA - Air Quality Plans for the achievement of EU air quality limit values for nitrogen dioxide (NO2) in the UK published September 2011
4.6	DEFRA Consultation: Review of the Clean Air Act – Call for evidence dated September 2013.
4.7	DEFRA Summary of responses and government reply to local air quality management in England Consultation dated December 2013.
5.	**ENERGY, CLIMATE CHANGE AND EMISSIONS**
5.1	Energy Act 2013 and all related consultation documents and draft secondary legislation, but excluding any Legislation or Guidance which gives effect to any policies or proposals which are set out in such Act, related consultation documents and/or draft secondary legislation, on or before the Amendment and Restatement Date.
5.2	DECC Consultation: Transition from the Renewables Obligation to Contracts for Difference (URN13D/150) dated July 2013 and Government Response dated 12 March 2014.
5.3	DECC Consultation: Renewables Obligation Grace Periods Consultation dated November 2013 (URN 13D/295) and Government Response dated 12 March 2014.
5.4	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy Roadmap 2050 dated 15 December 2011.
5.5	DECC UK Renewable Energy Roadmap dated 12 July 2012 as updated December 2012 and November 2013.
5.6	Delegated legislation pursuant to the Energy Act 2008, Energy Act 2010 and Energy Act 2011, but excluding any Legislation or Guidance which gives effect to any policies or proposals which are set out in such Acts, on or before the Amendment and Restatement Date.
5.7	Delegated legislation pursuant to the Climate Change Act 2008, but excluding any Legislation or Guidance which gives effect to any policies or proposals which are set out in such Act, on or before the Amendment and Restatement Date.
5.8	Delegated legislation pursuant to the Green Energy (Definition and Promotion) Act 2009, but excluding any Legislation or Guidance which gives effect to any policies or proposals which are set out in such Act, on or before the Amendment and Restatement Date.
5.9	DECC Consultation (URN 12D/403; Cm 8468): Electricity Demand Reduction – Consultation on options to encourage permanent reductions in electricity use

	dated November 2012.
5.10	European Energy Security Strategy dated 28 May 2014.
5.11	DECC Energy Efficiency Strategy 2013 and update dated December 2013.
5.12	Communication (COM 2014/15 final) from the EU Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A policy framework for climate and energy in the period from 2020 to 2030 dated 22 January 2014.
5.13	Ofgem consultation on Project Discovery: Options for delivering secure and sustainable energy supplies dated 3 February 2010.
5.14	Ofgem consultation on Regulating energy networks for the future: RPI-X@20 Recommendations dated 26 July 2010.
5.15	Ofgem consultation (137/13): Project TransmiT: Impact Assessment of industry's proposals (CMP213) to change the electricity transmission charging methodology.
5.16	Project TransmiT: Further consultation on proposals to change the electricity transmission charging methodology dated 25th April 2014.
5.17	DECC Consultation Supporting Independent Renewable Investment: Offtaker of Last Resort, 11 February 2014.
5.18	DECC Consultation Proposals for Implementation of Electricity Market Reform, 23 June 2014.
5.19	DECC Biomass Sustainability, 16 June 2014.
5.20	Draft Renewables Obligation Closure Order 2014 (June 2014).
5.21	DECC Consultation on Adjustments to the Sustainability and Reporting Provisions for Biomass Power Plants under the Renewables Obligations and Renewable Heat Incentive, 16 June 2014.
5.22	EU Commission 2030 Climate and Energy Framework.
6.	**WATER QUALITY**
6.1	EU Water Framework Directive (2000/60/EC) including the proposed daughter directives as well as the UK Technical Advisory Groups various sets of proposals relating to implementation of the Water Framework.
7.	**MISCELLANEOUS**
7.1	Thematic Strategy on the sustainable use of natural resources (COM (2005) 670 final) dated 21 December 2005.
7.2	UK Government Construction Strategy dated May 2011.
8.	**EMR CONSULTATIONS AND RESPONSES**
8.1	The Government Response to the January Code and License consultation: https://www.gov.uk/government/consultations/emr-consultation-on-industry-code-and-licence-modifications
8.2	The Government Response to the April Balancing and Settlement Code modifications consultation: https://www.gov.uk/government/consultations/emr-modifications-to-balancing-and-settlement-code-bsc-subsidiary-documents
8.3	Ofgem's Renewables Obligation: Guidance on the transition period - Draft supplementary guidance dated 17 July 2014
8.4	Ofgem's Renewables Obligation: The 'enabling financial decisions' grace period,

	Consultation on draft guidance dated 30 June 2014

SCHEDULE 14

Performance Mechanism

1. **INTRODUCTION**

1.1 It is a fundamental principle that, if no Services are provided by the Contractor, then no payment will be made by the Councils to the Contractor. In order to achieve this principle, financial deductions may be made by the Councils following events where the Facilities operated by the Contractor are not Available or where the Contractor's performance in delivering the Services is not in accordance with the Performance Criteria set out in the Specification.

1.2 The framework for dealing with the Availability of Services is set out in the **Schedule 3** (Payment Mechanism). This Schedule sets out the framework for monitoring performance of the Services and for determining performance points and any resulting adjustment to payment.

1.3 At the higher level the primary concern is whether the Contractor's performance of the Services meets or exceeds the Contract Targets. Performance against the Contract Targets may result in adjustments which shall be applied in accordance with **Schedule 3** (Payment Mechanism). Prolonged failures to achieve Contract Targets will trigger a Contractor Default which entitles the Councils to terminate this Contract under **clause 57** (Termination on Contractor Default).

1.4 Indirect deductions via a Performance Points system address performance against Key Performance Indicators (KPIs). These relate to more local and specific service activities that ensure standards of services are enhanced year-on-year or at least maintained in accordance with details set out in **Schedule 1** (Specification) and the Contractor's Proposals.

1.5 The Contractor's performance against the Performance Criteria (detailed in the Specification) will be measured by reference to the KPI's.

1.6 The regime set out in this Schedule (the Performance Regime) will apply in full for the duration of the Contract Period.

2. **KEY PERFORMANCE INDICATORS**

2.1 The KPIs are set out in Table 1 below.

2.2 The list of KPIs shall be reviewed annually by the Contractor and the Councils and any additional or revised KPIs and monitoring methods shall be agreed by the Parties prior to 31st March each year. The first review shall be carried out so as to enable any additional or revised KPIs to be implemented as from 31st March 2011. Changes to KPIs shall be kept to a minimum to ensure continuity of data collection and to establish performance trends.

FIGURE 1 – PERFORMANCE FLOW CHART FOR PERFORMANCE FAILURE EVENT

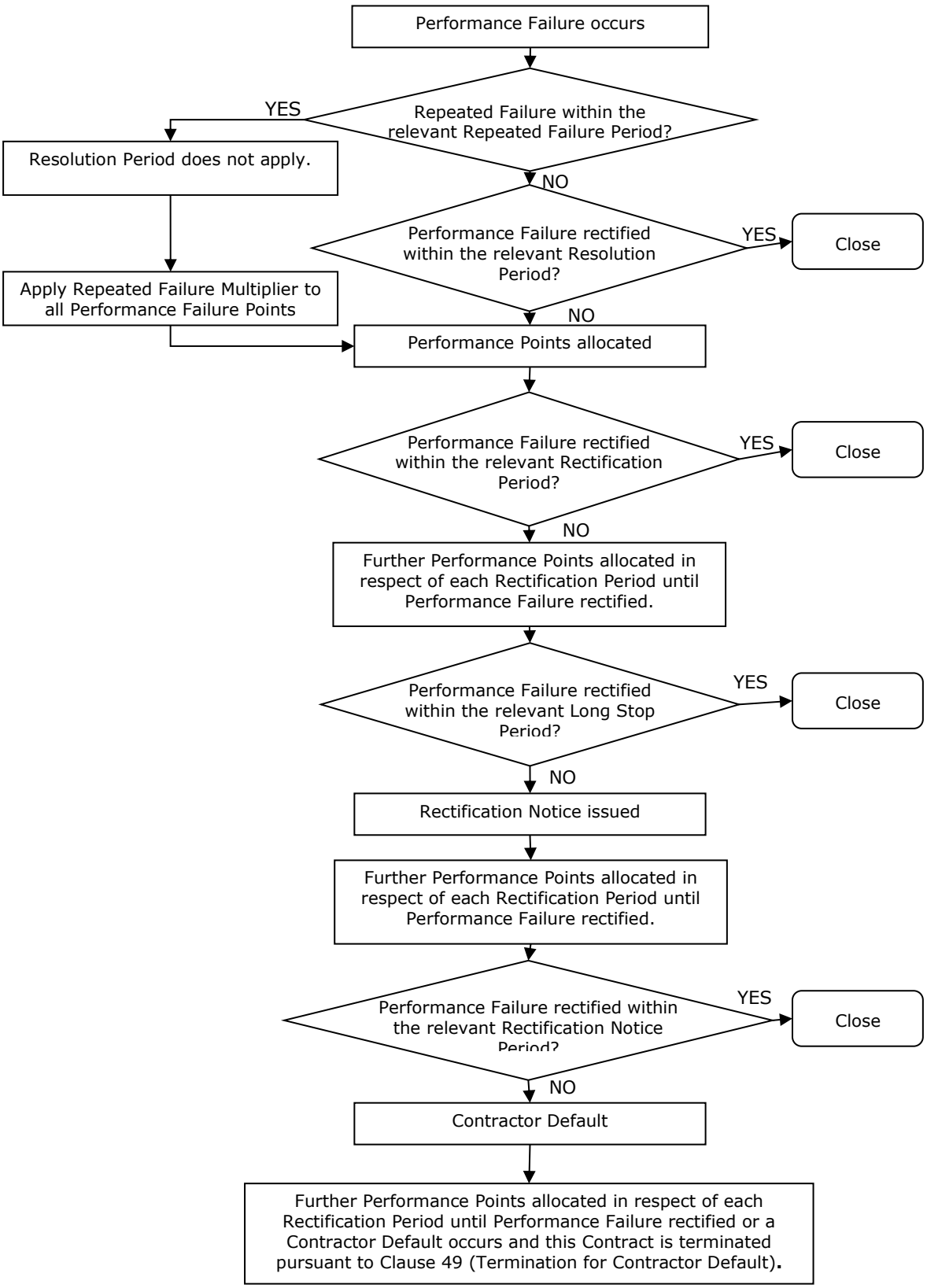


Table 1

KPI No	Contract Reference	Performance Failure	Measurement	Reporting Frequency	Resolution Period	Rectification Period	Performance Points per Failure or Resolution Period or Rectification Period	Long Stop Period	Initial Repeated Failure Period
Monthly KPIs									
1.	Specification Para 3.2	**Services Delivery Plan** Failure to update the Services Delivery Plan (SDP) (including all other subsidiary plans and documents).	Business Days	Monthly	5 Business Days	10 Business Days	3000	2 months	3 Years
2.	Specification Para 3.15	**Contingency Plan** Failure to maintain and comply with the Contingency Plan	No of occurrences	Monthly	N/A	N/A	600	N/A	1 Year
3.	Specification paras 3.14	**Health and Safety Plan** Failure to operate the Services in accordance with the Health and Safety Plan	No of occurrences	Monthly	N/A	N/A	1000	N/A	1 Year
4.	Schedule 4 (Reporting)	**Monthly Reporting** Failure to provide the monthly waste data report and operational report to the Councils by the specified date in accordance with Schedule 4 (Reporting)	Business Days	Monthly	0	5 Business Days	500	2 months	1 Year
5.	Schedule 4 (Reporting)	**Monthly report errors** Failure to verify and correct errors identified in Monthly Reports within 10 Business Days in accordance with Schedule 4 (Reporting)	Business Days	Monthly	0	5 Business Days	250	3 months	1 Year
6.	Specification para 3.8	**Customer Enquiries** Failure to respond to enquiries, service requests	No of occurrences	Monthly	N/A	N/A	150	N/A	1 Year

		and complaints from members of the public or the Councils, within the response times specified in the Councils' customer care policies as at the date of this Contract (save to the extent that such failure on the part of the Contractor arises as a direct result from a delay by the Councils).							
7.	Specification para 5.6	**Education and Seminar Facilities** Failure to provide and make available educational and seminar facilities for visits and tours	No of occurrences	Monthly	N/A	N/A	400	N/A	1 Year
8.	Specification paras 3.11	**Environmental Management** Failure to obtain and maintain an accredited or equivalent Environmental Management System.	Business Days	Monthly	5 Business Days	28 Business Days	600	6 months	5 Years
9.	Specification paras 3.12.1	**Quality Assurance** Failure to obtain and maintain an accredited or equivalent quality management system.	Business Days	Monthly	5 Business Days	28 Business Days	600	6 months	5 Years
10.	Specification para 3.14.19	**Health and Safety Training Records** Failure to maintain health & safety training records for each member of staff.	No of occurrences	Monthly	5 Business Days	10 Business Days	50	1 Year	1 Year
11.	Specification paras 3.14.20 to 3.14.25	**RIDDOR** Failure to inform the Councils of any RIDDOR reportable accident or an accident involving a member of the public in accordance with the Specification.	No of occurrences	Monthly	N/A	N/A	150	N/A	1 Year
12.	Specification paras 4.7, SDP	**Weighbridge Provision** Failure to provide and maintain an operational weighbridge controlled entrance at each Delivery Point as set out in the Specification and Services	Business Days	Monthly	1 Business Day	3 Business Days	1100	3 months	1 Year

		Delivery Plan.							
13.	Specification paras 4.7.1, 4.7.4, 4.7.6, SDP	**Weighing and Monitoring** Failure to comply with the procedures set out in the Specification and Services Delivery Plan for the weighing, recording and reporting of Contract Waste and Third Party Waste	No of occurrences	Monthly	N/A	N/A	30	N/A	1 Year
14.	Specification paras 6.18	**HWRC Waste litter and spillages** Failure to take appropriate measures to prevent Waste escaping from a HWRC or to promptly control and contain any liquid spillages of Waste.	No of occurrences	Monthly	N/A	N/A	50	N/A	1 Year
15.	Specification para 6.19	**Flytipping** Failure to remove flytipped Waste in accordance with the Specification.	Operating Hours	Monthly	4 Operating Hours	4 Operating Hours	250	3 months	1 Year
16.	Specification paras 6.17, 6.7.3.7	**HWRC Traffic Continuity** Failure to comply with the SDP regarding management of traffic continuity at each HWRC in accordance with the Specification and the Services Delivery Plan	No of occurrences	Monthly	N/A	N/A	250	N/A	1 Year
17.	Specification para 6.7.14, 6.7.3.6, 6.7.4.2	**Authorised Vehicles** Failure to use reasonable endeavours in accordance with operating procedures to prevent vehicles other than those authorised by the Councils to deliver Waste under this Contract in accordance with the existing permit scheme for the residents of Derby City.	No of occurrences	Monthly	N/A	N/A	50	N/A	1 Year
18.	Specification paras 4.8.3, 4.8.4	**Daily Average Vehicle Turnaround Time** Failure to achieve the specified daily average Turnaround time at a Delivery Point as set out in the Specification	No of occurrences	Monthly	N/A	N/A	575	N/A	1 Year

19.	Specification para 4.8.5	**Maximum Vehicle Turnaround Time** Failure to achieve the specified maximum turnaround time at each Delivery Point as set out in the Specification	No of delayed vehicles	Monthly	N/A	N/A	10	N/A	1 Year
ANNUAL KPIs									
20.	Schedule 4 (Reporting)	**Annual Reporting** Failure to provide Annual Reports to the Councils by the specified date in accordance with Schedule 4 (Reporting)	Business Days	Annually	0	7 Business Days	1400	2 months	3 Years
21.	Schedule 4 (Reporting)	**Annual report errors** Failure to verify and correct errors identified in Annual Reports within 10 Business Days in accordance with Schedule 4 (Reporting)	Business Days	Annually	0	5 Business Days	500	3 months	3 Years
22.	Specification para 3.3.1	**Greenhouse Gas Emissions** Failure to achieve annual Greenhouse Gas Emission targets as defined in the Specification, excluding the Works	Number of tonnes of carbon dioxide equivalent, or part thereof, by which the Contractor failed to meet the annual Greenhouse Gas Emission Target	Annually	N/A	N/A	25 points per tonne of carbon dioxide equivalent or part thereof	N/A	6 Years
23.	Specification paras 1.4.3	**Contract Waste Analyses** Failure to conduct Contract Waste sampling and composition analyses and or make information available to the Councils in accordance with the Specification	Business Days	Every five years	5 Business Days	15 Business Days	250	2 months	3 Years
24.	Specification para 5.1.5	**NWTF Re-use, Recycling and Composting** Failure to meet the minimum NWTF Re-use, Recycling and Composting Target in accordance with the	Percentage points below the NWTF Recycling and Composting Target	Annually	N/A	N/A	200 points per 0.1% or part thereof by which the target is	N/A	5 Years

		Specification					missed		
25.	Specification para 6.2.2	**HWRC Re-use, Recycling and Composting Target** Failure to achieve the minimum HWRC Re-Use, Recycling and Composting Target at any individual HWRC in accordance with the Specification	Percentage points below the HWRC Re-Use, Recycling and Composting Target	Annually	N/A	N/A	200 points per 0.1% or part thereof by which the target is missed	N/A	10 Years
26.	Specification para 8.2 to 8.5	**Waste Minimisation and Education Plan** The Contractor shall develop a Waste Minimisation and Education Plan annually by 31st March in consultation with the Councils.	Per Business Day delay the complete Waste Minimisation and Education Plan is not submitted	Annually	5 Business Days	5 Business Days	100	2 months	5 Years

3. MONITORING RESPONSIBILITIES

3.1 The Contractor shall be responsible for the continuous monitoring and accurate recording at all times of its own performance of the Services and of compliance with, or default under, the requirements of the Performance Criteria for those KPIs identified in Table 1.

3.2 The Contractor shall notify the Councils, in accordance with paragraph 6 (Performance Monitoring Reports) of **Schedule 4** (Reporting), of any Performance Failures under any of the KPIs. If such a Performance Failure has occurred, the Performance Points and Performance Deductions shall be itemised in monthly reporting to the Councils.

3.3 Where necessary the Councils, acting in accordance with **clause 39.3** (Council Monitoring) of this Contract shall undertake their own assessment and additional monitoring in seeking to verify the accuracy of submissions made to it by the Contractor. Any error in the Contractor's monitoring identified in the Monthly Report or Annual Reports by the Councils through the procedure set out in **clause 32** (Report and Invoicing) shall constitute a Reporting Failure.

3.4 The Reporting Frequency is the minimum frequency with which the Contractor or Councils, as appropriate, shall report on the performance of the relevant KPI. The monitoring frequency shall be confirmed by the Contractor within the Services Delivery Plan for each KPI.

4. PERFORMANCE MONITORING PROGRAMME

4.1 The Contractor's Services Delivery Plan shall include a programme which shall:

4.1.1 describe in detail the actions that the Contractor shall take or procure to be taken regularly and systematically to monitor the provision of the Services to determine whether they are provided in accordance with the Contract;

4.1.2 require the Contractor to monitor each KPI at least as frequently as required in the Specification and this **Schedule 14** (Performance Mechanism);

4.1.3 record all Performance Failures defined as a failure to achieve a KPI;

4.1.4 be fully auditable back to the Performance Failures;

4.1.5 record all other areas where the Contractor has not delivered the Services in accordance with the requirements of the Contract;

4.1.6 record all areas where the delivery of Services has varied from the Services Delivery Plan.

4.1.7 have a flexible reporting capacity which shall include without limitation reports by month and by Contract Year, aggregated across the whole Contract and for each Facility;

(the "**Performance Monitoring Programme"**).

4.2 The Performance Monitoring Programme shall be updated by the Contractor on an annual basis, concurrent with the annual review of the SDP, and subject to the same review and approval process as the SDP.

5. PERFORMANCE MONITORING REPORTS

5.1 Performance Monitoring Reports shall be prepared by the Contractor and submitted all in accordance with **Schedule 4** (Reporting).

6. REPORTING FAILURE

6.1 Where it is agreed pursuant to the review procedure of the monthly Payment Report which is set out in **clause 32** (Report and Invoicing) that the Payment Report should be amended due to a failure by the Contractor to comply with its obligations in this Contract, such failure shall constitute a Reporting Failure. In the event that a Reporting Failure has occurred in respect of a KPI which it is the Contractor's responsibility to monitor, or which has been notified to the Contractor by the Councils, then a Reporting Failure Deduction shall be made. The Contractor shall include all calculations for any Reporting Failure Deduction in the Performance Monitoring Report for the following Payment Period.

6.2 The Reporting Failure Deduction shall be the sum of the following:

6.2.1 the charge for both the Councils' time and any professional fees to investigate the Reporting Failure, acting reasonably regarding time spent which shall not exceed the amount of the amendment to the Payment Report;

6.2.2 The charge for additional time spent by the Councils monitoring the Contractor more closely at the prevailing rate until the Councils, acting reasonably, are satisfied that the Contractor is reporting correctly. For one or more Reporting Failures for each Payment Period, the Councils will have the right to carry out further auditing and monitoring for up to 40 hours per month for a period of 4 months after the Reporting Failure(s), or if sooner until the Councils, acting reasonably, are satisfied that such Reporting Failure(s) would not be repeated;

7. PROVISION OF RECORDS

7.1 The Contractor shall keep up to date records of performance monitoring for each KPI, in an accessible and readable format and shall permit access to them free of charge to the Councils on reasonable notice.

7.2 To the extent that the records of performance monitoring are created or maintained on a computer or electronic storage device, then the Contractor shall agree to proposals of the Councils (such agreement not to be unreasonably withheld or delayed) for a reasonable procedure for back-up and off-site storage for copies of such records of performance monitoring and shall adhere to such agreed procedure.

7.3 Pursuant to **clause 40** (Audit Access) or otherwise, the Councils have the right to observe, inspect and satisfy itself as to the adequacy and accuracy of the performance monitoring procedures carried out by the Contractor including:

7.3.1 reports generated by the Contractor's management information systems or building management systems;

7.3.2 work plans;

7.3.3 completion of programmed work;

7.3.4 enquiries, complaints, comments and compliments.

8. EXCEPTIONS

8.1 No Performance Points may be levied for any Performance Failure:

8.1.1 where rectification of a Performance Failure is effected within the specified Resolution Period;

8.1.2 for the first five Business Days of a Relief Event;

8.1.3 for KPIs relating to a Site which is subject to Unavailability Deductions;

8.1.4 where the services are being delivered in accordance with the Contingency Plan.

9. PERFORMANCE POINTS

9.1 Where a Performance Failure occurs in respect of a KPI where Table 1 does not provide for a Resolution Period, the relevant number of Performance Points specified in Table 1 to this **Schedule 14** (Performance Mechanism) shall be allocated to the Contractor upon the occurrence of the Performance Failure.

9.2 Where a Performance Failure occurs in respect of KPI where Table 1 does provide for a Resolution Period, then:

9.2.1 if the Performance Failure is rectified within the Resolution Period, no Performance Points shall be allocated to the Contractor;

9.2.2 If the Performance Failure has not been rectified before the end of the Resolution Period, the relevant number of Performance Points specified in Table 1 to this **Schedule 14** (Performance Mechanism) shall be allocated to the Contractor upon the expiry of the Resolution Period.

9.3 The Contractor shall not be entitled to a Resolution Period where Repeated Failures occur.

9.4 Notwithstanding **paragraph 11** (Repeated Failures) below, or any other provision of this Contract, in each of the first five (5) full Contract Years following the NWTF Completion Date in relation to a Performance Failure in respect of KPI 22:

9.4.1 the aggregate number of Performance Points awarded shall not exceed 225,000;

9.4.2 notwithstanding **paragraph 9.4.1**, Performance Points awarded in respect of KPI 22 shall not be taken into account for the purposes of limb (n) of the definition of Contractor Default to the extent they exceed:

9.4.2.1 20,000 per Month;

9.4.2.2 190,000 in any period of twelve (12) Months.

10. RECTIFICATION PERIODS

10.1 A Rectification Period shall commence upon the later of the expiry of the Resolution Period or the occurrence of the Performance Failure.

10.2 Where a Performance Failure occurs in respect of a KPI where Table 1 does not provide for a Rectification Period, the relevant number of Performance Points specified in Table 1 to this **Schedule 14** (Performance Mechanism) shall be allocated to the Contractor either:

10.2.1 subject to **paragraph 10.3**, where, and only to the extent that, the Contractor fails to rectify the Performance Failure within the applicable Resolution Period, in which case the Performance Points shall be allocated to the contractor on expiry of the applicable Resolution Period; or

10.2.2 where no Resolution Period is provided for, the Performance Points shall be allocated to the Contractor on the occurrence of the Performance Failure.

10.3 Where a Performance Failure occurs in respect of a KPI where Table 1 provides for a Rectification Period, the relevant number of Performance Points specified in Table 1 to this **Schedule 14** (Performance Mechanism) shall be allocated to the Contractor:

10.3.1 upon the later of the expiry of any applicable Resolution Period or the occurrence of the Performance Failure; and

10.3.2 if the Contractor fails to rectify the Performance Failure within the relevant Rectification Period, then a further set of relevant Performance Points as set out in Table 1 will be allocated to the Contractor taking account of any Repeated Failure Multiplier as described in **paragraph 11** below.

10.4 At the end of each successive Rectification Period until the Performance Failure is Rectified, the Contractor shall be allocated further Performance Points at the level set out in Table 1 in each case multiplied by the applicable Repeated Failure Multiplier.

11. REPEATED FAILURES

11.1 The Repeated Failure Period means the Initial Repeated Failure Period (as defined in Table 1) which shall start from the day after the expiry of any applicable Resolution Period for the relevant KPI provided that:

11.1.1 if a Repeated Failure occurs during the Initial Repeated Failure Period, the Repeated Failure Period runs from the occurrence of such Repeated Failure until the expiry of a period equal to the relevant Initial Repeated Failure Period; and

11.1.2 if a Repeated Failure occurs during any extended period described at **paragraph 11.1.1**, or during any period further extended in accordance with this **paragraph 11.1.2**, runs from the occurrence of such Performance Failure until the expiry of a time equal to the relevant Initial Repeated Failure Period.

11.2 The Repeated Failure Period may therefore continue indefinitely until no Repeated Failure occurs during a period equal to the Initial Repeated Failure

Period (such period running from the last occurrence of the relevant Performance Failure).

11.3 Where a Performance Failure is a Repeated Failure, the Performance Failure Points for that particular Performance Failure shall be multiplied by the applicable Repeated Failure Multiplier.

Table 2: Repeated Failure Multipliers

Number of Failures relating to the same KPI within Repeated Failure Period	Repeated Failure Multiplier applied to last Performance Failure
2-3	1.2
4-5	1.5
6-8	2
9 and onwards	2.5

12. LONG STOP PERIOD

12.1 Those KPIs that are allocated a Long Stop Period are listed in Table 1.

12.2 If the Contractor fails to rectify a Performance Failure within the Long Stop Period, then the Councils shall be entitled to issue a notice to the Contractor (a **"Rectification Notice"**) instructing the Contractor to propose a remediation plan and rectify the Performance Failure as within a reasonable period (the Remediation Period), which shall be at least equal to the Long Stop Period unless otherwise agreed.

12.3 If, following receipt of the Rectification Notice, the Contractor fails to rectify the Performance Failure within the Remediation Period, then this shall be deemed a Contractor Default.

12.4 The Long Stop Period shall commence upon the later of the occurrence of the Performance Failure or the end of the relevant Resolution Period.

13. CALCULATION OF TOTAL PERFORMANCE POINTS

13.1 For each Payment Period t, the Monthly Performance Points shall be calculated by reference to the number of Performance Points the Contractor accumulated in relation to Monthly KPIs during month t (after application of the Repeated Failure Multiplier where relevant).

13.2 At the end of each Contract Year, the Annual Performance Points shall be calculated by reference to the number of Performance Points the Contractor accumulated in relation to the Annual KPIs (after application of the Repeated Failure Multiplier where relevant).

SCHEDULE 15

Project Documents and Finance Documents

PART 1 - PROJECT DOCUMENTS

Document	**Parties**
Construction Contract	(1) Contractor (2) Construction Contractor
Operating Contract	(1) Contractor (2) Operating Contractor
Settlement Agreement	(1) Shanks Group Plc (2) Ecodeco s.r.l. (3) the Contractor (4) United Utilities Waste Management Limited (5) Entsorga Italia s.r.l.
Independent Certifier's Deed of Appointment	(1) the Independent Certifier (2) the Contractor

PART 2 - INITIAL FINANCING AGREEMENTS

Document	**Parties / Description**
Senior Financing Agreement	(1) Contractor (2) HoldCo (3) Sumitomo Mitsui Banking Corporation (4) Sumitomo Mitsui Banking Corporation Europe Limited (5) Bayerische Landesbank, London Branch (6) UK Green Investment Bank Plc (7) The Original Lenders as set out in the Senior Financing Agreement
Intercreditor Agreement	As defined in the Senior Financing Agreement
Borrower Debenture	As defined in the Senior Financing Agreement
Parent Debenture	As defined in the Senior Financing Agreement
Construction Direct Agreement	As defined in the Senior Financing Agreement
Operating Contract Direct Agreement	As defined in the Senior Financing Agreement
Energos Direct Agreement	As defined in the Senior Financing Agreement
Energos Technical Support Direct Agreement	As defined in the Senior Financing Agreement
Entsorga Direct Agreement	As defined in the Senior Financing Agreement
Funders' Direct Agreement	As defined in the Senior Financing Agreement
HWM Direct Agreement	As defined in the Senior Financing Agreement
Pre-Processing Contractor Direct Agreement	As defined in the Senior Financing Agreement
Design Direct Agreement	As defined in the Senior Financing Agreement

Interserve Equity Bridge L/C	As defined in the Senior Financing Agreement
Shanks Equity Bridge L/C	As defined in the Senior Financing Agreement
Agency Fee Letter	As defined in the Senior Financing Agreement
Arrangement Fee Letter	As defined in the Senior Financing Agreement
Each Hedging Agreement	As defined in the Senior Financing Agreement
Each Transfer Certificate	As defined in the Senior Financing Agreement
Any other documents designated as Finance Documents by the Agent under the Senior Financing Agreement	

PART 3 - SUBORDINATED FINANCING AGREEMENTS

Document	**Parties / Description**
Noteholder Subscription and Payment Agreement	As defined in the Senior Financing Agreement
Shareholders' Agreement	As defined in the Senior Financing Agreement
Borrrower memorandum and articles	As defined in the Senior Financing Agreement
Parent memorandum and articles	As defined in the Senior Financing Agreement
Shanks ROCs L/C Parent Company Guarantee	As defined in the Senior Financing Agreement
Interserve ROCs L/C Parent Company Guarantee	As defined in the Senior Financing Agreement
Loan Note Instrument	As defined in the Senior Financing Agreement

SCHEDULE 16

Minor Facilities Protocol

PART 1 - DEVELOPMENT OF MINOR FACILITIES B

1. **NOT USED**

2. **Northwood HWRC Site**

2.1 The Councils have:

2.1.1 obtained a planning permission for the Northwood HWRC Site which allowed for the construction and operation of a facility at the Northwood HWRC Site in accordance with the Specification; and

2.1.2 completed the development of the Northwood HWRC Site in accordance with the planning permission obtained pursuant to **paragraph 2.1.1** and the Northwood Development Plans.

prior to the Amendment and Restatement Date.

3. **Glossop HWRC Site and Transfer Station**

3.1 The Councils have prior to the Amendment and Restatement Date:

3.1.1 obtained a planning permission for the Glossop HWRC Site and Transfer Station which allows for the construction and operation of a facility at the Glossop HWRC Site and Transfer Station in accordance with the Specification; and

3.1.2 commenced (but not completed) the refurbishment of the Glossop HWRC Site and Transfer Station in accordance with the planning permission obtained pursuant to **paragraph 3.1.1** above and the Glossop Development Plans.

3.2 If the Councils wish to carry out further or additional refurbishment of the Glossop Transfer Station and HWRC (or either part) then the Councils shall be required to serve a Council Notice of Change on the Contractor for the same.

3.3 Nothing in this **paragraph 3** shall give rise to a Compensation Event.

4. **Not Used**

5. **Site Conditions**

During the period from the Commencement Date to the date on which the Councils grant the Contractor a Lease of each of the Minor Facilities B (in accordance with **clause 7** (Nature of Land Interests)), the Councils shall ensure that each Minor Facility B together with the items listed on the Councils Asset Register are maintained in the condition they were in as at the Commencement Date and in accordance with Good Industry Practice (subject to fair wear and tear).

6. **Warranties in relation to Refurbishment and Development Work**

6.1 The Contractor acknowledges that the Councils have in relation to the development and/or refurbishment (as the case may be), including the design of the same of the Northwood HWRC and the integrated HWRC and Transfer Station at Glossop (**"Upgrade"**):

6.1.1 only approved the final designs for the Upgrade where the Contractor has confirmed its approval to such designs (such approval not to be unreasonably withheld or delayed where the designs are such that the Upgrade will allow the Contractor to comply with its obligations under this Contract);

6.1.2 procured that any building contractor appointed by the Councils to carry out the Upgrade shall be appointed on terms to be agreed by the Contractor; and

6.1.3 provided warranties in favour of the Contractor and the Operating Contractor from each contractor appointed by the Councils to perform any aspect of the Upgrade, such warranties in the Agreed Form subject to such amendments as may be agreed between the Parties provided that to the extent that the Councils were unable to procure suitable warranties in relation to the design of any aspect of the Upgrade then any defect in the design of any aspect of the Upgrade arising from a failure by the Councils' design contractor to use reasonable care and/or comply with Good Industry Practice shall be deemed to be a Compensation Event.

PART 2 - HANDOVER OF MINOR FACILITIES

1. Inspection of each Minor Facility

Prior to the Initial Services Commencement Date, the Contractor shall agree a date with the Councils for inspection of all associated equipment, fixtures and fittings, walls and fencing provided at each of the Minor Facilities together with those items listed on the Councils Asset Register for the Contractor to use for the Services Period. The Contractor and the Contract Manager shall inspect the Site of the relevant Minor Facility on the agreed date and prepare an inventory of equipment together with those items listed on the Councils Asset Register belonging to the Councils and the condition of that equipment.

2. Production of an Inventory and Condition Survey

The inventory and condition survey produced in accordance with **paragraph 1** above will be signed by both Parties and each will hold a copy for record purposes.

3. Handback of the Minor Facilities

Subject to **paragraph 4** below, the Contractor shall return to the Councils on the Expiry Date or the Extended Expiry Date (as the case may be) or, if earlier, the Termination Date, the Site of each Minor Facility and all its contents as indicated on the agreed inventory in the same or better condition as agreed to in the condition survey.

4. Handback of Equipment and Facilities at Raynesway

The Contractor shall not be obliged to return any of the items listed on the Councils Asset Register which relate to the Raynesway HWRC site.

SCHEDULE 17

Waste Reception Protocol

1. **Definitions**

Definitions used in this **Schedule 17** (Waste Reception Protocol)

"Accept" means, for the purpose of this **Schedule 17** (Waste Reception Protocol) only, a decision by the Contractor to unload or to permit the loading by others of all or any significant part of a Delivery for the purpose of Handling such Delivered Waste, whether or not:

(a) that Delivery contains any Rejectable Waste; and

(b) the Contractor knew or ought to have known of the presence of any such Rejectable Waste

and **"Accepted"** shall be construed accordingly. For the avoidance of doubt a decision by the Contractor to Accept any Waste shall not prejudice the Contractor's right subsequently to treat any such Waste (or part thereof) as Rejectable Waste

"Acceptable Waste" means any Waste which the Contractor is not entitled to Reject or treat as Rejectable Waste

"Accepted Waste" means any Waste which has been Accepted. For the avoidance of doubt Accepted Waste may contain Rejectable Waste

"ACT Plant" the advance conversion technology plant forming part of the New Waste Teatment Facility

"Authorised Vehicle" means any vehicle authorised by the Councils, any WCA or any Authorised Driver from time to time to Deliver Waste to any Delivery Point and where full details of such vehicle have been notified to the Contractor and the Operating Contractor by any such person not less than 1 Business Day prior to such vehicle making any Delivery

"Authorised Driver" means any driver authorised by any WCA or the Councils from time to time to Deliver Waste to any Delivery Point in an Authorised Vehicle and where the identity of such driver (together with the identity of the Authorised Vehicle such person is authorised to use for the purpose of Delivering of Waste) has been notified to the Contractor and the Operating Contractor by the Councils or any WCA not less than 1 Business Day prior to such person making any Delivery

"Average" the arithmetic mean weighted by the tonnage of Waste processed attributed with a particular Net Calorific Value, Moisture Content or Organic Content as the case may be

"Composition Failure"	has the meaning given in **paragraph 5.7**
"Contaminated Waste"	means any Waste at a Site which has been contaminated by Rejectable Waste, so that such Waste has become Rejectable Waste, to the extent that the Contractor has acted in accordance with Good Industry Practice to avoid or minimise such contamination having regard to the extent the Contractor knew of the existence of the relevant Rejectable Waste. For the avoidance of doubt Waste which has become Contaminated Waste may: (a) have been delivered in the same or in any other Delivery as the Delivery in respect of which the relevant Rejectable Waste was Delivered; or (b) have been delivered by the Contractor or any other person to the relevant Site
"Contract Waste Composition Protocol"	means the protocol specified in Table 17.1 below
"Delivered Waste"	means any Waste contained within a Delivery which has been Accepted by the Contractor. For the avoidance of doubt Delivered Waste may contain Rejectable Waste and to that extent the Contractor may subsequently treat all or any part of such Waste as Rejectable Waste
"Delivery"	means the arrival at the entry weighbridge at any Delivery Point of a delivery of Waste transported by and contained within or on any single vehicle (including on or in any trailer attached thereto) and **"Delivered"** and **"Delivering"** shall be construed accordingly. For the avoidance of doubt, such delivery of Waste from a single vehicle (including any trailer attached thereto) shall comprise a single Delivery
"Independent Testing Body"	means any appropriately qualified and independent person appointed by the Operating Contractor from time to time to carry out the analysis of Waste considered by the Contractor to be Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste in accordance with **paragraph 4.15** below, provided that the Councils may dispute any such appointment under the Dispute Resolution Procedure
"Initial Sampling Period"	means in relation to measuring: (a) the Average Net Calorific Value of Mixed Waste Fuel pursuant to **paragraph 5.2** of this **Schedule 17**, a period of ten (10) Business Days; (b) the Moisture Content of NWTF Residual Waste pursuant to **paragraph 5.4** of this **Schedule**

17, a period of ten (10) Business Days;

(c) the Organic Content of NWTF Residual Waste pursuant to **paragraph 5.5** of this **Schedule 17**, a period of five (5) Business Days.

"Maximum Moisture Content" means the maximum permitted Moisture Content of Waste specified in Table 17.1

"Maximum Net Calorific Value" means the maximum permitted Net Calorific Value of Waste specified in Table 17.1

"Minimum Net Calorific Value" means the minimum permitted Net Calorific Value of Waste specified in Table 17.1

"Minimum Organic Content" means the minimum permitted Organic Content of Waste specified in Table 17.1

"Mixed Rejectable Waste" means a mixture of:

(a) Rejectable Waste and/or Contaminated Waste; and

(b) other Waste to the extent that the Contractor has used Reasonable Measures to minimise the amount of such other Waste,

and Mixed Rejected Waste shall be deemed to be Rejectable Waste for the purpose of this **Schedule 17** (Waste Reception Protocol)

"Mixed Waste Fuel" means the materials deposited into the ACT Plant fuel bunker for subsequent processing by the ACT Plant

"Moisture Content" means the moisture content (wet weight basis) of any Waste as determined by testing as set out in BS CEN/TS 15414:2006 - Solid Recovered Fuels - Determination of Moisture Content Using the Oven Dry Method by weight

"Net Calorific Value" means :

(a) as measured by the Contractor on a periodic basis, the calorific value of any Waste as determined by testing as set out in BS CEN/TS 15400:2006 - Solid Recovered Fuels - Methods for the determination of calorific values

(b) where **paragraph 5.2** applies, the calorific value of the total amount of any Waste measured pursuant to this **Schedule 17** (Waste Reception Protocol) using the method detailed in section 2.4.2.1 of the "Integrated Pollution Prevention Control Reference Document on the Best Available Techniques for Waste Incineration August 2006", published by the European

Commission or an appropriate equivalent

in each case, such calorific value being calibrated by reference to previous measurements taken whether pursuant to the methodology in paragraph (a) or paragraph (b) above

"Organic Content" means the combined fractions originating from kitchen, garden and/or putresible waste and forming part of any Waste measured as a percentage by weight (wet weight basis) of the total amount of that Waste

"Reasonable Measures" means measures to remove and separate Rejectable Waste and/or Contaminated Waste (arising from any Delivery) from any other Waste either forming part of the relevant Delivery or otherwise at the Site to which the relevant Delivery was made by the Contractor:

(a) using its existing operatives and equipment at the relevant Site to which the relevant Delivery was made;

(b) not incurring material additional cost or suffering any material adverse impact on the Services; and

(c) not undertaking any specialist training or qualification of any operative,

in each case for the purpose of removing and separating such Rejectable Waste and/or Contaminated Waste

"Reject" means a decision made by the Contractor to reject in accordance with this **Schedule 17** (Waste Reception Protocol) the entirety of a Delivery at any time prior to the unloading of all or a significant part of such Delivery by declaring such Delivery to be a Rejected Load, and **"Rejected"** and **"Rejection"** shall be construed accordingly

"Rejectable Waste" means any Waste which the Contractor is entitled to Reject or to treat as Rejectable Waste in accordance with this **Schedule 17** (Waste Reception Protocol), whether or not the Contractor has Accepted or Rejected such Waste

"Rejectable Waste Report" means the report referred to in **paragraph 4.15** below

"Rejected Load" means the entirety of a Delivery which is Rejected

"Rejection Report" means the report referred to in **paragraph 4.7** below

"Waste Composition Testing" means testing by the Contractor of the composition of any Waste in accordance with **Schedule 1** (Specification)

"Waste Reception Protocol"	means the protocol for handling and disposing of Waste as set out in this **Schedule 17** (Waste Reception Protocol)
"Business Day"	means, for the purposes of this **Schedule 17** (Waste Reception Protocol) only, any Day upon which the Energos Technology at the NWTF is planned to be operated from time to time

2. Introduction

2.1 This Waste Reception Protocol shall apply to all Delivery Points. This **Schedule 17** (Waste Reception Protocol) shall not apply to any Household Waste deposited by the public at HWRCs. The Councils shall procure that this Waste Reception Protocol is applied at the transfer station at Waterswallows.

2.2 This **Schedule 17** (Waste Reception Protocol) specifies the types of Waste contained in any Delivery (whether constituting all or part of such Delivery) which:

2.2.1 the Contractor is entitled to require the person Delivering such Waste not to unload and immediately to remove such Delivery in its entirety from the relevant Delivery Point; or

2.2.2 require the Councils to pay the Contractor an additional amount for Handling:

2.2.2.1 Waste which the Contractor is entitled to Reject; and

2.2.2.2 any Rejectable Waste, Contaminated Waste or Mixed Rejectable Waste arising from Waste which the Contractor is entitled to Reject.

2.3 This **Schedule 17** (Waste Reception Protocol) includes procedures for:

2.3.1 the inspection and monitoring of Deliveries by the Contractor in order to Accept or Reject any Delivery; and

2.3.2 the Handling by the Contractor of any Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste in order to dispose of such Waste lawfully, safely and efficiently in accordance with Good Industry Practice at a fair market price taking into account the relevant circumstances.

2.4 This **Schedule 17** (Waste Reception Protocol) includes procedures in relation to the composition of NWTF Residual Waste.

3. Types of Rejectable Wastes

3.1 Subject to **paragraph 3.2** below, and notwithstanding that a Delivery may otherwise consist entirely of Acceptable Waste, the Contractor shall be entitled to Reject that Delivery or treat any Waste within that Delivery as Rejectable Waste if it contains any of the following types of Waste:

3.1.1 Waste which is not Contract Waste;

3.1.2 without prejudice to the generality of **paragraph 3.1.1** above, material amounts of any Waste type listed in **paragraph 4.19** below;

3.1.3 Waste not Delivered by an Authorised Driver or by an Authorised Vehicle (whether or not such Delivery consists entirely of Contract Waste);

3.1.4 Waste which is Delivered in an Authorised Vehicle which is not fit for the purpose of lawfully and safely transporting and unloading Waste to or at the relevant Delivery Point (whether or not such Delivery consists entirely of Contract Waste);

3.1.5 Waste which is transported in an enclosed or covered vehicle where any material amount of such Waste is of a materially different type to that described on the delivery note handed by the vehicle's driver to the Contractor at the entry weighbridge (whether or not such Delivery consists entirely of Contract Waste); or

3.1.6 Waste which is Mixed Rejectable Waste in accordance with paragraph 4.5.4 below (whether or not such Waste contains Contract Waste).

3.2 The Contractor shall not be entitled to declare any Delivery to be a Rejected Load pursuant to **paragraph 3.1** above to the extent that any Rejectable Waste can be removed and stored by the Contractor using Reasonable Measures. For the avoidance of doubt any Waste removed and stored using such measures shall continue to be treated as Rejectable Waste for the purpose of this **Schedule 17** (Waste Reception Protocol).

4. **Rejection Procedure**

4.1 The Contractor shall monitor at the entry weighbridge of each Delivery Point all Deliveries thereto for compliance with the Waste Reception Protocol, provided that any such failure to monitor shall not prejudice the Contractor's right subsequently to declare any Delivery to be Rejected Load, or to be Rejectable Waste, or to have caused Contaminated Waste or Mixed Rejectable Waste.

4.2 The Councils shall procure and the Contractor shall be entitled to require that the driver of the vehicle making any Delivery shall present to the Contractor at the entry weighbridge of any Delivery Point a delivery note describing the contents of that Delivery and such other information as may be required by Law or Good Industry Practice.

4.3 All vehicles carrying a Delivery shall be weighed and subject to an external visual inspection by the Contractor at the entry weighbridge of the relevant Delivery Point (without any requirement to touch or move the contents of the Delivery or to remove any covering or to open up any enclosed vehicle or trailer) and the weight, provenance and content of that vehicle (including any trailer attached thereto) shall be recorded by the Contractor in accordance with **Schedule 1** (Specification).

4.4 If the Contractor identifies that a Delivery contains or is delivered in circumstances which make it Rejectable Waste at any time prior to the entire Delivery or a significant part thereof being unloaded or permitted to be unloaded, the Contractor shall be entitled to direct the person making such Delivery to remove it from the relevant Delivery Point immediately at no cost to the Contractor (including directing such person to reload and remove any non-significant parts of that Waste which have been unloaded). To the extent that

any such person does not comply with a direction of the Contractor pursuant to this **paragraph 4.4**, any such Waste which is not removed and/or reloaded shall be deemed to be Rejectable Waste and shall be Handled and disposed of by the Contractor in accordance with this **Schedule 17** (Waste Reception Protocol) and the Contractor shall be entitled to recover the cost of doing so from the Councils pursuant to **paragraph 4.13** below.

4.5 If the Contractor identifies the presence of material Rejectable Waste after any Delivery (or a significant part thereof) has been unloaded, to the extent that such Delivery has not been mixed with any other Waste at the relevant Site, the Contractor shall:

4.5.1 set aside and store at that Site the entirety of that Delivery;

4.5.2 remove the Rejectable Waste from such Delivery and set aside and store at that Site such Rejectable Waste to the extent that the Contractor can do so using Reasonable Measures; or

4.5.3 Handle such Waste as Acceptable Waste,

and to the extent that any such Delivery has been unloaded and mixed with any other Waste at the relevant Site, the Contractor shall:

4.5.4 remove the Rejectable Waste and/or any Contaminated Waste arising therefrom from the other Waste with which it has been mixed, to the extent that the Contractor can do so using Reasonable Measures, and set aside and store at that Site such Rejectable Waste and/or Contaminated Waste;

4.5.5 set aside and store at that Site any Mixed Rejectable Waste arising from such Rejectable Waste and/or Contaminated Waste, and any such Mixed Rejectable Waste shall be stored separately from any Mixed Rejectable Waste, Rejectable Waste or Contaminated Waste arising from the identification of Rejectable Waste from any other Delivery to the extent it is reasonably practical to do so; or

4.5.6 Handle such Waste as Acceptable Waste.

4.6 If the Contractor wishes to treat any Waste as Rejectable Waste, Contaminated Waste or Mixed Rejectable Waste, the Contractor shall notify the Councils as soon as reasonably practicable, and in any event within two (2) hours of any Rejected Load, Rejectable Waste, Contaminated Waste or Mixed Rejectable Load being identified by the Contractor.

4.7 The Contractor shall submit to the Councils a report stating the basis for any Waste to be considered to be a Rejected Load, Rejectable Waste, Contaminated Waste or Mixed Rejectable Waste as soon as reasonably practicable and in any event (save in the case of Rejected Load) prior to such Waste being removed from the relevant Site (the **"Rejection Report"**). The Rejection Report shall include digital photographs and reasonable details of the relevant Rejected Load, Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste.

4.8 Except in the case of emergency or as required by Law, any Rejectable Waste, Contaminated Waste or Mixed Rejectable Waste (but not any Rejected Load) shall be stored by the Contractor separately to any other Waste at the relevant Site for not more than the lesser of:

4.8.1 two (2) Business Days;

4.8.2 the minimum storage period imposed by Law or any relevant Necessary Consents; or

4.8.3 the minimum period which such Waste can be safely stored at the relevant Site in accordance with Good Industry Practice without taking any measures beyond Reasonable Measures,

following notification by the Contractor to the Councils pursuant to paragraph 4.6 above.

4.9 Within 3 hours of receipt by the Councils of the Rejection Report (provided that such time period shall only run during normal working hours common to both Councils on any Business Day), the Councils shall either:

4.9.1 notify the Contractor that they agree with the Contractor's' assessment that the relevant Waste is Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste and authorise the Contractor to dispose of such Waste in accordance with this **Schedule 17** (Waste Reception Protocol); or

4.9.2 notify the Contractor that they require an inspection by the Councils' Authorised Officer and the Contractor's Project Director (or any permitted delegate of either person) on a date and time specified by the Councils within the minimum storage period permitted by **paragraph 4.8** above. The Councils may also request the presence of any WCA at any such inspection.

4.10 For the avoidance of doubt, and without prejudice to the Councils right to dispute that any Delivery was entitled to be treated as a Rejected Load, the Councils are not required to agree or comment upon any Rejected Load notified pursuant to **paragraph 4.6** above.

4.11 Following the agreement of the Rejection Report pursuant to **paragraph 4.9.1** above or following the Councils' inspecting any stored Rejectable, Contaminated Waste and/or Mixed Rejectable Waste and agreeing that such Waste is Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste pursuant to **paragraph 4.9.2** above, the Councils shall use all reasonable endeavours to procure that the relevant WCA from whom the relevant Rejectable Waste emanated is notified and steps are taken by or on behalf of the WCA to ensure that further deliveries from that WCA do not contain Rejectable Waste.

4.12 If the Councils fail to request or attend an inspection pursuant to **paragraph 4.9.2** above, the stored Waste to which such request or inspection relates shall be deemed to be Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste (as the case may be).

4.13 The additional costs properly and reasonably incurred by the Contractor in Handling and disposing of any Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste in accordance with this **Schedule 17** (Waste Reception Protocol) shall be added to:

4.13.1 the payment to the Contractor for Handling Hazardous Waste and Clinical Waste (HCWt) for the Payment Period to which such additional costs relate in accordance with **paragraph 2.7** of **Schedule 3** (Payment Mechanism); and

4.13.2 the annual payment for Hazardous Waste and Clinical Waste (HCWy) for the Contract Year to which such additional costs relate in accordance with **paragraph 1.6.1** of **Schedule 3** (Payment Mechanism).

4.14 The Contractor shall procure that the Operating Contractor shall appoint an Independent Testing Body from time to time and notify such appointment to the Councils prior to procuring any report in accordance with **paragraph 4.15** below.

4.15 Where the Contractor and Councils fail to agree that any Waste is Rejectable Waste, Contaminated Waste or Mixed Rejectable Waste (as the case may be), the Contractor shall procure a report from the Independent Testing Body containing an analysis of such Waste and stating its opinion (which shall be binding on the Councils and the Contractor) as to whether such Waste is Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste (as the case may be) (the **"Rejectable Waste Report"**).

4.16 The Rejectable Waste Report shall be based on the testing of a representative sample (as determined by the Independent Testing Body) of the relevant Waste considered by the Contractor to be Rejectable Waste, Contaminated Waste and/or Mixed Rejectable Waste. The Rejectable Waste Report shall state the nature, weight and potential impact on the Contractor's treatment processes of the relevant Waste.

4.17 The costs of the Rejectable Waste Report shall be borne by the Contractor, provided that where and to the extent that any relevant Waste fails to meet the Waste Reception Protocol or is found to be Rejectable Waste, Contaminated Waste or Mixed Rejectable Waste, the reasonable and proper costs of the Rejectable Waste Report shall be reimbursed by the Councils to the Contractor as a debt due under this Contract.

4.18 The Contractor shall attend meetings with the Councils and any WCA as reasonably requested by the Councils to consider and resolve issues relating to Rejectable Waste, Contaminated Waste, Mixed Rejectable Waste and/or any Rejected Load.

4.19 Without prejudice to the generality of **paragraph 3.1.1** above, the following categories of Waste shall be deemed to be Rejectable Waste:

4.19.1 septic tank contents and/or privy contents and/or cesspool contents and/or sewage related wastes;

4.19.2 radioactive waste;

4.19.3 explosives, munitions and other similar dangerous materials;

4.19.4 combustible liquids, highly flammable materials, pyrophoric materials, high pressure containers, water reactive materials, organic peroxides, oxidisers, other than those which:

4.19.4.1 any WCA or any of the Councils ordinarily collect on a regular basis from domestic properties and mixed with normal household waste;

4.19.4.2 are contained within fly tipped waste; or

4.19.5 tyres (except fly tipped waste delivered by any WCA or any of the Councils).

5. **Contract Waste Composition Protocol**

5.1 Subject to paragraphs 5.1A and 5.1B below, Tables 17.1 and 17.2 below contain maximum and minimum protocol for NWTF Residual Waste that the WCAs and/or the Councils shall be entitled to Deliver to any Delivery Point.

Table 17.1 Contract Waste Composition Protocol

Contract Waste Composition Protocol	**Limit**
Minimum Organic Content	21%
Maximum Moisture Content	60%
Minimum Net Calorific Value	See Table 17.2 and paragraph 5.1A
Maximum Net Calorific Value	18 MJ/kg

Table 17.2 Minimum Net Calorific Value

NWTF Residual Waste arising in the relevant Contract Year (tonnes per annum)	**Minimum Net Calorific Value (MJ/kg)**
155,000 and above	7.35
154,999 to 149,001	Minimum Net Calorific Value to increase in direct proportion to the decreasing NWTF Residual Waste arising from 7.35 at 155,000 tpa up to 7.52 at 149,000 tpa or monthly equivalents thereof
149,000 and below	7.52

5.1A Where the total quantity of NWTF Residual Waste delivered to the Contractor by a WCA and/or a Council Related Party in any Month:

5.1A.1 equals or exceeds twelve thousand nine hundred and seventeen (12,917) tonnes, the Minimum Net Calorific Value shall be 7.35 MJ/kg as specified in Table 17.2 above;

5.1A.2 is less than twelve thousand nine hundred and seventeen (12,917) tonnes per Month, then the Contractor shall notify the Councils promptly, and the Minimum Net Calorific Value shall be determined on a pro rata basis in accordance with Table 17.2 on the assumption that the monthly tonnage represents one twelfth of the figure for the relevant Contract Year.

5.1B If:

5.1B.1 at any time during a Contract Year the Contractor is entitled to a Compensation Event pursuant to **paragraph 5.7** below where a Composition Failure occurs in relation to the Net Calorific Value of the NWTF Residual Waste; and

5.1B.2 during the period when the Compensation Event applies, the Contractor receives less than twelve thousand nine hundred and seventeen (12,917) tonnes per Month such that the Contractor is compensated on the basis set out in **paragraph 5.1A.2**; and

5.1B.3 at the end of the relevant Contract Year it transpires that the total quantity of NWTF Residual Waste delivered to the Contractor by a WCA and/or a Council Related Party exceeds 155,000 tonnes per annum, such that the Contractor should have been compensated by reference to a lower Net Calorific Value in accordance with Table 17.2;

then an amount shall be deducted from the Unitary Charge in respect of any extra payment paid to the Contractor pursuant to **paragraph 5.7** corresponding to the difference in Minimum Net Calorific Value between 7.35 MJ/kg and the relevant value calculated earlier in accordance with Table 17.2.

5.2 The Contractor shall record the Average Net Calorific Value of Mixed Waste Fuel as derived from daily analysis of the NWTF performance data, including but not limited to the mass of Waste processed, the amount of steam generated, the flue gas temperature downstream of the boiler, and shall correlate such data against such Waste Composition Testing as may be carried out from time to time by the Contractor.

5.3 In the event that the Average Net Calorific Value of the Mixed Waste Fuel recorded pursuant to **paragraph 5.2** above falls below 8.5 MJ/kg or rises above 17.5MJ/kg measured on each Business Day for any period of five (5) consecutive Business Days, the Contractor may implement daily Waste Composition Testing of the NWTF Residual Waste, MBT output waste and the Mixed Waste Fuel over an Initial Sampling Period. The Contractor shall procure that such testing provides sufficient information to determine the Net Calorific Value of the various waste streams set out above and is based upon statistically significant data. In order to determine the Net Calorific Value of the NWTF Residual Waste beyond the Initial Sampling Period, the results of the Waste Composition Testing will be used to calibrate the Net Calorific Value of the Mixed Waste Fuel as derived pursuant to **paragraph 5.2** above so as to determine the corresponding Net Calorific Value of the NWTF Residual Waste processed on any day. Waste Composition Testing shall be repeated at monthly intervals or such longer suitable period agreed with the Councils and this shall continue for so long as the Average Net Calorific Value measured of the NWTF Residual Waste derived pursuant to this paragraph over any period of five (5) Business Days falls outside the limits set out in Table 17.1.

5.4 If the Contractor considers that the Moisture Content of the NWTF Residual Waste exceeds that set out in Table 17.1, the Contractor may implement daily Waste Composition Testing of the NWTF Residual Waste over an Initial Sampling Period. The Contractor shall procure that such testing measures the Moisture Content of the NWTF Residual Waste based upon statistically significant data and shall continue for so long as the Average Moisture Content measured over any period of five (5) consecutive Business Days is more than that set out in Table 17.1.

5.5 If the Contractor considers that the Organic Content of the NWTF Residual Waste is below that set out in Table 17.1, the Contractor shall implement weekly Waste Composition Testing of the NWTF Residual Waste. The Contractor shall procure that such testing measures the Organic Content of the NWTF Residual Waste based upon statistically significant data and shall continue for so long as the

Average Organic Content measured over any period of five (5) consecutive Business Days is less than that set out in Table 17.1.

5.6 Where and for so long as **paragraph 5.2**, 5.4 or 5.5 above (as the case may be) applies the Contractor shall:

5.6.1 provide any data referred to in **paragraph 5.2**, 5.4 or 5.5 above (as the case may be) to the Councils within the next Monthly Report to be submitted after any such data is available to the Contractor;

5.6.2 use reasonable endeavours to reduce the Moisture Content of the NWTF Residual Waste;

5.6.3 use reasonable endeavours to increase the Organic Content of the NWTF Residual Waste;

5.6.4 use reasonable endeavours to adjust the Net Calorific Value, Moisture Content or Organic Content (as the case may be) of the NWTF Residual Waste transported by the Contractor to the NWTF by prioritising NWTF Residual Waste from any Delivery Point with an appropriate Net Calorific Value, Moisture Content or Organic Content (as the case may be) (to the extent it is available);

5.6.5 use all reasonable endeavours to procure Third Party Waste which has an appropriate Net Calorific Value, Moisture Content or Organic Content (as the case may be) (to the extent it is available) and to the extent that does not cause the Contractor to incur material additional cost (which is not compensated for by any Third Party Income received from treating such Third Party Waste) or cause the Contractor to suffer any material loss of Third Party Income or any Deduction, and in the event of any required characteristics being mutually exclusive, the Contractor shall determine the most appropriate Third Party Waste to procure

5.6.6 use all reasonable endeavours to agree with the Councils measures that the Councils may be able to implement or procure in order that the Net Calorific Value, Moisture Content and/or Organic Content (as the case maybe) of the NWTF Residual Waste can be improved;

5.6.7 use reasonable endeavours to adapt the MBT throughput tonnage and or supply of air in the MBT operation so as to achieve an appropriate adjustment to the Net Calorific Value or Moisture Content (as the case may be).

5.7 If either:

5.7.1 the Average Net Calorific Value; and/or

5.7.2 the Average Moisture Content; and/or

5.7.3 the Average Organic Content;

(as the case may be) of the NWTF Residual Waste (including where combined with any Third Party Waste in accordance with paragraph 5.6.5 above) falls outside the relevant protocol specified in Table 17.1 (in each case a Composition Failure) for any period of fifteen (15) consecutive Business Days (the day after the expiry of such period being the Trigger Date);

5.7.4 the Contractor and the Councils shall acting reasonably seek to agree measures (including any Council Change) to enable the Contractor thereafter to achieve during the Services Period the same level of Diversion and Third Party Income from Energy Recovery as the Contractor would have achieved under the Base Case;

5.7.5 then such continued Composition Failure shall constitute a deemed Compensation Event from the Trigger Date until and including the fifth consecutive Business Day during which there has been no Composition Failure.

6. Contractor's Duties

6.1 Notwithstanding and without prejudice to any other provision in this **Schedule 17** (Waste Reception Protocol), the Contractor shall implement the procedures in this **Schedule 17** (Waste Reception Protocol) in accordance with Good Industry Practice and with the intent of seeking to identify Rejectable Waste at the entry weighbridge of the Delivery Point and to assist the Councils to procure the reduction or avoidance of Rejected Loads and Rejectable Waste, and the Contractor shall take all Reasonable Measures to mitigate the effects and the costs of Handling or disposing of all Rejectable Waste, Contaminated Waste and Mixed Rejectable Waste.

7. Heavy Metals

If at any time, the Contractor becomes aware that the NWTF has failed, or is trending towards failing, to comply with any applicable Legislation or Necessary Consents due to heavy metal gaseous emissions in excess of the relevant limits, the Contractor shall notify the Councils of such occurrence. Following receipt of such notice the Contractor and the Councils shall:

7.1 co-operate in order to seek to identify the source and/or type of the NWTF Residual Waste which is the cause of such excess heavy metal gaseous emissions; and

7.2 seek to agree steps which each Party can take to ensure the segregation of items which are causing excess heavy metal gaseous emissions and to encourage appropriate disposal of such items.

SCHEDULE 18

Project Liaison Group

1. **Project Liaison Group**

1.1 The Councils and the Contractor shall establish and maintain throughout the Contract Period a project liaison group (the **"Project Liaison Group"**).

1.2 The Project Liaison Group shall comprise:

1.2.1 the Councils' Authorised Officer and one senior representative from each of the Councils as each Council may nominate from time to time which may include elected members (the **"Council Liaison Group Representatives"**);

1.2.2 senior representatives of the Contractor as the Contractor may designate from time to time (the **"Contractor Liaison Group Representatives"**) so that the number of Contractor Liaison Group Representatives is equal to the number of Council Liaison Group Representatives on the Project Liaison Group provided that at least one of the Contractor Liaison Group Representatives shall be a board director of the Contractor; and

1.2.3 any representatives from relevant Waste Collection Authorities or other representatives from either Council (including chief officers, additional elected members or other officers) which the Councils wish to invite to or otherwise involve in the Project Liaison Group who will attend as advisors and consultees and not as full members (provided that at any meeting of the Project Liaison Group there shall not be more than three (3) additional attendees without the Contractor's consent).

1.3 A representative on the Project Liaison Group may appoint and remove an alternate by written notice to the other Party. If a representative is unavailable, his alternate shall have the same rights and powers as the representative.

1.4 The chair of the Project Liaison Group will be a representative of the Councils, nominated by the Councils as such.

1.5 Should either the Councils or the Contractor believe that the best interests of the Project would be served by the removal of one or more members of the Project Liaison Group, they may so specify in writing to the other Party and the Councils or the Contractor, as the case may be, shall, if they agree with the removal of that member, put forward to the other Party the name of a substitute member of the Project Liaison Group. Should the Parties disagree then the matter shall be referred to the Dispute Resolution Procedure.

1.6 The relevant substitute person shall, with the consent of the other Party, such consent not to be unreasonably withheld or delayed, become a member of the Project Liaison Group as from the date of its next meeting.

1.7 Project Liaison Group shall agree protocols and adopt such practices and procedures in respect of ways of working, clerking and other operational matters as it considers appropriate from time to time. The Project Liaison Group shall meet at least once every six months, and extra meetings may be convened by either Party by serving written notice on the other, specifying in reasonable

detail the matters to be discussed, at least two weeks prior to the proposed date of such meeting.

1.8 The quorum for a meeting of the Project Liaison Group shall be at least four (with at least two Council Liaison Group Representatives and two Contractor Liaison Group Representatives present).

1.9 Meetings of the Project Liaison Group should normally involve the attendance (in person or by alternative) of representatives at the meeting. Where the representatives of the Project Liaison Group consider it appropriate meetings may also be held by telephone or another form of telecommunication by which each representative can hear and speak to all other representatives at the same time.

1.10 Minutes of all decisions (including those made by telephone or other telecommunication form) and meetings of the Project Liaison Group shall be kept by the Contractor and copies circulated promptly to the Councils, normally within 10 Business Days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the Contractor and shall be open to inspection by the Councils at any time, upon request.

1.11 The key functions of the Project Liaison Group shall be to:

1.11.1 act as the custodian of the relationship between the Parties, and to serve as a forum for the open exchange of ideas so as to enable the Councils, other local stakeholders, the Contractor to discuss the Councils' forthcoming service requirements to ensure an integrated co-ordinated approach to fulfilling such requirements and to develop and update the Joint Municipal Waste Management Strategy;

1.11.2 drive the partnership forwards to ensure that there is significant achievement in accordance with the partnership objectives and to review financial and operating (including performance) issues in relation to the Contractor through the annual review process and other procedures;

1.11.3 monitor performance of the Contractor against KPIs;

1.11.4 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Contract including ensuring dissemination of information and consideration of the views of all the stakeholders connected with the Project;

1.11.5 consideration of issues relating to:

1.11.5.1 Necessary Consents;

1.11.5.2 the Works Programme;

1.11.5.3 provision of the Works and the Services; and

1.11.5.4 Council and Contractor Changes.

1.12 The role of the Project Liaison Group is to make recommendations to the Councils and to the Contractor, which the Councils and the Contractor may accept or reject at their complete discretion. Neither the Project Liaison Group itself, nor its members acting in that capacity, shall have any authority to vary

any of the provisions of this Contract or to make any decision binding on the Parties. The Councils and the Contractor shall not rely on any act or omission of the Project Liaison Group, or any members of the Project Liaison Group acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of the Councils or of the Contractor under this Contract. No discussion, review or recommendation by the Project Liaison Group shall relieve the Councils or the Contractor of any liability or vary any such liability or any right or benefit.

1.13 The Parties agree that the Project Liaison Group will develop a protocol/framework for its mode of working and decision making. The Parties also agree to ensure that there is a system of parallel and equivalent authority granted to its representatives on the Project Liaison Group from the respective parent bodies to ensure that the Project Liaison Group can perform its role and make the necessary commitments on behalf of those parent bodies. The Council Project Liaison Representatives shall report regularly to the Councils' Executive Boards and the work of the Project Liaison Group will be subject to the Councils' scrutiny arrangements (including Derbyshire County Council's Improvement and Scrutiny arrangements).

SCHEDULE 19

Not Used

SCHEDULE 20

Not Used

SCHEDULE 21

Unitary Charge Adjustment Protocol

1. **Introduction**

1.1 Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Contract or where the Parties mutually agree otherwise) be determined in accordance with this Schedule 21 (Unitary Charge Adjustment Protocol) which sets out the methodology to be applied whenever an amendment of, addition to or deletion from the Base Case and/or the Unitary Charge is required in response to a Relevant Event. For the avoidance of doubt:

(a) the provisions of this Schedule 21 shall not apply to a Qualifying Refinancing; and

(b) where a Relief Event has occurred which postpones the NWTF Planned Completion Date (and, as a consequence, the Expiry Date) in accordance with clause 20.2.4, the provisions of this Schedule 21 shall apply to the financial consequences of the Relief Event (which will be a "Relevant Event" for the purposes of this Schedule 21).

1.2 Where in accordance with this Schedule 21 the Base Case or the Unitary Charge is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor (in consultation with the Councils as set out in this Schedule 21), to reflect the cumulative impact of any prior Relevant Events on the version of the Base Case applicable immediately prior to the Relevant Event to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken.

2. **Base Case**

The Base Case at the Amendment and Restatement Date shall comprise the SPV financial model in the Agreed Form being the Microsoft Excel document ref

The Parties acknowledge that the Base Case has been prepared by reference to a suite of underlying models being the following Microsoft Excel models:

(a) Waste Flow Model (initial services), ref

(b) Operating Company Model (initial services), ref

(c) A co-ordinating Master model (initial services), ref

(d) Waste Flow Model (full services), ref

(e) Capital Expenditure Model, ref

(f) Operating Company Model (full services), ref

(g) A co-ordinating Master model (full services), ref

which the Councils may refer to, as appropriate, in assessing any amendment to the Base Case or the Unitary Charge but which the Parties agree shall not be

determinative of any change to the Base Case or Unitary Charge in accordance with this Schedule 21. For the avoidance of doubt, the Contractor shall not be obliged (and the Councils shall not be entitled) to update any of the models listed at (a) to (g) above when amending the Base Case or the Unitary Charge in accordance with this Schedule 21.

3. **Adjustment of Unitary Charge following a Relevant Event**

3.1 Any adjustments to the Base Case or the Unitary Charge (or to the dates set out therein) in response to a Relevant Event (a **"Relevant Event Adjustment"**) shall be calculated by the Contractor in accordance with principles set out in paragraph 3.2 below.

3.2 The Relevant Event Adjustment shall be made using the approach below as appropriate:

3.2.1 where the Estimated Change in Project Costs, Change in Costs and/or Change in Revenues associated with a Relevant Event do not include a requirement for additional funding and the Change in Costs or Change in Revenue can be addressed between the Parties without making changes to the Base Case, the relevant elements of the Unitary Charge shall be adjusted by an amount equating to the net change in the Change in Costs and/or Change in Revenues, and taking into account the Operating Contractor's operating margin of 10%; or

3.2.2 where the Change in Costs and/or Change in Revenue can only be determined by a change to the Base Case but where additional funding is not required then the provisions in paragraphs 4 and 5 will be implemented to determine how the relevant elements of the Unitary Charge will be adjusted by the lowest amount necessary to maintain the following parameters (the **"Key Financial Parameters A"**):

(a) an Operating Contractor's operating margin of 10% (where appropriate);

(b) a Base Case Equity IRR (in nominal terms) of 14% as shown in cell E41 of the worksheet entitled Base Case Output – Summary within the Base Case; and

(c) the following funders covenants of at least ADSCR (as defined in the Senior Financing Agreement) of 1.35 and a minimum LLCR (as defined in the Senior Financing Agreement) of 1.40 as per cells J6 and J9 respectively of the worksheet entitled Base Case Output – Summary within the Base Case the Debt Service Reserve Account Required Balance (as defined in the Senior Financing Agreement) and the LRA Required Balance (as defined in the Senior Financing Agreement) and financial gearing; or

3.2.3 where additional funding is required then the provisions in paragraphs 4 and 5 will be implemented to determine how the relevant elements of the Unitary Charge will be adjusted by the lowest amount necessary to maintain the following parameters (the **"Key Financial Parameters B"**):

(a) an Operating Contractor's operating margin of 10% (where appropriate);

(b) a Base Case Equity IRR Blended (nominal) of 14% as shown in cell E41 of the worksheet entitled Base Case Output – Summary within the Base Case; and

(c) the relevant terms of the additional funding that may be required by the Senior Lenders.

3.3 Notwithstanding any other provision of this Schedule 21, the Councils shall be entitled to pay any sum (or part thereof) which would give rise to an adjustment of the Unitary Charge by way of a lump sum, in which event and to that extent there shall be no adjustment of the Base Case under this Schedule 21.

4. **Model Adjustment Process**

4.1 Where in respect of a Relevant Event paragraph 3.2.1 only has been implemented the Parties agree that such change shall, on the next occasion that there is a revision to the Base Case in accordance with this Schedule 21, be consolidated as an update to the Unitary Charge and Base Case.

4.2 Where in respect of a Relevant Event paragraph 3.2.2 or 3.2.3 is to be implemented then the Parties agree that any changes to any element of the Unitary Charge shall be by way of a revision to the Base Case in accordance with this Schedule 21.

4.3 The Unitary Charge shall be revised so as to ensure that the Contractor is in a no better and no worse position (as defined by paragraph 5.3 below) than it was under the Base Case applicable immediately prior to the Relevant Event to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken. In no circumstances shall any revision provide compensation to the Contractor for any deviation in performance from that predicted in the latest Base Case.

4.4 In calculating the Estimated Change in Project Costs and in assessing other adjustments to be made to the Base Case arising from a Relevant Event, the Contractor shall be entitled to take into account, inter alia:

4.4.1 any Change in Costs and Change in Revenue without double counting any financing costs relating to the additional capital expenditure;

4.4.2 reasonable economic assumptions and market prices available to the Contractor in respect to the Relevant Event at the time; and

4.4.3 changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

provided that the Councils shall not be required (and the Contractor shall not be entitled) to (otherwise than as provided in this Schedule 21) take into account the financial impact up to the date of the Relevant Event those risks which the Contractor bears under the terms of this Contract, including (to the extent so borne by the Contractor under this Contract) changes in VAT rates, taxation rates and the impact of Unavailability Deductions and Performance Deductions.

4.5 If the Base Case is to be revised, then the Contractor shall make appropriate electronic amendments to it to effect such revisions made in accordance with this Schedule 21.

4.6 Where a revision to the Unitary Charge is required but no change is required to the Base Case model, the Contractor shall issue the calculations used to determine the relevant variance to the Unitary Charge and shall submit to the Councils.

5. **Model Principles of Adjusting the Base Case**

5.1 The following guidelines shall be followed in revising the Base Case:

5.1.1 wherever possible the revision shall be carried out without altering the logic, formulae, inputs and assumptions incorporated in the Base Case in any way whatsoever and only data such as costs incurred by the Contractor and the timing and amounts of draw downs of funding shall be changed. For the avoidance of doubt, any such revision to the Base Case will not constitute a Refinancing;

5.1.2 where it is necessary to amend the logic, formulae, inputs and assumptions incorporated in the Base Case to permit revisions to be made, this shall be carried out to the minimum extent necessary and, including but not limited to, in accordance with generally accepted accounting principles as used within the International Financial Reporting Standards;

5.1.3 where any amendment is to be made to the logic, formulae and assumptions within the Base Case, such changes will be made first to ensure that the outputs from the Base Case as amended correspond to the outputs immediately prior to amendment and the difference in the Project IRR Post Tax Cell E38 within the worksheet entitled Base Case Output Summary in the Base Case at the Amendment and Restatement Date does not differ by more than two (2) basis points (being zero point zero two per cent (0.02%));

5.1.4 once the Parties have confirmed that the Project IRR Post Tax is in accordance with paragraph 5.1.3, the inputs in respect of the Relevant Event will be included in the Base Case which will then be solved to confirm whether a revision to the Unitary Charge is required and the relevant Key Financial Parameters have been met, and if so the model shall be used to calculate the Unitary Charge necessary to satisfy the provisions of paragraph 3.2.2 or 3.2.3 above as applicable;

5.1.5 unless otherwise agreed by the Parties in writing, the Parties shall not be permitted to backdate any change in the Unitary Change as a result of the Relevant Event to a date which is earlier than the date on which the Relevant Event occurred;

5.1.6 where additional funding is required covenants imposed by lenders as part of such borrowing will be reflected in the updated Base Case; and

5.1.7 all revisions to the Base Case will require to be approved by Senior Lenders before becoming the updated Base Case for the purposes of this Contract.

5.2 Any amendment to the logic, formulae, inputs and assumptions incorporated in the Base Case shall be fully recorded so that the manner in which the relevant elements of the revised Unitary Charge is calculated can be readily verified.

5.3 Where, pursuant to the Contract, either Party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case (with the exception of a Qualifying Refinancing, payment of the Councils' Refinancing Share to which clause 36 (Refinancing) shall apply and payment of any lost Third Party Income to which paragraph 7 of this Schedule 21 shall apply) the adjustment to the Unitary Charge due shall be that required to ensure that, by reference to the Base Case adjusted under this Schedule 21 the Contractor is left in a no better and no worse position than the Contractor would have been in under the version of the Base Case applicable immediately prior to the Relevant Event, and shall be ascertained by:

5.3.1 determining the adjustment to the Unitary Charge required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the Relevant Event to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken;

5.3.2 reference to:

(a) the Contractor's rights, duties and liabilities under or arising pursuant to performance of this Contract, the Financing Agreements the Construction Contract and Operating Contract and to avoid doubt, this includes the costs of cancelling, breaking, extending, amending and/or replacing any hedging arrangements or instruments taken out by the Contractor pursuant to the Financing Agreements; and

(b) the Contractor's ability to perform its obligations and exercise its rights under this Contract, the Financing Agreements, the Construction Contract and the Operating Contract;

so as to ensure that the comparison of the output from the Base Case shows that the Project Post Tax IRR is unchanged (assessed to two decimal places).

5.4 If any material change in the risk profile of the Project arises from the revision, taking account of similar projects exposed to similar risks to those arising out of the circumstances giving rise to the revision, the Parties may agree that the Project IRR should be adjusted provided that such revision may only be an upwards adjustment unless the cost of the additional funding is less than that in the Base Case applicable immediately prior to the amendment.

6. Procedure

6.1 The Base Case shall be revised by the Contractor in accordance with the provisions of this Schedule 21 within fifteen (15) Business Days of the date at which the need for and basis of such a change become known.

6.2 If the Base Case is to be revised the Contractor shall revise the Base Case and submit to the Councils the revised Base Case for approval (such approval not to be unreasonably withheld or delayed).

6.3 The revised Base Case produced pursuant to paragraph 6.2 shall, when it is approved by the Councils (such approval not to be unreasonably withheld or delayed) and the Senior Lenders, become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

6.4 The Contractor shall ensure that each iteration of the Base Case is provided with a unique reference number and date.

6.5 The costs of undertaking a revision of the Base Case shall be treated as a Change in Costs in respect of all Relevant Events and (for the avoidance of doubt) shall be incorporated within the revised inputs associated with the revisions to the Base Case as a result of such Relevant Event.

6.6 Where practicable, the Contractor shall use all reasonable endeavours to carry out revisions to the Unitary Charge in the month in which the Relevant Event occurs in order that the revised Unitary Charge may take effect at the beginning of the next Contract Month.

6.7 Following agreement of the revised Base Case, the Contractor shall:

6.7.1 promptly deliver a copy of the revised Base Case to the Councils;

6.7.2 return a copy of the revised Base Case to the Councils, having observed the necessary version control in accordance with paragraph 6.4 and the necessary revisions to the Unitary Charge to be made in accordance with this Schedule 21; and

6.7.3 ensure that the necessary adjustments to the relevant element of the Unitary Charge shall be made from the Base Case Change Date but any revisions of the Unitary Charge shall not be due and payable until the copies of the revised Base Case have been returned to the Councils. Revisions that pre-date such approval will be paid by the Councils in the next Payment Period.

6.8 Unless otherwise agreed by the Parties in writing, the Contractor shall not be permitted to backdate any increase in the Unitary Charge as a result of a Change to a date which is earlier than the date on which the Change occurred.

7. Third Party Income

For the purposes of calculating the financial adjustment pursuant to the provisions of this Schedule 21 the following principles shall be applied to the following Relevant Events:

7.1 if the Relevant Event is caused by a Compensation Event, then for the purposes of determining the value of the adjustment to the Unitary Charge due, the financial adjustment shall include an amount in respect of lost Third Party Income equivalent to the amount shown in the Base Case for such Third Party Income;

7.2 if the Relevant Event arises from a Qualifying Change in Law, then for the purposes of determining the value of the adjustment to the Unitary Charge due, the financial adjustment shall include an amount in respect of lost Third Party Income equivalent to the lower of:

7.2.1 the average performance, in respect of such Third Party Income, in the three Payment Periods prior to any relevant Qualifying Change in Law; or

7.2.2 the amount shown in the Base Case;

in each case net of related costs.

7.3 if the Relevant Event arises from a Councils Change, then for the purposes of determining the value of the adjustment to the Unitary Charge due, the financial adjustment shall include an amount in respect of any net additional or lost Third Party Income (as the case may be);

7.4 if the Contractor serves a termination notice pursuant to the provisions of clause 59.5 and the Councils notify the Contractor pursuant to the provisions of clause 59.7 that they require the Contract to continue, then for the purposes of determining the value of the adjustment to the Unitary Charge due, the financial adjustment shall include:

7.4.1 an amount in respect of lost Third Party Income equivalent to the lower of:

(a) the average performance, in respect of such Third Party Income, in the three Payment Periods prior to the service of the termination notice; or

(b) the amount shown in the Base Case;

in each case net of related costs; and

7.4.2 any amount in respect of any increased landfill costs beyond those assumed in the Base Case (including landfill tax and transport costs), arising from the need to dispose of additional amounts of Waste to landfill,

but shall not include any relevant changes to the value of the Unitary Charge and any such Facility shall be deemed to be Available until the relevant Force Majeure Event ceases to subsist.

8. **Disputes**

Where the Contractor, Senior Lenders and the Councils are unable to agree the revisions to the Base Case (including the actual version of the Base Case to be used prior to the required changes being made) within twenty (20) Business Days of submission of the revised Base Case by the Contractor to the Councils (or such other time period as is agreed between the Parties), then either Party shall be entitled to refer the matter for resolution under the Dispute Resolution Procedure. Where the Adjudicator so requires, he shall have the assistance of an independent auditor appointed by agreement between the Contractor and the Councils or, failing such agreement, determined by the Adjudicator.

SCHEDULE 22

Title Defects

1. **Bolsover Site**

1.1 The enforcement of restrictive covenants contained in a Conveyance dated 30th December 1926 made between (1) William Barker (2) Brampton Brewery Company Limited which affect the Site and the roadway shaded brown on the Site Plan for the Bolsover HWRC.

1.2 The exercise or enforcement of rights granted in a Deed of Grant dated 8th April 1982 made between (1) The Derbyshire Coalite Company Limited (2) Severn Trent Water Authority.

1.3 Any action to prevent or restrict the exercise of the right of way granted to the Contractor under the Lease of the Site over all or any part of the roadway shown shaded brown on the Site Plan for the Bolsover HWRC by the owner of the land over which such rights are to be exercised.

1.4 The exercise or enforcement of the right contained in clause 13.3 of a Transfer dated 27th July 2006 made between (1) Alchemy Environmental Limited and (2) Derbyshire County Council to relocate either or both of the 2 eight metre wide all purpose accesses referred to therein.

1.5 The exercise of rights to mine under the Site to extract mines or minerals.

1.6 The existence of a leaking cess pit at the Bolsover Site.

2. **Stonegravels Site**

2.1 The exercise or enforcement of any rights of way referred to in a Conveyance dated 5 August 1986 made between (1) British Railways Board and (2) Derbyshire County Council over that part of the Site shown tinted blue on the Agreed Form plan entitled 'Stonegravels Site Plan (1)'.

2.2 The enforcement of any chancel repair liability against the Contractor in respect of the Site.

2.3 Any action to prevent or restrict the exercise of the right of way granted to the Contractor under the Lease of the Site over all or any part of the roadway shown shaded brown on the Agreed Form plan entitled 'Stonegravels Site Plan (2)' by the owner of the land over which such rights are to be exercised.

3. **Taylor Lane, Loscoe Site**

3.1 The exercise or enforcement of rights reserved to the National Coal Board under clause 1(a) of a Conveyance dated 25 August 1982 made between (1) The National Coal Board (2) Coal Industry Estates Limited and (3) Derbyshire County Council to let down the surface of the Site and any buildings, structures or works on or in the Site.

3.2 Any enforcement of the obligation contained in the Conveyance dated 25 August 1982 made between (1) National Coal Board (2) Coal Industry Estates Limited (3) The Derbyshire County Council to maintain forever the fences walls and

hedges shown marked with a letter 'T' on the Agreed Form plan entitled 'Taylor Lane, Loscoe Site Plan (1)'.

3.3 The existence within or close to the boundary of the Site of mine shafts.

4. **Manners Avenue, Ilkeston Site**

4.1 The enforcement or exercise of any provisions contained within a S.104 Agreement to be entered into pursuant to the provisions of clause 13.5.1 of a Transfer dated 3 September 2007 made between (1) Derbyshire County Council and (2) Clowes Developments (UK) Limited which affect the Site.

4.2 The exercise or enforcement of rights reserved to Manners Colliery Company Limited under clause 1 of a Conveyance dated 7 December 1933 made between (1) Manners Colliery Company Limited (2) Archibald Galland Mellors and (3) Ilkeston Collieries Limited to cause subsidence to the Site or any buildings on the Site.

4.3 The exercise or enforcement of rights reserved to the National Coal Board under a Conveyance dated 19 August 1976 made between (1) National Coal Board (2) Coal Industry Estates Limited and (3) The Derbyshire County Council to let down the surface of the Site and any building, structure or works erected, constructed or placed on or in the Site.

4.4 The exercise of rights to mine under the Site to extract mines or minerals.

4.5 The existence within or close to the boundary of the Site of mine shafts.

4.6 The enforcement of any chancel repair liability against the Contractor in respect of the Site.

5. **Sinfin Site**

5.1 The exercise or enforcement of the rights reserved over the Sinfin Site as set out in the following paragraphs of the First Schedule of a Transfer dated 22 November 1988 made between Northern Engineering Industries Plc (1) and Bowmer & Kirkland Limited (2) affecting title DY184684:

5.1.1 Paragraph (a) save for the right relating to the free uninterrupted passage of all mains and other services supplies water and soil from and to the Adjacent Land (as defined in the said Transfer) through the connecting pipes wires drains and water courses;

5.1.2 Paragraph (b) save for the right of support and protection for any buildings on the Adjacent Land (as defined in the said Transfer) or any building which may after the date of the said Transfer be erected on the Adjacent Land (as defined in the said Transfer);

5.1.3 Paragraph (c).

5.2 The enforcement of the covenants contained in the Transfer dated 22 November 1988 made between Northern Engineering Industries Plc (1) and Bowmer & Kirkland Limited (2) affecting title DY184684.

5.3 The enforcement of a positive covenant contained in a Conveyance dated 4 June 1947 made between (1) William Hadden, John Farquar Richardson and Arthur Walker Richardson and (2) International Combustion Limited to erect a fence

along the entire northern boundary of the site which is the subject of the said 1947 Conveyance.

5.4 The enforcement of any chancel repair liability against the Contractor in respect of the Site.

5.5 The exercise or enforcement of any rights of third parties (in existence at the date of grant of the Lease of the Site) to use footpaths, to exercise any of the rights granted by the licence granted by the Councils to use the Sinfin Site for the purposes of recreation lawful sports and pastimes and to graze horses at the Sinfin Site.

5.6 The lodging of an application to register all or part of the Sinfin Site as a town or village green under the Commons Registration Act 1965 or a registration of the same being completed.

5.7 The existence of the Barrack Brook within the Sinfin Site, the route of which is unknown.

5.8 Any rights obligations requirements and covenants owed to or exercisable by the owners occupiers or operators of the electricity substation within the Sinfin Site edged in red on the plan attached as an Agreed Form document and marked "Sinfin Substation" and the exercise of any rights over Sinfin Site granted pursuant to and for the benefit of SUCH electricity substation and the presence within or within the vicinity of the boundaries of the Sinfin Site of service media other than the Identified Service Media which prevent or materially delay the carrying out of the Works and Services under this Contract.

5.9 "Identified Service Media" means the drains referred to in the Conveyance dated 4 June 1947 made between 1) William Hadden Richardson and others and 2) International Combustion Limited and on the assumption that these drains are of shallow depth, made of pipework up to 300mm in diameter and not in use at the date of close of the Competitive Dialogue - 14 November 2008.

6. **Mayfield Road, Ashbourne Site**

6.1 The enforcement of any chancel repair liability against the Contractor in respect of the Site.

7. **Raynesway Site**

7.1 The enforcement of any chancel repair liability against the Contractor in respect of the Site.

7.2 The exercise or enforcement of the covenants and agreements contained in an Indenture dated 28 September 1898 made between (1) Robert Hornbrook (2) Richard Radford (3) William Hollis Briggs (4) William Woolley and (5) William Woolley in respect of the part of the Site registered under title number DY436391.

7.3 The prevention by Derbyshire Waste Limited (or its successors in title to the lease dated 18th December 2000 made between (1) The Derbyshire County council and (2)Derbyshire Waste Limited) of the exercise of rights of way by HGV vehicles and service vehicles over the roadway (shown shaded blue on the Agreed Form plan entitled 'Raynesway Site Plan (1)') and the prevention of the exercise and use of existing rights of free passage of water and drainage to and from the welfare cabin within the Raynesway Site through existing service media

from and to the land shown shaded blue on the Agreed Form plan entitled 'Raynesway Site Plan (1)'.

8. **Melandra Road, Glossop Site**

8.1 The enforcement of any restrictive covenants as may have been imposed on the title to the land forming the Site before 7 October 2009.

8.2 The prevention of the occupation and/or use of the Site by the Contractor under the lease by virtue of a third party successfully obtaining superior title to that of Derbyshire County Council to the Site.

8.3 The prevention of the exercise of a right of way by HGV vehicles and service vehicles over Melandra Road for the purpose of access to and egress from the Glossop Site to and from the public highway known as the A57.

9. **NOT USED**

10. **Northwood Site**

10.1 The exercise of rights contained in a Conveyance dated 21 March 1983 made between (1) British Railways Board and (2) West Derbyshire District Council to maintain, repair or cleanse any service conduits on, over or under the Site with attendant rights of access mentioned therein.

10.2 The exercise of rights contained in a Conveyance dated 21 March 1983 made between (1) British Railways Board (the **"Board"**) and (2) West Derbyshire District Council for the Board and its successors with or without workmen and equipment at all reasonable times to enter on to the Site for the purpose of maintaining, repairing, renewing, reinstating, altering or amending any fences, walls, railway banks, abatement or retaining walls, bridges or other walls of the Board.

10.3 The enforcement of the indemnity in respect of or the obligation to repair and maintain any works, paths, roadways, stiles, gates, ditches, culverts, drains, embankments, cuttings, bridges and other structures and works in accordance with the provisions of Clause 2 (d) of the Conveyance dated 21st March 1983 made between (1) British Railways Board (the **"Board"**) and (2) West Derbyshire District Council by the Board.

10.4 The enforcement of any restrictive covenant protected by the D (ii) Land Charge entry numbered 98251 dated 16 May 1983 over the Site to the extent that such restrictive covenants are not specified in the Charges Register for title number DY395749 at the date of this Contract.

10.5 The enforcement of the equitable charge contained in an Agreement dated 24th May 1993 in favour of His Grace the Duke of Rutland and Lord Edward Manners referred to at entry number 5 of the Charges Register of Title Number DY395749.

10.6 The exercise of rights contained in a Deed dated 25 September 2008 made between (1) Derbyshire Dales District Council and (2) Central Networks East Plc (**"Central"**) to:

10.6.1 enter upon, break open and excavate under the Site or any adjoining land of Derbyshire County Council to lay, place, use, inspect, repair, maintain, renew, replace, remove or render unusable electric lines and,

to the extent that and in such position on the Site as Central (acting reasonably) deem necessary, to serve any building or structure constructed on the land comprised with title numbers DY395724 and DY395749 as at 25 September 2008.

10.6.2 enforce the covenants not to excavate under or alter the level of the ground over, nor to construct any building or structure or plant or materials of any kind over or within one metre on either side of the route of the electric cable referred to in the Deed.

10.7 The exercise of and enforcement of informal rights of way crossing the Northwood Site and the lodging of an application to register or the registration of all or part of the Northwood Site as common land under the Commons Registration Act 1965, in either case based solely upon any right of way which has been exercised prior to the date of this Contract.

10.8 The existence of planning condition 15 (b) contained in planning permission LET7251 dated 25 September 2009 for the development of the Northwood Site.

11. **Clover Nook Site**

11.1 The exercise of rights contained in a Transfer dated 14 July 2000 made between (1) Derbyshire County Council (**"Transferor"**) and (2) Parkfield (Clover Nook Project) Limited to lay services through the Site in order to serve the Transferor's adjoining land.

11.2 The exercise of rights contained in a Transfer dated 14 July 2000 made between (1) Derbyshire County Council and (2) Parkfield (Clover Nook Project) Limited to enter onto the Site (on reasonable prior notice) for laying and making connections and repairing, maintaining, inspecting or cleansing the sewers, drains, watercourses, pipes, cables, wires or other conducting media in on or laid within the Site within 80 years of 14th July 2000.

11.3 The enforcement of the covenants contained in the transfer dated 14 July 2000 made between (1) Derbyshire County Council (**"Transferor"**) and (2) Parkfield (Clover Nook Project) Limited not to erect any temporary structure on the Site unless the siting, design, type and decoration thereof shall have first been approved by the Transferor in writing (acting reasonably).

11.4 The enforcement of the covenants contained in the transfer dated 14 July 2000 made between (1) Derbyshire County Council (**"Transferor"**) and (2) Parkfield (Clover Nook Project) Limited not (without the previous consent in writing of the Transferor) to build, erect, park or grow or plant, all such within six metres of the kerb of the estate roads carriageway, any building, erection, vehicle, plant, shrub, tree or other object which shall exceed or ultimately exceed one metre in height.

11.5 Any enforcement of the covenant contained in the transfer dated 14 July 2000 made between (1) Derbyshire County Council and (2) Parkfield (Clover Nook Project) Limited not to carry out on the Site any noxious or dangerous trade or business activity.

11.6 Any enforcement of the covenants contained in the transfer dated 14 July 2000 made between (1) Derbyshire County Council and (2) Parkfield (Clover Nook Project) Limited to keep unbuilt parts of the Site in a neat and tidy condition, free from weeds and rubbish and to plant and maintain landscaped areas to the reasonable satisfaction of the County Property Officer.

11.7 Any enforcement of the covenants contained in the transfer dated 14 July 2000 made between (1) Derbyshire County Council and (2) Parkfield (Clover Nook Project) Limited to maintain and keep in good and substantial repair and condition all buildings, yards, forecourts and other erections on the Site.

11.8 The failure of Derbyshire County Council to perform or procure the performance of the obligations of the Transferor as set out in Clause 7 of the Transfer dated 14 July 2000 made between (1) Derbyshire County Council and (2) Parkfield (Clover Nook Project) Limited (the **"Transferee"**) to complete and maintain the sewers and drains that serve the Site in a reasonable state of repair and condition until fully adopted except for specific instances of damage caused by abnormal use by the Transferee its contractors servants or agents or its successors.

11.9 The enforcement against the Contractor of the indemnity contained in the Transfer dated 14 July 2000 made between (1) Derbyshire County Council (the **"Transferor"**) and (2) Parkfield (Clover Nook Project) Limited (the **"Transferee"**) against all costs relating to the completing, maintaining and renewing the estate road and the sewers and drains serving the Site (save inadequate reinstatement following connections to services within the estate road, or the Transferor's adjoining land by the Transferee, and save specific instances of damage caused by abnormal use).

11.10 The failure of Derbyshire County Council to perform or procure the performance of the obligations of the Transferor in Clause 7 of the Transfer dated 14 July 2000 made between (1) Derbyshire County Council (the **"Transferor"**) and (2) Parkfield (Clover Nook Project) Limited (the **"Transferee"**) to provide all usual services including (without limitation) drainage within the boundaries of the estate road or within the adjacent land of the transferor in close proximity to the Site, and to grant any necessary fee simple easements or wayleaves to the Transferee or its successors across the Transferor's adjacent land without further consideration.

11.11 The exercise of the option to acquire the fee simple of the undeveloped part of the Site in accordance with the provisions of a transfer dated 14 July 2000 made between (1) Derbyshire County Council and (2) Parkfield (Clover Nook Project) Limited.

11.12 The exercise of the pre-emption right to acquire the fee simple of the undeveloped part of the Site in accordance with the provisions of a transfer dated 14 July 2000 made between (1) Derbyshire County Council and (2) Parkfield (Clover Nook Project) Limited.

11.13 The enforcement of the covenant contained in a Deed of Variation dated 28 July 2006 made between (1) Derby City Council and (2) Parkfield Clover Nook Project Limited (which is imported into the transfer dated 14 July 2000 made between (1) Derbyshire County Council and (2) Parkfield (Clover Nook Project) Limited as a replacement clause 4) to not later than 13th July 2010 to complete the development (as that term is defined within the transfer) in a proper and workmanlike manner to practical completion stage as certified by the transferees Surveyor or Architect under any relevant building contract in conformity with the plans elevations and specifications previously approved by and to the reasonable satisfaction in all respects of the County Property Officer.

11.14 The existence of a capped mine entry within 20 metres of the boundary of the Site.

SCHEDULE 23

Combined Heat and Power ("CHP") Protocol

1. **Introduction**

Pursuant to paragraph 2.2.1.3(i) of Service Output 2 of **Part 2** of **Schedule 1** (Specification) this **Schedule 23** sets out the obligations of the Councils and the Contractor in respect of developing and implementing a proposal for supplying heat from NWTF to heat users.

2. **CHP Plan**

2.1 The Contractor has identified the potential for supplying heat generated by the NWTF to heat users in the vicinity of the NWTF as set out in the Contractor's Proposals.

2.2 The Contractor shall further develop the initial work as set out in the Contractor's Proposals and carry out a study to identify potential heat users, their heat requirements and commercial opportunities. The Contractor shall assess the costs and engineering feasibility of modifying the NWTF, installing pipelines and all other equipment, including any phased implementation, (the **"CHP Works"**) to enable heat to be supplied to the heat users.

2.3 To the extent that it is able and subject to availability of commercially sensitive information, the Councils shall make available relevant information regarding potential CHP opportunities to the Contractor.

2.4 The Contractor shall prepare a plan (the **"CHP Plan"**) to include the following:

2.4.1 Details of the scope of the CHP Works;

2.4.2 Details of the operation and maintenance of the CHP system;

2.4.3 A CHP Works Programme;

2.4.4 A financial model identifying as a minimum all capital expenditure for the CHP Works and ongoing life cycle replacement, operating costs, revenues from supply of heat and ROCs, and all impacts in the Base Case on operating costs and revenues from electricity generation;

2.4.5 Proposed milestone payments for the CHP Works;

2.4.6 Heads of terms for agreements with the Heat User(s).

2.5 The Contractor shall submit the CHP Plan to the Councils no later than the date which is twelve (12) months following the Amendment and Restatement Date.

2.6 Within twenty (20) Business Days of receipt of the CHP Plan, the Councils shall notify the Contractor in writing:

2.6.1 of its acceptance of the CHP Plan; or

2.6.2 request the Contractor to provide clarification or additional details within an agreed timescale and resubmit the CHP Plan; or

2.6.3 confirm that the CHP Plan is not to be implemented.

2.7 Upon receipt of notification of the Councils' acceptance of the CHP Plan the Contractor shall implement the CHP Plan pursuant to **clause 28** (Changes to the Works and Services).

2.8 Upon receipt of notification of the Councils' acceptance of the Contractor Change pursuant to **clause 28** (Changes to the Works and Services), the Contractor shall agree final commercial terms with the heat user(s) and finalise the CHP Contract(s).

3. **The CHP Works**

3.1 The Contractor shall implement the CHP Plan and complete the CHP Works by the CHP Planned Completion Date(s). Subject to the programme set out in the CHP Plan, the CHP Planned Completion Date shall be no later than twelve (12) months after the NWTF Completion Date.

3.2 Notwithstanding **paragraph 2.6**, the Councils shall accept no liability for the suitability of the heat users or the CHP Plan.

3.3 The Contractor shall be wholly responsible for managing the CHP Contract(s).

3.4 Notwithstanding the outcome of this **Schedule 23** (Combined Heat and Power "CHP" Protocol), the Contractor shall retain its obligations for meeting the Contract Targets.

THE COMMON SEAL OF	)	David Tysoe
DERBYSHIRE COUNTY COUNCIL	)	
was affixed to this deed	)	
in the presence of:	)	

Authorised Signatory
COUNTY SECRETARY

Number in Seal Book: 2009/1162

THE COMMON SEAL OF	)	A C Wasteney
DERBY CITY COUNCIL	)	
was hereunto affixed to this deed	)	
in the presence of:	)	

Authorised Signatory

S Leslie

Authorised Signatory

EXECUTED on behalf of	)
RESOURCE RECOVERY	)
SOLUTIONS (DERBYSHIRE) LIMITED	)
as a deed by its attorney	)
Michael John Edwards	

Attorney's Signature

Michael John Edwards

Name of Witness: Rob Thompson

Signature: Rob Thompson

Adddress of witness:
100 Barbirolli Square
Manchester
M2 3AB