

**Dated**

**2019**

- (1) Derby City Council and Derbyshire County Council**
- (2) Renewi UK Services Limited**

**Service Agreement for the Provision of Waste Management Services**

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**Date:** 2019

**Parties:**

- (1) **DERBY CITY COUNCIL** of Council House, Corporation St, Derby DE1 2FS and **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, DE4 3AG (“**Councils**”).
- (2) **RENEWI UK SERVICES LIMITED** incorporated and registered in England & Wales with company number 02393309 whose registered office is at Dunedin House Auckland Park, Milton Keynes, Buckinghamshire MK1 1BU (“**Contractor**”).

**Background**

- (A) The Councils issued a notice to terminate a Long Term Waste Management Contract (“**PPP Contract**”) for Waste Management Services on .
- (B) The Councils have entered into an Inter Authority Agreement under which they agree to contract jointly for the Services under a single contract.
- (C) In order to meet the Councils’ statutory duties for waste disposal under section 51 of the Environmental Protection Act 1990, the Councils have appointed the Contractor to provide the Services and the Contractor has agreed to provide the Services in accordance with this Agreement.
- (D) The Councils have agreed to appoint the Contractor to provide the NWTF Services and the Contractor has agreed to provide the NWTF Services in accordance with Schedule 14 and this Agreement.

**Agreed Terms**

**1. Definitions and Interpretation**

- 1.1. In this Agreement the following expressions shall have the following meanings:

<b>Agreement:</b>	this agreement including the schedules;
<b>Asset:</b>	all equipment, containers, materials, vehicles and signage necessary for the proper performance of the Services during the Term and used exclusively for the performance of the Services (and for the avoidance of doubt, excludes the NWTF Assets);
<b>Available</b>	means not Unavailable;
<b>Best Value Duty</b>	has the meaning given to it in the PPP Contract;
<b>Bribery Act:</b>	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning such

	legislation;
<b>Business Day:</b>	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
<b>Change:</b>	any change to this Agreement including to any of the Services;
<b>Change Control Note:</b>	the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure;
<b>Change Control Procedure:</b>	the procedure for changing this Agreement as set out in Schedule 6;
<b>Change in Law</b>	a change in Law or a new requirement to comply with existing Law or existing Law ceasing to apply, which arises solely as a direct consequence of the United Kingdom's withdrawal from the European Union and has an impact on the Contractor's ability to comply with its obligations under this Agreement (including the costs associated with complying with its obligations under this Agreement). For these purposes, Law means any legal provision a Party must comply with including any law, statute, subordinate legislation within the meaning of section 21 (1) of the Interpretation Act 1972, enforceable EU right within the meaning of section 2 of the European Communities Act 1972 or section 2 of the European Union (Withdrawal) Act 2018, bye-law, regulation, order, mandatory guidance or code of practice, judgement of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere;
<b>Composting</b>	has the meaning given to it in the PPP Contract;
<b>Confidential Information:</b>	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which: <ul style="list-style-type: none"> <li>(a) is known by the receiving Party to be confidential;</li> <li>(b) is marked as or stated to be confidential; or</li> </ul>

- (c) ought reasonably to be considered by the receiving Party to be confidential subject always to clause 40;

<b>Contingency Plan:</b>	the plan which sets out the procedures to be adopted by the Contractor in the event of a disruption to the Services (including the procedures to be taken by the Contractor in planning and providing for any such event), the Contingency Plan at the date of this agreement being set out in the Service Delivery Plan;
<b>Contract Area</b>	has the meaning given to it in the PPP Contract;
<b>Contract Manager:</b>	the person designated as such by the Contractor in accordance with clause 24;
<b>Contract Price:</b>	the Monthly Payments which become due and payable by the Councils to the Contractor in respect of the Services in each Contract Year calculated in accordance with the provisions of this Agreement;
<b>Contract Waste</b>	<p>(a) waste collected in the administrative areas of Derbyshire and Derby City by the relevant waste collection authorities as required by S.51 EPA 1990 and delivered to a Delivery Point; and</p> <p>(b) Household Waste deposited by the public at any of the HWRCs;</p>
<b>Contract Year:</b>	a period of 12 months, the first of which commences on the Services Commencement Date, and each subsequent Contract Year commences on the relevant anniversary of the Services Commencement Date;
<b>Contractor's Personnel:</b>	all employees, staff, other workers, agents and consultants of the Contractor and of any Sub-Contractors who are engaged in the provision of the Services and/or the NWTF Services from time to time;
<b>Councils' Authorised Officer:</b>	the person designated as such by the Councils in accordance with clause 24;

<b>Councils' Health and Safety Policy:</b>	the health and safety policy of the Councils as provided to the Contractor on or before the Commencement Date and as subsequently provided to the Contractor from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Laws regarding health and safety;
<b>Councils' Premises:</b>	any premises of the relevant Council which are the subject of a Licence or Lease made in accordance with clause 12;
<b>Data Processor:</b>	shall have the same meaning as set out in the Data Protection Act 2018;
<b>Data Protection Laws:</b>	means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of personal data and privacy applicable to the performance of this agreement, including where applicable the Data Protection Act 2018, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR), as amended or superseded; including where applicable the guidance and codes of practice issued by the Information Commissioner from time to time including but not limited to surveillance and use of camera/recording equipment howsoever employed;
<b>Default Notice:</b>	a written notice given by the Councils to the Contractor pursuant to paragraph 2.1 of Schedule 2 giving details of a Performance Failure;
<b>Deductions:</b>	the deductions to be made from the Contract Price in respect of Performance Failures calculated in accordance with paragraphs 13.1 and 13.2 of Schedule 2;
<b>Delivery Point</b>	any:  (a) delivery point 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 4.2 of Schedule 1 (Specification) and nominated as a Delivery Point in the Service Delivery Plan or implemented as a Delivery Point through the Change Control Procedure, 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 of Schedule 1 (Specification) and identified by the Contractor in the Contingency Plan;
	(c) the Clover Nook Transfer Station and the Glossop Transfer Station;
<b>Delivery Point Availability Criteria</b>	those availability criteria set out at paragraph 4.11 of Schedule 1 (Specification);
<b>Dispute Resolution Procedure:</b>	the procedure set out in clause 30;
<b>EIRs:</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
<b>Effective Date:</b>	the date of this Agreement;
<b>Equipment:</b>	all equipment, containers, materials, vehicles and signage including the Assets necessary for the proper performance of the Services during the Term (and for the avoidance of doubt excludes the NWTF Equipment);
<b>Exit Management Plan:</b>	the Exit Management Plan contained within the Service Delivery Plan;
<b>FOIA:</b>	the Freedom of Information Act 2000, and any subordinate legislation made under that act 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 legislation;
<b>Force Majeure:</b>	any cause affecting the performance by a Party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm, earthquake and any natural disaster or official general industrial action unconnected to the Contractor, but excluding any industrial dispute relating only to the Contractor or to any of the Contractor's Personnel or any other failure in the Contractor's supply chain;
<b>Fly Tipped Waste</b>	has the meaning given to it in the PPP Contract;
<b>Good Industry Practice:</b>	the degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator engaged in the same type of undertaking as that of the Contractor under the same or similar circumstances at the relevant time for such exercise;
<b>Handle</b>	has the meaning given to it in the PPP Contract;
<b>Hazardous Household Waste</b>	has the meaning given to it in the PPP Contract;
<b>Household Waste</b>	has the meaning attributed to it in Section 75(5) and Section 89 of the Environmental Protection Act 1990 and Schedule 1 and schedule 2 of the Controlled Waste (England and Wales) Regulations 2012;
<b>HWRC</b>	any premises identified as household waste recycling centres in Part 1 Councils' Premises of Schedule 9;
<b>HWRC Availability Criteria</b>	the Availability Criteria for HWRCs as set out in paragraph 6.6 of Schedule 1 (Specification);
<b>Information:</b>	has the meaning given under section 84 of FOIA;
<b>Insolvency Event:</b>	where:

- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of that other party; or
- (c) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor (being a company); or
- (d) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (e) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor; or
- (f) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not

discharged within 14 days; or

- (g) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (f) (inclusive); or
- (h) the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

**Insurances:**

all or any of the insurance required to be maintained by the Contractor pursuant to this Agreement as set out in clause 33.1 and Schedule 13;

**Intellectual Property Rights:**

any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the “look and feel” of any websites;

**Key Sub-Contract**

any Sub-Contract which involves provision of the Services;

**Landfill**

has the meaning given to it in the PPP Contract;

**Law:**

shall mean the laws of England and Wales and the European Union and any other laws or regulations, bylaws, regulatory policies, guidance, guidelines or industry codes which apply to the provision of the Services including, without limitation, the Modern Slavery Act 2015, the Environmental

Protection Act 1990, the Controlled Waste Regulations 2012, Waste (England and Wales) Regulations 2011, the Public Health Act 2006, the Clean Neighbourhood and Environment Act 2005, the Control of Pollution Act 1974 and the Health and Safety at Work etc. Act 1974;

<b>Lease:</b>	a lease of the relevant Council's Premises entered into by the Contractor and the relevant Council on the Effective Date, Service Commencement Date or such other date agreed between the Parties (acting reasonably) in the form set out in Part 3 of Schedule 8 (and which relate to the premises from which the Contractor shall provide the Services and/or the NWTF Services), or any leases subsequently entered into by the relevant Council and the Contractor in relation to property let to the Contractor by the relevant Council in connection with the provision of the Services or any part of them or the NWTF Services or any part of them in accordance with clause 12;
<b>Licence</b>	a licence to occupy the relevant Council's Premises entered into either between the Contractor or Sub-Contractor and the relevant Council on the Effective Date in the form set out in Part 2 of Schedule 8 (and which relate to the premises from which the Contractor or Sub-Contractor shall provide the Services or any part of them and/or the NWTF Services or any part of them);
<b>MBT</b>	has the meaning given to it in PPP Contract;
<b>Month:</b>	a calendar month;
<b>Monthly Payment:</b>	the amount calculated in accordance with paragraph 1 of Schedule 4;
<b>Necessary Consents:</b>	all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services and/or the NWTF Services;
<b>Non-Rectifiable Default:</b>	a Performance Failure which is not capable of remedy;

<b>NWTF</b>	the new waste treatment facility on the Sinfen Site used to provide the NWTF Services;
<b>NWTF Assets</b>	all equipment, containers, materials, vehicles and signage necessary for the proper performance of the NWTF Services during the Term and used exclusively for the performance of the NWTF Services;
<b>NWTF Equipment</b>	all equipment, containers, materials, vehicles, and signage including the NWTF Assets necessary for the proper performance of the NWTF Services during the Term;
<b>NWTF Services</b>	has the meaning given to it in Schedule 14;
<b>NWTF Services Cost</b>	the costs which become due and payable by the Councils to the Contractor in respect of the NWTF Services calculated in accordance with Schedule 14 and the provisions of this Agreement;
<b>NWTF Term</b>	the period during which the Contractor provides NWTF Services pursuant to the terms of this Agreement;
<b>Payment Mechanism:</b>	means the payment mechanism set out in Schedule 4;
<b>Performance Failure:</b>	any failure to provide the Services in accordance with the Performance Standards;
<b>Performance Standards:</b>	the standards to which the Contractor shall perform the Services as required by the Specification and such higher and/or additional standards (that do not otherwise lower the standards required by the Specification) as may be contained in the Method Statements;
<b>Personal Data:</b>	shall have the same meaning as set out in the Data Protection Act 2018;
<b>PPP Contract</b>	has the meaning given to it in Background paragraph (A);
<b>Prohibited Act:</b>	any of the following: <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Councils a</li> </ul>

financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Councils;
- (d) any activity, practice or conduct which would constitute one of the offences listed in (c) above if such activity, practice or conduct had been carried out in the UK;

**Quality Management System:** the approved quality management system whose object is to ensure that the Services meet the Performance Standards and this Agreement generally and in respect of the NWTF Services that the NWTF Services meet the standards required by this Agreement generally;

**Rectification Notice:** a written notice given by the Councils to the Contractor pursuant to paragraph 12.2 of Schedule 2 initiating the process to remedy a Performance Failure;

**Recyclable Materials** has the meaning given to it in the PPP Contract;

**Relevant Transfer:** a relevant transfer for the purposes of

	TUPE;
<b>Replacement Contractor:</b>	any third party supplier of Replacement Services appointed by the Councils from time to time;
<b>Replacement Services:</b>	any services that are identical or substantially similar to any of the Services and which the Councils receives in substitution for any of the Services following the termination or expiry of this Agreement (in whole or in part), whether those services are provided by the Councils internally or by any Replacement Contractor;
<b>Request for Information:</b>	has the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term “request” shall apply);
<b>Re-Use</b>	has the meaning given to it in the PPP Contract;
<b>Service Delivery Plan:</b>	the Contractor’s method statements for the delivery of the Services set out in Schedule 3;
<b>Service User</b>	has the meaning given to it in the PPP Contract;
<b>Services:</b>	the services to be delivered by or on behalf of the Contractor under this Agreement, as more particularly described in Schedule 1 and which, for the avoidance of doubt, excludes the NWTF Services;
<b>Services Commencement Date</b>	means 00.01 on the day following the termination of the PPP Contract;
<b>Sinfin Site</b>	Sinfin Lane, Derby, DE24 9GF;
<b>Specification:</b>	the specification of the Services set out in Schedule 1;
<b>Sub-Contract:</b>	any contract between the Contractor and a third party pursuant to which the Contractor agrees to source the provision of any services from that third party;
<b>Sub-Contractor:</b>	a contractor or supplier that enters into a Sub-Contract with the Contractor;
<b>TUPE:</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as

	amended);
<b>Term:</b>	the period of 24 months from the Services Commencement Date as may be varied by: <ul style="list-style-type: none"> <li>(a) any extension to this Agreement pursuant to clause 3; or</li> <li>(b) the earlier termination of this Agreement in accordance with its terms;</li> </ul>
<b>Termination Date:</b>	the date of expiry or termination of this Agreement;
<b>Termination Payment Default:</b>	means an amount in excess of £1,000,000 is overdue for payment by the Councils for more than 2 Months and the amount is undisputed by the Councils;
<b>Unavailable</b>	means not complying with the Delivery Point Assessment Criteria or the HWRC Availability Criteria (as relevant);
<b>Unavailability Deduction</b>	in respect of HWRCs and/or project transfer stations (being Clover Nook, Glossop and Raynesway for which have a fixed payment) not being Available in accordance with the requirements of the Specification
<b>Uninsurable</b>	In relation to a risk either that: <ul style="list-style-type: none"> <li>(a) insurance is not available to the Contractor in respect of the Services, NWTF Services, the Councils' Premises and/or the Sinfin Site in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or</li> <li>(b) the insurance premium payable for insuring the risk is at such a level that the risk is not generally being insured against in the worldwide market with reputable insurers of good standing by contractors in the United Kingdom;</li> </ul>
<b>WCA</b>	has the meaning given to it in the PPP Contract; and
<b>Works</b>	has the meaning given to it in the PPP Contract.



- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4. The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
- 1.5. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Words in the singular shall include the plural and vice versa.
- 1.7. A reference to one gender shall include a reference to the other genders.
- 1.8. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force (and as may from time to time be amended) made under it.
- 1.9. Subject to clause 50 a reference to **writing** or **written** includes faxes and email.
- 1.10. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.12. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13. Where any statement is qualified by the expression "so far as Party is aware" or "to Party's knowledge" or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14. Any phrase introduced by the words "including", "includes", "in particular" or similar shall be construed without limitation by the related general words.
- 1.15. Where there is any conflict or inconsistency between the provisions of the Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 1.15.1. the clauses of the Agreement
  - 1.15.2. Schedule 4 to this Agreement;
  - 1.15.3. the remaining schedules to this Agreement;

## COMMENCEMENT AND DURATION

### 2. Term

- 2.1. This Agreement shall take effect on the Effective Date and shall continue until the Termination Date.

### 3. Extending the Term

- 3.1. The Councils may extend this Agreement beyond the Term by further periods of 3 months, up to a total maximum period of 6 months (the first such extension being the “**Extension Period**”). If the Councils wish to extend this Agreement, they shall give the Contractor at least 1 months’ written notice of such intention before the expiry of the Term or the Extension Period (as the case may be).
- 3.2. If the Councils give such notice then unless the Contractor notifies the Councils within 10 Business Days of the date of such notice in writing that it is unable or unwilling to provide the Services beyond the Term, the Term shall be extended by the period set out in the notice. The Contractor shall continue to provide the Services in accordance with this Agreement during the extended term.
- 3.3. If the Councils do not wish to extend this Agreement beyond the Term or the Contractor serves notice in accordance with clause 3.2 this Agreement shall expire automatically on the expiry of the Term.

### 4. Due Diligence and the Contractor’s Warranty

- 4.1. The Contractor acknowledges and confirms that:
  - 4.1.1. it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and the NWTF Services and has asked the Councils all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services and the NWTF Services in accordance with the terms of this Agreement;
  - 4.1.2. it has received all information requested by it from the Councils to enable it to determine whether it is able to provide the Services and the NWTF Services in accordance with the terms of this Agreement;
  - 4.1.3. it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Councils;
  - 4.1.4. it has satisfied itself as to any assets and premises to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and
  - 4.1.5. it has entered into this Agreement in reliance on its own due diligence.

- 4.2. Save as otherwise provided in this Agreement, no representations, warranties or undertakings shall be taken to have been made or implied from anything said or written in any dialogue or discussion or exchange between the Parties prior to the Effective Date, except as expressly stated in this Agreement. The Contractor acknowledges and agrees that it has not relied upon any information given or representation made by or on behalf of the Councils in entering into this Agreement.
- 4.3. The Contractor shall promptly notify the Councils in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Councils during such due diligence which materially and adversely affects its ability to perform the Services and the NWTF Services.
- 4.4. The Contractor shall not be entitled to recover any additional costs from the Councils which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Councils by the Contractor in accordance with clause 4.3 save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Councils and the Contractor could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor shall be entitled to recover such reasonable additional costs from the Councils or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5. The Councils warrant that neither the Councils nor any third party shall:
- 4.5.1. exercise or purport to exercise any interest or rights (including any easement or right of occupation); and/or
- 4.5.2. enforce or purport to enforce any restriction, stipulation or covenant
- in respect of or related to the Councils' Premises that may have an impact upon:
1. the Contractor's ability to access the Councils' Premises; and/or
  2. the Contractor's ability to perform the Services and/or the NWTF Services; and/or
  3. the costs incurred by the Contractor in performing the Services and/or NWTF Service.
- 4.6. Nothing in this clause 4 shall limit or exclude the liability of the Parties for fraud or fraudulent misrepresentation.

## **THE SERVICES**

### **5. Supply of Services and NWTF Services**

- 5.1. The Contractor shall provide:

- 5.1.1. the Services to the Councils from the Services Commencement Date for the Term, and
  - 5.1.2. the NWTF Services to the Councils from the Services Commencement Date for the NWTF Term,
- in accordance with the provisions of this Agreement.
- 5.2. During the period from the Effective Date to the Services Commencement Date the Councils and the Contractor shall do all such things as may be required in order to be ready to fully provide the Services and the NWTF Services on the Services Commencement Date and thereafter for the Term and NWTF Term respectively. This shall include without limitation:
- 5.2.1. organising and attending meetings at the offices of the Councils, the Contractor or their advisors to discuss any mobilisation activities that may be required;
  - 5.2.2. ensuring all actions required for a successful mobilisation of the Services and the NWTF Services are taken, including without limitation ensuring the Contractor's ICT systems and any interfaces required with the Councils' ICT systems are fully operational; and
  - 5.2.3. attending such meetings with officers and/or members of the Councils and/or members of the public at such locations and at such times as the Councils may reasonably require.
- 5.3. The Contractor shall provide the Services and the NWTF Services:
- 5.3.1. using such time, resources, trained personnel and skill as may be necessary for the due and proper performance of the Services and the NWTF Services;
  - 5.3.2. with reasonable skill and care and in accordance with Good Industry Practice;
  - 5.3.3. in a such a manner which complies fully with the requirements of the Specification and Schedule 11 in respect of the Services or Schedule 14 in respect of the NWTF Services (as the case may be);
  - 5.3.4. in accordance with the Method Statements, which apply only to the Services;
  - 5.3.5. in compliance with the Necessary Consents;
  - 5.3.6. in all respects in accordance with the policies of the Councils set out in Schedule 10 as may have been provided to the Contractor at the date of this Agreement or otherwise made available to the Contractor from time to time; and
  - 5.3.7. in accordance with all applicable Laws.

- 5.4. For the avoidance of doubt the Contractor shall not be relieved from any obligation to provide the Services and the NWTF Services in the event of any industrial dispute relating to the Contractor and/or the Contractor's Personnel. However, the Contractor shall notify the Councils in writing as soon as it is aware of any actual or potential industrial dispute or failure in the Contractor's supply chain.
- 5.5. The Contractor shall have regard to the Councils' Best Value Duty in relation to the Services and the NWTF Services under Part 1 of the Local Government Act 1999.
- 5.6. Subject to any existing contractual arrangements which either Council has at the date of this Agreement with any other contractor, the Councils shall grant the Contractor an exclusive right for the reception, treatment and disposal of Contract Waste for the Term and in accordance with the provisions of this Agreement.

## **6. Performance of the Services**

- 6.1. The Contractor shall ensure that the Services meet or exceed the Performance Standards at all times.
- 6.2. The Contractor shall monitor its performance of the Services and report the findings of its monitoring to the Councils in accordance with clause 27.

## **7. Performance of the NWTF Services**

- 7.1. The Contractor shall ensure that the NWTF Services meet or exceed the standards specified in Schedule 14 or such other standards as agreed in writing by the Parties at all times.
- 7.2. The Contractor shall monitor its performance of the NWTF Services and report the findings of its monitoring to the Councils in accordance with clause 27.
- 7.3. In delivering the NWTF Services, the Contractor shall apply the same management of the NWTF Services Cost as it would apply were it delivering the NWTF Services itself without any cost recovery.

## **8. Quality Management System**

- 8.1. The Contractor shall maintain a Quality Management System throughout the Term.
- 8.2. The Contractor shall ensure that all aspects of the Services and the NWTF Services are conducted in accordance with the requirements of the Quality Management System.
- 8.3. Without prejudice to any other right or remedy the Councils may have the Councils may carry out periodic audits of the Quality Management System. The Contractor shall ensure that the Councils shall have a like right in respect of any relevant Sub-Contractor's quality management systems. The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Councils including providing them with all

information and documentation which they reasonably require in connection with this clause 7.

- 8.4. The operation of each of the Quality Management System maintained by the Contractor is without prejudice to any other rights or remedies the Councils may have including in relation to their right to levy Deductions in accordance with clause 23.

## **9. Necessary Consents**

- 9.1. The Contractor shall:

9.1.1. subject to Schedule 12 (Lifecycle), at its own expense, obtain and maintain all Necessary Consents which may be required for the performance of the Services and shall use all reasonable endeavours to ensure that the Councils do not incur any additional costs associated with obtaining or maintaining the same;

9.1.2. at its own expense, obtain and maintain all Necessary Consents which may be required for the performance of the NWTF Services and shall use reasonable endeavours to ensure that the Councils do not incur any additional costs associated with obtaining or maintaining the same.

9.1.3. procure that no Necessary Consent is breached by it, the Contractor's Personnel or any other person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Services and the NWTF Services; and

9.1.4. not do or permit anything to be done which might cause or otherwise result in a breach of any Necessary Consents relating to the Services and the NWTF Services.

- 9.2. The Contractor shall, within 48 hours of becoming aware of the same, notify the Councils' Authorised Officer of any actions, claims or proceedings which may be threatened or pending and which may lead to any Necessary Consent being revoked or not renewed relating to the Services and the NWTF Services.

## **10. Health and Safety**

- 10.1. The Contractor shall perform its obligations under this Agreement (including those in relation to the Services and the NWTF Services) in accordance with:

10.1.1. all applicable Law regarding health and safety; and

10.1.2. the Contractor's health and safety policy prepared in accordance with clause 10.2.

- 10.2. The Contractor shall prepare and maintain its own health and safety policy, a copy of which shall be provided to the Councils' Authorised Officer before the Services Commencement Date as well as to the Contractor's Personnel.

In preparing and maintaining such a health and safety policy the Contractor shall have regard to the Councils' Health and Safety Policy. The provision of the Contractor's health and safety policy to the Councils' Authorised Officer shall in no way relieve the Contractor of its obligations to comply with applicable Law nor does it amount to approval by the Councils of such policy. All material amendments to, and replacements of, the Contractor's health and safety policy shall similarly be provided to the Contractor's Personnel and to the Councils' Authorised Officer.

- 10.3. The Contractor shall notify the Councils as soon as practicable of any health and safety incidents or material health and safety hazards at the Councils' Premises (and/or any other premises from which it provides the Services and/or the NWTF Services) and which relate to or arise in connection with this Agreement and/or the performance of the Services and/or the NWTF Services. The Contractor shall instruct the Contractor's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.
- 10.4. Subject to Schedule 12 (Lifecycle), without in any way limiting the other provisions of this Agreement the Contractor shall:
  - 10.4.1. provide the Services in such a way as to minimise, so far as is reasonably practicable, any health and safety risks to the Contractor's Personnel, members of the public and any other persons;
  - 10.4.2. accept full responsibility for the day-to-day operational aspects of health and safety while performing the Services;
  - 10.4.3. inform the Councils immediately of any breaches in health and safety Law;
  - 10.4.4. co-operate fully with the Councils in their monitoring of health and safety standards;
  - 10.4.5. inform the Councils immediately in writing of any health and safety issues relating to the Councils' health and safety responsibilities in relation to this Agreement; and
  - 10.4.6. inform the Councils in writing of all RIDDOR reportable incidents as soon as possible (including outside normal office hours).
- 10.5. In respect of the NWTF Services, without in any way limiting the other provisions of this Agreement the Contractor shall:
  - 10.5.1. provide the NWTF Services in such a way as to minimise, so far as is reasonably practicable, any health and safety risks to the Contractor's Personnel, members of the public and any other persons;
  - 10.5.2. accept full responsibility for the day-to-day operational aspects of health and safety while performing the NWTF Services;
  - 10.5.3. inform the Councils immediately of any breaches in health and safety Law;

- 10.5.4. co-operate fully with the Councils in their monitoring of health and safety standards;
  - 10.5.5. inform the Councils immediately in writing of any health and safety issues relating to the Councils' health and safety responsibilities in relation to this Agreement; and
  - 10.5.6. inform the Councils in writing of all RIDDOR reportable incidents as soon as possible (including outside normal office hours).
- 10.6. The Contractor shall throughout the:
- 10.6.1. Term conduct regular monitoring of the health and safety arrangements in place in relation to the provision of the Services, and
  - 10.6.2. NWTF Term conduct regular monitoring of the health and safety arrangements in place in relation to the provision of the NWTF Services.
- 10.7. Without prejudice to any other right or remedy the Councils may have, the Councils shall be entitled to audit and monitor the Contractor's health and safety arrangements relating to the Services and/or the NWTF Services. The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Councils including providing them with all information and documentation which they reasonably require in connection with this clause 10, including in relation to any actual or prospective investigation by the Health and Safety Executive or other relevant agency.
- 10.8. The Contractor shall ensure that suitable financial provision for health and safety is made in order to ensure that the Contractor can comply with any changes to working practices which may be required as a result of changes in Law or best practice relating to the Services and the NWTF Services.
- 10.9. The Contractor shall actively participate in any relevant non-statutory safety groups that the Councils' Authorised Officer may from time to time reasonably specify.
- 10.10. Without in anyway limiting the foregoing the Contractor shall ensure it provides the Services and the NWTF Services in accordance with the latest guidance and codes of practice issued by the Health and Safety Executive (HSE), the Environment Agency (EA), the Waste Industry Health and Safety Forum (WISH) and any other relevant body and the Contractor's risk assessments and safe working practices reflect these at all times.

## **11. Human Rights and Equalities**

- 11.1. Without limiting the general obligations set out in this Agreement the Contractor shall (and shall procure that the Contractor's Personnel shall) perform its obligations under this Agreement (including those in relation to the Services and NWTF Services) in accordance with:
- 11.1.1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);



- 11.1.2. the Councils' equal opportunities policies as appended; and
  - 11.1.3. any other requirements and instructions which the Councils reasonably imposes in connection with any equality obligations imposed on the Councils at any time under applicable equality Law;
- 11.2. The Contractor shall:
- 11.2.1. take all necessary steps to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation); and
  - 11.2.2. at all times comply with the provisions of the Human Rights Act 1998 (or any Law which may replace the same) in the performance of this Agreement. The Contractor shall also undertake, or refrain from undertaking, such acts as the Councils requests so as to enable the Councils to comply with its obligations under the Human Rights Act 1998 (or any Law which may replace the same).

## **12. Councils' Premises**

- 12.1. The relevant Council shall grant Licences to the Contractor or its Sub-Contractor for each of the following Council's Premises on the Effective Date:
- 12.1.1. Bolsover Household Waste Recycling Centre, Buttermilk Lane, Chesterfield Road, Bolsover, S44 6AE;
  - 12.1.2. Ilkeston Household Waste Recycling Centre, Manners Avenue, Ilkeston, Derbyshire, DE7 8EF;
  - 12.1.3. Ashbourne Household Recycling Centre, Mayfield Road, Ashbourne, Derbyshire, DE6 2BJ;
  - 12.1.4. Loscoe Household Recycling Centre, Taylor Lane, Loscoe, Heanor, Derbyshire, DE75 7TA;
  - 12.1.5. Waste Transfer Station and Household Waste Recycling Centre, Melandra Road, Glossop, SK13 6JQ;
  - 12.1.6. Household Waste Recycling Centre, Main Street, Newhall, Swadlincote, Derbyshire, DE11 0TP;
  - 12.1.7. Stonegravels Household Waste Recycling Centre, Stonegravels Lane, Chesterfield, Derbyshire, S41 7LF;
  - 12.1.8. Northwood Household Waste Recycling Centre, Harrison Way, Darley Dale, Matlock, Derbyshire, DE4 2LF; and
  - 12.1.9. Clover Nook Household Waste Transfer Station, Clover Nook Industrial Estate, Grange Close, South Normanton, Alferton, Derbyshire, DE55 4QT

12.2. The Contractor shall enter into Leases for the each of the following Council's Premises on the Effective Date:

12.2.1. Household Waste Recycling Centre, Raynesway HWRC, Derby, DE21 7BA; and

12.2.2. Sinfin Site, Sinfin Lane, Derby, DE24 9GF.

The Councils and the Contractor agree that all Leases entered into between the Parties relating to a relevant Council's Premises under this clause 12 during the Term shall be excluded from the provisions of Part II of the Landlord and Tenant Act 1954.

12.3. Each Licence granted under clause 12.1, shall terminate and be superseded by a Lease when the Parties enter into such relevant Lease.

12.4. The relevant Council and the Contractor shall enter into Leases for each of the relevant Council's Premises listed in clause 12.2 on the Services Commencement Date or on such other date as notified by the relevant Council (acting reasonably).

12.5. The Contractor shall (and shall procure all Sub-Contractors shall) only be entitled to use and occupy the relevant Council's Premises in accordance with the terms of the Licence or Lease, shall comply with the requirements of each relevant Necessary Consents and shall use any Councils' Premises made subject to a Licence or Lease only for the purposes of providing the Services and/or the NWTF Services unless otherwise previously agreed in writing by the Councils.

12.6. The Councils shall comply with their respective obligations under the Licences and Leases.

### **13. Premises Generally**

13.1. Save in respect of the Councils' Premises, the Contractor shall be responsible for providing or procuring the provision of all premises necessary in order to perform the Services in accordance with this Agreement and ensuring that the same are available for the Term.

13.2. Without in anyway limiting its other obligations under this Agreement the Contractor shall:

13.2.1. obtain and maintain, or procure that its Sub-Contractors obtain and maintain, the Necessary Consents to use all relevant premises (including without limitation the Councils' Premises) for the purposes of providing the Services and the NWTF Services;

13.2.2. be responsible, or procure that its Sub-Contractors are responsible for the payment of all fees, charges, rates (other than at the Councils' Premises) and all other outgoings and expenses in relation to the premises; and

13.2.3. Subject where relevant to Schedule 12 (Lifecycle) operate, keep in good repair and maintain the premises in accordance with all

applicable Laws, where applicable the Leases, and Good Industry Practice; and

- 13.2.4. insure the Councils' Premises in accordance with the provisions of clause 30 and Schedule 13 (Insurance).

#### **14. Rights of Access**

- 14.1. The Contractor shall permit the Councils' Authorised Officer upon reasonable prior written notice to the Contractor (save in the event of an emergency when no notice shall be required), to visit any premises, including without limitation the Councils' Premises, where or from where the Services and the NWTF Services are being performed, and to inspect the Equipment and meet with the Contractor's Personnel engaged in the provision of the Services and the NWTF Services. The Contractor shall comply with all reasonable requests by the Councils during or as a result of each such inspection, to enable the Councils to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement.

#### **15. Rights of Occupation - Sinfin Site**

- 15.1. The Contractor shall permit the Councils' appointed representatives (notified to the Contractor from time to time) to use exclusively an office within the Sinfin Site for the NWTF Term and provide all utilities and welfare facilities required by the Councils' appointed representatives.

#### **16. Equipment and Assets**

- 16.1. All Assets used in the provision of the Services at Councils' Premises shall be owned by the Contractor or a Sub-Contractor, or where approved by the Councils, leased by the Contractor or a Sub-Contractor on terms which permit the Contractor or Sub-Contractor to assign the benefit of such lease to the Councils.
- 16.2. The Contractor shall, during the Term:
  - 16.2.1. operate, maintain and keep in good repair the Equipment in accordance with Good Industry Practice;
  - 16.2.2. ensure that the Contractor's Personnel are properly trained, supervised, competent and sufficiently experienced in the use of the Equipment and they use and operate it in a proper and safe manner;
  - 16.2.3. insure the Equipment in accordance with the terms of clause 33;
  - 16.2.4. subject to Schedule 12 (Lifecycle), promptly provide replacements when breakdowns occur or an item of Equipment ceases to work effectively;
  - 16.2.5. maintain an asset register containing a description of each Asset (incorporating make/model and registration numbers).

- 16.3. Not less than 3 Months prior to the expiry of the Term, or in the case of early termination as soon as practicable after any notice of termination, or if none, as soon as practical thereafter, the Councils shall notify the Contractor in writing indicating which, if any, of the Assets the Councils requires to be transferred to them or the Replacement Contractor for the purpose of continuing the provision of the Services or services the same as or similar to the Services.
- 16.4. Within thirty (30) days after receiving notice in accordance with clause 16.3, the Contractor shall notify the Councils in writing of the value of each Asset specified in the notice provided under clause 16.3 being the current market value (exclusive of VAT) fixed by a valuer (appointed by the Contractor at its cost but approved by the Councils) acting as an independent expert and not as arbitrator (the “**Market Value**”).
- 16.5. Following determination of the Market Value of the Assets, the Councils shall pay the Market Value (the “**Value**”) of the Assets at the date of transfer. Subject to payment of the Value by the Councils or the Replacement Contractor (or the assumption by the same of any lease payments), the Contractor shall transfer the transferring Assets to the Councils or the Replacement Contractor (as determined by the Councils).
- 16.6. If the Councils, acting reasonably, determines (whether as a result of monitoring or audit or through any other means) that the Equipment is not in the condition required by this Agreement the Contractor shall promptly put such Equipment, or procure that such Equipment is put, in the condition required by this Agreement at no additional cost to the Councils.

#### **16A NWTF Equipment and NWTF Assets**

16A.1. The Contractor shall during the NWTF Term:

16A.1.1. operate, maintain and keep in good repair NWTF Equipment and NWTF Assets in accordance with Good Industry Practice;

16A.1.2. ensure the Contractor’s Personnel are properly trained, supervised, competent and sufficiently experienced in the use of the NWTF Equipment and NWTF Assets and they use and operate them in a proper and safe manner;

16A.1.3. promptly notify the Councils when breakdowns occur or an item of NWTF Equipment ceases to work effectively or an NWTF Asset is damaged;

16A.1.4. develop and maintain an asset register containing a description of each NWTF Equipment and NWTF Asset; and

16A.1.5. comply with obligations specified in Schedule 14 (NWTF Services) in respect of NWTF Equipment and NWTF Assets.

#### **17. Contingency Arrangements**

- 17.1. As at the date of this Agreement the Councils and the Contractor have agreed the Contingency Plan which includes 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.

- 17.2. The Contractor shall demonstrate to the Councils' reasonable satisfaction the viability and effectiveness of the Contingency Plan and the Contractor's business continuity measures generally in relation to the Services.
- 17.3. The Contractor shall ensure the Contingency Plan is kept up-to-date and shall comply with it at all times.
- 17.4. Following the occurrence of an event requiring the implementation of the Contingency Plan in respect of any of the Services, or any part thereof, the Contractor shall:
  - 17.4.1. implement the Contingency Plan;
  - 17.4.2. continue to provide the affected Services to the Councils in accordance with the Contingency Plan; and
  - 17.4.3. restore the affected Services to normal within the period laid out in the Contingency Plan.
- 17.5. To the extent that the Contractor complies fully with the provisions of this clause 17 (and the circumstances giving rise to the implementation of the Contingency Plan were not in whole or part due to a default of the Contractor); then a disruption of the Services due to a critical interruption to the Contractor's business critical functions (whether wholly or in part) which means the Contractor is unable to provide or any part of the Services for any amount of time shall not constitute a performance failure for the purposes of clause 23 and Schedule 2.

## **18. Step In**

- 18.1. The Councils shall be entitled to exercise a right of step-in in respect of the Council's Premises in accordance with this clause 18 if they reasonably believe that action is required in connection with the provision of the Services and/or the NWTF Services:
  - 18.1.1. to discharge a statutory duty;
  - 18.1.2. to address a serious risk which exists to the health and safety of persons or property or to the environment that the Contractor is unable or is expressly unwilling to remedy; or
  - 18.1.3. to deal with an emergency that has arisen.
- 18.2. If the Councils wish to exercise their right of step-in, the Councils' Authorised Officer shall provide to the Contractor notice in writing specifying:
  - 18.2.1. the action the Councils wish to take;
  - 18.2.2. the reason for such action;
  - 18.2.3. the date the Councils wish to commence such action;

- 18.2.4. the time period which the Councils believe will be necessary for such action; and
  - 18.2.5. to the extent practicable, the effect on the Contractor and its obligation to provide the Services and/or the NWTF Services during the period such action is being taken.
- 18.3. Following service of notice in accordance with clause 18.2, the Councils shall take such action as notified together with any additional action as they reasonably believe is necessary (the “**Required Action**”) and the Contractor shall provide to the Councils all such assistance as reasonably requested by the Councils in taking the Required Action. The Councils shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
- 18.4. The Councils shall undertake any Required Action in accordance with Good Industry Practice.
- 18.5. If the Required Action is taken as a result of a breach by the Contractor of its obligations under this Agreement and the taking of such Required Action prevents the Contractor from providing any part of the Services and/or the NWTF Services then, for so long as and to the extent that the Required Action is taken:
- 18.5.1. the Contractor shall be relieved of its obligations to provide that part of the Services and/or the NWTF Services as are affected; and
  - 18.5.2. in respect of the period in which the Councils are taking the Required Action, that part of the Contract Price and/or the NWTF Services Cost due from the Councils to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services and/or the NWTF Services affected by the Required Action in full over that period, less an amount equal to the sum of Councils’ reasonable costs of operation in taking the Required Action and the amount of Deductions arising as a result of the breach.
- 18.6. Where the Councils take the Required Action other than as a result of a breach by the Contractor which prevents the Contractor from providing any part of the Services and/or the NWTF Services then, for so long as and to the extent that the Required Action is taken:
- 18.6.1. the Contractor shall be relieved from its obligations to provide such part of the Services and/or the NWTF Services as are affected; and
  - 18.6.2. in respect of the period in which the Councils is 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 that incremental costs are incurred) that part of the Contract Price and/or the NWTF Services Cost due from the Councils to the Contractor shall equal the amount the Contractor would receive if it were satisfying all

its obligations and providing the Services and/or NWTF Services affected by the Required Action in full over that period.

## **CHARGES AND PAYMENT**

### **19. Contract Price**

- 19.1. In consideration of the provision of the Services by the Contractor, the Councils shall from the Services Commencement Date pay the Contractor in respect of each Month (subject to a pro rata adjustment in respect of any Month of less than one calendar month's duration at the beginning or end of the Term) the Monthly Payment determined from time to time in accordance with Schedule 4 (Payment Mechanism).
- 19.2. In addition, the Contract Price may be amended by agreement between the Parties as a consequence of the Change Control Procedure. No other sums shall be due to the Contractor from the Councils in connection with the Services.

### **20. NWTF Services Cost**

- 20.1. In consideration of the provision of the NWTF Services by the Contractor, the Councils shall from the Services Commencement Date pay the Contractor in respect of each Month (subject to a pro rata adjustment in respect of any Month of less than one calendar month's duration at the beginning of the Term) the NWTF Services Cost determined from time to time in accordance with Schedule 14 (NWTF Services).
- 20.2. In addition, the NWTF Services Cost may be amended by agreement between the Parties by a deed of variation as described in Schedule 14.

### **21. Reports, Invoicing and Payment**

#### **21.1. Contractor to Issue Monthly Report and Invoices**

- 21.1.1. Within ten (10) Business Days after the last day of each Month during the Term the Contractor shall provide to the Councils a Monthly Report in the form set out in Schedule 11 (Reporting) setting out the calculation of the Monthly Payment claimed by the Contractor for the Month after the application of any Monthly Adjustments and all other deductions the Councils are entitled to make in accordance with this Agreement.
- 21.1.2. 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.
- 21.1.3. Within ten (10) Business Days after the last day of each Month during the NWTF Term the Contractor shall invoice the Councils for the NWTF Services Cost in the form set out in Schedule 14 (NWTF Services) setting out the cost, overheads, indexation and mark up for the Month.

- 21.1.4. The Contractor shall submit with each invoice for NWTF Services Cost a detailed cost break down schedule itemising cost items, calculation of the mark-up and documentary evidence for any cost items greater than £10,000 (or such other value as may be agreed by the Parties).
- 21.1.5. Each invoice for NWTF Services Cost submitted by the Contractor shall be accompanied by a valid VAT invoice from the Contractor to the Councils in the amount properly chargeable to VAT.
- 21.1.6. The Councils acknowledge that the Contractor shall be entitled to raise invoices after the expiry of the Term and/or NWTF Term in respect of Services and/or NWTF Services provided during the Term (including, without limitation, where invoices are delivered to the Contractor by Sub-Contractors after expiry of the Term and/or NWTF Term).

## **21.2. Councils' Authorised Officer to Reply by Issuing Councils' Monthly Reply**

Within five (5) Business Days of receiving the Monthly Report the Councils shall provide to the Contractor the Councils' Monthly Reply which shall state:

- 21.2.1. whether or not the Councils agree with the Monthly Report; and
- 21.2.2. 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 Month together with evidence to support such opinion.

## **21.3. 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.

## **21.4. 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.

## **21.5. 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.



#### **21.6. Councils Disagree with NWTF Services Cost**

If the Councils notify the Contractor that the Councils disagree with an invoice for NWTF Services Cost including the detailed cost break down schedule itemising cost items and calculation of the mark-up, the Contractor shall take proper account of such objection and shall thereupon as soon as practicable and in any event within (10) Business Days of receipt of the Councils' notification modify such invoice or refer the issue for determination in accordance with clause 30 (Dispute Resolution).

#### **21.7. Referral to Dispute Resolution Procedure**

21.7.1. Without prejudice to either Party's right to refer any dispute to adjudication at law, if the Councils and the Contractor do not agree on the amount of any Monthly Payment on or before the fourteenth (14) Business Day after submission of the Councils' Monthly Reply either Party may refer such dispute for determination in accordance with clause 30 (Dispute Resolution).

21.7.2. Following resolution of the dispute under either clause 21.7.2 or 21.7.3 the amount agreed or adjudged to be due shall be treated as not in dispute and shall, together with interest thereon at 4% above the base rate of the Bank of England calculated on a daily basis from the day after the date on which the Monthly Payment invoice was due but for the dispute until the date of payment of the disputed amount, be paid by the Councils within five (5) Business Days of receipt by the Councils of a valid VAT invoice in respect thereof.

#### **21.8. Councils to Pay Undisputed Amounts (Monthly Payment)**

21.9. Notwithstanding any such dispute as referred to in clause 21.6 (Referral to Dispute Resolution Procedure) the Councils shall pay the undisputed amount on or before the date which is ten (10) Business Days after the Monthly Report was submitted pursuant to clause 21.1.1, clause 21.5 or clause 21.6 (the "Due Payment Date") and the final date for payment shall be seven (7) Business Days thereafter.

#### **22. Not Used**

#### **23. Deductions**

23.1. If the Contractor fails to meet the performance levels specified in Schedule 2 the Contractor shall incur the Deductions in accordance with Schedule 2.

#### **STAFF**

#### **24. Contract Manager and Councils' Authorised Officer**

24.1. The Contractor shall appoint a Contract Manager who shall be responsible for matters allocated to him under this Agreement and who shall be the principal point of contact for the Contractor. The first Contract Manager shall be **Will Spurr** of Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire, Mk1 1BU and in the event he is replaced, the Contractor shall ensure that the Councils have the opportunity to be involved in the

selection of any successors. All communications, documentation, notices and materials relating to this Agreement and sent or provided to the Contractor shall be marked for the attention of the Contract Manager.

- 24.2. The Councils shall appoint a Councils' Authorised Officer who shall be responsible for the Services and the NWTF Services from the perspective of the Councils. The first Councils' Authorised Officer shall be Claire Brailsford of County Hall, Matlock, DE4 3AG. The Councils' Authorised Officer shall have authority to act on behalf of the Councils in relation to the Services and the NWTF Services. The Councils' Authorised Officer shall be entitled to appoint deputies to act on his behalf and shall provide details of any appointed deputy/deputies to the Contractor. References in this Agreement to the Councils' Authorised Officer shall be deemed to include his deputy.
- 24.3. The Contract Manager and the Councils' Authorised Officer shall have the authority to act on behalf of their respective Parties on the matters for which they are expressed to be responsible. Without limitation, they shall be responsible for:
  - 24.3.1. co-ordinating the performance of the Services and the NWTF Services, including the overseeing the conduct and quality thereof;
  - 24.3.2. arranging and attending (personally or by representative) progress and review meetings as described in clause 27 (Reporting and Meetings); and
  - 24.3.3. using reasonable endeavours to resolve issues arising under this Agreement save that they shall refer all disputes which are outside their ordinary authority to resolve to appropriate members of their senior management in accordance with the provisions of clause 30 (Dispute Resolution).
- 24.4. The Contractor shall ensure that the role of Contract Manager is not vacant (in terms of a permanent representative) for more than thirty (30) Business Days. Any replacement shall be suitably qualified and fully competent to carry out the tasks assigned to the Contract Manager whom he/she has replaced. A temporary replacement shall be identified as soon as practicable to ensure there is always a Contract Manager in post. The Contract Manager shall be employed by the Contractor solely in relation to this Agreement.
- 24.5. The Contractor shall notify the Councils of the identity, qualifications and experience of its Contract Manager.
- 24.6. The Councils may request in writing that the Contractor removes, or procures the removal of, its Contract Manager if in the reasonable opinion of the Councils the Contract Manager is not carrying out his duties with all due professionalism, care and attention. The Contractor shall promptly consider the request and so long as the removal is consistent with the Contractor's employment policies and procedures, the Contractor shall remove, or procure the removal of, its Contract Manager.
- 24.7. If the Contractor replaces the Contract Manager for any reason the cost of effecting such replacement shall be borne by the Contractor.

- 24.8. If the Contractor appoints a deputy Contract Manager the Contractor shall also notify the Councils of the identity, qualifications and experience of such person.

**25. Contractor's Personnel**

- 25.1. At all times, the Contractor shall ensure that:

- 25.1.1. each of the Contractor's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services and the NWTF Services in respect of which he is engaged;
- 25.1.2. there is an adequate number of Contractor's Personnel to provide the Services and the NWTF Services properly;
- 25.1.3. the Contractor's Personnel are adequately supervised and are informed of, and are discharging their duties in accordance with, the terms of this Agreement;
- 25.1.4. the Contractor's Personnel comply with all policies (including policies of the Councils) and Laws in relation to their discharge of the Services and the NWTF Services; and
- 25.1.5. only those people who are authorised by the Contractor are involved in providing the Services and/or the NWTF Services.

- 25.2. The Councils' Authorised Officer may, after due consideration of all the relevant circumstances, request that the Contractor, by notice in writing citing reasons, removes any of the Contractor's Personnel who the Councils reasonably decide have failed to carry out their duties with reasonable skill, or in any other respect is engaged in providing the Services and/or the NWTF Services contrary to the requirements of clause 25.1. Following the removal of any of the Contractor's Personnel for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary qualifications, training and skills to meet the requirements for the provision of the Services and/or the NWTF Services at no additional cost to the Councils.

- 25.3. The Contractor shall maintain up-to-date personnel records on those Contractor's Personnel employed directly by the Contractor and/or H W Martin Limited engaged in the provision of the Services and the NWTF Services and shall provide such information to the Councils as the Councils reasonably requests on the Contractor's Personnel. The Contractor shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Laws.

- 25.4. The Contractor shall use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services and the NWTF Services is at least as good as the prevailing industry norm for similar services, locations and environments.

## **26. TUPE**

The Parties agree that the provisions of Schedule 7 shall apply to any Relevant Transfer of staff under this Agreement.

## **CONTRACT MANAGEMENT**

### **27. Reporting and Meetings**

- 27.1. The Contract Manager shall be contactable by telephone and by email (on numbers and email addresses previously provided to the Councils) at all times during normal business hours on each Business Day and outside such hours if required to ensure the proper performance of the Services and the NWTF Services. In the event the Contractor appoints a deputy contract manager the Contractor shall also inform the Councils' Authorised Officer of such person's contact details.
- 27.2. Without relieving the Contractor of any liability or obligation under this Agreement the Contract Manager shall follow the reasonable instructions of any Councils' Authorised Officer in relation to each of the Services, the NWTF Services and this Agreement generally.
- 27.3. The Contract Manager shall inform the Councils' Authorised Officer in writing within the timescales provided for in the Specification of becoming aware of any instances which prevent or unreasonably hinder or may prevent or unreasonably hinder the Contractor from meeting its obligations under this Agreement, or if there is no specific time specified in the Specification for the particular instance, then within 24 hours of becoming aware of the same.
- 27.4. The Contractor shall comply with the provisions of Schedule 5 (Contract Management) and Schedule 11 (Reporting) relating to the Services.
- 27.5. The Contractor shall comply with reporting obligations specified in Schedule 14 (NWTF Services) relating to the NWTF Services.

### **28. Monitoring by the Councils**

- 28.1. In addition to the monitoring carried out by the Contractor, the Councils, without prejudice to any other right or remedy the Councils may have, shall be entitled to monitor the performance of the Services and/or the NWTF Services by the Contractor.
- 28.2. The Contractor shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Councils in carrying out such monitoring at no additional charge to the Councils.
- 28.3. The Councils may increase the extent to which it monitors the Contractor's performance of the Services and/or the NWTF Services if the Contractor fails to meet the Performance Standards, fails to fulfil its obligations specified in Schedule 14 (NWTF Services) or fails to fulfil its other obligations under this Agreement. The Councils' Authorised Officer shall notify the Contractor of the Councils' intention to increase the level of its monitoring and the Contractor shall bear its own costs in complying with such monitoring.

## 29. Change Control

- 29.1. Any Change shall be subject to the Change Control Procedure provided that Changes which:
- 29.1.1. would cause any Necessary Consents to be revoked (or a new consent required to implement the relevant change to the Services to be unobtainable);
  - 29.1.2. requires the Services or NWTF Services to be performed in a way that infringes any applicable Laws or is inconsistent with Good Industry Practice;
  - 29.1.3. would (if implemented) materially change the Services or would otherwise amount to the award of a new contract under regulation 72 of the Public Contracts Regulations 2015; or
  - 29.1.4. would require implementation in an unreasonable period of time,
- are not permitted.
- 29.2. Any potential Change highlighted as a result of the Contractor's reporting in accordance with clause 29.2 shall be addressed by the Parties using the Change Control Procedure.
- 29.3. Any minor change to the exact extent of the Services shall be implemented by reference to the Payment Mechanism and shall not constitute a Change that needs to be determined in accordance with the Change Control Procedure.

### 29A Brexit Change in Law

- 29A.1 If a Change of Law occurs or is shortly to occur, then the Contractor may write to the Councils to express an opinion on its likely effects giving full details of:
- 29A.1.1 any necessary change to the Services and/or NWTF Services;
  - 29A.1.2 whether any changes are required to the terms of this Agreement;
  - 29A.1.3 whether relief from compliance with the Contractor's obligations is required; and
  - 29A.1.4 any change to the Contract Price.

in each case giving full details of the procedures for implementing the change ("**Change Request**").

- 29A.2 As soon as practicable after receipt of a Change Request from the Contractor under clause 29A.1, the Parties shall discuss and agree the issues referred to in clause 29A.1 including ways in which the Parties can reasonably mitigate the effect of the Change in Law.

- 29A.3 Where the Contractor makes a Change Request relating to clause 26A.1.4, the Contractor shall:
- 29A.3.1 provide evidence that the Contractor has used reasonable endeavours to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
  - 29A.3.2 demonstrate how any change to the Contract Price to be incurred has been measured in a cost effective manner;
  - 29A.3.3 demonstrate how any change to the NWTF Service Cost to be incurred has been measured in a cost effective manner;
  - 29A.3.4 provide evidence as to how the Change in Law has affected prices charged by similar businesses delivering similar Services and/or NWTF Services;
  - 29A.3.5 demonstrate any expenditure that has been or will be avoided, which is anticipated to be incurred as a result of a Change in Law;
- 29A.4 Any changes to the terms of this Agreement agreed by the Parties relating to or as a result of a Change in Law shall be documented through a Change Control Note.
- 29A.5 Where the Parties cannot agree on any changes requested by a Party under clause 29.A.1, the Change Request shall be determined under clause 30 (Dispute Resolution).
- 29A.6 Until such time as a Change Request is determined, the Parties shall continue to perform their obligations as set out in this Agreement.

## **29B NWTF Services**

- 29B.1 Either Party may submit to the other Party a proposal at any time during the Term for the addition of further NWTF Services in accordance with the process set out in Schedule 14.
- 29B.2 Clause 29 shall not apply to the addition of further NWTF Services.
- 29B.3 Where the Parties agree for the addition of further NWTF Services during the Term of this Agreement, such a change shall be effected by a deed of variation.

## **30. Dispute Resolution**

- 30.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it including in connection with the Services and/or the NWTF Services ("**Dispute**") then, the Parties shall follow the procedure set out in this clause:

- 30.1.1. either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with relevant supporting documents. On service of the Dispute Notice, the Councils’ Authorised Officer and the Contract Manager shall attempt in good faith to resolve the Dispute;
  - 30.1.2. if the Councils’ Authorised Officer and Contract Manager are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice (or sooner at the discretion of the Councils), the Dispute shall be referred to an Executive Director (or equivalent) of either Council and the Contractor’s Managing Director who shall attempt in good faith to resolve it; and
  - 30.1.3. if an Executive Director (or equivalent) of either Council and the Contractor’s Managing Director are for any reason unable to resolve the Dispute within 30 days of it being referred to them, such dispute may be referred, by agreement between the Parties, to a single independent expert. The independent expert shall be selected by mutual agreement or, failing such agreement within 21 days, shall be selected by the appropriate professional body in accordance with clause 30.2. Decisions of the independent expert shall be final and binding. The fees of the independent expert shall be borne by the Parties in such proportions as may be determined by the independent expert or, if the expert declines to make a decision, equally.
- 30.2. For the purposes of clause 30.1.3, the appropriate professional body shall be:
- 30.2.1. in the case of a dispute relating to clauses 19 to 23 inclusive and Schedule 2 and Schedule 4, the Institute of Chartered Accountants in England and Wales (or any successor body);
  - 30.2.2. in the case of a dispute in connection with the provision of the Services, the NWTF Services or the Specification, the Chartered Institute of Waste Management (or any successor body); and
  - 30.2.3. in the case of all other disputes, the Law Society of England and Wales or such other professional body as designated or recommended by it.
- 30.3. If either the Councils or the Contractor does not agree with any dispute being referred for resolution in accordance with this clause 30, then the dispute shall be determined by the courts in accordance with clauses 57 and 58.
- 30.4. The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute.

### **31. Sub-Contracting and Assignment**

- 31.1. The Contractor shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the Councils not to be unreasonably withheld or delayed. Subject to clause 31.1A the Contractor may not sub-contract the whole or any part

of its obligations under this Agreement except with the express prior written consent of the Councils not to be unreasonably withheld or delayed.

#### 31.1A

- 31.1A.1. The Councils note that, as at the date of this Agreement, the Contractor has entered into, or intends to enter into the following sub-contracts and, for the purposes of clause 31.1 confirms that it consents to such sub-contracts:

##### Services

HW Martin Waste Ltd
FCC Waste Services UK Ltd
Stanton Recycling Ltd
Willshee
SRCL
Veolia ES UK Ltd
Viridor
2ZLF
AWM
MidUK
AmeyCespa
CSWDC
City Of Stoke
Tarmac UK
Lancashire Waste Ltd
Mercia Waste Mgt Ltd
Transwaste Ltd

##### NWTF Services

Weir
Castle Environmental
Johnston Aggregates



Augean UK
PWP
Veolia
AMCS
GM Treble
Nalco
Veolia
System UVEX Ltd
RSM
Dunphy
Bronswerk
TMS
Quartzelec
Ambitermo
PJD
RSM
Boultings
Croboride
C Jensen Filtration
Control Valve Services
Comid
KSB
Vesuvius
Capes
Ingersol Rand
Hach Lange Ltd
Zurich

British Engineering Services
Doncaster Maintenance UK Ltd
Protec Camerfield
TYCO
Alder & Allen
Avery IWT
Baileys
Churchill
Derby City Council
Schindler
Reliance High Tech
OCS
Buckingham Plant Hire
Schneider
Siemens
Western Power Dist
ABB
DP Clean Tech
ECL
Keytec
Entsorga
Air Spectrum Environmental
Bonfanti
Kone
Bivitech
Entsorga
IFE Aufbereitungstechnik GmbH

METSO Denmark A/S
Okay Engineering
RMR Control & Automation Ltd
TOMRA Sorting Ltd
Pellenc
Entsorga
H&M Disinfection
Pirtek Nottingham Ltd
Rainham Industrial Services Ltd
Gilgen
British Engineering Services
Sulzer Dowding & Mills
Interbelt
Crowcon detection
Honeywell (BW Microclip)
Endress & Hauser Ltd
Aggreko UK
Brammer Ltd
Edmundson Electrical Ltd
GHD
Wernick Hire
Mason Electronics
Wiers Turbines
Johnsons
Air Spectrum Environmental
Quattro Plant
Severn Trent

E.on
Npower
Castle
Marchwood Scientific Services
Lahoist
CPL
H&M Disinfection
Jet Vac Systems Ltd
Watson Petroleum Ltd T/A Hall Fuels
NBC Bird & Pest Solutions Ltd
Alcontrol UK Ltd
Alder & Allen
Signs Express Derby
Severn trent
BOC
Johnsons Apparel Master
Nalco
CBISS
GE
Suez
Nalco
Quartzelec, TMS
Thomsons, PJD, Tibbs
Atlas Engineering, Roltech
Furmanite, Multiplex
Additional Supplier
York Linnings,Mokesa,Cobb

Rainham, SGB
ACE, Atlas Copco
Swan Analytical, Nalco, Endress & Hauser
Zurich, Allianz
Tyco, Crowcon
Protec
Intech Environmental, Lanes for drains, Dynorod
Ladybird
Spec
MJ Wilson, PI Sales
APPS (UK) Ltd, Probe
Granada
Novartis Animal Health
Ecopest
Assured
Intech Environmental

- 31.1A.2. The Councils confirm their approval to any Sub-Contract which is let to any party set out in the Service Delivery Plan; and
- 31.1A.3. The provisions of clause 31.1 shall not apply to any Sub-Contract let by the Contractor which is not a Key Sub-Contract.
- 31.2. In the event that the Contractor enters into any Sub-Contract in connection with this Agreement it shall:
- 31.2.1. remain responsible to the Councils for the performance of its obligations under the Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- 31.2.2. not used; and
- 31.2.3. provide a copy, at no charge to the Councils, of any such Sub-Contract promptly on receipt of a request for such by the Councils' Authorised Officer (with commercially confidential material being redacted).

- 31.3. The Councils shall be entitled to novate this Agreement to any other body which substantially performs any of the functions that previously had been performed by the Councils.
- 31.4. Subject to the prior written consent of the Councils, the Contractor shall be entitled to novate the agreement where there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under this Agreement and 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 this Agreement.

## LIABILITY AND INSURANCE

### 32. Liability

- 32.1. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement or otherwise in connection with the Services and/or the NWTF Services.
- 32.2. Subject to clause 32.3, neither Party shall be liable to the other (as far as permitted by Law) for any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect or for indirect special or consequential loss or damage in connection with this Agreement.
- 32.3. Subject to clause 32.5, the Contractor's total aggregate liability:
  - 32.3.1. is unlimited in respect of:
    - 32.3.1.1. the indemnities in Schedule 7;
    - 32.3.1.2. any criminal act committed by the Contractor or any of the Contractor Personnel; and
    - 32.3.1.3. the Contractor's wilful default;
  - 32.3.2. in respect of all other claims, including in respect of:
    - 32.3.2.1. termination of this Agreement;
    - 32.3.2.2. claims, losses or damages which are covered by the insurances required pursuant to clause 33, to each relevant insurance level specified;
    - 32.3.2.3. claims losses or damages, whether arising from tort (including negligence), breach of contract or otherwise in connection with this Agreement

is limited, in the aggregate, to £500,000 in each Contract Year for the Term and/or £100,000 of the NWTF Services Cost in each Contract Year of the NWTF Term.

32.4. Subject to clause 32.5, the Councils' maximum aggregate liability to the Contractor for all claims arising for any act, omission or breach of this Agreement shall not in any circumstances exceed five hundred thousand pounds (£500,000) in each Contract Year. For the avoidance of doubt the limitation in this clause 32.4 shall not apply to the payments required to be made by the Councils under this Agreement in consideration for the provision of the Services and/or NWTF Services.

32.5. Notwithstanding any other provision of this Agreement neither Party limits or excludes its liability for:

32.5.1. fraud or fraudulent misrepresentation;

32.5.2. death or personal injury caused by its negligence; or

32.5.3. any other act or omission, liability for which may not be limited under any Law,

and the Councils do not limit or exclude their liability pursuant to Schedule 7 or clause 33.5.

### **33. Insurance**

#### **Insurance (Services)**

33.1. The Contractor shall at the cost of the Councils in accordance with the mechanism contained in Schedule 4 (Payment Mechanism) take out and maintain during the Term with reputable insurance company or companies a policy or policies of insurance to cover its liabilities that may incur in connection with the Services and this Agreement generally and which, as a minimum, provide the following levels of cover:

33.1.1. public liability insurance with a limit of indemnity of not less than £25 million in relation to any one claim or series of claims;

33.1.2. insurance to cover the full replacement cost of the Equipment;

33.1.3. property damage insurance and business interruption as specified in Part A of Schedule 13 (Insurance);

33.1.4. environmental impairment liability insurance as specified in part B of Schedule 13 (Insurance);

33.1.5. employer's liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims;

33.1.6. motor third party liability insurance; and

33.1.7. all insurances which may be required by Law from time to time including as at the date of this Agreement.

### **Insurance (NWTF Services)**

- 33.2. The Contractor shall at the cost of the Councils in accordance with Schedule 14 (NWTF Services) take out and maintain during the NWTF Term with reputable company or companies a policy or policies of insurance to cover its liabilities that may incur in connection with the NWTF Services and this Agreement generally and which, as a minimum, provide the following levels of cover:
- 33.2.1. construction third party liability insurance as specified in Part C of Schedule 13; and
  - 33.2.2. environmental impairment liability insurance for the Sinfin Site only as specified in Part C of Schedule 13 (Insurance)
- 33.3. The Insurances (in connection with the Services and the NWTF Services) shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor providing services of a similar nature to the Services and the NWTF Services in respect of risks insured in the international insurance market from time to time.
- 33.4. The Contractor shall ensure that the public liability policy shall contain an indemnity to principals clause under which the Councils shall be indemnified in respect of claims made against the Councils in respect of death or bodily injury or third party property damage arising out of or in connection with:
- 33.4.1. the Services,
  - 33.4.2. the NWTF Services
- for which the Contractor is legally liable.

### **Insurance Deductible**

- 33.5. For such period of time during the Term where the deductible for an Insurance is less than the maximum contractual deductible for such Insurance specified in Schedule 13 ("Insurance Deductible Deficiency") the Councils shall indemnify the Contractor on demand in respect of any and all losses, liabilities, costs or expenses incurred by the Contractor including in respect of claims made against the Contractor by Insureds (as specified in Schedule 13) arising from such Insurance Deductible Deficiency provided that the Council's liability under this clause 33.5 shall be limited to £750,000 arising out of each and every claim.
- 33.6. Notwithstanding the obligation specified at clause 33.5:
- 33.6.1. the Councils shall have the right to take such action necessary including requiring the Contractor to obtain insurance quotes available on the open market to reduce the Insurance Deductible Deficiency during the Term;



- 33.6.2. in respect of any damage or loss caused by the Contractor or any of its Sub-Contractors, the indemnity in this clause 33.5 shall be without prejudice to the Councils' rights pursuant to clause 12.
- 33.7. Without limiting the other provisions of this Agreement, the Contractor shall:
  - 33.7.1. take or procure the taking of all reasonable risk management and risk control measures in relation to the Services and the NWTF Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 33.7.2. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Contractor is or becomes aware; and
  - 33.7.3. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
- 33.8. The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 33.9. Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
  - 33.9.1. if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Councils:
    - 33.9.1.1. details of the policy concerned; and
    - 33.9.1.2. its proposed solution for maintaining the minimum limit of indemnity specified; and
  - 33.9.2. if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Contractor shall:
    - 33.9.2.1. ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or
    - 33.9.2.2. if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity

specified, immediately submit to the Councils full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

- 33.10. Prior to the Services Commencement Date, and thereafter promptly following a request to do so, the Contractor shall provide evidence, in a form satisfactory to the Councils, that the Insurances are in force and effect and meet in full the requirements of this clause 33. Receipt of such evidence by the Councils shall not in itself constitute acceptance by the Councils or relieve the Contractor of any of its liabilities and obligations under this Agreement.
- 33.11. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this clause, the Councils may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 33.12. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement.

## **INFORMATION**

### **34. Freedom of Information**

- 34.1. The Contractor acknowledges that the Councils is subject to the requirements of the FOIA and the EIR and shall:
  - 34.1.1. provide all necessary assistance and cooperation as reasonably requested by the Councils to enable the Councils to comply with its obligations under the FOIA and the EIR;
  - 34.1.2. transfer to the Councils all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
  - 34.1.3. provide the Councils with a copy of all Information belonging to the Councils requested in the Request for Information which is in its possession or control in the form that the Councils requires within 5 Business Days (or such other period as the Councils may reasonably specify) of the Councils' request for such Information; and
  - 34.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the Councils.
- 34.2. The Contractor acknowledges that the Councils may be required under the FOIA and the EIR to disclose Information concerning the Contractor, the Services and/or the NWTF Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Councils shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- 34.3. Notwithstanding any other provision in the Agreement, the Councils shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor, the Services and/or the NWTF Services is exempt from disclosure in accordance with the FOIA and/or the EIR.

## **Data Protection**

### **35. Data Processing**

- 35.1. Where the Contractor, pursuant to this agreement, processes Personal Data on behalf of the Councils, the Contractor acknowledges that the Councils are the Data Controllers and the owner of such Personal Data, and that the Contractor is the Data Processor.

### **36. Compliance with Data Protection Laws**

- 36.1. The Data Processor warrants that it has complied, and shall continue to comply, with the requirements of the applicable Data Protection Laws and all other data protection legislation in any jurisdiction relevant to the exercise of its rights or the performance of its obligations under this agreement.

### **37. Data Processing Obligations**

- 37.1. In respect of any Personal Data to be processed by the Data Processor pursuant to this Agreement for which the Councils are Data Controllers, the Data Processor shall:
- 37.1.1. have in place and at all times maintain appropriate technical and organisational measures in such a manner as is designed to ensure the protection of the rights of the data subject and to ensure a level of security appropriate to the risk and shall implement any reasonable security measures as requested by the Councils from time to time;
  - 37.1.2. not engage any sub-processor without the prior specific or general written authorisation of the Councils (and in the case of general written authorisation; the Data Processor shall inform the Councils of any intended changes concerning the addition or replacement of other processors and the Councils shall have the right to object to such changes);
  - 37.1.3. ensure that each of the Data Processor's employees, agents, consultants, Sub-Contractors and sub-processors are made aware of the Data Processor's obligations under this Schedule and enter into binding obligations with the Data Processor to maintain the levels of security and protection required under the Data Protection clauses in this Agreement. The Data Processor shall ensure that the terms of this Schedule are incorporated into each agreement with any sub-processor, subcontractor, agent or consultant to the effect that the sub-processor, subcontractor, agent or consultant shall be obligated to act at all times in accordance with duties and obligations of the Data Processor under this Schedule. The Data Processor shall at all times be and

remain liable to the Councils for any failure of any employee, agent, consultant, subcontractor or sub-processor to act in accordance with the duties and obligations of the Data Processor under this Schedule;

- 37.1.4. process that Personal Data only on behalf of the Councils in accordance with the Councils' instructions and to perform its obligations under this agreement or other documented instructions and for no other purpose save to the limited extent required by law;
- 37.1.5. (at no additional cost to the Councils) within 7 days following the end of the term of this agreement, deliver to the Councils (in such format as the Councils may require) a full and complete copy of all Personal Data, and, following confirmation of receipt from the Councils, permanently remove the Personal Data (and copies) from the Data Processor's systems, and the Data Processor shall certify to the Councils that it has complied with these requirements, and such Personal Data shall remain confidential in perpetuity;
- 37.1.6. ensure that all persons authorised to access the Personal Data are subject to obligations of confidentiality and receive training to ensure compliance with this agreement and the Data Protection Laws;
- 37.1.7. make available to the Councils all information necessary to demonstrate compliance with the obligations laid out in Article 28 of GDPR and allow for and contribute to audits, including inspections, conducted by the Councils or another auditor mandated by the Councils, of the Data Processor's data processing facilities, procedures and documentation (and the facilities, procedures and documentation of any sub-processors) in order to ascertain compliance with the Data Protection clauses in this Agreement, within 5 Business Days of request by the client and, following any such audit, without prejudice to any other rights of the Councils, the Data Processor shall implement such measures which the Councils considers reasonably necessary to achieve compliance with the Data Processor's obligations under this Schedule; provided that, in respect of this provision the Data Processor shall immediately inform the Councils if, in its opinion, an instruction infringes Data Protection Laws;
- 37.1.8. taking into account the nature of the processing, provide assistance to the Councils, within such timescales as the Councils may require from time to time, in connection with the fulfilment of the Councils' obligation as Data Controller to respond to requests for the exercise of data subjects' rights pursuant to Chapter III of the GDPR to the extent applicable;
- 37.1.9. provide the Councils with assistance in ensuring compliance with articles 32 to 36 (inclusive) of the GDPR (concerning security of processing, data breach notification, communication of a personal data breach to the data subject, data protection impact assessments, and prior consultation with supervisory authorities)

to the extent applicable to the Councils, taking into account the nature of the processing and the information available to the Data Processor;

- 37.1.10. (at no additional cost to the Councils) deal promptly and properly with all enquiries or requests from the Councils relating to the Personal Data and the data processing activities, promptly provide to the Councils in such form as the Councils may request, a copy of any Personal Data requested by the Councils;
- 37.1.11. (at no additional cost to the Councils) assist the Councils (where requested by the Councils) in connection with any regulatory or law enforcement authority audit, investigation or enforcement action in respect of the Personal Data;
- 37.1.12. immediately notify the Councils in writing about:
  - 37.1.12.1. any Data Breach or any accidental loss, disclosure or unauthorised access of which the Data Processor becomes aware in respect of Personal Data that it processes on behalf of the Councils;
  - 37.1.12.2. any request for disclosure of the Personal Data by a law enforcement authority (unless otherwise prohibited);
  - 37.1.12.3. any access request or complaint received directly from a data subject (without responding other than to acknowledge receipt).
- 37.1.13. maintain a record of its processing activities in accordance with Article 30 of the GDPR;
- 37.1.14. process Personal Data only in accordance with the details set out in the Data Processing Table and/or any Information Sharing Protocol as amended by the Councils by notice in writing (acting reasonably) from time to time to reflect changes to the Services and/or the NWTF Services or the way in which they are delivered; and
- 37.1.15. indemnify the Councils against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Councils or for which it may become liable as a result of or in connection with any failure of the Data Processor, its employees, agents, consultants, subcontractors or sub-processors to comply with this Schedule.

### **38. International Data Transfers**

- 38.1. In respect of any Personal Data to be processed by a Party acting as Data Processor pursuant to this agreement for which the other Party is Data Controller, the Data Processor shall not transfer the Personal Data outside the EEA or to an international organisation without:

- 38.1.1. obtaining the written permission of the Data Controller;
- 38.1.2. ensuring appropriate levels of protection, including any appropriate safeguards if required, are in place for the Personal Data in accordance with the Data Protection Laws;
- 38.1.3. notifying the Data Controller of the protections and appropriate safeguards in paragraph 4.1.2 above;
- 38.1.4. documenting and evidencing the protections and appropriate safeguards in paragraph 4.1.2 above and allowing the Data Controller access to any relevant documents and evidence.

### 39. Details of Processing Activities

39.1. The following table sets out the details of processing as required by Article 28 of GDPR:

<b>Purposes for which the Personal Data shall be processed</b>	To enable the Data Processor to: <ul style="list-style-type: none"> <li>• provide the Services and/or the NWTF Services effectively;</li> <li>• fulfil its contractual obligations under this Agreement;</li> <li>• enable the Councils to discharge their obligations as waste disposal authorities for their respective areas.</li> </ul>
<b>Description of the categories of the data subjects</b>	Users of HWRCs Constituents of the Councils Customers Suppliers Educational/Community contacts
<b>Description of the categories of Personal Data</b>	Name, address, telephone, email Vehicle registration numbers Tachograph data Images Chargeable transaction data Medical data (site incidents)
<b>Description of transfers of Personal Data to a country outside of the EEA</b>	None

<b>The envisaged time limits for erasure of the different categories of Personal Data</b>	Personal data shall only be processed for the period necessary to enable provision of the Services and/or the NWTF Services or to comply with statutory obligation
<b>General description of technical and organisational security measures</b>	System access controls; data access controls; input controls; data back ups, training for staff on security measures and compliance with the Data Protection Laws.
<b>Authorised Sub-Processors</b>	H W Martin Waste Limited

#### **40. Confidentiality and Transparency**

40.1. Subject to clause 40.2, each Party shall:

- 40.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 40.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

40.2. Notwithstanding clause 40.1 a Party may disclose Confidential Information which it receives from the other Party:

- 40.2.1. where disclosure is required by applicable law or by a court of competent jurisdiction;
- 40.2.2. to its auditors or for the purposes of regulatory requirements;
- 40.2.3. on a confidential basis, to its professional advisers;
- 40.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 40.2.5. where the receiving party is the Contractor, to the Contractor's Personnel on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Contractor's Personnel to whom it discloses Confidential Information pursuant to this clause 40.2.5 shall observe the Contractor's confidentiality obligations under the Agreement; and
- 40.2.6. where the receiving party is the Councils:

40.2.6.1. on a confidential basis to the employees, agents, consultants and contractors of the Councils;

40.2.6.2. on a confidential basis to any successor body or organisation to which the Councils transfers or proposes to transfer all or any part of its functions; or

40.2.6.3. to the extent that the Councils (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement, employment contract or arrangement containing terms no less stringent than those placed on the Councils under this clause 40.

40.3. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of the Agreement is not Confidential Information and notwithstanding any other provisions in this Agreement the Contractor hereby gives its consent for the Councils to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Councils may consult with the Contractor to inform its decision regarding any redactions but the Councils shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA and/or the Local Government Transparency Code 2014.

40.4. On or before the Termination Date the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Councils' employees, rate-payers or service users are delivered up to the Councils.

#### **41. Audit**

41.1. The Contractor shall assist representatives of the Councils with any audit process or investigation by allowing them unrestricted access to any records held by the Contractor, for example documentation, files, statements, literature or any other similar material, in whatever form relating to the carrying out of the Services and/or the NWTF Services, including access to any premises in which such material is stored, processed or otherwise kept. Such representatives shall also be entitled to take copies of any and all documentation and to access and copy computer data which is or appears (acting reasonably) to be relevant to the Services and/or the NWTF Services. For the avoidance of doubt the Councils' rights under this clause are subject to its obligations in clause 35.1.

41.2. The Contractor shall allow the Councils' representatives to take statements from any member of the Contractor's Personnel at times within normal working hours in connection with an audit process or investigation. The Contractor shall instruct such Contractor's Personnel to co-operate fully with any audit process or investigation.



- 41.3. The Contractor shall allow any Authorised Officer and any auditors or other advisers to the Councils to access the Contractor's Personnel and to such of the Contractor's records as the Councils may reasonably require to:
- 41.3.1. fulfil any legally enforceable request by any regulatory body;
  - 41.3.2. review compliance of the Services with the Performance Standards and this Agreement generally;
  - 41.3.3. review compliance of the NWTF Services with Schedule 14 and this Agreement generally;
  - 41.3.4. verify the accuracy of the Contract Price (and proposed or actual variations to them in accordance with this Agreement) and/or the costs of all sub-contractors and suppliers;
  - 41.3.5. verify the accuracy and completeness of any management information delivered or required by this Agreement;
  - 41.3.6. review the integrity, confidentiality and security of any data relating to the Councils or any service users;
  - 41.3.7. review the Contractor's compliance with the Data Protection Laws, the FOIA, in accordance with clause 35 (Data Processing) and clause 34 (Freedom of Information) and any other legislation applicable to the Services;
  - 41.3.8. identify any suspected fraud;
  - 41.3.9. review any books of account kept by the Contractor in connection with the provision of the Services and/or the NWTF Services; and/or
  - 41.3.10. carry out the audit and certification of the Councils' accounts.
- 41.4. The Councils shall use their reasonable endeavours to minimise any disruption or delay to the Services and the NWTF Services caused by the conduct of an audit and that, where appropriate possible, individual audits are co-ordinated with each other.
- 41.5. The Councils shall provide to the Contractor no less than five (5) Business Days' written notice of its intention to conduct an audit, save where the audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
- 41.6. The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 41 save that where the audit identifies a material breach of the terms of this Agreement by the Contractor, the Contractor shall reimburse the Councils for the Councils' costs reasonably incurred in the course of the audit.
- 41.7. If an audit identifies that:
- 41.7.1. the Contractor has failed to perform its obligations under this Agreement in any material manner, the Parties shall agree and

implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Councils about the Contract Price, proposed Contract Price or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;

41.7.2. the Councils have overpaid any aspect of the Contract Price, the Contractor shall pay to the Councils the amount overpaid within 30 days of the Councils notifying the Contractor of the findings of the audit. The Councils may deduct the relevant amount from the Contract Price if the Contractor fails to make this payment; and

41.7.3. the Councils have underpaid any aspect of the Contract Price, the Councils shall pay to the Contractor the amount of the under-payment within 30 days of the Councils notifying the Contractor of the findings of the audit.

41.8. In the event the Councils and the Contractor cannot agree the remedial plan required pursuant to clause 41.7 within 10 Business Days of the Councils notifying the Contractor of the findings of the audit either Party shall be entitled to refer the matter to the Dispute Resolution Procedure.

## **42. Intellectual Property**

42.1. Unless agreed otherwise in advance by the Councils in writing, all Intellectual Property Rights created by the Contractor's Personnel:

42.1.1. in the course of performing the Services and the NWTF Services; or

42.1.2. exclusively for the purpose of performing the Services and the NWTF Services, shall vest in the Councils on creation.

42.2. The Contractor shall indemnify the Councils against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights as a result of the provision of the Services and/or the NWTF Services, except to the extent that they have been caused by the Councils' acts or omissions.

## **TERMINATION**

### **43. Termination**

43.1. Without prejudice to any other right or remedy the Councils may have, the Councils may terminate this Agreement in whole or part with immediate effect by the service of written notice on the Contractor in the following circumstances:

43.1.1. if the Contractor is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy the Councils may only terminate this Agreement under this

clause 43.1 if the Contractor has failed to remedy such breach within 28 days of receipt of notice from the Councils to do so;

- 43.1.2. if there is an Insolvency Event;
  - 43.1.3. if there is a change of control of the Contractor within the Term within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Councils reasonably objects;
  - 43.1.4. if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply; and
  - 43.1.5. If any Insurances become Uninsurable at any time during the Term, which is not solely caused by the actions of the Contractor or any Sub-Contractor.
- 43.2. The Councils may terminate this Agreement in accordance with the provisions of clause 44 and clause 45.
- 43.3. If this Agreement is terminated by the Councils in accordance with:
- 43.3.1. clauses 43.1.1 or 43.1.2 or clause 45 such termination shall be at no loss or cost to the Councils and the Contractor, subject to clause 32, hereby indemnifies the Councils against any such losses or costs which the Councils may suffer as a result of any such termination; or
  - 43.3.2. clauses 43.1.3 or 43.1.4 or 43.1.5 such termination shall be without liability to either Party.
- 43.4. The Contractor may terminate this Agreement in the event that the Councils commit a Termination Payment Default by giving 30 days' written notice to the Councils. In the event that the Councils remedy the Termination Payment Default in the 30 day notice period, the Contractor's notice to terminate this Agreement shall be deemed to have been withdrawn.
- 43.5. The Councils may terminate the NWTF Services in the event that the Parties cannot agree on development of the NWTF Services as described in Schedule 14 (NWTF Services) within 3 Months from Service Commencement Date (or on such other date the Parties may agree).

#### **44. Force Majeure**

- 44.1. Subject to the remaining provisions of this clause 44, neither Party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement (and for the avoidance of doubt no Deductions shall accrue) to the extent that such non-performance is due to a Force Majeure.
- 44.2. In the event that either Party is delayed or prevented from performing its obligations under this Agreement by a Force Majeure, such Party shall:
  - 44.2.1. give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement

date and extent of such delay or prevention, the cause thereof and its estimated duration;

- 44.2.2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
- 44.2.3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 44.3. A Party cannot claim relief if the Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.
- 44.4. Not Used.
- 44.5. As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate measures to mitigate the effects of the Force Majeure and to facilitate the continued performance of this Agreement. Where the Contractor is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure in accordance with Good Industry Practice.
- 44.6. The affected Party shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure unless agreed otherwise by the Parties.
- 44.7. The Councils may, during the continuance of any Force Majeure, terminate this Agreement by written notice to the Contractor if a Force Majeure occurs that affects all or a substantial part of the Services and/or the NWT Services and which continues for more than 30 Business Days.

#### **45. Prevention of Bribery**

- 45.1. The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor's Personnel, have at any time prior to the Commencement Date:
  - 45.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and
  - 45.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 45.2. The Contractor shall not during the term of this Agreement:
  - 45.2.1. commit a Prohibited Act; and

- 45.2.2. do or suffer anything to be done which would cause the Councils or any of the Councils' employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 45.3. The Contractor shall during the term of this Agreement:
  - 45.3.1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
  - 45.3.2. keep appropriate records of its compliance with its obligations under clause 41.3.1 and make such records available to the Councils on request.
- 45.4. The Contractor shall immediately notify the Councils in writing if it becomes aware of any breach of clause 45.1 and/or clause 45.2, or has reason to believe that it has or any of the Contractor's Personnel have:
  - 45.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 45.4.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and
  - 45.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 45.5. If the Contractor makes a notification to the Councils pursuant to clause 45.4 the Contractor shall respond promptly to the Councils' enquiries, co-operate with any investigation, including allowing the Councils to audit any books, records and/or any other relevant documentation in accordance with clause 41.
- 45.6. If the Contractor is in Default under clause 45.1 and/or clause 45.2, the Councils may by notice:
  - 45.6.1. require the Contractor to remove from performance of this Agreement any Contractor's Personnel whose acts or omissions have caused the Default; or
  - 45.6.2. immediately terminate this Agreement.
- 45.7. Any notice served by clause 45.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Councils believes has committed the Prohibited Act and the action that the Councils has elected to take (including, where relevant, the date on which this Agreement shall terminate).

## 46. Consequences of Termination

### 46.1. On the expiry of:

46.1.1. the Term; or

46.1.2. the NWTF Term, or

46.1.3. if this Agreement is terminated in whole or in part for any reason

the Contractor shall co-operate fully with the Councils to ensure an orderly migration of the Services (or the relevant part) and/or the NWTF Services (or the relevant part as appropriate) to the Councils or, at the Councils' request, a Replacement Contractor. The Contractor shall at no time take any action during the Term or the NWTF Term or thereafter which is intended, directly or indirectly, to prejudice, disrupt or otherwise frustrate such transfer.

### 46.2. During the final 6 months of the Term or during the period of any notice of termination under this Agreement, and in either case for a period not exceeding 6 months after the Termination Date the Contractor shall fully co-operate in relation to the transfer of the Services and/or where the Termination Date arises during the NWTF Term the NWTF Services and for the purposes of this clause 46.2 the term "co-operate" shall include:

46.2.1. liaising with the Councils and/or a Replacement Contractor, and providing reasonable assistance and advice concerning the Services and the Service Transfer and/or the NWTF Services;

46.2.2. allowing any Replacement Contractor access (at reasonable times and upon reasonable notice) to the Councils' Premises but not to the extent that it may cause interference with the provision of the Services and/or the NWTF Services by the Contractor;

46.2.3. subject to the provisions of clause 40, providing to the Councils and/or to a Replacement Contractor all and any information concerning the Services and/or the NWTF Services which is required for the efficient transfer of responsibility for their performance, including without limitation in relation to the Assets and Equipment, its employees and sub-contractors (which in the case of information concerning employees shall comply with the provisions of Schedule 7);

46.2.4. using all reasonable endeavours to assign or otherwise transfer the benefit of any sub-contract or other contract related to the performance of the Services and/or the NWTF Services; and

46.2.5. where there is a Relevant Transfer as a result of the termination or expiry of this Agreement, complying with the provisions of Schedule 7.

### 46.3. On termination of this Agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Councils before such completion) the Contractor shall procure that all data and other material belonging to the Councils (and all media of any nature containing information and data belonging to the Councils or relating to the Services

and/or the NWTF Services), shall be delivered to the Councils forthwith and the Contract Manager shall certify full compliance with this clause.

- 46.4. The Parties shall comply with clauses 16.4 to clauses 16.6 in relation to the Assets to be transferred to the Councils or a Replacement Contractor on the Termination Date.
- 46.5. Any Deductions to the Councils properly due in accordance with this Agreement and not deducted from an invoice pursuant to clause 18 shall be paid by the Contractor to the Councils within 30 days of an invoice from the Councils for the same.
- 46.6. The provisions of clause 1 (Definitions and Interpretation), clause 6.2 (Performance), clauses 16.3 - 16.6 (Equipment and Assets), clause 21 (Reports, Invoicing and Payment), ) clause 23 (Deductions), clause 26 (TUPE and Pensions), clause 27 (Reporting and Meetings) clause 30 (Dispute Resolution), clause 32 (Liability), clause 33 (Insurance), clause 34 (Freedom of Information), clause 35 (Data Processing), clause 36 (Compliance with Data Protection Laws) clause 41 (Audit), clause 42 (Intellectual Property) clause 43 (Termination), this clause 46 (Consequences of Termination), clause 48 (Waiver), clause 49 (Rights and Remedies), clause 50 (Severability), clause 52 (Third Party Rights), clause 54 (Notices), clause 55 (Entire Agreement), clause 57 (Governing Law), clause 58 (Jurisdiction), Schedule 2 (Performance and Deductions), Schedule 4 (Payment Mechanism), Schedule 7 (TUPE ), and Schedule 9 (Contingency Plan) together with such other provisions are necessary for their proper interpretation shall survive termination or expiry of this Agreement.
- 46.7. Termination or expiry of this Agreement shall be without prejudice to any rights and remedies of the Contractor and the Councils which accrued prior to such termination or expiry and nothing in this Agreement prejudices the right of either Party to recover any amount outstanding at such termination or expiry.

## **GENERAL PROVISIONS**

### **47. Not Used**

### **48. Waiver**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **49. Rights and Remedies**

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **50. Severability**

- 50.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 50.2. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **51. Partnership or Agency**

- 51.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute one Party the agent of the other Party, or authorise one Party to make or enter into any commitments for or on behalf of the other Party.
- 51.2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **52. Third Party Rights**

- 52.1. Except as expressly provided in Schedule 7 a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 52.2. Notwithstanding the rights for third parties expressly provided for in Schedule 7, the rights of the parties to terminate, rescind or agree any modification, deletion, variation, waiver or settlement under this Agreement are not subject to the consent of any other person despite that such termination, rescission or variation may extinguish or alter that person's entitlement under that right.

## **53. Publicity**

- 53.1. The Contractor shall not and shall take all reasonable steps to ensure that the Contractor's Personnel shall not:
  - 53.1.1. make any press announcements or publicise this Agreement or its contents in any way; or
  - 53.1.2. use the Councils' name or logo in any promotion or marketing or announcement,(except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction or otherwise as expressly



provided for in this Agreement) without the prior written consent of the Councils, which shall not be unreasonably withheld or delayed.

53.2. The Contractor shall ensure that all publicity and promotional material relating to the Services and/or the NWTF Services:

53.2.1. fully complies with this Agreement and any guidelines issued by the Councils from time to time; and

53.2.2. reflects the corporate identity of the Councils and does not reflect adversely on the Councils in any way.

#### **54. Notices**

54.1. Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing marked for the attention of the Contract Manager (in the case of notices or other communications to the Contractor) or the Authorised Officer (in the case of notices or other communications to the Councils) and shall be:

54.1.1. delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

54.1.2. sent by fax to its main fax number.

54.2. Any notice or other communication shall be deemed to have been given:

54.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

54.2.2. if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service;

54.2.3. if sent by fax, on the day of transmission if sent before 4.00pm on any Business Day or, if sent at 4.00pm or afterwards or on a day which is not a Business Day, at 9.00am on the next Business Day, subject to confirmation of transmission.

54.3. Notices required by this Agreement may not be sent by email. Day to day communications required for the proper management of this Agreement and the proper provision of the Services and/or the NWTF Services may be sent by email.

#### **55. Entire Agreement**

55.1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

55.2. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made

innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

**56. Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

**57. Governing Law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**58. Jurisdiction**

Subject to clause 30 each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **Schedule 1      Specification**

### **1      GENERAL**

#### **1.1      Introduction**

- 1.1.1      This Schedule 1 (Specification) defines the Councils' minimum requirements for the Services.
- 1.1.2      The Contractor shall be required to develop, maintain and deliver the Services in accordance with the Service Delivery Plan 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 Agreement requires otherwise.

#### **1.2      Scope of the Services**

- 1.2.1      The Contractor shall provide 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 Services shall include the following:

#### **NOT USED**

#### **1.2.3**

#### **Services Management**

- (a)      managing the smooth transition of the Services from the Contractor (as such term is defined in the PPP Contract) at the Services Commencement Date and to the Replacement Contractor at Termination Date;
- (b)      obtaining and maintaining relevant quality assurance standards for the Services;
- (c)      obtaining and maintaining relevant environmental management standards for the Services;
- (d)      maintaining a Services Delivery Plan ("SDP") that details how the requirements of this Specification shall be delivered;
- (e)      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;

- (f) undertaking annual Customer Satisfaction Surveys (as defined in paragraph 3.4.3 below) related to the Services;
- (g) not used;
- (h) developing, operating and maintaining appropriate monitoring and reporting systems for the performance and payment of the Services;
- (i) providing the Councils with access, information and assistance necessary to monitor the Services;
- (j) not used;
- (k) managing health, safety and welfare requirements for the safe operation of the Services; and
- (l) ensuring adequate contingency arrangements are in place,

as described more fully in section 3 of this Specification;

#### **Contract Waste Reception and Transfer Services**

- (m) 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;
- (n) the receipt, storage, management and disposal of Clinical Waste;
- (o) the receipt of gully emptying Waste and street litter, drying/draining of the Contract Waste and its delivery to a suitable disposal point; and

as described more fully in section 4 of this Specification;

#### **NOT USED**

- (p) not used;
- (q) providing copies of all relevant Necessary Consents to the Councils;
- (r) not used;
- (s) not used;

- (t) Handling and haulage to the NWTF of appropriate Contract Waste , as and when required for delivery of the NWTF Services;
- (u) not used; and
- (v) not used;

#### **HWRC Services**

- (w) not used;
  - (x) not used
  - (y) not used;
  - (z) receive Contract Waste which is Household Waste directly delivered by the public at HWRCs;
  - (aa) management, operation and maintenance of HWRCs in accordance with this Specification;
  - (bb) integrate the operation of the HWRCs with other Services and activities at the other facilities, where appropriate;
  - (cc) transfer of segregated Compostable Waste for Composting as appropriate;
  - (dd) provision of a service to Compost Compostable Waste collected at the HWRCs;
  - (ee) separation of Recyclable Materials and materials for Re-Use and their preparation for onward sale;
  - (ff) transfer, sale or disposal of Recyclable Materials and materials for Re-use to reprocessors;
  - (gg) not used;
  - (hh) transfer for treatment and/or disposal of residual Household Waste from HWRCs;
  - (ii) provision of facilities for the segregation of waste electrical and electronic equipment ("WEEE"); and
  - (jj) 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**

- (kk) provide and or develop, manage and operate facilities and Services for the Landfilling of Contract Waste or the

treatment and acceptance of Contract Waste not diverted from Landfill,

as described more fully in section 7 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 duty of care code of practice issued under section 34(7) of the Environmental Protection Act 1990 (as the same may be amended from time to time). 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 duty of care code of practice issued under section 34(7) of the Environmental Protection Act 1990 (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:
- (a) Handling source segregated dry Recyclable Materials collected by the WCAs (other than bulky collections and Fly Tipped Waste);
  - (b) Handling of source segregated Compostable Waste collected by the WCAs (other than Fly Tipped Waste);
  - (c) transport and disposal of abandoned vehicles;
  - (d) not used;
  - (e) 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 The Councils give no guarantee or undertaking as to the quantity or composition of the Contract Waste. Subject to **clause 29** (Change Control), the Contractor shall accept and make provision for potential changes in quantity and composition of the Contract Waste over the Term.
- 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.

## **1.5 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 HWRC Re-Use, Recycling and Composting Target and the HWRC additional diversion target (as set out in 1.4.1 of the Payment Mechanism) ("**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 Agreement, 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:
  - (a) it is not disposed of by way of Landfill and is, therefore, not subject to Landfill Tax, and
  - (b) it satisfies one or more of the criteria specified below:
    - (i) the definition for Recycling;
    - (ii) the definition for Composting;
    - (iii) the definition for Recovery;
    - (iv) the definition of Beneficial Use;
    - (v) the definition of Re-use; or
    - (vi) it constitutes moisture lost from the Contract Waste during processing.
- 1.5.5 Not used
- 1.5.6 Weight calculations on which the Contractor's performance will be calculated will not include any allowance for any moisture added by the Contractors or any Sub-Contractor after delivery.
- 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 53** (Publicity):

- 1.6.2 all publicity issued by the Contractor in relation to the 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 Services shall have due regard to the provisions of the Contractor's corporate style; and
- 1.6.5 no material shall be published which includes the Contractor's logo without the prior consent of the Contractor.

## **1.7 Not Used**

## **2 Not used**

## **3 MANAGEMENT OF THE SERVICES**

### **3.1 Summary of Management Requirements**

The Contractor shall develop, implement and operate an effective management system for the Services in accordance with **paragraph 1.2** and as further detailed below.

### **3.2 Service Delivery Plan**

- 3.2.1 Not Used.
- 3.2.2 Not Used.
- 3.2.3 Not Used.
- 3.2.4 All procedures in the SDP shall be operated 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 Not used

### **3.4 Customer Satisfaction Surveys**

#### **Customer Satisfaction Surveys**

- 3.4.1 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").
- 3.4.2 The Customer Satisfaction Survey shall be carried out every year commencing within 12 months of the Services Commencement Date and the survey results shall be provided as soon as they are available.
- 3.4.3 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.
- 3.4.4 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.
- 3.4.5 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 Law and Good Industry Practice, 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.
- 3.4.6 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.

### **3.5 Contract Monitoring, Data Processing and Reporting**

## **Contract Monitoring**

Subject to **clause 27** (Reporting and Meetings):

- 3.5.1 the Contractor shall be responsible for monitoring its own performance under the Agreement in accordance with this Schedule 1 (Specification) and Schedule 2 (Performance and Deductions) 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 Agreement.
- 3.5.2 The Councils shall be entitled to conduct random monitoring checks on any operational areas of the Contract.
- 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 Agreement.
- 3.5.4 The Contractor shall submit Monthly Reports in accordance with paragraph 2 of Schedule 11 (Reporting).

## **Records**

- 3.5.5 The Contractor shall maintain records for the purposes of complying with its obligations under Schedule 11 (Reporting) and completion of statistical returns (including CIPFA, DEFRA, WasteDataFlow).
- 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 Termination Date.

## **Management Information Systems**

- 3.5.7 The Contractor shall 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 Term. 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 **clauses 34** (Freedom of Information) and **40** (Confidentiality and Transparency), 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 Agreement other than pursuant to a Councils' Change.
- 3.5.10 Not used
- 3.5.11 Not used
- 3.5.12 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 Contractor's 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.

### **3.6 Enforcement**

- 3.6.1 Subject to **clause 29** (Change Control), 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.
- 3.7.2 The Contractor shall comply with the relevant Councils' security regulations, and, where applicable ensure full compliance with its obligations under the Data Protection Act 2018, the General Data Protection Regulation (GDPR) (as amended) and the

Computer Misuse Act 1990 (as amended) in so far as they relate to the Agreement.

3.7.3 The Contractor shall maintain all fences, walls, hedges and gates around the perimeter of each of the Councils' Premises, and subject to Schedule 12, 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 a comprehensive customer care service in line with the SDP for dealing with enquiries, complaints 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 Services to be added to the Councils' websites.

3.8.5 The Contractor shall provide and operate a computerised complaint handling system compatible with and to enable the Councils to comply with the Councils' relevant complaints handling policies as at the date of this Agreement. 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 are taken as appropriate.

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 Agreement.

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 inform the Councils of the details of the complaint which shall be consistent with and enable the Councils to comply with the Councils' relevant complaints handling policies.

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 report 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. 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 Councils' Premises 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 Services. An emergency call out procedure shall be provided, maintained and updated in accordance with the requirements of the Environment Agency.
- 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. In the event of an emergency, e.g. traffic, accident, spillage, that representative shall be required to be on the relevant facility within two hours 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 Not used
- 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 Household Waste.

- 3.10.5 The Contract Waste delivered to the emergency delivery points shall be disposed of by the Contractor in accordance with this Agreement. 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 Agreement.
- 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 hold certification for the provision of the 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 in relation to the Services, and retain certification at an equivalent standard for the remainder of the Term.

### **3.12 Quality Assurance**

- 3.12.1 The Contractor shall hold certification for the provision of the 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 in relation to the Services, and retain certification at an equivalent standard for the remainder of the Term.

### **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.

### **3.14 Health, Safety and Welfare**

#### **General Requirements**

- 3.14.1 The Contractor shall at all times in providing Services comply with the provisions of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 and all relevant statutory provisions.
- 3.14.2 The Contractor shall provide evidence of its compliance with paragraph 3.14.1 as reasonably required by the Councils upon request.
- 3.14.3 The Contractor shall ensure that members of the public must not have any doubt that the Councils' Premises are hazardous places and appropriate warning signs and information notices shall be prominently displayed at each facility.

#### **Health and Safety Plan**

- 3.14.4 The Contractor shall carry out risk assessments and adopt safe working practices, in accordance with the Law, that apply to its activities under this Agreement to ensure the appropriate standards of safety for all site users, visitors, and construction, management and operations personnel.
- 3.14.5 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.
- 3.14.6 The Contractor's health and safety policy 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".
- 3.14.7 Subject to **clause 29** (Change Control), the Contractor shall take full note of the Councils' corporate health and safety policies as amended from time to time.
- 3.14.8 The Contractor shall hold certification for the provision of the Services in accordance with ISO18001, BS ISO 45001:2018 or equivalent standard, or similar health and safety management system, through a certifying body accredited by the United Kingdom Accreditation Service in relation to the Services, and

retain certification at an equivalent standard for the remainder of the Term.

### **Equipment**

- 3.14.9 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.
- 3.14.10 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.
- 3.14.11 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, Provision and Use of Work Equipment Regulations 1998, the Personal Protective Equipment Regulations 2002, the Personal Protective Equipment at Work Regulations 1992 (as amended) and relevant statutory provisions.
- 3.14.12 Not used
- 3.14.13 Within the provision for visits to the facilities by organised groups as contemplated by this Agreement the Contractor shall supply appropriate Personal Protective Equipment as necessary.

### **Employees**

- 3.14.14 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.
- 3.14.15 Special care shall be taken to protect the health and safety of operatives working in close proximity to the waste being processed.

### **Facilities**

- 3.14.16 Not used.
- 3.14.17 The Contractor shall provide all necessary fire-fighting, first aid, health and safety facilities at each of the facilities provided for the Services, commensurate with the requirements of the fire authority and other statutory authorities.
- 3.14.18 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.

- 3.14.19 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.
- 3.14.20 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**

- 3.14.21 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 Contractor.
- 3.14.22 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.
- 3.14.23 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.
- 3.14.24 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.
- 3.14.25 The Contractor shall notify the Councils' Authorised Officer as soon as practicable in the event of a reportable incident, and in any event:
  - (a) within two (2) hours from the time of the relevant incident becoming known to the Contractor which involves a customer; and
  - (b) within one (1) Business Day from the time of any other relevant incident reportable in accordance with RIDDOR.

- 3.14.26 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 a report identifying any 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.
- 3.14.27 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. 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 as and when required by the Contractor.

### **3.16 Maintenance Plan**

- 3.16.1 The Contractor shall procure an Initial Condition Independent Surveyor to carry out an Initial Condition Survey which describes the condition of the Councils' Premises as soon as reasonably practicable following the Services Commencement Date and lifecycle replacement costs (costs over and above routine maintenance) which the Initial Condition Independent Surveyor considers are likely to be required within five years following the Services Commencement Date, and shall provide the results of the same to the Councils.
- 3.16.2 The Contractor shall carry out all such refurbishment or maintenance to meet the requirements as set out in this Agreement and to ensure that the condition the Councils' Premises at the Termination Date (is the same as it was as the Services Commencement Date (as confirmed by the Initial Condition Survey).
- 3.16.3 The Contractor shall procure an independent surveyor to carry out a Final Condition Survey which describes the condition of the Councils' Premises at the Termination Date and compares this with the Initial Condition Survey, and shall provide the results of the same to the Councils.

### **3.17 Handback Criteria**

3.17.1 Not Used

3.17.2 NOT USED.

3.17.3 Not Used

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 market 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 Subject to the Councils' requirements to maintain continuity of operation the amount of Waste within the Councils' Premises at the Termination Date shall be consistent with normal operational practice.

3.17.6 At the Termination Date, the Contractor shall be required to co-operate with the Councils and/or an incoming contractor regarding the transfer of relevant Necessary Consents.

### **3.18 Sale and Marketing of recovered materials**

3.18.1 Not used

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 provide an audit trail demonstrating the destinations of Recovered or Recycled materials, as reasonably requested by the Councils' Authorised Officer.

## **4 CONTRACT WASTE RECEPTION AND TRANSFER SERVICES**

### **4.1 Summary of Service Requirement**

The Contractor shall operate a network of Services and facilities for Handling 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 Term.

- 4.2.2 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 non-permitted 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.
- 4.2.9 The Contractor shall take all reasonable steps to ensure that only persons authorised to enter the Councils Premises. All vehicles and persons within the Councils Premises 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 Agreement 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\*, 20.03 01, 20 03 02, 20 03 03 and 20.01.32, or their future equivalents, may 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 Not Used**

**4.4 Delivery Points**

**4.4.1 Location of Delivery Points**

The Contractor shall throughout the Term provide a network of Delivery Points in the locations specified in the remainder of this **paragraph 4.4.1**.

**(a) 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; and

The Contractor shall provide a separate Delivery Point for those authorities listed above, the purposes of receiving bulky waste and small loads, and to be available for use as a contingency facility in the event of the unavailability of the Delivery Point referred to above.

**(b) 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:

- (i) within the administrative boundary of Erewash Borough Council; and
- (ii) 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(a)** above).

**(c) 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:

- (i) within a 10 mile radius of grid reference SK 301 198; and
- (ii) 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(a)** above).

(d) **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 provide an existing integrated transfer station and HWRC at Waterswallows, Buxton as a Delivery Point for the purposes of receiving Contract Waste collected by High Peak Borough Council operated by a third party contractor on behalf of the Councils. The Contractor is required to dispose of residual Waste from this facility.

(e) **Derbyshire Dales**

The Contractor shall provide and/or operate a minimum of two (2) Delivery Points for the purposes of receiving Contract Waste collected by Derbyshire Dales District Council which shall be:

- (i) the existing Clover Nook Transfer Station as a Delivery Point for the purposes of receiving Contract Waste collected by Derbyshire Dales District Council; and
- (ii) 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(a)** above).

(f) **Chesterfield, Bolsover, North East Derbyshire**

The Contractor shall provide a minimum of one (1) Delivery Point which is not a Landfill Site 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.

(g) **Amber Valley**

The Contractor shall provide and/or operate a minimum of two (2) Delivery Points for the purposes of receiving Contract Waste collected by Amber Valley Borough Council which shall be:

- (i) the Contractor shall operate the existing Clover Nook Transfer Station as a Delivery Point for the purposes of receiving Contract Waste collected by Amber Valley Borough Council; and
- (ii) 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(a)** 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 in aggregate have sufficient capacity to accept all Contract Waste delivered by or on behalf of the WCAs to the Contractor throughout the Term.

#### **4.4.3 Maximum Tonnages**

The Contractor shall not receive trade Waste at Councils' Premises.

#### **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:

(a) 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.

4.6.2 The Contractor shall notify the Councils where the opening hours for any Delivery Point which is not located at Councils' Premises differ 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 SDP.

4.6.4 The Contractor shall use reasonable endeavours to open Delivery Points at times other than the above in response to emergencies.

#### **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 movement of Contract Waste to or from Delivery Points shall comprise:
- (a) Date
  - (b) Origin District (name) or HWRC (name) or other
  - (c) Transaction number which shall be sequential for the Contract (weighbridge ticket if different)
  - (d) site name (and where applicable name of site diverted from)
  - (e) Licence number
  - (f) 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.
  - (g) Time weighed on
  - (h) Vehicle registration number
  - (i) Driver's name (to allow for surname and clock number format)
  - (j) Transfer note number (where issued)
  - (k) Gross weight
  - (l) Nett weight
  - (m) Tare weight
  - (n) Time weighed off
  - (o) Name of Delivery Point
  - (p) Comments field
  - (q) Round number



- 4.7.4 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 calibrated and tested in accordance with statutory requirements.
- 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 Not used
- 4.8.3 Subject to **paragraphs 4.8.4 and 4.8.6**, 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.
- 4.8.4 Subject to **paragraph 4.8.6**, 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.

- 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 or 19:
- (a) during the period from 1 January to 7 January (or such other period as the Parties may agree) in each Contract Year;
  - (b) where the same arises as a result of the implementation of any requirement of the Councils' Authorised Officer 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 Agreement; or
  - (c) where the Contractor can demonstrate to the reasonable satisfaction of the Councils' Authorised Officer that the failure to meet the obligation was a result of Councils' vehicle breakdown, or use of site amenities or site for mess breaks by the driver or crew.
- 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 at all times.
- 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.

#### **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 NOT USED.
- 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 ("**Delivery Point Availability Criteria**"):
  - (a) Lawful Operation

The Delivery Point is lawfully able to receive Contract Waste delivered by WCAs.
  - (b) 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.

(c) Weighbridge and other recording equipment

A weighbridge and appropriate recording equipment or an alternative recording methodology is being used and is in an operating condition sufficient to satisfy the data recording requirements set out in this Specification.

5 NOT USED

## **6 HOUSEHOLD WASTE RECYCLING CENTRE 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 paragraphs 6.2.2 and 6.2.3 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.
- 6.2.2 The "**HWRC Re-Use, Recycling & Composting Target**" (excluding Rubble, Specified Hazardous Waste and Clinical Waste) for all sites combined shall be 60%.
- 6.2.3 No individual HWRC shall achieve a Re-Use, Recycling and Composting performance of less than 50% in all Contract Years of the Term, 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.

### **6.3 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 a record 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 HWRCs for the reception of Household Waste in accordance with this Specification.

6.4.2 The Contractor shall operate the following HWRCs.

Site	Site Owner	Site Address
Glossop	Derbyshire County Council	Melandra Road, Glossop, SK13 6JQ (to be redeveloped by others)
Stonegravels (Chesterfield)	Derbyshire County Council	Sheffield Road, Chesterfield, S41 7LF
Loscoe	Derbyshire County Council	Taylor Lane, Loscoe, near Heanor, DE75 7TA
Ilkeston	Derbyshire County Council	Manners Avenue, Ilkeston, DE7 8EF
Ashbourne	Derbyshire County Council	Mayfield Road, Ashbourne, DE6 2BN
Bolsover	Derbyshire County Council	Buttermilk Lane, Bolsover S44 6AE
Northwood	Derbyshire County Council	Currently being developed
Bretby	Derbyshire County Council	Main Street, Newhall, DE11 10TR
Raynesway	Derby City Council	Raynesway Park Drive, Derby, DE21 7BA

## 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 "HWRC Availability Criteria" shall be:

(a) Lawful Operation

The HWRC is lawfully able to receive Household Waste deposited by the public.

(b) 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 Law and the relevant Necessary Consents.

(c) 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:

(a) logical and clearly-defined site layout;

- (b) 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;
- (c) sufficient facilities for the reception of Contract Waste with sufficient capacity for all Contract Waste types listed in **paragraph 6.10.3** below;
- (d) safe, clean and practicable environment with minimal distances required for lifting and carrying materials to waste receptacles;
- (e) access control and advice at the site entrance, including helpful, proactive and adequate site supervision with sufficient employees for meeting and greeting customers;
- (f) methods 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;
- (g) sufficient queuing space and car parking so as not to adversely impact on traffic outside the sites on public highways, save as at Raynesway where the Contractor and the Councils acknowledge there is an existing queuing issue which the Contractor shall use reasonable endeavours to mitigate;
- (h) suitable, safe access for pedestrians to the extent permitted by the Councils;
- (i) site office serviced by electricity, water supply, telephone and sewerage;
- (j) adequate lighting;
- (k) 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;
- (l) traffic loops or other suitable measures for measuring the number of vehicle visits;
- (m) use of CCTV facilities with the ability to provide the Councils on request with access to the data and if required and in line with data protection legislation, suitable copies, for a rolling period of up to three weeks;
- (n) measures to minimise energy use and promote high levels of energy efficiency;



- (o) a good standard of site housekeeping to be undertaken to maintain the appearance of the HWRCs;
  - (p) not used; and
  - (q) any other facilities as may be dictated by the environmental permit.
- 6.7.4 In addition, at Raynesway HWRC in Derby City 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;
- 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 Subject to 6.7.3.g. above, 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 as required to comply with the requirements of this Specification.
- 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 trade waste and that traders seeking to deposit such waste are diverted to legitimate disposal facilities.

## **6.9 Non-Household Waste**

- 6.9.1 Save as required by this Specification, at any HWRC where any person 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. No payments shall be taken from members of the public under any circumstances except for Compost sales unless previously agreed with the Councils.

## **6.10 Recycling and Re-Use of Contract Waste**

- 6.10.1 Subject to the HWRC Reuse, Recycling and Composting Target, 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 SDPs.

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:

- (a) newspapers and magazines
- (b) cardboard
- (c) glass bottles and jars
- (d) Textiles
- (e) scrap metal (incl. food, drink & aerosol cans)
- (f) green garden Waste
- (g) clean soils
- (h) refrigerators, freezers, and other equipment containing ozone depleting substances
- (i) plastic bottles (HDPE, PET, PVC)
- (j) other plastic including film and carrier bags
- (k) wood (untreated timber)
- (l) chipboard, MDF and composite board
- (m) furniture, fixtures and fittings
- (n) bric-a-brac and tools
- (o) bicycles
- (p) car batteries
- (q) engine oil
- (r) tyres
- (s) tetrapak and similar cartons
- (t) hardcore and rubble
- (u) WEEE
- (v) mobile phones

- (w) all dry cell batteries nickel/cadmium batteries
- (x) fluorescent tubes/long life bulbs
- (y) paint
- (z) books
- (aa) metal foil
- (bb) sheet glass
- (cc) spectacles
- (dd) shoes
- (ee) vegetable oils
- (ff) oil filters
- (gg) carpets
- (hh) plasterboard
- (ii) 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 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 Agreement.

#### **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:

(a) register and maintain registration of its HWRCs as Designated Collection Facilities under the WEEE Regulations; and

(b) 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 at the end of the Agreement. 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 Term.
- 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 maintain existing proposed traffic arrangements at the HWRCs including provision for parking
- 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 subject to 6.7.3.g above 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 as required to meet the requirements of 6.7.3.o above and such as not to 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
- 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 (to the extent practicable, and where not practicable as soon as reasonably possible) 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 as soon as practicable at the start of the following Business Day.

## **7 TREATMENT AND DISPOSAL SERVICES**

### **7.1 Summary of Service Requirement**

- 7.1.1 The Contractor shall use reasonable endeavours to utilise appropriate treatment facilities to divert residual Waste from Landfill.
- 7.1.2 Not Used
- 7.1.3 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 at all times.
- 7.2.2 Not used.
- 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.



### **7.3 Operating Standards**

The Contractor shall procure that all Landfill Sites are operated in accordance with Necessary Consents and Good Industry Practice.

## **Schedule 2      Performance and Deductions**

### **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 4 (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 4 (Payment Mechanism).
- 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 Service Delivery Plan.
- 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 Term.

### **2. KEY PERFORMANCE INDICATORS**

- 2.1 The KPIs are set out in Table 1 below.

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
<b>Monthly KPIs</b>									
2.	Specification Para 3.15	<b>Contingency Plan</b> 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	<b>Health and Safety Plan</b> 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 11 (Reporting)	<b>Monthly Reporting</b> Failure to provide the monthly waste data report and operational report to the Councils by the specified date in accordance with Schedule 11 (Reporting)	Business Days	Monthly	0	5 Business Days	500	2 months	1 Year
5.	Schedule 11 (Reporting)	<b>Monthly report errors</b> Failure to verify and correct errors identified in Monthly Reports within 10	Business Days	Monthly	0	5 Business Days	250	3 months	1 Year

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
		Business Days in accordance with Schedule 11 (Reporting)							
6.	Specification para 3.8	<b>Customer Enquiries</b> Failure to respond to enquiries, service requests 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 Agreement (save to the extent that such failure on the part of the Contractor arises as a direct result from a delay by the Councils).	No of occurrences	Monthly	N/A	N/A	150	N/A	1 Year
8.	Specification paras 3.11	<b>Environmental Management</b> Failure to obtain and maintain an accredited or equivalent Environmental	Business Days	Monthly	5 Business Days	28 Business Days	600	6 months	5 Years

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
		Management System.							
9.	Specification paras 3.12.1	<b>Quality Assurance</b> 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 3.14.21	<b>Health and Safety Training Records</b> 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 3.14.22 to 3.14.25	<b>RIDDOR</b> 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	<b>Weighbridge Provision</b> Failure to provide and maintain an operational	Business Days	Monthly	1 Business Day	3 Business Days	1100	3 months	1 Year

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
		weighbridge controlled entrance at each Delivery Point as set out in the Specification and Services Delivery Plan.							
13.	Specification paras 4.7.1, 4.7.4, 4.7.6, SDP	<b>Weighing and Monitoring</b> 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	<b>HWRC Waste litter and spillages</b> 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

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
15.	Specification para 6.19	<b>Flytipping</b> 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.g	<b>HWRC Traffic Continuity</b> 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.f, 6.7.4.	<b>Authorised Vehicles</b> 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	No of occurrences	Monthly	N/A	N/A	50	N/A	1 Year

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
		Agreement in accordance with the existing permit scheme for the residents of Derby City.							
18.	Specification paras 4.8.3, 4.8.4	<b>Daily Average Vehicle Turnaround Time</b> 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	<b>Maximum Vehicle Turnaround Time</b> 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
<b>Annual KPIs</b>									
25.	Specification para 6.2.2	<b>HWRC Re-use, Recycling and Composting Target</b> Failure to achieve the	Percentage points below the HWRC Re-Use,	Annually	N/A	N/A	200 points per 0.1% or part thereof by which the	N/A	10 Years



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
		minimum HWRC Re-Use, Recycling and Composting Target at any individual HWRC in accordance with the Specification	Recycling and Composting Target				target missed is		

### **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 5 (Payment Reports) of Schedule 11 (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 28.3 (Council Monitoring) of this Agreement 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 Payment Report by the Councils through the procedure set out in clause 21 (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 is defined in the table below.

### **4. NOT USED**

### **5. PERFORMANCE MONITORING REPORTS**

- 5.1 Performance Monitoring Reports shall be prepared by the Contractor and submitted all in accordance with Schedule 11 (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 21 (Report and Invoicing) that the Payment Report should be amended due to a failure by the Contractor to comply with its obligations in this Agreement, 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 Payment 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 41 (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 KPIs relating to a Site which is subject to Unavailability Deductions;
  - 8.1.3 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 2 (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 2 (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.

## **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 2 (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 2 (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 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, 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 3      Service Delivery Plan**

**Renewi UK Services Ltd**

**Method Statement 1**

**Service Commencement and Expiry Arrangements**

**Draft 1.0**

## **Introduction**

This Method Statement details the overall high level approach that the Contractor will undertake for the implementation and management of the Continuity Services and for their handover to others on the expiry of the Contract

## **Implementation**

The Contractor has put in place, from the start date of the new contract, new subcontracts with key supply chain partners for the provision of the following services:

- Transfer Station Handling
- HWRC Management
- Landfill Disposal
- Haulage
- Treatment/Diversion
- 'Special waste' services eg clinical, bulky, asbestos etc.

The Councils have given their prior approval for these services and subcontracts

The service delivery partners have supplied these services previously to the Contractor and the Councils, in many cases over many years giving a high degree of confidence that the services will be effective and resilient.

Further details of these services are found in MS's 2,15,16 and 17

As these services are already being provided to the Contractor under a previous contract there should be no need for a particular implementation timeline as the arrangements will continue seamlessly from the previous contract to the new contract

The management of the implementation of the services will be undertaken by Renewi's Derby & Derbyshire contracts team based at the Waste Education Centre offices at Sinfin Lane, Derby under the leadership of the Renewi Derby Contracts Director. An organogram is shown in the Appendix 1.s. The Contractor knows its resource will be sufficient for the efficient running of the services based on its experience of providing the same services to the Councils over approximately 10 years

The management of the services will follow the Renewi quality and environmental management systems which are fully accredited to ISO 9001 and 14001 on a UK site wide basis. These will be retained for the duration of the Continuity Service arrangements, with details supplied to the Councils on request.

The Contractor will agree with the Councils a communications plan that deals with the migration of the services from the old to the new contract and other matters this is dealt with further in Appendix 2.

## **Expiry**

The objective will be to manage the exit from the contract in an orderly and well planned manner.

The Contractor and The Councils will agree an appropriate length of time for the exit plan and recognise that there may be a period of overlap with any incoming contractor's transition/mobilisation period.

There will be a number of key areas to address during de-mobilisation including areas such as people, health and safety, organisation, business processes, IT systems and current / historical data, business continuity,

service continuity and communications. We will work with the Councils and the new contractor to ensure that our exit plan is in line with any future mobilisation plan so that as with mobilisation at the beginning of our contract, a seamless transfer occurs.

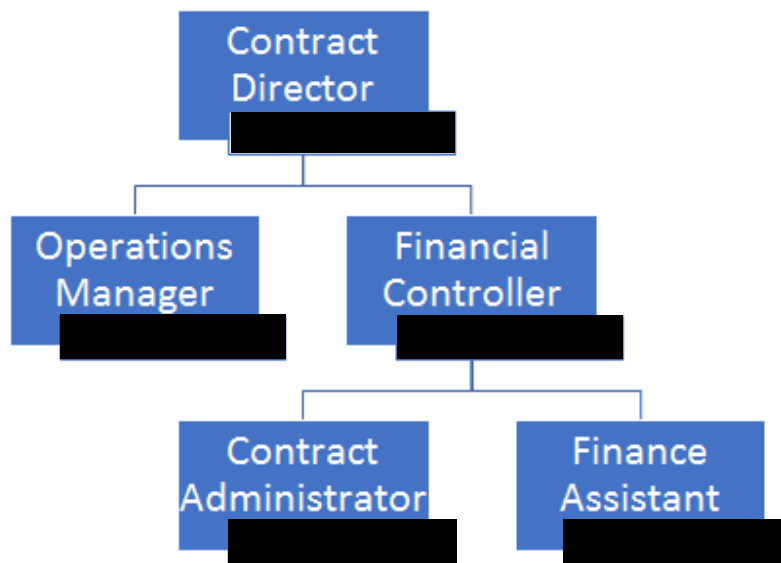
The Contractor and our delivery partners will hand over the relevant assets at contract completion either to the Councils or to the new contractor and will co-operate with the Councils in the preparation of a final survey of the assets and their condition (including where relevant, agreement of net book values).

If the facilities are to continue to be operational, the Contractor and its subcontractors, where relevant, will cooperate to enable the environmental permits to be transferred either to the Councils or to the new contractor.

The Contractor and its subcontractors will provide information relating to employees' eligibility to transfer to a new contractor in line with the relevant employment legislation in place at the time.



## Appendix 1 - Organogram-Continuity Services Management



## **Appendix 2 - Communications Activities**

To cover such areas as:

- Initial transfer to new service delivery model
- Communications around day to day business as usual (continuity services and NWTF)
- Emergencies and incidents
- Expiry and transfer to new contract
-

**Renewi UK Services Ltd**

**Method Statement 2 Contingency Plans**

**Draft 1.0**

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## Summary

This method statement sets out the contingency plans that the Contractor has put in place to address non-availability of Delivery Points ('DPs' (as defined in the Contract)) to receive waste from Waste Collection Authorities (WCAs), residual waste from the Household Waste Recycling Centres (HWRCs), and waste brought to HWRCs by Members Of the general Public ('MOPs').

The Contractor's intention in any situation of non-availability of a DP will be to get services restored as soon as possible in a safe and controlled manner. It is acknowledged that 'non-availability' can arise for relatively minor reasons and be very temporary, or, on rare occasions can be serious and without prompt mitigation can have a significant and longer term impact on service delivery.

### Delivery Points

At DPs, in general, failure of items of key equipment would not prevent tipping at or use of the facility but would necessitate alternative site procedures to be implemented. This method statement outlines these alternative site procedures for unforeseeable failure of key items of equipment and/or non-availability of the DP for whatever reason.

It is unlikely that a DP will be unavailable for an extended period of time except in the event of a major incident such as a fire, explosion or serious Health and Safety incident.

If a DP (other than a HWRC) is not available for any reason, an alternative tipping location for each DP has been identified in Appendix 1 of this method statement. The alternative locations proposed are either waste transfer stations (WTSs) operated under the contract, or third party Waste Transfer Stations (WTS's), Refuse Derived Fuel (RDF) facilities, or landfill sites.

Wherever possible advance agreement has been reached with the operators of any third party facilities to agree the terms for their contingency use. RRS has flexible bulk transport contract arrangements with its contract haulier to ensure any additional bulker movements required as a result of the implementation of contingency plans can be organised as quickly as possible.

### Incident Management

The Contract Director (see MS 1) or a nominated senior manager will in the event of a major incident co-ordinate a suitable and timely response.

The main aim will be to ensure that normal services are restored at the earliest opportunity and that the Councils are regularly updated about the status of both the incident and the contingency response- including where appropriate, input into any media enquiries.

### Equipment Breakdown

At WTS's the main contingency planning will be to ensure replacement mobile plant will be available at short notice in the event that mobile plant used for the loading of vehicles cannot be repaired quickly in the event of a breakdown.

### Other Typical Failure Scenarios And Remedies

The table below sets out some of the typical events that could arise at DPs together with typical contingency arrangements that could be put in place.

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Event	Contingency Measures	Rectification Measures
Failure of weighbridge mechanics	<ul style="list-style-type: none"> <li>Agree average payloads with Councils based on historic data</li> <li>Revert to a manual ticket procedure</li> </ul>	<ul style="list-style-type: none"> <li>Maintenance contracts with weighbridge engineers</li> </ul>
Failure of weighbridge software	<ul style="list-style-type: none"> <li>Revert to manual ticket procedure based on weighbridge display</li> </ul>	<ul style="list-style-type: none"> <li>Simple diagnostic and system reboots will be within capability of site staff</li> <li>Maintenance contracts with software engineers</li> </ul>
Breakdown of loading equipment	<ul style="list-style-type: none"> <li>Store Contract Waste within WTS</li> </ul>	<ul style="list-style-type: none"> <li>Transport spare machine from other sites</li> <li>Hire machines from plant hire companies identified in advance</li> </ul>
Failure of control software	<ul style="list-style-type: none"> <li>Some equipment can be operated in manual mode as well as automatic mode</li> </ul>	<ul style="list-style-type: none"> <li>Simple diagnostic and system reboots will be within capability of site staff</li> <li>Priority maintenance contract with software engineers</li> </ul>
Fire on site	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>Well maintained fire control equipment and stringent operating procedures/training</li> <li>FPP in good level of detail and on hand for fire brigade to minimize risk of damage</li> <li>Put fire out as soon as possible</li> </ul>

### Contingency Tipping Arrangements

In the event that an incident at a DP requires alternative tipping arrangements to be made available, the alternative DPs that would be used are detailed in Appendix 1 to this method statement. These contingency arrangements will ensure that all councils are provided with continuity of service. Where more than one alternative DP has been identified the waste would be diverted to the most appropriate site based on the direction given by the Councils.

## **Procedures for Activating Contingency Plans**

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The procedure to be followed will be as follows:

An initial phone call will be made by the Contractor's Contract Director or in his absence, the Operations Manager (see MS 1), to the nominated person at each of the two Councils, covering at least the following items:

- Which DP or DPs are affected and to what extent
- Reason why the Contingency Plan is to be activated
- When the Contingency Plan needs to take effect
- Likely duration of the Contingency Plan event
- Which alternative DP or DPs are to be used from when, and to what extent
- Next anticipated update to the incident i.e. update next working day

The Councils will be asked to advise their respective WCAs directly and immediately to action the changes.

The information provided by the Contractor in the initial phone call will be confirmed by e-mail to both Councils.

While a Contingency Plan is in operation the Contractor will issue (unless otherwise agreed by the Councils) daily updates to both Councils regarding the continuing need for the Contingency Plan and when it is expected to come to an end.

If the reason for the Contingency Plan being activated is serious, for example as a result of a major safety or environmental incident or fire, then the Contractor and the Councils will agree the extent to which their communications teams need to be involved, in case there is a need to inform the media, or to be prepared for questions from the media.

Should the communications teams be involved then the Contractor will assist, as necessary, in the following areas:

- RCV Depots
- Receiving facilities
- Supply Chain
- Regulators
- Press (after consultation with the Councils and a press statement being agreed by all parties)

If there are any financial implications arising from the activation of a Contingency Plan then these will be identified, quantified and dealt with within the normal monthly invoicing and paymech approval routines.

### **HWRC Non-Availability**

In the event of non-availability of an HWRC for any reason the Contractor will discuss urgently with the Councils how this should be communicated to the general public, but in most if not all instances the contingency plan will be for the public to be directed by a combination of signage

and other local communications initiatives to the next nearest HWRC site(s) until the situation that led to the closure has been resolved

#### Appendix 1- WCA Contingency Site Locations

All percentage splits are for indicative purposes only.

Delivery Points				
'As Is' Facilities			Designated DP	Contingency DP Arrangement
WCA	Council split %	Waste Type		
<b>High Peak</b>				
Glossop WTS	<b>38</b>	Household & Commercial Residual	Glossop WTS	Buxton WTS
		Street Cleansing	Glossop WTS	Buxton WTS
		WEEE	Glossop WTS	Buxton WTS
		Fly tipped (incl. asbestos and tyres)	Glossop WTS	Buxton WTS
		Bulky	Glossop WTS	Buxton WTS
Waterswallows WTS	<b>61</b>	Household & Commercial Residual	Buxton WTS	Glossop WTS
		Street Cleansing	Buxton WTS	Glossop WTS
		Gully Waste	Buxton WTS	Chesterfield WTS
		Clinical Offensive only	Buxton WTS	Glossop WTS
		WEEE	Buxton WTS	Glossop WTS
		Fly tipped (incl. asbestos and tyres)	Buxton WTS	Glossop WTS
		Bulky	Buxton WTS	Glossop WTS
(SRCL)	<b>1</b>	Clinical Infectious only	SRCL (Oldham)	Chesterfield WTS

<b>Derbyshire Dales</b>				
Waterswallows WTS	<b>51</b>	Household & Commercial Residual	Buxton WTS	Glossop WTS
		Street Cleansing	Buxton WTS	Glossop WTS
		Clinical offensive only	Buxton WTS	Clover Nook WTS
		WEEE	Buxton WTS	Clover Nook WTS
		Fly tipped (incl. asbestos and tyres)	Buxton WTS	Clover Nook WTS

		Bulky	Buxton WTS	Clover Nook WTS
Clover Nook WTS	<b>48</b>	Household & Commercial Residual	Clover Nook WTS	Buxton WTS Raynesway WTS
		Clinical infectious and offensive	Clover Nook WTS	Chesterfield WTS
		Street Cleansing	Clover Nook WTS	Chesterfield WTS
		WEEE	Clover Nook WTS	Chesterfield WTS
		Fly tipped (incl. asbestos and tyres)	Clover Nook WTS	Chesterfield WTS

		Bulky	Clover Nook WTS	Chesterfield WTS
Raynesway WTS	<b>1</b>	Household & Commercial Residual	Raynesway WTS	Clover Nook WTS
		Street Cleansing	Raynesway WTS	Clover Nook WTS
		Clinical infectious and offensive	Raynesway WTS	Clover Nook WTS
		WEEE	Raynesway WTS	Clover Nook WTS
		Fly tipped (incl. asbestos and tyres)	Raynesway WTS	Clover Nook WTS
		Bulky	Raynesway WTS	Clover Nook WTS

<b>North Derbyshire East</b>				
Chesterfield WTS	<b>93</b>	Household & Commercial Residual	FCC Chesterfield WTC	Clover Nook WTS
		Street Cleansing		Clover Nook WTS
		Gully Waste	FCC Chesterfield WTC	Clover Nook WTS
		Clinical infectious and offensive	FCC Chesterfield WTC	Clover Nook WTS
		WEEE	FCC Chesterfield WTC	Clover Nook WTS
		Fly tipped (incl. asbestos and tyres)	FCC Chesterfield WTC	Clover Nook WTS
		Bulky	FCC Chesterfield WTC	Clover Nook WTS
Clover Nook WTS	<b>7</b>	Household & Commercial Residual	Clover Nook WTS	FCC Chesterfield TLS
		Street Cleansing	Clover Nook WTS	FCC (Chesterfield)



		GullyWaste	Clover Nook WTS	FCC (Chesterfield)
		Clinical infectious and offensive	Clover Nook WTS	FCC (Chesterfield)
		WEEE	Clover Nook WTS	FCC (Chesterfield)
		Fly tipped (incl. asbestos and tyres)	Clover Nook WTS	FCC (Chesterfield)
		Bulky	Clover Nook WTS	FCC Chesterfield TLS

<b>Bolsover</b>				
Chesterfield WTS	<b>43</b>	Household & Commercial Residual	FCC Chesterfield WTS	Clover Nook WTS
		Street Cleansing	FCC Chesterfield WTS	Clover Nook WTS
		Clinical infectious and offensive	FCC Chesterfield WTS	Clover Nook WTS
		WEEE	FCC Chesterfield WTS	Clover Nook WTS
		Fly tipped (incl. asbestos and tyres)	FCC Chesterfield WTS	Clover Nook WTS
		Bulky	FCC Chesterfield WTS	Clover Nook WTS
Clover Nook WTS	<b>57 50</b>	Household & Commercial Residual	Clover Nook WTS	FCC Chesterfield TLS
		Street Cleansing	Clover Nook WTS	FCC Chesterfield TLS
		Clinical infectious and offensive	Clover Nook WTS	FCC Chesterfield TLS
		WEEE	Clover Nook WTS	FCC (Chesterfield)
		Fly tipped (incl. asbestos and tyres)	Clover Nook WTS	FCC (Chesterfield)
		Bulky	Clover Nook WTS	FCC Chesterfield

<b>Chesterfield</b>				
Chesterfield WTS	<b>100</b>	Household & Commercial Residual	FCC Chesterfield WTS	Clover Nook WTS
		Bulky	FCC Chesterfield WTS	Clover Nook WTS
		Street Cleansing	FCC Chesterfield WTS	Clover Nook WTS

		Clinical infectious and offensive	FCC Chesterfield WTS	Clover Nook WTS
		WEEE	FCC Chesterfield WTS	Clover Nook WTS
		Fly tipped (incl. asbestos and tyres)	FCC Chesterfield WTS	Clover Nook WTS

<b>Amber Valley</b>				
Clover Nook	<b>92</b>	Household & Commercial Residual	Clover Nook WTS	Stanton / Raynesway
		Bulky	Clover Nook WTS	Stanton / Raynesway
		Clinical infectious and offensive	Clover Nook WTS	Raynesway
		WEEE	Clover Nook WTS	Raynesway
		Fly tipped (incl. asbestos and tyres)	Clover Nook WTS	Raynesway
		Street Cleansing	Clover Nook WTS	2ZLF (mechanical sweepings) / Raynesway (street litter bin waste & manual sweepings)
FCC Raynesway TLS	<b>7</b>	Household & Commercial Residual	FCC Raynesway TLS	Veolia London Rd WTS
		Clinical infectious and offensive	FCC Raynesway TLS	Clover Nook WTS
		WEEE	FCC Raynesway TLS	Clover Nook WTS
		Fly tipped (incl. asbestos and tyres)	FCC Raynesway TLS	Clover Nook WTS
		Street Cleansing (street litter bin waste & manual sweepings only)	FCC Raynesway TLS	Clover Nook WTS
		Bulky	FCC Raynesway TLS	Veolia London Rd WTS
2ZLF	<b>1</b>	Mechanical Street Sweepings only (not street	2ZLF	FCC Raynesway TLS

		litter bin waste or manual sweepings)		
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<b>South Derbyshire</b>				
Willshees WTS,Burton	<b>83</b>	Household & Commercial Residual	Willshees WTS	FCC Raynesway TLS
		Street Cleansing	Willshees WTS	FCC Raynesway TLS
		Clinical offensive only	FCC Raynesway TLS	Clover Nook WTS
		WEEE	FCC Raynesway TLS	Clover Nook WTS
		Fly tipped (incl. asbestos and tyres	Willshees WTS	FCC Raynesway TLS
		Bulky	Willshees WTS	FCC Raynesway TLS
FCC Raynesway TLS	<b>14</b>	Household & Commercial Residual	FCC Raynesway TLS	Willshees WTC
		Street Cleansing (street litter bin waste & manual sweepings only)	FCC Raynesway TLS	Willshees WTC
		Fly tipped (incl. asbestos and tyres)	FCC Raynesway TLS	Willshees WTC
		WEEE	FCC Raynesway TLS	Clover Nook WTS
		Bulky	FCC Raynesway TLS	Willshees WTC
		Clinical infectious and offensive	FCC Raynesway TLS	Clover Nook WTS
2ZLF	<b>3</b>	Mechanical Street Sweepings only (not street litter bin waste or manual sweepings)	2ZLF	FCC Raynesway TLS

<b>Derby City</b>				Veolia London Rd WTS
FCC Raynesway TLS	<b>90</b>	LACMW	FCC Raynesway TLS	Clover Nook WTS Stanton WTS

Veolia London Rd TLS	5		Veolia London Rd TLS	Willshees WTS FCC Alfreton RDF  FCC Raynesway TLS
2ZLF	3	Street Cleansing	2ZLF	FCC Raynesway TLS
2ZLF	2	Gully	2ZLF	FCC Raynesway TLS
FCC Raynesway TLS		Clinical	FCC Raynesway TLS	Clover Nook WTS
FCC Raynesway TLS		WEEE	FCC Raynesway TLS	Clover Nook WTS
FCC Raynesway TLS		Hazardous	FCC Raynesway TLS	Clover Nook WTS
Veolia London Rd TLS		Bulky	Veolia London Rd TLS	FCC Raynesway TLS

<b>Erewash</b>				
Stanton TLS	90	Household & Commercial Residual	Stanton TLS	Raynesway TLS
		Bulky	Stanton TLS	Veolia London Rd WTS Raynesway WTS
2ZLF	5	Mechanical Street Sweepings only (not street litter bin waste or manual sweepings)	2ZLF	Raynesway TLS
Raynesway TLS	5	Household & Commercial Residual	Raynesway TLS	Stanton WTS
		Street Cleansing (street litter bin waste & manual sweepings only)	Raynesway TLS	Stanton WTS
		Bulky	Raynesway TLS	Stanton WTS
		Clinical infectious and offensive	Raynesway TLS	Clover Nook WTS
		WEEE	Raynesway TLS	Clover Nook WTS
		Fly tipped (incl. asbestos and tyres)	Raynesway TLS	Clover Nook WTS

<b>HWRC's</b>			<b>Designated</b>	<b>Contingency</b>
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			<b>DP</b>	<b>Arrangement</b>
Ashbourne	<b>100</b>	Residual	Willshees WTS,Burton	Veolia London Rd WTS
Bolsover	<b>100</b>	Residual	Clover Nook WTS	Chesterfield WTS
Bretby	<b>100</b>	Residual	Willshees WTS,Burton	Veolia London Rd WTS
Glossop	<b>100</b>	Residual	Glossop WTS	Clover Nook WTS
Ilkeston	<b>100</b>	Residual	Stanton WTS	Clover Nook WTS
Loscoe	<b>100</b>	Residual	Stanton WTS	Clover Nook WTS
Northwood	<b>100</b>	Residual	Clover Nook WTS	Stanton WTS
Raynesway	<b>100</b>	Residual	Raynesway TLS	Veolia London Rd WTS
Stonegravels	<b>100</b>	Residual	Chesterfield WTS	Clover Nook WTS

**Renewi UK Services Ltd**

**Method Statement 4**

**Service Management**

**Draft 1.1**

## **Client Liaison**

Renewi will seek to foster an open and honest approach to dialogue and will encourage debate and communication amongst all stakeholders and delivery partners. We have a clear understanding of the contract requirement and will routinely share information and liaise with the Councils and other stakeholders.

The contractor and the councils will agree to meet regularly to discuss the performance and management of the contract.

There will be regular contact between the Contractor and Council staff regarding working interfaces, complaints, campaigns and initiatives.

### **Complaints Management**

The contractor is committed to maintaining effective arrangements for the management of complaints.

IT

The security of both Renewi's system and that of the Councils is paramount. The Contractor will ensure that the system is secure to access and protected

### **Monitoring and Reporting**

Self-monitoring is an integral part of the Contract and the contractor will take a proactive approach in managing quality by reviewing service performance and acting on key performance indicators

## **Waste Audit Trail**

The flow of all wastes will be monitored and recorded including:

- Weighbridge records of contract waste delivered by WCAs to nominated Delivery Points, whether Waste Transfer Stations (WTSs), Landfill sites or other nominated locations
- Weighbridge records from Landfill sites that receive residual waste from Household Waste Recycling Centres (HWRCs)
- Weighbridge records from re-processors and composters that receive recyclable materials and green waste from HWRCs

Wastes types will be recorded and identified by their EWC (European Waste Classification) code and these will be used to determine overall municipal waste tonnage. The above data will be collected and will be used to produce waste flow records by County, City and WCA areas.

The records will be backed-up daily with archived materials retained for a period to be agreed with the Councils. This will provide a durable and robust audit trail from which the data can be utilised to produce invoices and payment requests for contract waste.

All waste streams dispatched from the sites and facilities will be accompanied by a consignment note detailing the origin of the waste.

The waste flow data will be used in accountancy software for the monthly calculation of the Unitary Charge as well as in checking invoices and receipts from third parties such as Landfill operators and re-processors.

The contractor will carry out duty of care audit checks to verify environmental compliance.

All waste arriving into a site will be inspected, as far as practicable to ensure the waste conforms to the Site Environmental Permit and any Transfer Note issued under Duty of Care

At HWRCs, a member of staff will visually inspect the waste as it arrives at the site and will give assistance where necessary to ensure that the waste is separated and sorted in the correct area. Non-contract waste will not be accepted at the sites and this will be re-directed to a suitably licensed commercial facility.

A designated member of staff working at the WTS' will visually inspect the waste as it arrives and is deposited by the WCA and other vehicles

In addition to routine spot checks, waste audit reports and standard visual monitoring; Renewi will ensure equipment, at all sites, is properly calibrated and maintained in accordance with legal requirements. Contractor's staff will periodically audit site operations and will examine calibration logs and records in order to ensure compliance

### **Customer satisfaction surveys**

Annual Customer Satisfaction Surveys will be carried out for each HWRC following agreement by the councils to the content and questions.

### **Working Relationships**

Renewi will maintain good working relationships between the Councils, WCAs, partners, contractors, subcontractors and other service users to deliver value for money and ensure the correct level of service delivery

Renewi will manage equality and diversity issues, as they relate to it's sites, in close liaison with the councils.



**Renewi UK Services Ltd**

**Method Statement 5**

**Quality Assurance**

## **Introduction**

The contractor maintains Quality, Environment and Health and Safety systems for its business and hence for the contract, including organisation and responsibilities, targets, planning, design, risk management, process control, measuring, audit and customer care

### **Quality Management Systems**

The contractor's systems have been designed to meet the requirements of:

- BS EN ISO 9001:2008 - Quality Management Systems
- BS EN ISO 14001:2004 - Environmental Management Systems
- BS OHSAS 18001:2007 - Occupational Health and Safety Management Systems.

Renewi has achieved accreditation to ISO 9001, 14001 and 18001 and is committed to maintaining this

The contractor will ensure:

- Key client, stakeholder, contractual and legal requirements are identified and delivered
- The policies and practices necessary to deliver these requirements are well understood, effective and clearly communicated
- Each individual involved in delivering the service clearly understands their role and responsibilities, and is both competent and adequately equipped to carry out their tasks
- Activities are planned to maximise the 'right first time' principle with the emphasis placed on problem prevention

### **Competence and Training**

All personnel involved partly or wholly in activities related to the waste services provided will have received the necessary induction, training and/or experience such as CoTC; and will be provided with clear instructions regarding their tasks and requirements.

Training records will be maintained identifying the tasks and functions requiring specific skills, which significantly affect the performance of Renewi in carrying out its objectives and the service provided to the Councils.

The Operations Managers will ensure that site staff are directed and trained in relevant emergency procedures for their particular site or activity. These procedures will be documented within the Site Operational Plans, and periodically reviewed.

### **Performance Monitoring**

Monitoring, measurement and analysis will be carried out on the contract will be developed as an effective means of monitoring performance and identifying the need for improvement.

**Renewi UK Waste Services Ltd**

**Method Statement 6**

**Interface with the Public and Waste Minimisation**

## **Summary**

As an organisation we recognise the importance of communicating with customers.

Engaging with stakeholders helps us to identify the key issues and risks facing us as a business partnership.

The Contractor will work with the councils on public engagement activity as required.

**Renewi UK Waste Services Ltd**

**Method Statement 10**

**Employment and Staffing**

## **Introduction**

Effective employment and staffing are central to the implementation and success of the contract.

## **Organisational Structure And Key Roles**

The overall organisational structure for the delivery of the Project is shown in MS1 and is further appended to this MS10

The **Contracts Director** has overall responsibility for the formulation and delivery of all strategies, and the delivery of the services provided under the Contract .The Contracts Director will have wide experience in operational and contract management

The **Operations Manager** reports to the Contracts Director and is responsible for delivery of operational services to meet exacting performance targets. The services are delivered by sub-contractors and cover waste disposal, household waste recycling centres (HWRCs), waste transfer stations (WTS), waste treatment, and transport services. The key purpose of the role is to provide effective leadership and to ensure the services are delivered in accordance with the Contract, statutory requirements, necessary permits, and good industry practice.

The **Financial Controller** reports to the Contracts Director and supports the business by having the overall responsibility for the production of accurate and timely management and statutory accounting information. As a business partner they contribute to key decision making within the business, working closely with the management team to deliver against the business plan and budgets, and with the Councils regarding all aspects of the paymech, contract performance, data management and reporting.

The **Management Accountant/Analyst** reports to the Financial Controller and is responsible for ensuring all waste and other data that derives from the various delivery points and other treatment and disposal facilities is received and processed in a timely and accurate manner, and used appropriately to generate orders, invoices, reports and accounts as required by the contract and the Councils

The **Contract Administrator** reports to the Financial Controller and is responsible for management of complaints, company and contract administration including close liaison with the Renewi Support Services functions and with the administration teams of the two Councils. They are also responsible for the smooth running of the contract office

## **Support Services**

The contract will be further supported by services drawn from Renewi Head Office support departments based at Milton Keynes. These services include HR, legal, insurance, payroll, purchasing, treasury, IT and where necessary those provided by the Executive Directors.

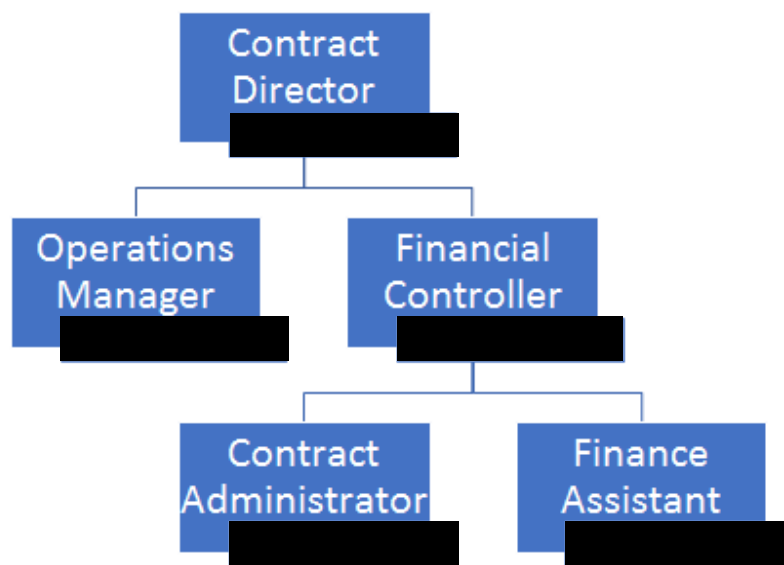
## **Subcontract Staffing - HWRCs**

This is covered in MS17-HWRCs

## **HR Policies**

The Contractor and HW Martin Waste Ltd have a wide range of policies and procedures for all aspects of HR management including such aspects as recruitment and training, performance management and disciplinary matters in place and available for review on request at any time.

Appendix A- Continuity Services Organogram



**Renewi UK Services Ltd**

**Method Statement 11**

**Health, Safety and Welfare**



## **Introduction**

The protection of the health, safety and welfare of both the workforce involved in the delivery of this project and the residents of the Councils accessing the services provided, is critical to the success of this Agreement and all parties involved.

## **Safety Management Systems**

The Contractor operates a management system which incorporates safety, health & environment (SHE) which comprises three basic layers:

1. Core SHE policies, management standards and procedures covering SHE topics of critical importance to Renewi and apply to all Renewi operations across the UK
2. Core non-SHE policies, standards and procedures which have SHE implications; such as core documents relating to plant and equipment, IT systems, purchasing, human resources, etc.
3. Local level permits, licences, management/working plans, permissions, consents, procedures, risk assessments and other SHE and related documents. These documents are produced and maintained by local management with the assistance of Renewi professionals and outside consultants.

The purpose of the safety, health & environment quality management (SHEQ) management system is to:

- Ensure compliance with relevant health, safety and environmental legislation as the starting point and, wherever reasonably practicable, exceed legal standards
- Provide a safe and healthy working environment for employees, visitors and any other third parties who may visit or be affected by our operations
- Prevent all avoidable accidents and incidents, whether near miss, minor or major, resulting from its activities and investigating any which do happen to prevent reoccurrence
- Ensure continuous improvement in health, safety and environment
- Take a risk based approach to the management of health, safety and environment.

## **Health and Safety 'Mission'- Contractor and Sub-contractors**

The Contractor fully recognises and accepts the need to achieve excellence and continuous improvement in health and safety management and performance, and a commitment to this goal has been made by the contractor's Board of Directors. The Board of Directors are responsible for providing leadership for SHEQ compliance and improvement, ensuring adequate resources are budgeted for SHEQ and that company strategy is always consistent with high SHE standards. The Contracts Director is responsible for providing the resources and framework locally to promote a positive SHEQ culture through their leadership, budgeting, management of change, visible commitment and direction and the objectives they set their employees.

## **Audits and inspections**

The Contractor will undertake regular planned and unplanned SHEQ audits of both its own and third party facilities and this includes joint inspections with representatives of the two Councils

## **SHEQ Resources**

The Contractor has access to a team of SHEQ professionals for the contract. These include:

- Regional SHEQ Advisor
- Renewi UK Head of SHEQ
- Renewi Group Head of SHEQ

Collectively, these SHEQ professionals will provide leadership, advice, technical assistance and independent monitoring to the contractor to enable them to fulfil their responsibilities in implementing the safety management system and all associated risk controls.

The Contracts Director is responsible for operational aspects of SHEQ performance. In addition, all other service delivery partners will be required to allocate appropriate levels of health and safety management/support for the delivery of their own subcontract services.

### **Training**

The Contractor and its subcontractors will identify the skills, knowledge and expertise required within the contract and satisfy any training and development needs arising particularly those SHEQ related.

For those personnel in relevant managerial and supervisory positions technical competence will be required in accordance with the schemes provided by the Waste Industry Training Advisory Board (WAMITAB) as well as through internal schemes.

The contractor and its subcontractors will all maintain proper training records

### **First Aid**

In terms of first aid, the Contractor and its subcontractors, supported by the SHEQ advisory teams, will assess and provide the appropriate arrangements for first aid for all activities.

Site managers are responsible for informing their staff of the arrangements that have been made in connection with the provision of first aid and for ensuring these arrangements remain effective.

### **SHEQ Reporting**

Statutory and company reporting protocols will be followed at all times including both for serious incidents such as RIDDORS and also improvement reporting such as Near Miss reporting. All serious incidents should be reported to the councils within 24 hours. All operational reports will include prominent sections on SHEQ performance including all significant incidents and key trends, and SHEQ will be at the top of the agenda for all management meetings

**Renewi UK Services Ltd**

**Method Statement 15**

**Disposal / Landfill & Treatment**

### **Proposed Landfill Sites**

The Contractor intends to use the following sites from time to time for disposal of residual wastes

The contractor will ensure only waste types which the sites are permitted to take are delivered to them.

Other sites may be added to the list subject to the prior approval of the Councils and appropriate DOC information being obtained

<b>Landfill Name</b>	<b>Operator</b>	<b>Address</b>	<b>Wastes to be Disposed at the Site</b>
Arden	P. Casey Enviro Ltd	Ovenhill Road Birch Vale Derbyshire SK22 1BY	<ul style="list-style-type: none"><li>▪ HWRC residual waste</li><li>▪ Contract Waste from WTSs</li></ul>
Erin	Viridor Waste Management Ltd.	Markham Lane Duckmanton Chesterfield S44 5HS	<ul style="list-style-type: none"><li>▪ HWRC residual waste</li><li>▪ Contract Waste from WCAs</li><li>▪ Contract Waste from WTSs</li><li>▪ NWTF oversize, fines and rejects</li></ul>
Welbeck	FCC Environment	Wakefield	<ul style="list-style-type: none"><li>▪ HWRC residual waste</li><li>▪ Contract Waste from WTSs</li></ul>
Leadenham	FCC Environment	Lincs	<ul style="list-style-type: none"><li>▪ HWRC residual waste</li><li>▪ Contract Waste from WTSs</li></ul>
Pilsworth	Viridor	Pilsworth Road, Bury, Lancashire, BL9 8QZ	<ul style="list-style-type: none"><li>▪ HWRC residual waste</li><li>▪ Contract Waste from WTSs</li></ul>
Ling Hall	Veolia	Coventry	<ul style="list-style-type: none"><li>▪ HWRC residual waste</li><li>▪ Contract Waste from WTSs</li><li>▪</li></ul>
Poplars	Biffa	Cannock	<ul style="list-style-type: none"><li>▪ HWRC residual waste</li><li>▪ Contract Waste from WTSs</li></ul>
Shawell	Tarmac	Lutterworth	<ul style="list-style-type: none"><li>▪ HWRC residual waste</li><li>▪ Contract Waste from WTSs</li><li>▪</li></ul>

### **Proposed Diversion & Treatment Sites**

The Contractor intends to use the following sites for diversion of Contract Waste from the Waste Transfer Stations

The contractor will ensure only waste types which the sites are permitted to take are delivered to them.

Other sites may be added to the list subject to the prior approval of the Councils and appropriate DOC information being obtained

Site Name	Operator	Address	Wastes to be Disposed at the Site
Coventry EfW	CSWDC Ltd	Bar Road, Coventry, CV3 4AN	▪ Contract Waste from WTSs
Eastcroft EfW	FCC Environment	Incinerator Road, Off Cattle Market Road, Nottingham, NG2 3JH	▪ Contract Waste from WTSs
Four Ashes EfW	Veolia	1 Station Road, Four Ashes, Wolverhampton, West Midlands, WV10 7DG	▪ Contract Waste from WTSs
Peak Waste	Peak Waste Recycling Ltd	Wood Lane, Kniveton, Ashbourne, Derbyshire, DE6 1JF	▪ Contract Waste from HWRCs
Sheffield EfW	Veolia	Lumley Street, Sheffield, S4 7ZJ	▪ Contract Waste from WTSs
Stoke EfW	MES Environmental	Campbell Rd, Sideway, Stoke-On-Trent, Staffordshire, ST4 4EX	▪ Contract Waste from WTSs
Transwaste RDF	Transwaste Ltd	Gibson Lane, Melton, Hull, HU14 3HH	▪ Contract Waste from WTSs ▪ Contract Waste from HWRCs
Willshee's RDF	Willshee's Skip Hire	Glensyl Way, Burton-on-Trent, DE14 1LX	▪ Contract Waste from WTSs ▪ Contract Waste from HWRCs
Wolverhampton EfW	MES Environmental	Crown Street, Wolverhampton, West Midlands, WV1 1QB	▪ Contract Waste from WTSs
Ardley EfW	Viridor	Bicester	▪ Contract Waste from WTSs
Peterborough EfW	Viridor	Peterborough	▪ Contract Waste from WTSs
Allerton Park EfW	Amey	Northallerton	▪ Contract Waste from WTSs
Milton Keynes EfW	Amey	Milton Keynes	▪ Contract Waste from WTSs
BDR MBT	Rotherham	Renewi	▪ Contract Waste from WTSs
ELWA MBT x2 FI & JL	East London	Renewi	▪ Contract Waste from WTSs
Valley Farm Road	Leeds	AWM	▪ Contract Waste from WTSs ▪ Contract Waste from HWRCs
Castle Donington RDF	Castle Donington	Veolia	▪ Contract Waste from WTSs ▪ Contract Waste from HWRCs
MidUK RDF	Caythorpe	MidUK/AWM	▪ Contract Waste from WTSs ▪ Contract Waste from HWRCs
			▪

Alfreton RDF	Alfreton	FCC Environment	<ul style="list-style-type: none"> <li>▪ Contract Waste from WTSs</li> <li>▪ Contract Waste from HWRCs</li> </ul>
Mansfield RDF	Mansfield	Veolia	<ul style="list-style-type: none"> <li>▪ Contract Waste from WTSs</li> <li>▪ Contract Waste from HWRCs</li> </ul>
Atherton RDF	Bury	Viridor	<ul style="list-style-type: none"> <li>▪ Contract Waste from WTSs</li> <li>▪ Contract Waste from HWRCs</li> </ul>
West Meadows	Derby	2ZLF	<ul style="list-style-type: none"> <li>▪ Gully &amp; sweepings</li> </ul>

The Contractor intends to utilise short term or ‘spot diversion opportunities’ whenever they become available at a cost not exceeding the equivalent delivered cost to landfill.

The Contractor will record the details of waste destinations and delivery details for Waste Data Flow to the reasonable satisfaction of the councils. A report on these events will be forwarded to the Councils as part of the reporting regime on a monthly basis.

**Renewi UK Services Ltd**

**Method Statement 16**

**Delivery Point(s) and Waste Transfer**

## Introduction

This Method Statement details the Delivery Points, usually transfer station facilities, to be provided for;

- The Waste Collection Authorities (WCAs) to deposit Contract Waste
- The disposal of residual waste from certain Household Waste Recycling Centres (HWRCs) in circumstances where these are not delivered direct to treatment facilities per MS15.

All designated Delivery Points, with the exception of Willshees TLS are located within the County or City, providing access for the WCA collection fleets

## Provision of Delivery Points

The Contractor operates or has put in place third party subcontractor arrangements for the provision of various Delivery Points, to comply with the requirements of the Specification. The Councils have agreed these Delivery Points.

The Delivery Points are as set out in Tables 1 and 2 below

In the event that any Delivery Point becomes unavailable for any reason the contingency arrangements as set out in MS2 apply

Delivery Points will be regularly audited by the Contractor and the Councils

**Table 1 - Designated Delivery Points**

WCA	Designated Delivery Point
<b>Amber Valley BC</b>	Raynesway WTS (7% waste) Clover Nook WTS (93% waste)
<b>Bolsover DC</b>	Clover Nook WTS (57% waste) Chesterfield WTS (43% waste)
<b>Chesterfield BC</b>	Chesterfield WTS (100% waste)
<b>Derby City Council</b>	Raynesway WTS (90% waste) London Road WTS (5% waste) 2ZLF West Meadows (5% sweepings & gully waste)



WCA	Designated Delivery Point
<b>Derbyshire Dales DC</b>	Raynesway WTS (2% waste) Clover Nook (51% waste) SITA Waterswallows (48% waste)
<b>Erewash BC</b>	Raynesway WTS (5% waste) Stanton WTS (90% waste) 2ZLF West Meadows (5% sweepings & gully waste)
<b>High Peak BC</b>	SITA Waterswallows WTS (61% waste) SRCL Ltd (Oldham) (1%) Glossop WTS (38% waste)
<b>NE Derbyshire DC</b>	Clover Nook WTS (7% waste) Chesterfield WTS (93%)
<b>South Derbyshire DC</b>	2ZLF West Meadows (2% sweepings & gully waste)
	Raynesway WTS (14% waste)
	SRCL Ltd (Four Ashes) (1% waste)
	Burton WTS ('Willshees') (83% waste)

**Table 2 - Delivery Point Address and other details**

<b>Delivery Point</b>	<b>Operator</b>	<b>Location and Address</b>	<b>Consented Opening Times</b>	<b>Telephone number</b>
Clover Nook WTS	HW Martin	Grange Close, Clover Nook Industrial Estate, Alfreton, Derbyshire, DE55 4RF	Mon - Fri 07.00 - 17.00hrs Sat 07.00 - 17.00hrs Sun 07.00 - 09.00hrs	01773 520795
Glossop WTS	HW Martin	Melandra Road, Brookfield, Glossop, Derbyshire, SK13 6JQ	Mon - Fri 07.00 - 17.00hrs Sat 07.00 - 17.00hrs Sun 07.00 - 09.00hrs	01457 868841
Raynesway WTS	FCC	Raynesway Park Drive, Raynesway, Derby, DE21 7BA	Mon - Fri 07.00 - 17.00hrs Sat 07.00 - 17.00hrs Sun 07.00 - 16.00hrs	01332 572189
Stanton WTS	Stanton Recycling	The Old Iron Works, Crompton Road, Ilkeston, Derbyshire, DE7 4BG	Mon - Fri 07.00 - 17.00hrs Sat 07.00 - 12.00hrs Sun Closed	0115 930 8144
Waterswallows WTS	Sita	Waterswallows Industrial Estate, Waterswallow Road, Green Fairfield, Buxton, Derbyshire, SK17 7JB	Mon - Fri 08.00 - 17.00hrs Sat 08.00 - 13.00hrs Sun 08.00 - 13.00hrs	01298 767991
Burton WTS	Willshee's Skip Hire	Glensyl Way, Burton-on-Trent, DE14 1LX	Mon - Fri 07.00 - 17.30hrs Sat 07.00 - 12.30hrs Sun 09.00 - 12.30hrs	01283 702340
West Meadows 'Road Wet Waste' Treatment Facility	2ZLF	West Meadows Industrial Estate, Derby DE21 6HA	Mon - Fri 07.00 - 17.00hrs Sat - by arrangement	0333 305 2122

Within 1 month of the start of the contract, the contractor will provide full details of opening times at each site for bank holidays and public holidays.

## **Minor Waste Streams**

### Gully Emptying and Other Wet Wastes

In addition to the DP at West Meadows, the WTS's at Raynesway, Chesterfield, Clover Nook and Willshees also act as reception points for gully emptying and other wet wastes

Glossop, Waterswallows and Stanton WTS do not include facilities to accept gully emptying waste.

### Clinical Waste

Provision for the reception of low hazardous Clinical Waste as required by the Specification is made at each WTS aside from Stanton. A steel lockable container is located at each WTS for the temporary storage of Clinical Waste delivered to the Facility. Within each container there is a series of wheelie bins for each category of Clinical Waste. Clinical Waste is delivered to the WTSs at Clover Nook and Raynesway, and is collected by SRCL and taken to their various facilities typically at Oldham, Nottingham and Wolverhampton for disposal.

### WEEE and Hazardous Waste

Provision for the reception of WEEE and certain hazardous wastes in small quantities as required by the Specification is made at each WTS aside from Stanton and Wilshees

**Renewi UK Services Ltd**

***Method Statement 17:  
HWRCs***

## **1. Introduction**

This Method Statement sets out the operating procedures that the Sub Contractor HW Martin Waste Ltd (HWM) will utilise to deliver the HWRC operation under a sub-contract, and under the overall management of the Operating Contractor Renewi UK Services Ltd (Renewi).

This method statement sets out details of the Operating Procedures, Contingency Procedures and staff which HWM use to manage the HWRC's. These have been developed through successful delivery of these services both within the Derbyshire region and elsewhere within the UK.

HWM and the contractor will provide an efficient re-use, recycling and disposal service for all relevant waste delivered to the sites by the public.

## **2. Operating Procedures - HWRCs**

### **2.1. Opening Hours**

Each HWRC site will be open to the public between the hours of 08:30 to 18:00 each day except Christmas Day, Boxing Day and New Year's Day. The only exception to these hours will be that Raynesway HWRC will be open to the public between the hours of 08:00 to 18:00 each day except Christmas Day, Boxing Day and New Year's Day.

Vehicles delivering or collecting containers from site may access the sites before or after these opening times.

### **2.2. Measures to Promote Re-use and Recycling**

#### **Reuse on HWRCs**

HWM currently sends the following items deposited at HWRCs for reuse:-

- Gas bottles
- Paint - working with a local charity at the Raynesway site
- Bric-a-brac - items that can be reused and are readily marketable are sold at markets, auctions etc.

Information concerning where to deposit reusable items on site, will be disseminated to site users by means of signs, strategically placed, and prepared in the style of the recycling signage already provided.

#### **Recycling on HWRC's**

HWM will promote Recycling through the provision of: -

- Friendly and efficient staff to provide guidance and assistance
- Clear Signage
- Provision of adequate recycling collection containers

### **2.3. Contract wastes to be collected and container size**

HWM will aim to provide a uniform service across all HWRC's and will also provide the same type of container for all output streams, where space allows. The following table illustrates the output streams and the containers which will initially be provided for on-site storage:

Material to be recycled	Type of container to be provided
Residual waste	Open 34 m3 hooklift container
Green garden waste	Open 34 cubic metre hooklift container
Hardcore and rubble	Open 12 cubic metre hooklift container
Gypsum/plasterboard	Open 12 cubic metre/ Open 34 cubic metre hooklift container
Wood 1 <sup>st</sup> grade	Open 34/40 cubic metre hooklift container
Wood 2 <sup>nd</sup> grade	Open 34 /40 cubic metre hooklift container
Plastic Bottles	Open 34 cubic metre hooklift container
Newspapers and magazines	34 cubic metre hooklift container
Cardboard	Open 34 cubic metre hooklift container
Glass bottles and jars	Beehive type recycling banks
Asbestos	Sealed 34 cubic metre hooklift container
Tyres	Open 15 or 34 cubic metre hooklift container
Large Domestic Appliances	Open 34 cubic metre container
Small Domestic Appliances	12 or 34 cubic metre container or dedicated area
Fridges etc.	34 cubic metre container
TV's	Enclosed 'shipping' container
Fluorescent lamps	Specialist container
Cans	In ferrous metal container
Textiles including Shoes	Specialist textiles container
Re use including bric-a-brac, tools, bicycles, books.	Segregated by site staff and placed in an enclosed container of appropriate size for the facility
Metals	Enclosed & open container of appropriate size for the facility
Car Batteries	Battery boxes
Oil - engine and vegetable collected separately	Bunded oil tanks
Household Batteries collected separately	Leak proof enclosed container
Hazardous Waste, including paint	Chemical safe
Gas bottles	Lockable cage
Paint reuse (Raynesway only)	Specialist container

HWM are also constantly reviewing the items which are segregated at the HWRC's. Legislation, general public demand and other external market forces will form part of this review and may lead to additional containers being offered at sites for collection of these materials (or in some cases removal of streams that are no longer practicable to recycle). HWM would involve Renewi and the Councils in this decision-making process through email conversations and/or meetings.

#### 2.4. Arrangements for Sorting, Segregation and Storing Waste

Research into this area has shown that the key to sorting, segregating and storing waste effectively at HWRCs is:

- Clear visible signage
- Segregated collection
- A "meet and greet" service

##### Clear Visible Signage

Each site will be provided with prominent signage detailing the type of commodity to be deposited in each location. The site signage will adopt the universal WRAP standard.

Where possible, the signage will be prominently displayed above the containers to ensure that it is permanently visible.

### **Material separation**

Site Operatives, having the job title of “Recycling Advisor”, are responsible for ensuring that recyclate is captured and placed in the correct receptacle. Any contamination identified in a container will be removed retrospectively using the procedures set down in the risk assessment.

All segregated material will be stored in suitable receptacles. The following criteria have been used to assess the suitability of containers to be used:

- Health and safety implications to site staff and site users
- Quantity of material expected to be delivered to site and to be stored
- Physical nature of material
- Availability of space on site
- Vehicle access
- Type of vehicle used for collection
- Accessibility for all users
- Environmental Permit and planning requirements

### **A “meet and greet” service**

Site staff will, subject to duties and activities, seek to meet and greet the public at the sites.

## **2.5. Arrangement for Emptying Containers and Collecting Recyclable Materials**

### **Collection Frequency**

HWM understands the importance of providing adequate vehicles to cope with seasonal fluctuations and as an experienced operator of Derbyshire’s HWRC’s, with its operating base located in the centre of the County, HWM is ideally placed to deploy resources throughout Derbyshire and Derby City efficiently and quickly.

Skips will be replaced when required. Where space allows spare skips will be stored on site and where not they will be stored on the nearest WTS or in HWM’s depot in Blackwell or Alfreton Recycling Centre. HWM aim to operate a next day collection service which ensures that full containers are removed from site generally no later than the next working day after they are reported as full. In some circumstance’s containers may remain on site for longer periods (e.g. for pairing up draw bar loads) whilst ensuring that sufficient capacity is available for the public to deposit their waste materials at all times.

### **Vehicle Types, Numbers & Resources**

HWM has a pool of resources that it can draw from to proficiently manage the spikes of demand that occur throughout the year, the vehicle fleet will be increased at the critical times of the year to cope with demand.

The HWRCs will be serviced by a vehicle fleet of 32 tonne gvw and 26 tonne gvw hooklift vehicles, a proportion of which will draw close coupled trailers capable of carrying 2 containers as illustrated opposite. All vehicles are fitted with ground level operated automatic sheeting systems



which assist in ensuring the safety of the vehicles driver by eliminating any fall from height accidents.

The vehicles are fitted with mobile phones, satellite tracking, and digital tachographs. All drivers will be contactable via mobile phone. The vehicles will have hands free kits which allow vehicles to be re-routed should priority services be required at any given HWRC and allowing the driver to communicate safely with the control room. This facility also forms a key part of lone working procedures as it allows continual contact to be maintained.

The on board satellite tracking providing historic and live information. The tracking software will allow:

- Monitoring that the driver is using designated routes,
- The length of time spent on sites
- Ensuring that road speed restrictions are being adhered to
- Determining whether the driver is having adequate breaks to comply with tachograph regulations
- Identifying where the vehicle is at any one time for instance in the event of a mechanical breakdown, etc.
- Monitoring where the driver is in cases where mobile phone contact is lost in line with our lone working procedures.

The driver's tachograph downloads will be both internally and externally verified. The driver and HWM will receive reports of its externally verified tachograph data. This information is also provided electronically in order for us to prove that we are complying with all driver applicable legislation and regulations.

In general demand for container movement can be planned; however, HWM's experience as a HWRC service contractor provides us with a detailed understanding of the factors that are significant in determining variations in demand of site inputs and throughput. Weather, school holidays, and the level of kerbside collection all impact upon the best estimation of HWRC throughputs.

Other factors which need to be taken into account that influence the inputs into HWRC's and therefore affect transport requirements include:

- Saturdays and Sundays are busier than mid-week.
- Spring time is the busiest season which generally arrives with the first of the year's mild weather.
- School holiday periods and Bank Holidays lead to an upturn in business.
- The period between Christmas and New Year is a traditionally busy period dealing with additional inputs generated at that time.

These periods can be planned for and we will take the following measures to ensure the same high-quality service is available.

- Temporary vehicles are added to the fleet
- Additional site staff are deployed
- Spare containers are provided
- An intense clearance programme is initiated to ensure sites waste volumes are reduced before each anticipated period of increased activity
- Merchants and disposal points are made aware of the Company's collection and disposal requirements

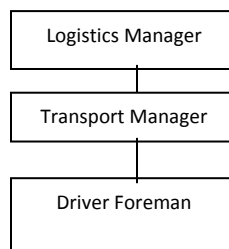


The following table also illustrates an estimate of the number of vehicles to be used to service the contract in both normal and peak demand periods:

HWRC	Vehicle Demand Normal	Vehicle Demand High
Ashbourne	0.2	0.3
Bolsover	0.3	0.4
Bretby	0.3	0.4
Stonegravels	0.7	0.9
Raynesway	1.1	1.3
Glossop	0.3	0.4
Ilkeston	0.5	0.7
Loscoe	0.9	1.1
Northwood	0.3	0.4
TOTAL	4.6	5.95.9

## Transport Staff

Transport from HWRCs is managed by a team of dedicated Transport Managers based at HWM's Alfreton Recycling Centre. They all hold the relevant Certificate of Professional Competence for this type of operation and regularly attend update seminars to ensure they are aware of the very latest developments. An indicative structure is shown below:



## Work Scheduling

In practice, each HWRC is contacted in the afternoon and its haulage requirements for next day is assessed and recorded. A transport plan is then prepared using this data and sufficient vehicle resources are deployed to ensure that sufficient capacity is maintained at the HWRCs.

Vehicle deployment schedule for the following day(s)

- The administration office &/or Transport Manager will contact all sites on a daily basis each afternoon to determine the transport requirement of the sites for the following day
- The site will be asked to indicate at the point of the initial phone call, anticipated loads at the site throughout the day.

Preliminary duty of the driver - commencement of working day

- Carry out visual inspection of vehicle and complete vehicle check sheet
- If the driver is incapable of rectifying any minor defect (e.g., blown bulb, residue obscured lens, etc.) or if the defect requires expert mechanical knowledge then they must contact their direct supervisor for further instruction. The driver must not take the vehicle onto a public highway before consulting with their manager.

#### Arrival of vehicle on HWRC site as requested

- Report to HWRC Duty Manager before commencing vehicle activities (if during operational hours). At the sites where it is not possible to segregate the general public areas from the vehicle manoeuvring areas then the HWRC Duty Manager will close the site while the loading activities are taking place.
- Agree with the HWRC Duty Manager the order of work. Identify container for transport as per HWRC Duty Manager's instruction.
- Confirm the identity of HWRC Traffic Controller.
- Carry out visual inspection of load and container; identify any protruding waste, poor weight distribution (if practically possible), or container defect and report to site manager as appropriate.
- If the container is damaged then the driver completes a "Skip Repair" record. If the container is unsafe for carriage, the Assistant Transport Manager is contacted for instructions with regard to repair.
- Rear facing cab mounted work lights are to be used at the discretion of the driver to illuminate the working area and Traffic Controller in low light conditions.
- As per the instruction of Traffic Controller commence on site manoeuvres.
- Load container onto hooklift vehicle.
- If required, shunt containers as per on site instruction.
- When loaded with full container, check on board weighing to determine gross weight of vehicle. If maximum gross weight of vehicle is exceeded report to site manager and reposition on site as instructed.
- If the load is within the legal gross weight of vehicle the driver should commence a visual inspection of the load. The vehicle must not be taken onto a public highway if it is evident on a visual inspection that the weight distribution of the load would adversely affect the safety of the driver or the general public. Where the driver suspects the load is biased towards one side or is overloading any of the vehicles axles then the load should be repositioned on the site as per the instruction of the site manager. The driver must then inform his/her manager and await further instruction.
- Once satisfied by the visual inspection the driver will utilise the vehicles auto-sheeting equipment.
- Complete "Waste Collection Ticket and Transfer Note" and leave a copy with the HWRC manager
- Before leaving the HWRC the driver must complete the "Daily Log" recording the site, the container reference number (if available), the waste type and the destination.

#### On arrival at the disposal point

- The Driver must ensure that appropriate PPE is worn and that the instructions of the disposal point are adhered to at all times.
- The Driver is to report to weighbridge and then must ensure that the weighbridge operative has recorded who the client is and where the load originates from. Once the weighbridge operative acknowledges that the vehicles gross weight is recorded then they must continue to the designated tipping area.
- After successfully discharging the load the Driver must report back to the weighbridge, if applicable the vehicle should be taken through any on site wheel wash.
- Once the vehicle has been weighed off the driver must complete the "Daily Log". The weight and ticket number must be recorded.
- If at any point the container is damaged the driver must complete a "Skip Repair" form and contact his/her manager for further instruction.

- Should the driver be uncertain of the next destination then the driver must contact his/her manager and proceed as per instruction.

#### Arrival at operating centre

- On completion of the working day, the Driver should ensure that all paperwork is fully completed.
  - The Daily Log must be an accurate record of the day's work and each load must be accompanied by a copy of the disposal points weigh bridge ticket.
  - Any skip repair forms must be fully completed.
- If the Driver is aware of any vehicle or skip gear defects the Driver must complete a Defect Report and report the defect to the workshop or, if the facility is unavailable, their manager.
- If the Driver is on the deployment schedule to work the following day then their manager will allocate the following day's HWRC service tasks accordingly.

#### Weekend Coverage

To cope with high weekend usage and where required, additional haulage will be provided to ensure that sufficient containers are empty at noon on Saturdays. Containers becoming full after this time would be exchanged and left on site, where possible. As a contingency measure, spare containers would be parked at an appropriate WTS and exchanged with full if required. We anticipate that this would only need to be done at peak times such as Bank Holidays and in the Spring.

#### 2.6. Supplies and Servicing of Containers

The following table sets out the provision of containers at the HWRCs.

Material	Container Provided By	Container Serviced By
Residual waste	HWM	HWM
Green garden waste	HWM	HWM
Hardcore and rubble	HWM	HWM
Gypsum/plasterboard	HWM	HWM
Wood 1 <sup>st</sup> grade	Merchant	Merchant
Wood 2 <sup>nd</sup> grade	Merchant	Merchant
Plastic Bottles	HWM	HWM
Tetrapak	Merchant	Merchant
Newspapers and magazines	HWM	HWM
Cardboard	HWM	HWM
Glass bottles and jars	Merchant	Merchant
Asbestos	HWM	HWM
Tyres	HWM	HWM
Large Domestic Appliances	HWM	HWM
Small Domestic Appliances	Merchant	Merchant
Fridges, etc	Merchant	Merchant
TV's	Merchant	Merchant
Fluorescent lamps	Merchant	Merchant
Textiles including Shoes	Merchant	Merchant
Re use including bric-a-brac, tools, bicycles, books,	HWM	HWM
Metals	HWM	HWM
Car Batteries	Merchant	Merchant
Oil - engine and vegetable collected separately	Merchant	Merchant

Material	Container Provided By	Container Serviced By
Household Batteries collected separately	Merchant	Merchant
Hazardous Waste, including paint	HWM	Merchant
Gas bottles	HWM	Merchant
Paint (Raynesway only)	HWM	Merchant

Should any container be unsafe then the container would be taken out of service immediately. HWM has an ongoing programme of container repair and refurbishment across the fleet of containers it uses throughout its nationwide operations.

## 2.7. Arrangement for Traffic Access, Queuing and Car Parking

It is important to ensure that the through flow of users and their cars is as efficient as practicable. Traffic should be kept moving, albeit slowly to accord with the speed limit of 10 mph.

Our arrangements for traffic access, queuing and car parking will reflect this need to ensure smooth entrance, operations and exit whilst encouraging best public behaviour at peak operating hours.

We will continue to keep the traffic management at the sites under review and propose changes where we feel that these would improve either visitor throughput or health & safety. For example, we have already proposed amending the current parking arrangements at Raynesway to a parallel parking layout (as has successfully been done at Stonegravels in the past).

### Traffic Access

Wherever possible, public traffic will be kept within a defined area, with separate in and out gates and a one-way traffic flow. Operations will be centred on the operational areas, and again, wherever possible separate gates will be used for operator traffic.

### Queuing

The route through will be clearly signposted and will follow a logical order that draws the user through the site. Following initial queuing the public will enter a recycling area. As a general rule, containers will be clustered in use to suit the demand profile ensuring effective filling and a minimum carrying distance for the public. Deployment of a traffic controller who has also received meet and greet training during busy periods will also serve to reduce queuing on site.

## 2.8. Arrangements for Suitable Safe Access for Pedestrians

The safety of customers and operatives is given the highest priority and the following measures are used to provide for the safety of all persons using the site:

- Clear traffic management systems are in place with pedestrian access to sites prohibited as our risk assessment identifies this as a significant hazard. The exception being a pre-arranged operator chaperoned appointment).
- The site layout is planned to minimize reversing manoeuvres wherever practicable
- Children and pets remain inside customers vehicles whilst on site
- Vehicle queuing is kept to a minimum
- Plant and collection vehicles are segregated from customers cars

- Good housekeeping on site ensures that trip hazards are removed, spillages are dealt with immediately and ice and snow is treated and removed to prevent slips trips and falls
- Safety barriers to prevent members of the public accidentally falling into waste containers
- Clear identification of staff with branded high visibility clothing

## **2.9. Details of Site Offices Serviced by Electricity, Water Supply, Telephone and Sewerage**

Staff welfare is key to HWM. An important part of ensuring that our policies are met in this area is associated with the provisions made for staff at site offices. Each HWRC will be equipped with a site cabin which will serve as a fully equipped office and welfare facilities for employees.

All sites have CCTV systems that trigger security alerts to our security surveillance contractor.

## **2.10. Details of Adequate Lighting**

As HWRC's will be operational outside daylight hours, lighting will be required and maintained to ensure that all sites remain functional during all operational hours.

## **2.11. Arrangements for Subcontracting On-site Operations**

HWM will be using a combination of site operations subcontractors and direct employees for day to day operations of the HWRCs in Derbyshire and Derby City. These arrangements are used widely and successfully across a number of contracts. Details of all sub-contract HWRC Managers will be notified upon their appointment.

All individuals who are employed to work on the HWRC's (sub contracted or direct employees) will receive training to ensure that they are fully qualified to carry out their day to day activities. This training will be repeated and renewed as and when appropriate.

Each sites finance includes any income that can be generated through the sale of items that can be re-used or recycled that are brought to the HWRCs. Bric a Brac will not be sold on the sites, but will be stored in secure containers and taken off site for marketing. Site Managers will arrange to sell this type of material via specialist dealers, auctions, flea markets, car boot sales and other sales. Records will be kept of all materials removed via this route either by recording the weights or agreeing a typical weight per item and applying this. The benefit of this approach is that it encourages the Site Managers to run the sites efficiently and optimise the separation of materials into the different waste streams enabling them to generate as much income as possible.

HWM will have overall responsibility for all elements of HWRC management, operation and maintenance. The site operations subcontractors will be bound by a contractual agreement that outlines both their and HWM's responsibilities in relation to the operations of the sites. A summary of the allocation of these responsibilities is provided below.

Responsibility	Renewi	HWM	HWM Jointly with site operations subcontractor
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Contract Management	✓	✓	
Contract Supervision	✓	✓	
Liaison with client	✓	✓	
Site day to day operations		✓	✓
Health Safety and Environmental Compliance	✓	✓	✓
Auditing quality, environmental and safety management systems	✓	✓	✓
Control of site layout with approval from the Authorities	✓	✓	✓
Selection and marketing recycled products	✓	✓	
Site maintenance and repairs	✓	✓	✓
Provision and maintenance of site plant, materials and equipment		✓	
Operation of mobile compaction plant		✓	✓
Supply Recycling Advisors		✓	✓
Haulage of waste and recycle		✓	
Defect reporting		✓	✓
Provision of CoTC holders		✓	✓
Security and ANPR		✓	✓
Customer Services including help and advice	✓	✓	✓
Waste Management Licencing and Environment Agency liaison	✓	✓	
Insurances	✓	✓	✓
Complete Site Daily Diary and report on full containers		✓	✓
Administration, management reporting and data acquisition		✓	
Sourcing new markets and innovations	✓	✓	
Training as required and to equivalent standard as direct staff		✓	

## 2.12. CCTV Recording, Body Cam Recording and ANPR

All HWRCs included in the Derbyshire and Derby City Waste Management Contract are equipped with closed circuit television systems. Fixed and Dome cameras are strategically located on site and linked to remote activation sensors which will focus cameras on any source of movement detected. The images will be recorded on site and stored for a maximum of 30 days before being overwritten.

The contractor will co-operate with the councils in regards to investigating incidents where the CCTV material may be of relevance.

Sites are linked to a central control room which can alert the monitoring station that an intruder has been detected and the control room can sound an audible warning on site which may deter any further incursion. Should the intruder ignore any warnings issued, the local police are then alerted.

The contractor will continue to employ the use of body cam devices, on a rotating program, at various sites.

The contractor will continue to provide ANPR at Raynesway HWRC and will co-operate with the city council in regards to any investigation requirements.

### **2.13. Arrangements for Service Users to Dispose of Boxes and Plastic Bags used to carry Waste to HWRCs**

Small flexible one tonne bulk bags and mobile bins will be located adjacent to recycling containers for the deposit of bags and boxes which would then be transferred to the appropriate container by a member of the Site Staff.

### **2.14. Prevention of Unauthorised Commercial Vehicles at Raynesway**

Wastes being delivered to site will be inspected prior to deposit and will be assessed as either conforming, (i.e. domestic waste from within the allowed local area delivered by the waste producer in a car) or non-conforming wastes (i.e. trade wastes, unreasonable quantities; waste delivered in a vehicle over 3.5 tonnes gvw, or commercially produced wastes).

Wastes being delivered in vans, pick-ups and trailers up to 3.5 tonnes gvw will be accepted provided that the waste is conforming, originates from the drivers own dwelling, as far as can be reasonable ascertained and is accompanied by a valid permit issued by an Authorised Official of Derby City Council.

Persons attempting to deliver non-conforming waste, regardless of delivery vehicle type, will be advised that the site cannot accept this waste and will be given the appropriate reason and issued with a rejection notice.

In the event of dispute, Site Staff will request that a disclaimer is completed, which will be passed to the City Council, who may carry out further investigation and take any appropriate action. HW Martin Waste Ltd will give full support to the City Council in such cases. Depositors will also be warned that the site is under CCTV surveillance, and evidence will be provided to the Environment Agency in furtherance of enforcement action being taken.

### **2.15. Arrangements for Dealing with Hazardous Waste**

Hazardous wastes are categorised by the Environment Agency (EA) as follows:

**Category 1** Non-conforming waste posing an immediate threat to health or environment.

**Category 2** Non-conforming waste with no immediate threat to health or environment.

**Category 3** Wastes accepted on site and allowable under the EA Site Licence and working plan.

The following table illustrates the arrangements on every site which will be put in place to handle the deposit of hazardous waste.

Waste Description	Category	Reception and Storage
Explosives and munitions	1	Items discovered are not handled by persons on site. Site is evacuated then closed. Emergency services called.
Radioactive waste	1	Items discovered are not handled by persons on site. Site is evacuated then closed. Emergency services called.

Waste Description	Category	Reception and Storage
Chemical waste showing reactivity	1	Items discovered are not handled by persons on site. Site is evacuated then closed. Emergency services called.
Carcinogenic, clinical and medical waste	1/2	Items discovered are not handled by persons on site. Site is evacuated then closed. Emergency services called. Low grade deposits would be handled by a clinical waste disposal sub-contractor and after the deposit was isolated, the HWRC would operate normally.
Paints (Oil/solvent based)	3	Isolated from the waste stream and placed in secure chemical safe. Deposits will be identified by specialist and disposed of at the appropriate licensed facility
Household chemicals	3	Isolated from the waste stream and placed in secure chemical safe. Deposits will be identified by specialist and disposed of at the appropriate licensed facility
Oils	3	Deposited in a waste oil tank bunded to 110% of tank capacity. Collected by oil recycler.
Fluorescent tubes	3	Handled to avoid breakage and placed inside sealed tube receptacle. Collected by mercury recovery specialists.
Asbestos	3	Waste to be received double bagged and carefully placed in sealed container. Disposal via landfill.
WEEE	3	Refrigeration equipment stored in containers and dispatched to CFC removal facilities followed by defragmentation process. TV's are stored in containers prior to removal to specialist facilities. SDA is stored in containers prior to removal to specialist facilities.
Batteries	3	Both domestic and Automotive batteries are stored in sealed waterproof containers and collected by specialist recyclers.
LPG Bottles	3	Segregated and stored in a secure lockable cage. Collected by manufacturers for recycling.

### Transport of Hazardous waste

All HWRCs are registered with the Environment Agency as hazardous waste producers. The following wastes handled at the HWRC's are classified as hazardous and will be transported according the legislative requirements.

Where HWM provides the haulage services for materials such as asbestos, a hazardous waste consignment note is provided and accompanies the load to the disposal point. The Driver follows HWM's procedure for the collection, transport and delivery of asbestos for disposal.



In the case where merchants collect hazardous waste directly from site, the HWRC Manager will ensure that the hazardous waste consignment note provided by the collecting merchant is completed correctly and that the collection premises code is marked on the collection note.

#### **2.16. Segregation of Hazardous Waste**

All Site Operatives will be trained to recognise hazardous waste and where possible will intercept attempted deposits before the wastes become commingled with other types.

Clear procedures set out the actions to be followed when Hazardous waste arrives at a site. All site personnel and managers will be trained in implementation of these procedures.

#### **2.17. 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**

HWM employees are trained to recognise individuals who may have difficulties in carrying out activities on the site. As part of the training, employees will develop the skills required to identify customers who have:

- Physical difficulty in using the site
- Difficulty in recognizing the different waste streams with regard to recycling

In each case, it is of the utmost importance that the customers receive physical help, advice and information with regard to the recycling process, whilst maintaining and preserving their dignity. The appropriate assistance will therefore be provided by the contractor.

#### **2.18. Procedure for identifying and recording waste**

Upon arrival at a HWRC waste will be identified by staff via visual or verbal confirmation at which point it will be guided to an appropriate receptacle using staff assistance and signage.

Waste will be recorded when leaving the site following the procedures for waste transfer, this includes the completion of a waste transfer note and the recording of waste loads leaving the site on the daily log sheet, these procedures are regularly audited by the contractor.

Information is then entered onto a database and used to produce recycling statistics and other data for submission.

#### **2.19. A Procedure for Identifying and Recording Non-Contract Waste and Protocols for Dealing with those Suspected of Illicitly Depositing Non-Contract Waste**

##### **Trade Waste**

Trade waste will not knowingly be accepted on any HWRC site. Site staff will receive training to help them identify trade waste abuse by identifying:

- Size and type of vehicle
- Nature of load
- Frequency of visits
- Other identifiers on the vehicle such as tools, business paperwork etc.

Suspect traders will be intercepted on site and questioned with regard to: -

- Type of waste carried
- Quantity in the vehicle
- Origin of waste
- Anticipated further deliveries

If it is apparent from the above questions and taking into account the type of vehicle being used including any sign writing, onboard tools or any obvious business related paperwork being present, that the waste being deposited is trade waste, then the permission to tip will not be granted.

Any persons attempting to deposit trade waste onto the site will be advised of the nearest licensed commercial facility where known and issued with a rejection notice. Site staff will not act in a manner to provoke or incite abuse or violence from suspected traders, and will avoid unnecessary confrontation. They will not put themselves or their colleagues in danger from physical abuse or assault. It should be noted that a large proportion of the complaints received about the HWRC service come as a direct result of people being turned away from site with suspected trade waste.

### **3. Contingency Procedures**

#### **3.1 Emergency Arrangements**

In the event of an emergency, a member of staff will be nominated as the Incident Controller (IC) and will take overall responsibility for coordinating the response to the emergency. Each site will have a member of staff nominated as the initial coordinator of any emergency; this is normally the Duty Manager. Depending on the severity of the emergency, this member of staff may become the IC or a more senior member of staff may be nominated. Emergencies will be managed in line with the Emergency Plan and will be defined as one or more of the following which would trigger implementation of the action plan:

- Fire on site
- Major accident injury or sickness (minor injuries and sickness will be dealt with through on site Health and Safety procedures)
- Electrical incident
- Spillage
- Exposure to chemicals
- Explosives on site
- Gas leakage
- Flooding

The IC will coordinate any emergency services required to deal with the incident.

An emergency procedure will be located on site within the Safety, Health and Environment (SHE) manual which will be maintained and updated by the Health and Safety Manager.

#### **3.2 Proposals for Temporary and Permanent Closure of HWRC's**

Dependant on the severity of the incident and perceived risk to health, the incident may result in the temporary closure of a HWRC. HWM will notify the Contractor and the contractor will notify the councils of any closure and the following measures will be enacted:

- Collections from site will be suspended.

- Customers arriving at the site will be advised of the closure and the anticipated period of closure.
- Customers will be informed of the location of the nearest available alternative site (see Method Statement 2)
- All events will be recorded in the site diary.

#### 4 Staff

All site staff will wear clean, sensible and safety appropriate work wear, along with a visible name badge, at all times.

##### 4.1 Number of Staff (Schedule 1, Appendix B, Clause 4.2.4.1)

The table below provides an indication of typical 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	Tue	Wed	Thur	Fri	Sat	Sun	Total
Ashbourne	4	3	3	3	3	4	4	24
Bolsover	4	3	3	3	3	4	4	24
Stonegravels	6	5	5	5	5	6	6	38
Raynesway	8	6	6	6	6	8	8	48
Ilkeston	5	4	4	4	4	5	5	32
Loscoe	6	5	5	5	5	6	7	39
Northwood	3	2	2	2	3	4	4	20
Bretby	4	3	3	3	3	4	5	25
Glossop	3	3	3	3	3	4	4	23

#### Management Deployment

	Mon	Tue	Wed	Thur	Fri	Sat	Sun
Operations Manager	✓	✓	✓	✓	✓	On call	On call
Contract Manager	✓	✓	✓	✓	✓	On call	On call
Contract Supervisor	✓	✓			✓	✓	✓
Transport Manager	✓	✓	✓	✓	✓		
Assistant Transport Manager	✓	✓	✓			✓	✓
Total no. of staff	5	5	4	3	4	2	2

#### 4.2 Maintenance of Cleanliness Standards

Site Managers will perform a daily walk round check and will arrange for operatives to clean any wastes arising from HWRC activities both within the site and along the access road. A record will be made in the site diary of inspections and rectification. Equipment will be provided to site operatives who will ensure that public access areas are maintained in a clean condition.

The site access road and site roads will be cleaned by mechanical road sweeper should the need arise.

Merchant and contractor containers will be cleaned at intervals to ensure that the containers remain presentable and odour free. HWM's hook lift containers will be

maintained and cleaned at the operating centre at Blackwell, which is equipped with steam cleaning equipment.

**Schedule 4      Payment Mechanism**

**1A      GENERAL**

In the event that any component of payment is due over a period which is less than the full applicable Month (for example due to the impact of a Relevant Event or Relief Event), payments shall be pro-rated as appropriate.

**1.      MONTHLY PAYMENT**

The Monthly Payment in respect of each Month, will be payable following issuance and agreement of the Monthly Report (in accordance with the process set out in clause 32 of the Contract). For the avoidance of doubt, as the Monthly Payment will be based on actual waste flows which will only be available after the relevant Month, the payable amount calculated, reported and agreed will be due to be paid by the 20<sup>th</sup> Working Day following the end of the relevant Month. For example, for the services provided for the month of January, the Monthly Report stating the Monthly Payment calculated will be submitted in February and will be payable by the last Business Day of the month of February.

**1.1      Principal Formula**

The Monthly Payment (MPm), representing the payment due to the Contractor for the relevant Month shall be calculated using the following formula:

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$$MPm = HWRCpm + TSPm + LFPm + DRWpm + NNDRm + HAZPm + INSm + LCm \pm OAm - MAm + DSSm + YEFAY$$

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Where:

MPm	=	the Monthly Payment, being the amount payable for services provided in the relevant Month
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<b>HWRCpm</b>	=	the HWRC Payment, being the amount payable in respect of HWRC services for the relevant Month, calculated in accordance with <b>paragraph 1.2 of this Schedule 3</b>
<b>TSPm</b>	=	the Contract Transfer Station Payment, being the amount payable in respect of Transfer Station services for the relevant Month, calculated in accordance with <b>paragraph 1.3 of this Schedule 3</b>
<b>LFPm</b>	=	the Landfill Payment, being the amount payable in respect of Landfill for the relevant Month, calculated in accordance with <b>paragraph 1.4 of this Schedule 3</b>
<b>DRWpm</b>	=	the Diverted Residual Waste Payment, being the amount payable in respect of Residual Waste diverted from landfill for the relevant Month shall be calculated in accordance with <b>paragraph 1.5 of this Schedule 3</b>
<b>NNDRm</b>	=	the NNDR Payment, being the reimbursement of any NNDR properly payable in respect of the Facilities referred to in <b>paragraph 1.6 of this Schedule 3</b>
<b>HAZpm</b>	=	the Hazardous Waste Payment, being the amount payable in respect of Specified Hazardous Waste and/or Clinical Waste Handled for the relevant Month, calculated in accordance with <b>paragraph 1.7 of this Schedule 3</b>
<b>INSm</b>	=	the Insurance Payment, being the amount payable in respect of Insurance for the relevant Month, calculated in accordance with <b>paragraph 1.8 of this Schedule 3</b>
<b>LCm</b>	=	the Lifecycle Payment, being the amount payable in respect of Lifecycle in the relevant Month as agreed to be undertaken in accordance with <b>paragraph 1.9 of this Schedule 3</b>
<b>OAm</b>	=	any other amount, whether payable by or to the Councils, as agreed between parties, in all cases without double

		counting, calculated in accordance with <b>paragraph 1.10 of this Schedule 3.</b>
<b>MAM</b>	=	the Monthly Adjustments in respect of the relevant Month, calculated in accordance with <b>paragraph 1.11 of this Schedule 3.</b>
<b>DSSm</b>	=	the Diversion Saving Sharing, being the amount payable in respect savings generated from avoiding landfill for the relevant Month, calculated in accordance with <b>paragraph 1.12 of this Schedule 3.</b>
<b>YEFay</b>	=	the Year End Floor Adjustment, calculated and applied in accordance with <b>paragraph 2 of this Schedule 3.</b>

## 1.2 HWRC Payment (HWRCpm)

Payment for management of HWRCs (including the associated Composting and haulage) in each full Payment Period (HWRCpm) shall be calculated as follows:

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$$\text{HWRCpm} = [(\text{HWFAP} \times \text{Dm} / \text{Dy}) + (\text{HWTm} \times \text{HWR}) + (\text{HCTm} \times \text{HCR})] \times \text{IX2y}$$


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Where:

<b>HWRCpm</b>	=	The amount payable in respect of the HWRCs in the relevant Month
<b>HWFAP</b>	=	the total fixed annual payment in respect of all the HWRCs, calculated in accordance with <b>paragraph 1.2.1 of this Schedule 3</b>
<b>Dm</b>	=	The number of days in the relevant Month, in the Contract Period

<b>Dy</b>	=	the number of days in the relevant year (being the 12 month period from the 1 <sup>st</sup> September to 31 <sup>st</sup> August) in which the relevant Month falls. For the avoidance of doubt this will be 365 or 366.
<b>HWTm</b>	=	the total Tonnage of Household Waste actually deposited by members of the public at HWRCs in the relevant Month (excluding Rubble, Specified Hazardous Waste and Clinical Waste)
<b>HWR</b>	=	the Tonnage rate for HWRCs being <b>£18.88</b> per Tonne (Price Base April 2011)
<b>HCTm</b>	=	the total Tonnage of Compostable Waste actually deposited by members of the public at HWRCs in the relevant Month which is sent for Composting
<b>HCR</b>	=	the extra-over Tonnage rate for HWRC Compostable Waste being <b>£47.58</b> per Tonne (Price Base April 2011)
<b>IX2y</b>	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month calculated in accordance with <b>paragraph 1.13 of this Schedule 3</b>

#### 1.2.1 ***HWRC Fixed Annual Payment (HWFAP)***

The HWRC Fixed Annual Payment (HWFAP) for management of HWRCs shall be the aggregate of the fixed payments for each HWRC and shall be calculated as follows:

$$\text{HWFAP} = \text{HAsy} + \text{HBoly} + \text{HChesy} + \text{HGlosy} + \text{Hilky} + \text{HLosy} + \text{HNory} + \text{HRayy} + \text{HBrety}$$



Where:

<b>HAshy</b>	=	the fixed annual payment in respect of the HWRC at Ashbourne being  <b>£209,685</b> (Price Base April 2011).
<b>HBoly</b>	=	the fixed annual payment in respect of the HWRC at Bolsover being  <b>£192,412</b> (Price Base April 2011).
<b>HChesy</b>	=	the fixed annual payment in respect of the HWRC at Stonegravels (Chesterfield) being <b>£196,659</b> (Price Base April 2011).
<b>HGlosy</b>	=	the fixed annual payment in respect of the HWRC at Glossop being <b>£190,578</b> (Price Base April 2011).
<b>Hilky</b>	=	the fixed annual payment in respect of the HWRC at Ilkeston being <b>£178,889</b> (Price Base April 2011).
<b>HLosy</b>	=	the fixed annual payment in respect of the HWRC at Loscoe being <b>£194,519</b> (Price Base April 2011).
<b>HNory</b>	=	the fixed annual payment in respect of the HWRC at Northwood being <b>£190,206</b> (Price Base April 2011).
<b>HRayy</b>	=	the fixed annual payment in respect of the HWRC at Raynesway being <b>£253,692</b> (Price Base April 2011)
<b>HBrety</b>	=	the fixed annual payment in respect of the HWRC at Bretby being <b>£193,736</b> (Price Base April 2011).

### 1.3 Contract Transfer Station Payment

Payment for management of Contract Transfer Stations (including the associated haulage) in each full Payment Period (TSPm) shall be calculated as follows:

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$$\text{TSPm} = (\text{TSFAP} \times \text{Dm} / \text{Dy} \times \text{IX2y}) + (\text{TST1m} \times \text{TSR1} \times \text{IX2y}) + (\text{TST2m} \times \text{TSR2} \times \text{RPIXy}) + (\text{TST3m} \times \text{TSR3} \times \text{RPIXy}) + ((\text{TST4m} \times \text{TSR4}) \times \text{RPIXy}) + (\text{TRaynesy} \times \text{Dm} / \text{Dy} \times \text{RPIXy})$$


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Where:

<b>TSPm</b>	=	the total amount payable in respect of Contract Transfer Stations in the relevant Month
<b>TSFAP</b>	=	the total annual fixed payment fee in respect of all Contract Transfer Stations, calculated in accordance with <b>paragraph 1.3.1 of this Schedule 3</b>
<b>Dm</b>	=	The number of days in the relevant Month, in the Contract Period
<b>Dy</b>	=	the number of days in the relevant year (being the 12 month period from the 1 <sup>st</sup> September to 31 <sup>st</sup> August) in which the relevant Month falls. For the avoidance of doubt this will be 365 or 366.
<b>TST1m</b>	=	the total Tonnage of Contract Waste actually delivered to the Clover Nook and Glossop Transfer Stations by or on behalf of WCAs in the relevant Month
<b>TSR1</b>	=	the Tonnage rate for Clover Nook and Glossop Transfer Stations being <b>£13.38</b> per Tonne (Price Base April 2011)
<b>TST2m</b>	=	the total Tonnage of Contract Waste actually delivered to the Chesterfield, Willshee, and Stanton Transfer Stations by or on behalf of WCAs in the relevant Month
<b>TSR2</b>	=	the Tonnage rate for Chesterfield, Willshee and Stanton Transfer Stations being <b>£23.34</b> per Tonne (Price Base April 2019)
<b>TST3m</b>	=	the total Tonnage of Contract Waste actually delivered to London Road Contract Transfer Station by or on behalf of WCAs in the relevant Month
<b>TSR3</b>	=	the Tonnage rate for London Road Transfer Station being

		<b>£30.27</b> per Tonne (Price Base April 2019)
<b>TST4m</b>	=	the total Tonnage of Contract Waste actually delivered to Raynesway Transfer Station by or on behalf of WCAs in the relevant Month
<b>TSR4</b>	=	the Tonnage rate for Raynesway Transfer Station being <b>£17.85</b> per Tonne (Price Base April 2019)
<b>TRaynesy</b>	=	the fixed annual payment in respect of Raynesway Transfer Station being <b>£574,000</b> (Price Base April 2019).
<b>IX2y</b>	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with <b>paragraph 1.13 of this Schedule 3</b>
<b>RPIXy</b>	=	the Retail Prices Indexation Factor calculated in accordance with <b>paragraph 1.13 of this Schedule 3</b>

#### 1.3.1 **Contract Transfer Station Fixed Annual Payment (TSFAP)**

The Contract Transfer Station Fixed Annual Payment (TSFAP) for management of Contract Transfer Stations shall be the aggregate of the fixed payments for each Contract Transfer Station and shall be calculated as follows:

$$\text{TSFAP} = \text{TClovery} + \text{TGlosy}$$

Where:

<b>TClovery</b>	=	the fixed annual payment in respect of Clover Nook Transfer Station being <b>£408,243</b> (Price Base April 2011)
<b>TGlosy</b>	=	the fixed annual payment in respect of Glossop Transfer Station being <b>£408,243</b> (Price Base April 2011).

#### 1.4 Landfill Payment (LFPm)

Payment for Landfill (LFPm) in each relevant Month shall be calculated as follows:

$$\text{LFPm} = \text{HLFPm} + \text{TLFPm}$$

Where:

<b>LFPm</b>	=	the total amount payable in respect of Landfill in the relevant Month
<b>HLFPm</b>	=	the total amount payable in respect of Landfill derived from HWRCs in the relevant Month, calculated in accordance with <b>paragraph 1.4.1 of this Schedule 3</b>
<b>TLFPm</b>	=	the total amount payable in respect of Landfill derived from the Transfer Stations in the relevant Month, calculated in accordance with <b>paragraph 1.4.2 of this Schedule 3</b>

##### 1.4.1 HWRC derived Landfill Payment (HLFP)

The HWRC derived Landfill Payment (HLFP) for the relevant Month shall be calculated as follows:

$$\text{HLFPm} = \text{HWTm} \times (1 - (\text{HWRCrat.} + \text{HWRCadd})) \times [(\text{HLGFR} \times \text{RPIXCy}) + \text{LFTy}]$$

Where:

<b>HLFPm</b>	=	the total amount payable in respect of Landfill derived from HWRCs in the relevant Month
<b>HWTm</b>	=	the actual total Tonnage of Household Waste deposited by members of the public at HWRCs in the relevant Month (excluding Rubble, Specified Hazardous Waste and Clinical Waste actually Handled)

<b>HWRCrat</b>	=	the HWRC Re-Use, Recycling and Composting Target (expressed as a percentage) for the relevant Contract Year applicable for the relevant Month, as set out in Schedule 1 (Specification)
<b>HWRCadd</b>	=	the HWRC additional diversion target being 7%
<b>HLGFR</b>	=	the Tonnage rate for HWRC Landfill being £20.64 per tonne (Price Base 2011)
<b>RPIXCy</b>	=	the Retail Prices Indexation Factor Cumulative calculated in accordance with paragraph 1.13 of this Schedule 3
<b>LFTy</b>	=	the prevailing rate of Landfill Tax per Tonne in the relevant Contract Year applicable for the relevant Month for the type of Waste being Landfilled

#### 1.4.2 Transfer Station derived Landfill Payment (TLFP)

The Transfer Station derived Landfill Payment (TLFP) for the relevant Month shall be calculated as follows:

$$\text{TLFPm} = (\text{TSTm} + \text{BUXTm} + 2\text{ZLFTm} - \text{WEEEm} - \text{HAZTm} - \text{DRWTm} - \text{NWTFTm}) \times (\text{TLGFRm} + \text{LFTy})$$

Where:

<b>TLFPm</b>	=	the total amount payable in respect of Landfill derived from Transfer Stations in the relevant Month
<b>TSTm</b>	=	the actual total Tonnage of Contract Waste delivered to the Contract Transfer Stations (Clover Nook, Glossop, Willshees, Stanton, London Road, Chesterfield and Raynesway) by or

		on behalf of WCAs in the relevant Month
<b>BUXTm</b>	=	the actual total Tonnage of Contract Waste delivered to the Buxton Transfer Station (operated by a third party) by or on behalf of WCAs in the relevant Month.
<b>2ZLFTm</b>	=	the actual total Tonnage of Contract Waste delivered to the 2ZLFT Transfer Station by or on behalf of WCAs in the relevant Month.
<b>WEEEm</b>	=	the actual total Tonnage of Waste Electrical and Electronic Equipment (WEEE) delivered to the Contract Transfer Stations (Clover Nook, Glossop, Willshees, Stanton, London Road, Chesterfield and Raynesway) by or on behalf of WCAs in the relevant Month.
<b>HAZTm</b>	=	the actual total tonnage of Specified Hazardous Waste and/or Clinical Waste delivered to the Contract Transfer Stations (Clover Nook, Glossop, Willshees, Stanton, London Road, Chesterfield and Raynesway) by or on behalf of the WCAs in the relevant Month.
<b>DRWTm</b>	=	the actual total Tonnage of Diverted Residual Waste away from landfill and treated at alternative Treatment Outlets (e.g. alternative energy from waste facility, sweepings facility etc) as secured by the Contractor in the relevant Month. For the avoidance of doubt this excludes any Residual Waste sent to the NWTF for treatment in the relevant Month
<b>NWTFTm</b>	=	the actual total Tonnage of Residual Waste sent by the Contractor to the NWTF for treatment in the relevant Month. For the avoidance of doubt this excludes any waste delivered directly to the NWTF by the WCA's in the relevant Month (as this will not be Contract Waste passing through the Transfer Stations to start with).
<b>TLGFRm</b>	=	the relevant Tonnage rate for Transfer Station Landfill in the relevant Month, applicable as follows:

		<ul style="list-style-type: none"> <li>• From Services Commencement Date to 31<sup>st</sup> March 2020 = <b>£20.53</b> per tonne</li> <li>• From 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021 = <b>£21.78</b> per tonne</li> <li>• From 1<sup>st</sup> April 2021 onwards = <b>£23.04</b> per tonne</li> </ul> <p>For the avoidance of doubt, these rates are fixed, no indexation is applicable to these rates</p>
<b>LFTy</b>	=	the prevailing rate of Landfill Tax per Tonne in the relevant Contract Year applicable for the relevant Month for the type of Waste being Landfilled

## 1.5 Diverted Residual Waste Payment (DRWPm)

Payment for Residual Waste from Contract Transfer Stations, diverted from landfill (DRWPm) in each relevant Month shall be calculated as follows:

$$\text{DRWPm} = \Sigma(\text{DRWTm} \times \text{DRWRm}) + (\text{AHAULm} - \text{PHAULm})$$

Where:

<b>DRWPm</b>	=	the total amount payable in respect of Diverted Residual Waste in the relevant Month
<b>DRWTm</b>	=	the actual total Tonnage of Diverted Residual Waste away from landfill and treated at the alternative Treatment Outlet (e.g. alternative energy from waste facility, sweepings facility etc) as secured by the Contractor in the relevant Month. For the avoidance of doubt this excludes any Residual Waste sent to the NWTF for treatment in the relevant Month
<b>DRWRm</b>	=	<p>the actual Tonnage rate paid by the Contractor applicable to the Treatment Outlet (e.g. alternative energy from waste facility, sweepings facility) used in the relevant Month, as evidenced by Contractor and set out in the Monthly Report as required by Schedule 4 (Reporting).</p> <p>However, for any Tonnage of Diverted Residual Waste which is put through the Contractors own network of facilities to produce RDF and be treated, this rate will be <b>£96.57</b> per tonne (Price Base April 2019) indexed in accordance with the Retail Prices Indexation Factor (RPIxy) calculated in accordance with <b>paragraph 1.13 of this Schedule 3</b></p>
<b>AHAULm</b>	=	the actual total haulage costs of hauling Residual Waste in the relevant Contract Month, from the relevant Contract Transfer Station to the i) alternative Treatment Outlet and ii) the NWTF, without double counting any haulage costs that may have been included in DRWRm on the basis the Treatment Outlet provider incorporated such cost in that rate charged.



<b>PHAULm</b>	=	<p>the total amount already paid for haulage as included in the relevant TSR1, TSR2, TSR3 and TSR4 rates for the total tonnes of Residual Waste sent from the Contract Transfer Stations to the i) alternative Treatment Outlet and ii) the NWTF, in the relevant Contract Month.</p> <p>Appendix 1 sets out the haulage rate element that is included in each of the TSR's to be used in determining this amount already paid.</p>

Should the Contractor seek to divert Residual Waste that would cost more than sending the same waste to Landfill (i.e. by comparing i) the relevant Treatment Outlet gate fee plus associated haulage to ii) the landfill gate fee plus landfill tax plus associated haulage), the Contractor will be required to obtain approval from the Councils prior to sending such waste to the Treatment Outlet.

#### **1.6 National Non-Domestic Rates (NNDRm)**

Payment to the Contractor for National Non-Domestic Rates (NNDRm) for the relevant Month in respect of the Facilities (being HWRCs and Project Transfer Stations (Clover Nook and Glossop only)) shall be equal to the NNDR amount properly paid by the Contractor (and/or its subcontractors) in that relevant Month.

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.

#### **1.7 Specified Hazardous Waste and/or Clinical Waste Payment (HAZPm)**

In the relevant Month, 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 (HAZPm) 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 Month by third parties for transporting, Recycling, treating and/or disposing of the relevant Specified Hazardous Waste and/or Clinical Waste.

For the purposes of this paragraph 1.7, costs incurred by the Contractor shall only be Demonstrably Reasonable and Proper Costs where:

- they represent a reasonable market price (in the relevant circumstances) for the services provided; and
- 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.

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

#### 1.8 Insurance (INSm)

Payment to the Contractor for Insurance (INSm) for the relevant Month in respect of the Facilities (being HWRCs and Project Transfer Stations (Clover Nook and Glossop only)) shall be equal to the Insurance Premium amount properly paid by the Contractor in that relevant Month, to cover the Required Insurances.

#### 1.9 Lifecycle (LCm)

Payment to the Contractor for Lifecycle (LCm) in respect of the Facilities (being HWRCs and Project Transfer Stations (Clover Nook and Glossop only)) shall be that which is not routine maintenance (**as described in the paragraph 3.16 of the Specification**); has been agreed with the Councils as requiring to be undertaken; and the cost budget of such lifecycle work is agreed prior to work being undertaken.

Such Lifecycle payment to be made once the work is complete shall be equal to the amount properly paid by the Contractor, which will be supported by satisfactory documentary evidence that such costs have been incurred and properly calculated.

#### 1.10 Other Amounts (OAm)

Payments to or from the Contractor for Other Amounts (OAm) will be as agreed by the parties at the time, to the extent applicable, both acting reasonably. As agreed between the Councils and the Contractor, this will be used to cover amounts including, but not limited to:

- i. any Price Adjustment for Overheads **as applicable and as set out in Paragraph 3 of this Schedule 3** with respect to Office Space Rent and Rates; and
- ii. Conditions Surveys, as applicable and as set out in paragraph 3.16 of the Specification and Schedule 12 (Lifecycle).

### 1.11 Monthly Adjustments (MAm)

To the extent applicable, Monthly Adjustments (MAm) for the relevant Month shall be applied comprising of:

- Unavailability Deductions in respect of HWRCs and /or Project Transfer Stations (being Clover Nook, Glossop and Raynesway for which have a fixed payment) not being Available in accordance with the requirements of the Specification,
- Performance Adjustments in respect of the Services not being delivered in accordance with Key Performance Indicators
- Tipping Away Payments in respect of costs incurred by WCAs as a result of diversion of Contract Waste from Primary Delivery Points
- Reporting Failure Deductions in respect of finding failure by the Contractor in reporting.

The Monthly Adjustments for the relevant Month shall be calculated using the following formula:

---

$$\text{MAm} = \text{UDm} + \text{PDm} + \text{TAPm} + \text{RFDm} + \text{PPAm}$$

---

<b>MAm</b>	=	the Monthly Adjustment applicable in the relevant Month
<b>UDm</b>	=	Unavailability Deductions applicable in respect of the relevant Month, calculated in accordance with <b>paragraph 1.11.2 of this Schedule 3</b>
<b>PDm</b>	=	Performance Adjustments applicable in respect of the relevant Month, calculated in accordance with <b>paragraph 1.11.3 of this Schedule 3</b>
<b>TAPm</b>	=	Tipping Away Payments applicable in respect of the relevant Month, calculated in accordance with <b>paragraph 1.11.4 of this Schedule 3</b>

<b>RFDm</b>	=	Reporting Failure Deductions applicable in respect of the relevant Month calculated pursuant to Schedule 2( <b>Performance Mechanism</b> )
<b>PPAm</b>	=	Previous Period Adjustments applied in the relevant Month in respect of errors or omissions from previous Months as agreed to be corrected with the Councils pursuant to Schedule 2 ( <b>Performance Mechanism</b> )

#### 1.11.1 ***Monthly Adjustments in Excess of the Monthly Payment***

In respect of any relevant Month, the Authority may not make Monthly Adjustments which in aggregate would result in the Monthly Payment being negative for the relevant Payment Period. To the extent that the Monthly Adjustments in respect of any Payment Period would result in a negative Monthly Payment, the Monthly Payment for that Payment Period will be nil, and the amount of any excess Monthly Adjustments not applied shall be rolled forward and deducted from the next Payment Period, and at each subsequent Payment Period until such Monthly Adjustments have all been deducted from amounts due to the Contractor.

#### 1.11.2 ***Unavailability Deductions***

Unavailability Deductions in respect of the relevant Month shall be calculated using the following formula:

$$UDm = [\Sigma(HUHm \times HUR) + \Sigma(TSUHm \times TSUR)] \times IX2y] + [\Sigma(RTSUHm \times RTSUR) \times RPIXy]$$

Where:

<b>UDm</b>	=	the Unavailability Deductions applicable in respect of the relevant Month
<b>HUHm</b>	=	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 Month

<b>HUR</b>	=	the HWRC Unavailability Rate set out in <b>Table A</b> below applicable for each HWRC
<b>TSUHm</b>	=	the number of hours (or part thereof) within the specified Delivery Point Opening Hours that any of the Delivery Points listed in <b>Table B</b> failed to meet the Delivery Point Availability Criteria in the relevant Month. 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.
<b>TSUR</b>	=	The Transfer Station Unavailability Rate set out in <b>Table B</b> below applicable for each Contract Transfer Station
<b>IX2y</b>	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with <b>paragraph 1.13 of this Schedule 3</b>
<b>RTSUHm</b>	=	the number of hours (or part thereof) within the specified Delivery Point Opening Hours that the Raynesway Transfer Station failed to meet the Delivery Point Availability Criteria in the relevant Month. 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.
<b>RTSUR</b>	=	The Transfer Station Unavailability Rate set out in <b>Table C</b> below applicable for the Raynesway Transfer Station
<b>RPIXy</b>	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with <b>paragraph 1.13 of this Schedule 3</b>

**Table A: HWRC Unavailability Rates**

Site Name	Rate per hour (Price Base April 2011)

Glossop	55.42
Stonegravels (Chesterfield)	57.19
Loscoe	56.57
Ilkeston	52.02
Ashbourne	60.98
Raynesway	70.09
Bolsover	55.96
Northwood	55.32
Bretby.	56.34

**Table B: Transfer Station Unavailability Rates**

Site Name	Rate per hour (Price Base April £ (TSUR)	Applicable from	Applicable to
Clover Nook Transfer Station	141.08	Effective Date	Expiry Date
Glossop Transfer Station	141.08	Effective Date	Expiry Date

**Table C: Raynesway Transfer Station Unavailability Rate**

Site Name	Rate per hour (Price Base April £ (RTSUR)	Applicable from	Applicable to
Raynesway Transfer Station	176.18	Effective Date	Expiry Date

**1.11.3 Performance Deductions**

Performance Deductions in respect of the relevant Month shall be calculated using the following formula:

---


$$PDm = PPm \times PPR \times IX2y$$

Where:

<b>PDm</b>	=	the Performance Deduction applicable in respect of the relevant Month
<b>PPm</b>	=	the number of Performance Points levied in respect of the relevant Month, determined in accordance with Schedule 2 ( <b>Performance Mechanism</b> ) covering those measured monthly and / or annually applicable for that Month.
<b>PPR</b>	=	the performance point rate being £1.12 (Price Base April 2011)

<b>IX2y</b>	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with <b>paragraph 1.13 of this Schedule 3</b>



#### 1.11.4 *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 in the relevant Month according to the following formula:

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$$\text{TAPm} = \text{TAPTm} \times \text{TAPMm} \times \text{TAPR} \times \text{IX2y}$$

---

Where:

<b>TAPm</b>	=	the Tipping Away Payment applicable in respect of the relevant Month
<b>TAPTm</b>	=	the Tonnage of Contract Waste diverted from the Primary Delivery Points in the relevant Month as a result of the relevant Primary Delivery Point being Unavailable and/or as instructed by the Contractor
<b>TAPMm</b>	=	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
<b>TAPR</b>	=	the Tipping Away Payment mileage rate being £1.46 per tonne per mile (Price Base April 2011)
<b>IX2y</b>	=	the Indexation Factor for the relevant Contract Year y, applicable to the relevant Month, calculated in accordance with <b>paragraph 1.13 of this Schedule 3</b>

Provided always that the Contractor shall not be liable to pay Tipping Away Payments:

- 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
- 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
- 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 WCA that the alternative Delivery Point should be used.

For the avoidance of doubt, should Contract Waste be directed to the Sinfin Site and so directly delivered by a WCA, no Tipping Away Payment would apply with respect to that event.

## 1.12 Diversion Savings Share (DSSm)

The Diversion Saving Share (DSSm) is intended to share with the Contractor cost savings resulting from diverting Residual Waste from Contract Transfer Stations, away from Landfill, calculated in accordance with the following formula:

$$\text{DSSm} = [[\text{DRWTm} \times (\text{TLGFRm} + \text{LFTy})] - \text{DRWPm}] \times 50\%$$

Where:

<b>DSSm</b>	=	the Diversion Savings Share in the relevant Month
<b>DRWTm</b>	=	the actual total Tonnage of Diverted Residual Waste away from landfill and treated at the alternative energy from waste facilities as secured by the Contractor in the relevant Month. For the avoidance of doubt this excludes any Residual Waste sent to the N WTF for treatment in the relevant Month
<b>TLGFRm</b>	=	<p>the relevant Tonnage rate for Transfer Station Landfill in the relevant Month, applicable as follows:</p> <ul style="list-style-type: none"> <li>• From Services Commencement Date to 31<sup>st</sup> March 2020 = <b>£20.53</b> per tonne</li> <li>• From 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021 = <b>£21.78</b> per tonne</li> <li>• From 1<sup>st</sup> April 2021 onwards = <b>£23.04</b> per tonne</li> </ul> <p>For the avoidance of doubt, these rates are fixed, no indexation is applicable to these rates.</p>
<b>LFTy</b>	=	the prevailing rate of Landfill Tax per Tonne in the relevant Contract Year applicable for the relevant Month for the type of Waste being Landfilled

<b>DRWPm</b>	=	the total amount payable in respect of Diverted Residual Waste in the relevant Month, as calculated in accordance with <b>paragraph 1.5 of this Schedule 3</b>
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### 1.13 Indexation

All rates and prices in this Payment Mechanism are either at the Price Base Date of 1 April 2011 or 1 April 2019. Indexation where applicable, shall be applied annually from 1 April (being each Indexation Year) as follows:

#### 1.13.1 *Indexation Factor (IX2y)*

The Indexation Factor ("IX2y") for the relevant Indexation Year shall be calculated as follows:

---


$$IX2y = (RPIXy \times 91.9\%) + (AWEICy \times 8.1\%)$$


---

Where:

<b>RPIXy</b>	=	the Retail Prices Indexation Factor Cumulative for the relevant Indexation Year calculated in accordance with <b>paragraph 1.13.2 of this Schedule 3</b>
<b>AWEICy</b>	=	the Average Weekly Earnings Indexation Factor - Cumulative ("AWEICy") for the relevant Indexation Year calculated in accordance with <b>paragraph 1.13.3 of this Schedule 3</b>

#### 1.13.2 *Retail Prices Indexation Cumulative (RPIXy)*

The Retail Prices Indexation Factor - Cumulative ("RPIXy") for the relevant Contract Year shall be calculated as follows:

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$$\text{RPIX}_{Cy} = \text{RPIX}_{y-1} \div \text{RPIX}_0$$


---

Where:

<b>RPIX<sub>Cy</sub></b>		the Retail Prices Indexation Factor Cumulative for the relevant Contract Year
<b>RPIX<sub>y-1</sub></b>	=	the published RPIX for the January immediately preceding the relevant Indexation Year (the 'Indexation Year' is each 12 month period commencing on 1 <sup>st</sup> April)
<b>RPIX<sub>0</sub></b>	=	the RPIX published for January 2011 being 228.2

### 1.13.3 *Average Weekly Earnings Indexation Cumulative (AWEIC)*

The Average Weekly Earnings Indexation Factor - Cumulative ("AWEIC<sub>y</sub>") for the relevant Contract Year shall be calculated as follows:

---


$$\text{AWEIC}_{Cy} = \text{AWEI}_{y-1} \div \text{AWEI}_0$$


---

Where:

<b>AWEIC<sub>y</sub></b>	=	the Average Weekly Earnings Indexation Factor for the relevant Contract Year
<b>AWEI<sub>y-1</sub></b>	=	the Average Weekly Earnings Index (Whole Economy not seasonally adjusted excluding bonuses and including arrears Reference KASH) for the January immediately preceding the

		relevant Indexation Year (the 'Indexation Year' is each 12 month period commencing on 1 <sup>st</sup> April)
<b>AWE<sub>lo</sub></b>	=	the Average Weekly Earnings Index (Whole Economy not seasonally adjusted excluding bonuses and including arrears Reference KASH) published for January 2011 being 143.4.

#### 1.13.4 ***Retail Prices Indexation (RPIX<sub>y</sub>)***

The Retail Prices Indexation Factor ("RPIX<sub>y</sub>") for the relevant Contract Year shall be calculated as follows:

$$\text{RPIX}_y = \text{RPIX}_{y-1} \div \text{RPIX}_B$$

Where:

<b>RPIX<sub>y</sub></b>		the Retail Prices Indexation Factor Cumulative for the relevant Contract Year
<b>RPIX<sub>y-1</sub></b>	=	the published RPIX for the January immediately preceding the relevant Indexation Year (the 'Indexation Year' is each 12 month period commencing on 1 <sup>st</sup> April)
<b>RPIX<sub>B</sub></b>	=	the RPIX published for January 2019 being 283.4

## 2. **YEAR END FLOOR ADJUSTMENT**

The Year End Floor Adjustment (YEFA<sub>y</sub>) is to be calculated once every year, following the month in which the 1<sup>st</sup> and 2<sup>nd</sup> anniversary of the Effective Date occurs. For clarity, if the Effective Date is a day in September 2019, the YEFA will be calculated, reported and applied in October 2020 (covering the period from the Effective Date to the month end of September 2020) and October 2021 (covering the period

from and including October 2020 to the month end of September 2021). The YEFA shall be calculated based on the following:

### **Principles and parameters**

The principle of the YEFA is to provide a floor profit level to the Contractor, as parties acknowledge that a reduction in tonnage throughput at the Contract Transfer Stations will erode the Contractors profit for a reason which has not been the Contractor's fault.

The Parties acknowledge this could arise should tonnages be required to be direct delivered to the NWTF at the Sinfin site. The Parties also acknowledge that should tonnages not be at a level such that the profit is eroded to below the floor level, should the Councils have incurred insurance deductibles or rectification costs from an insurable event, the Councils will be entitled to recoup such cost subject to the floor position not being breached.

The following parameters apply to the YEFA:

- The "Base Case Annual Tonnage Throughput at the Contract Transfer Stations" (BCTT) is 226,732 tonnes (as per the forecast provided by the Councils)
- The Annual Base Case Net Profit to the Contractor is £803,185
- The Annual Net Profit Floor is £500,000
- The difference between the Annual Base Case Net Profit and the Annual Net Profit Floor is £303,185
- For each shortfall in tonnage throughput at the Contract Transfer Stations, the erosion of profit to the Contractor is set at £3.97 per tonne
- Therefore, the tonnage through put that would result in the Annual Net Profit Floor to be reached is 150,363 (being 226,732 tonnes less 76,369 tonnes, where 76,369 is determined by the calculation  $\text{£}303,185 / \text{£}3.97$ ).

**The YEFA will apply as follows under the following circumstances:**

**1) If ATT < 150,363 tonnes**

- Should the “Actual Tonnage Throughput at the Contract Transfer Stations” (ATT) be 150,363 tonnes or lower, the YEFA adjustment will apply to make the Contractor whole to the Annual Net Profit Floor after taking account of 50% of the Diversion Saving Sharing the Contractor has received in the year (DSSy) via paragraph 1.12 of this Schedule 3.
- The YEFA adjustment, which will be a payment to the Contractor will be applied as follows:  
$$\text{YEFAY} = (£3.97 \times (150,363 - \text{ATT})) - (50\% \times \text{DSSy})$$

Should the YEFA be less than zero (i.e. negative), then YEFA will be nil in this circumstance

**2) If ATT > 150,363 tonnes**

- Should the “Actual Tonnage Throughput at the Contract Transfer Stations” (ATT) be higher than 150,352 tonnes, no adjustment is made with respect to making the Contractor whole to the Annual Net Profit Floor.
- However, should the Councils have made payment to the Contractor pursuant to the indemnity at clause 33.5 the Councils can claim this from the Contractor via the YEFA Adjustment, with such claim being limited to the Annual Net Profit Floor after taking account of 50% of the Diversion Saving Sharing the Contractor has received in the year (DSSy) via paragraph 1.12 of this Schedule 3.
- The YEFA Adjustment which will be a rebate to Councils will be as follows:

**YEFAY = The lower of:**

- 1) The deductible or rectification cost incurred by the Councils**
- or**

**2)  $(£3.97 \times (\text{ATT} - 150,363)) + (50\% \times \text{DSSy})$**

For the avoidance of doubt if there has been no deductible or rectification cost incurred by the Councils then YEFA will be nil in this circumstance



- In the event the Councils were not made whole for the deductible or rectification cost incurred under this mechanism in the first year, the balance remaining will be rolled forward to the next year and be applied in that year, subject to the same mechanism above.

### 3. PRICE ADJUSTMENT FOR OVERHEADS

The below table provides a breakdown of the annual overheads and management cost the Contractor has budgeted for.

OH Expense cost item	£ (Price Base April 2019)
Employment costs for 5 FTE	£368,114
Office Space Rent and Rates	£42,000
Mgmt Charge & Central OHs	£332,789
Whitespace IT system	£30,000
<b>Total</b>	<b>£772,903</b>

Should the Contractor be able to utilize the Sinfin Education Centre as office space, the Contractor will therefore not incur the Office Space Rent and Rates it has budgeted for, being £42,000 per annum. Should this arise, that avoided cost / saving will be passed back to the Councils through a reduction to the Monthly Payment, via the “Other Amounts” limb. The monthly reduction will be £3,500 (£42,000 / 12) index by RPIXy, in accordance with paragraph [1.13.4] of this Schedule 3.

## APPENDIX 1 - HAULAGE ELEMENT IN THE TRANSFER STATION RATES

The below table sets out the haulage element within the Contract Transfer Station rates for TSR1, TSR2, TSR3 and TSR4 to be used when calculating the PHAULm in paragraph 1.5.

Relevant Transfer Station Rate	Haulage Element (price per tonne - Price Base April 2019)
TSR1: Clover Nook	£9.31pt
TSR1: Glossop	£11.67pt
TSR2: Chesterfield	£9.23pt
TSR2: Willshee	£12.87pt
TSR2: Stanton	£11.21pt
TSR3: London Road	£11.20pt
TSR4: Raynesway	£11.20pt

## **Schedule 5      Contract Management**

- 1      The Contractor and the Councils 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 Services and this Agreement.
- 2      Should the most appropriate member of 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.
- 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 Services and this Agreement.
- 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.

## **Schedule 6      Change Control**

### **1      General Principles**

- 1.1      Where the Councils or the Contractor see a need to change this Agreement, the Councils may at any time request, and the Contractor may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule.
- 1.2      Until such time as a Change is made in accordance with the Change Control Procedure, the Councils and the Contractor shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 1.3      Any discussions which may take place between the Councils and the Contractor in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4      Any work undertaken by the Contractor and the Contractor's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule, shall be undertaken entirely at the expense, risk and liability of the Contractor.

### **2      Procedure**

- 2.1      Discussion between the Councils and the Contractor concerning a Change shall result in any one of the following:
  - 2.1.1      no further action being taken; or
  - 2.1.2      a request to change this Agreement by the Councils; or
  - 2.1.3      a recommendation to change this Agreement by the Contractor.
- 2.2      Where a written request for an amendment is received from the Councils, the Contractor shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Contractor to the Councils within two weeks of the date of the request.
- 2.3      A recommendation to amend this Agreement by the Contractor shall be submitted directly to the Councils in the form of two copies of a Change Control Note signed by the Contractor at the time of such recommendation. The Councils shall give its response to the Change Control Note within three weeks.
- 2.4      Each Change Control Note shall contain:
  - 2.4.1      the title of the Change;
  - 2.4.2      the originator and date of the request or recommendation for the Change;

- 2.4.3 the reason for the Change;
  - 2.4.4 full details of the Change, including any changes to the Specifications;
  - 2.4.5 the cost, if any, of the Change on an open book basis and any corresponding change to the Contract Price;
  - 2.4.6 any capital expenditure required, including a statement as to how such capital expenditure will be funded;
  - 2.4.7 a timetable for implementation, together with any proposals for acceptance of the Change;
  - 2.4.8 details of the likely impact, if any, of the Change on other aspects of this Agreement including the terms and conditions;
  - 2.4.9 any amendments to the Necessary Consents or whether additional Necessary Consents are required;
  - 2.4.10 the date of expiry of validity of the Change Control Note (which shall not be less than 40 Business Days; and
  - 2.4.11 provision for signature by the Councils and the Contractor.
- 2.5 For each Change Control Note submitted by the Contractor, the Councils shall, within the period of the validity of the Change Control Note:
- 2.5.1 allocate a sequential number to the Change Control Note; and
  - 2.5.2 evaluate the Change Control Note and, as appropriate:
    - (a) request further information; or
    - (b) accept the Change Control Note by arranging for two copies to be signed by or on behalf of the Councils and return one of the copies to the Contractor; or
    - (c) notify the Contractor of the rejection of the Change Control Note.
- 2.6 A Change Control Note signed by the Councils and by the Contractor shall constitute an amendment to this Agreement.

## Schedule 7 TUPE

### 1 Interpretation

The definitions and rules of interpretation in this paragraph apply in this Schedule 7.

**Staffing Information:** in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Councils may reasonably request (subject to the Data Protection Legislation), but including in an anonymised format:

- a) their ages, dates of commencement of employment or engagement and gender;
- b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- c) the identity of their employer or relevant contracting party;
- d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and Councils car schemes applicable to them;
- g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

**Service Transfer Date:** the date on which the Services (or any part of the Services), for whatever reason transfer from the Contractor to the Councils or any Replacement Operator.

**Contractor's Final Staff List:** the list of all the Contractor's Personnel engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the Service Transfer Date.

**Contractor's Provisional Staff List:** a list prepared and updated by the Contractor of all the Contractor's Personnel engaged in, or wholly or mainly assigned to, the

provision of the Services or any part of the Services at the date of preparation of the list.

**Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**Transferring Employees:** those employees whose contracts of employment will transfer to the Councils or Replacement Contractor pursuant to the Employment Regulations on expiry or termination of this Agreement.

## 2 Transfer of Employees to the Contractor at the Service Commencement Date

2.1 The Councils and the Contractor believe that, as the Contractor is currently providing the Services at the Service Commencement Date, there will be no Relevant Transfer pursuant to Employment Regulations.

## 3 Employment Exit Provisions

3.1 This Schedule 7 envisages that on the termination of this Agreement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part, or otherwise) resulting in a transfer of the Services in whole or in part (**Service Transfer**).

3.2 If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations then, in such event, the Councils or a Replacement Contractor would inherit liabilities in respect of the Transferring Employees.

3.3 If the Employment Regulations apply on termination of this Agreement, the provisions in paragraph 3.9 to paragraph 3.13 of this Schedule 7 shall apply.

3.4 If the Employment Regulations do not apply on termination of this Agreement, paragraph 3.15 of this Schedule 7 shall apply.

3.5 For the avoidance of doubt, all other paragraphs in this paragraph 3 of this Schedule 7 shall apply to all Service Transfers, whether or not the Employment Regulations apply.

3.6 The Contractor agrees that, subject to compliance with the Data Protection Laws:

3.6.1 within 20 days of the earliest of:

- (a) receipt of a notification from the Councils of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination of this agreement or any part thereof; or
- (c) the date which is 6 months before the expiry of the Term or any renewal term,



it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Councils or, at the direction of the Councils, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List when reasonably requested by the Councils or any Replacement Contractor;

3.6.2 at least 1 Month before the Service Transfer Date, the Contractor shall prepare and provide to the Councils and/or, at the direction of the Councils, to the Replacement Contractor, the Contractor's Final Staff List. The Contractor's Final Staff List shall identify which of the Contractor's Personnel named are Transferring Employees;

3.6.3 the Councils shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and

3.6.4 on reasonable request by the Councils the Contractor shall provide the Councils or at the request of the Councils, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Councils reasonably request.

3.7 The Contractor agrees that after the earliest event noted at paragraphs 3.6(a)(i) to (iii) it shall not without the prior written consent of the Councils (such consent not to be unreasonably withheld or delayed):

3.7.1 assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Contractor's Provisional Staff List:

3.7.2 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Councils;

3.7.3 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List save for any such changes in the ordinary course of business as applicable to the Contractor's staff as a whole;

3.7.4 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Councils;

3.7.5 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List

save for any such changes in the ordinary course of business as applicable to the Contractor's staff as a whole; and

- 3.7.6 replace any of the Contractor's Personnel listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List other than in the ordinary course of business.

During the same period, the Contractor will promptly notify the Councils or, at the direction of the Councils, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.

- 3.8 At least 28 days before the expected Service Transfer Date, the Contractor shall provide to the Councils or any Replacement Contractor, in respect of each person (subject to compliance with Data Protection Legislation) on the Contractor's Final Staff List who is a Transferring Employee, their:

- 3.8.1 pay slip data for the most recent month;
- 3.8.2 cumulative pay for tax and pension purposes;
- 3.8.3 cumulative tax paid;
- 3.8.4 tax code;
- 3.8.5 voluntary deductions from pay; and
- 3.8.6 bank or building society account details for payroll purposes.

- 3.9 In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that:

- 3.9.1 the Contractor shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. The Contractor shall indemnify the Councils and any Replacement Contractor in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Councils or any Replacement Contractor including without limitation all reasonable legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) the Contractor's failure to perform and discharge any such obligation;
- (b) any act or omission by the Contractor on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;

- (c) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
  - (d) any claim made by or in respect of any person employed or formerly employed by the Contractor other than a Transferring Employee for which it is alleged the Councils or any Replacement Contractor may be liable by virtue of this agreement and/or the Employment Regulations; and
  - (e) any act or omission of the Contractor in relation to its obligations under regulation 13 of the Employment Regulations, or in respect of an award of compensation under regulation 14 of the Employment Regulations except to the extent that the liability arises from the Councils or Replacement Contractor's failure to comply with regulation 13(4) of the Employment Regulations.
- 3.10 The Contractor shall indemnify the Councils and any Replacement Contractor in respect of any claims arising from any act or omission of the Contractor in relation to any other Contractor's Personnel who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
- 3.11 The Councils shall perform and discharge or procure that the Replacement Contractor shall perform and discharge all of their obligations in respect of all the Transferring Employees and their representatives for their own account from the Service Transfer Date. The Councils shall indemnify or procure that the Replacement Contractor shall indemnify the Contractor in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Contractor including without limitation all reasonable legal expenses and other professional fees (together with any VAT thereon) in relation to:
  - 3.11.1 the Councils' (or either Council's) or the Replacement Contractor's failure to perform and discharge any such obligation;
  - 3.11.2 any act or omission by the Councils (or either of them) or the Replacement Contractor relating to a Transferring Employee occurring on or after the Service Transfer Date;
  - 3.11.3 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) payable after the Service Transfer Date;
  - 3.11.4 any alleged or anticipatory breach of contract by the Councils (or either of them) or the Replacement Contractor in respect of the

Transferring Employees or anyone who would have been a Transferring Employee if not for their resignation and/or objection before the Service Transfer Date; and

- 3.11.5 any actual or proposed substantial change by the Councils (or either of them) or the Replacement Contractor in the working conditions or terms of employment of all or any of the Transferring Employees or anyone who would have been a Transferring Employee if not for their resignation and/or objection which taken individually or collectively are to their detriment.
- 3.12 The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.
- 3.13 The Councils shall assume (or shall procure that the Replacement Contractor shall assume) the outstanding obligations of the Contractor in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration before the Service Transfer Date.
- 3.14 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the Councils to the Contractor under paragraph 3.6 to paragraph 3.13 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 3.15 In the event of a Service Transfer to which the Employment Regulations do not apply, the following provisions shall apply:
  - 3.15.1 the Councils or the Replacement Contractor can, at its discretion, make to any of the employees listed on the Contractor's Provisional Staff List or any Contractor's Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
  - 3.15.2 when the offer has been made by the Councils or Replacement Contractor and accepted by any employee or worker, the Contractor shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Contractor which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
  - 3.15.3 if the employee does not accept an offer of employment made by the Councils or Replacement Contractor, the employee shall remain employed by the Contractor and all claims in relation to the employee shall remain with the Contractor; and
  - 3.15.4 if the Councils or the Replacement Contractor does not make an offer to any employee on the Contractor's Provisional Staff List or

any Contractor's Personnel, then that employee and all claims in relation to that employee remains with the Contractor.

4      Transfer of Employees to the Contractor at the Effective Date

4.1      The Councils and the Contractor believe that, as the Contractor is currently providing the Services at the Services Commencement Date, there will be no Relevant Transfer on the Services Commencement Date pursuant to Employment Regulations.

4.2      If as a direct and sole consequence of the Parties entering into this Agreement the contract of any employee of the Contractor transfers to the Councils then:

4.2.1      the Councils will, within 5 Working Days of becoming aware of that fact, notify the Contractor in writing;

4.2.2      the Contractor may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Councils; and

4.2.3      if such offer of employment is accepted, the Councils shall immediately release the person from its employment;

4.3      If after the period referred to in Paragraph 4.2 no such offer has been made, or such offer has been made but not accepted, and no such other step has been taken to successfully resolve the matter the Councils may within 5 Working Days give notice to terminate the employment of such person and the Contractor will indemnify the Councils against all Employee Liabilities arising out of the termination of the employment of any of the Contractor's employees referred to in Paragraph 5.2

4.4      The indemnities in Paragraph 4.3 shall not apply:-

4.4.1      to any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Councils; or

4.4.2      to any termination of employment occurring later than 3 Months from the Service Commencement Date.

5      Transfer of Personnel of Interserve Construction Limited at the Effective Date

5.1      The parties acknowledge that as at the Service Commencement Date there are a number of employees and/or workers engaged by Interserve Construction Limited (and/or its agents, suppliers and sub-contractors) on the Sinfin Site ("**Interserve Personnel**").

- 5.2 The Parties agree and understand that the Interserve Personnel are engaged in the construction of the facilities and will not be engaged in providing the Services. As such, the Parties believe that there will be no Relevant Transfer pursuant to Employment Regulations to transfer the Interserve Personnel to the Councils or the Contractor.
- 5.3 However, notwithstanding the provisions of paragraph 5.2, if any of the Interserve Personnel claims that his/her contract of employment has been transferred to the Contractor pursuant to the Employment Regulations then:
- 5.3.1 the Contractor will, within 5 Working Days of becoming aware of that fact, notify the Council in writing; and
- 5.3.2 the Contractor will at the Councils' cost resist any such attempt or allegation that Interserve Personnel transfer to the Contractor and refuse to accept the same. Such resistance will include but not be limited to defending Employment Tribunal proceedings alleging a right to transfer.
- 5.4 In the event that an Employment Tribunal claim is brought by or on behalf of any Interserve Personnel as envisaged by clause 5.3, the Councils reserve the right to take full conduct of any such claims.
- 5.5 If, notwithstanding the provisions of this Clause 5, any Interserve Personnel transfer to the Contractor pursuant to the Employment Regulations, the Contractor will use its reasonable endeavours to deploy the Interserve Personnel, either at the Sinfin Site or in the provision of Services. The Contractor agrees to keep the Councils informed in respect of such efforts to redeploy the Interserve Personnel and give the Councils a reasonable opportunity to assist with the attempt to redeploy them.
- 5.6 If the Contractor is not able to redeploy the Interserve Personnel, provided that the Contractor:-
- 5.6.1 complies with the ACAS Code of Practice;
- 5.6.2 complies with its own internal procedures and policies relating to redundancy; and
- 5.6.3 complies with the provisions of section 98 and section 105 of the Employment Rights Act 1996
- then the Contractor may terminate the Interserve Personnel's employment by reason of redundancy and the Councils will indemnify the Contractor on demand in respect of any and all losses, liabilities, costs and/or expenses arising out of the same.
- 5.7 The provisions of this Paragraph 5 shall only apply to any Interserve Personnel that claim that his/her contract of employment has been transferred to the Contractor pursuant to the Employment Regulations before the date falling six (6) Months after the Services Commencement Date.

5.8 The Councils agree that where the NWTF Services cease to be provided by the Contractor within the period of six Months commencing on the date falling 10 Business Days following the Service Commencement Date, the Councils shall agree to receive a novation of the terms of appointment of each of the following individuals who has been engaged by the Contractor to assist in the provision of the NWTF services:

5.8.1 [REDACTED];

5.8.2 [REDACTED];

5.8.3 [REDACTED];

5.8.4 [REDACTED];

5.8.5 [REDACTED]; and

5.8.6 [REDACTED].

## **Schedule 8      Councils' Premises**

### **Part 1. Ancillary Rights**

#### **1. List of Councils' Premises**

1. Bolsover Household Waste Recycling Centre, Buttermilk Lane, Chesterfield Road, Bolsover, S44 6AE;
2. Ilkeston Household Waste Recycling Centre, Manners Avenue, Ilkeston, Derbyshire, DE7 8EF;
3. Ashbourne Household Recycling Centre, Mayfield Road, Ashbourne, Derbyshire, DE6 2BJ;
4. Loscoe Household Recycling Centre, Taylor Lane, Loscoe, Heanor, Derbyshire, DE75 7TA;
5. Waste Transfer Station and Household Waste Recycling Centre, Melandra Road, Glossop, SK13 6JQ;
6. Household Waste Recycling Centre, Main Street, Newhall, Swadlincote, Derbyshire, DE11 0TP;
7. Stonegravels Household Waste Recycling Centre, Stonegravels Lane, Chesterfield, Derbyshire, S41 7LF;
8. Northwood Household Waste Recycling Centre, Harrison Way, Darley Dale, Matlock, Derbyshire, DE4 2LF;
9. Clover Nook Household Waste Transfer Station, Clover Nook Industrial Estate, Grange Close, South Normanton, Alferton, Derbyshire, DE55 4QT;
10. The Contractor shall enter into Leases for the each of the following Council's Premises on the Effective Date:
11. Household Waste Recycling Centre, Raynesway HWRC, Derby, DE21 7BA; and
12. Sinfin Site, Sinfin Lane, Derby, DE24 9GF.



**Part 2. Agreed form of Licence**

**DATED**

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**LICENCE TO OCCUPY LAND ON A SHORT TERM BASIS**

**THE AREA KNOWN AS**

**CIVIC AMENITY SITE, BRETBY, MAIN STREET  
NEWHALL, SWADLINCOTE, DERBYSHIRE  
DE11 0TP**

Between

**Derbyshire County Council,  
County Hall  
Matlock  
Derbyshire  
DE4 3AG**

And

**Renewi UK Services Limited  
Dunedin House,  
Auckland Park,  
Milton Keynes,  
Buckinghamshire,  
MK1 1BU**

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### SCHEDULE

*Schedule 1 Rights granted to Licensee*

This licence is dated

## Parties

- (1) Derbyshire County Council, whose registered office is at County Hall, Matlock, Derbyshire DE4 3AG (**Licensor**)
- (2) Renewi UK Services Limited incorporated and registered with company number 02393309 whose registered office is at Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire MK1 1BU (**Licensee**)

## Agreed terms

### 1. Interpretation

The following definitions and rules of interpretation apply in this licence.

#### 1.1 Definitions:

**Land:** all that land and buildings known as Bretby Civic Amenity Site, Main St., Newhall, Swadlincote, Derbyshire DE11 0TP and shown edged red on the Plan or such reduced or extended area as the Licensor may from time to time designate as comprising the Land.

**Access Routes:** such roads, paths and other means of access in or to the land the use of which is necessary for obtaining access to and egress from the Land as designated from time to time by the Licensor.

**Competent Authority:** any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

**Lease:** a lease dated 27<sup>th</sup> April 2018 (commencing 01.05.2015) and made between The Bretby Brick and Stone Company Ltd and Anthony Douglas Barnes and Derbyshire County Council.

**Licence Fee:** the amount of £1 per month or such other amount as the Licensor in its absolute discretion may from time to time determine on giving one months' notice.

**Licence Fee Commencement Date:** 3 August 2019

**Licence Period:** the period from and including 3 August 2019 until the date on which this Licence is determined in accordance with clause 1 or on 29<sup>th</sup> April 2020 whichever date shall be the sooner.

**Necessary Consents:** all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

**Permitted Use:** The Land shall be used only as a Waste Recycling Centre as described and agreed in the WMSA

**Plan:** the plan attached to this licence marked "Plan".

**Waste Management Services Agreement (WMSA):** the written agreement between the Licenser and the Licensee dated \_\_\_\_\_ which governs the Licensee's use of the site and the provision of waste management services by the Licensee.

**Service Media:** all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

**Sub-Contractor:** has the meaning given to it in the WMSA.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Licence.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedule forms part of this Licence and shall have effect as if set out in full in the body of this Licence. Any reference to this Licence includes the Schedule.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.8 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.9 A reference to **writing** or **written** excludes fax and e-mail.

- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

## **2. Licence to occupy**

2.1 This licence is subject to the terms and conditions of the Lease. The Lessor and Licensee shall adhere to the terms of the Lease at all times during the term of this Licence.

2.2 Subject to clause 3 and clause 1, the Lessor permits the Licensee to occupy the Land for the Permitted Use for the Licence Period in common with the Lessor and all others authorised by the Lessor (so far as is not inconsistent with the rights given to the Licensee to use the Land for the Permitted Use) together with the rights mentioned in 0.

2.3 The Licensee acknowledges that:

- (a) the Licensee shall occupy the Land as a licensee and that no relationship of landlord and tenant is created between the Lessor and the Licensee by this Licence;
- (b) the Lessor retains control, possession and management of the Land and the Licensee has no right to exclude the Lessor from the Land;
- (c) H W Martin Waste Limited also occupies the Land as a licensee and, although this Licence is personal to the Licensee, the Lessor acknowledges that:
  - (i) H W Martin Waste Limited shall continue to occupy the Land; and
  - (ii) the Licensee may share, part possession with or grant any licence or occupational rights over the whole of the Land to any Sub-Contractor provided that no relationship of landlord and tenant is created; and
- (d) the Licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights given in clause 2 may only be exercised in accordance with the WMSA.

### 3. Licensee's obligations

The Licensee agrees and undertakes:

- (a) to pay:
  - (i) to the Licenser the Licence Fee payable without any deduction in advance on the first day of each month, if demanded, and proportionately for any period of less than a month the first such payment being for the period from and including the Licence Fee Commencement Date to the end of the month. Each Licence Fee paid by the Licensee shall include the Licence Fee payable together with such VAT as may be chargeable on the Licence Fee.
  - (ii) The Licensee shall pay directly to the relevant suppliers all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Land; the Licensee shall also pay all rates or taxes payable in respect of the Land or the Licensee's use of the Land directly to the relevant authority
- (b) to keep the Land clean, tidy and clear of rubbish;
- (c) not to use the Land other than for the Permitted Use;
- (d) not to make any alteration or addition whatsoever to the Land;
- (e) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices on the Land or access routes without the prior written consent of the Licenser such consent not to be unreasonably withheld or delayed;
- (f) not to do or permit to be done on the Land anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Licenser or any owner or occupier of neighbouring land;
- (g) not to cause or permit to be caused any damage to:
  - (i) the Land, or any neighbouring land; or
  - (ii) any Land of the owners or occupiers of the Land, or any neighbouring land;
- (h) not to obstruct the access routes make them dirty or untidy or leave any rubbish on them;
- (i) not to apply for any planning permission in respect of the Land;
- (j) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Land or which will or might vitiate in whole or in part

any insurance effected by the Licensor in respect of the Land from time to time;

- (k) to comply with all laws and with any recommendations of the relevant suppliers relating to the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Land;
- (l) to observe any rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Land and the access routes;
- (m) to leave the Land in a clean and tidy condition and to remove the Licensee's possessions, plant machinery, furniture, equipment and goods from the Land immediately at the end of the Licence Period;
- (n) to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
  - (i) this Licence;
  - (ii) any breach of the Licensee's undertakings contained in clause 3; and/or
  - (iii) the exercise of any rights given in clause 2;
- (o) not to do anything on or in relation to the Land that would or might cause the Licensor to be in breach of the tenant's covenants and the conditions contained in any lease held by the Licensor
- (p) not to do anything on or in relation to the Land that would or might contravene the Licensee's obligations and responsibilities in the WMSA.
- (q) not to do anything on or in relation to the Land that would or might interfere with the right of HW Martin Waste Limited to occupy the Land.
- (r) to pay to the Licensor interest on the Licence Fee or other payments at the rate of 4% per cent per annum above the base rate of Lloyds Bank plc from time to time calculated on a daily basis from the due date until payment if the Licensee shall fail to pay the Licence Fee or any other payments due under this Licence within twenty eight days of the due date (whether formally demanded or not).

## **1. Termination**

4.1 This Licence shall end on the earliest of:

- (a) The start date of a lease entered into by the Licensor and the Licensee for use of the Land and which supersedes this Licence; or

(b) the termination of the WMSA by either party and for any reason.

4.2 Termination of this Licence shall not affect the rights of either party in connection with any breach of any obligation under this Licence which existed at or before the date of termination.

## **1. Notices**

5.1 Any notice or other communication given under this Licence shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:

- (a) to the Licensor at: County Hall, Matlock, Derbyshire DE4 and marked for the attention of Director of Legal Services;
- (b) to the Licensee at Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire MK1 1BU;
- (c) or as otherwise specified by the relevant party by notice in writing to the other party.

5.2 Any notice or other communication given in accordance with clause 5.1 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.

5.3 A notice or other communication given under this Licence shall not be validly given if sent by e-mail.

5.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **6. Costs**

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution (or registration, if any) and performance of this Licence.

## **7. No warranties for use or condition**

a. The Licensor gives no warranty that the Land possesses the Necessary Consents for the Permitted Use.



- b. The Licensors give no warranty that the Land is physically fit for the purposes specified in clause 2.
- c. The Licensee acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Licensors before the date of this Licence as to any of the matters mentioned in clause a or clause b.
- d. Nothing in this clause shall limit or exclude any liability for fraud.

## **8. Limitation of Licensors' liability**

8.1 Subject to clause 0, the Lensors are not liable for:

- (a) the death of, or injury to the Licensee, its employees, customers or invitees to the Land; or
- (b) damage to any land of the Licensee or that of the Licensee's employees, customers or other invitees to the Land; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Land in the exercise or purported exercise of the rights granted by clause 2.

8.2 Nothing in clause 0 shall limit or exclude the Lensors' liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Lensors or its employees or agents; or
- (b) any matter in respect of which it would be unlawful for the Lensors to exclude or restrict liability.

## **8. Conflict with WMSA**

9.1 In the event of any conflict or inconsistency between this Licence and the WMSA, the terms of the WMSA shall prevail including those relating to dispute resolution.

## **10. Third party rights**

A person who is not a party to this Licence shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.

**1. Governing law**

This Licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**13. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Licence or its subject matter or formation (including non-contractual disputes or claims).

This Licence has been entered into on the date stated at the beginning of it.

## Schedule 1 Rights granted to Licensee

15. The right for the Licensee and any Sub-Contractor to use the Land for the Permitted Use.

1.1 The right for the Licensee and any Sub-Contractor to use such parts of the Access Routes for the purpose of access to and egress from the Land as shall from time to time be designated by the Licensor for such purpose.

1.2 The right for the Licensee and any Sub-Contractor to use the Service Media serving the Land.

### 1) Signed for and on behalf of Derbyshire County Council

Signed .....  
Date.....

Print Name.....  
Position.....

### 2) Signed by for and on behalf of Renewi UK Services Limited

Signed .....  
Date.....

Print Name..... Company Position.....

Part 3. Agreed Form of Lease

DATED \_\_\_\_\_ 2019

DERBY CITY COUNCIL

- and -

RENEWI UK SERVICES LIMITED

L E A S E

- relating to -

Premises known as ♦  
in the City of Derby

Director of Legal Procurement and Democratic  
Services & Monitoring Officer  
Derby City Council  
Council House  
Corporation Street  
Derby DE1 2FS

## CONTENTS

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### CLAUSE

1. *Interpretation*
2. *LETTING, TERM AND TERMINATION*
3. *RIGHTS AND RESERVATIONS*
4. *SUBJECTION*
5. *RENTS PAYABLE*
6. *INTEREST*
7. *INSURANCE*
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15. *NOTICES*
16. *EXECUTION*
17. *TERMINATION*
18. *LAND REGISTRATION APPLICATIONS*
19. *ENFORCEMENT*

**LR1. Date of lease**

.....2019

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s)**

◆

**LR2.2 Other title numbers**

◆

**LR3. Parties to this lease**

**Landlord**

DERBY CITY COUNCIL of The Council House Corporation Street Derby DE1 2FS

**Tenant**

RENEWI UK SERVICES LIMITED

Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire, MK1 1BU  
(Company number 02393309)

**Other parties**

None

**LR4. Property**

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**

The premises (referred to in this Lease as "the Premises") known as  
◆ shown edged red on the plan attached at Appendix 1.

**LR5. Prescribed statements etc.**

**LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**

Not applicable.

**LR5.2 This lease is made under, or by reference to, provisions of:**

Not applicable.

**LR6. Term for which the Property is leased**

From the date hereof (referred to in this Lease as "the Term Commencement Date") to and including for a period of two years (this term is referred to in this Lease as the Contractual Term).

**LR7. Premium**

None.

**LR8. Prohibitions or restrictions on disposing of this lease**

This lease contains a provision that prohibits or restricts dispositions.

**LR9. Rights of acquisition etc.**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

None.

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

None.

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property**

The rights specified in clause 3.1 and Schedule 1

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

The rights specified in clause 3.2 and Schedule 2.

**LR12. Estate rentcharge burdening the Property**

None.

**LR13. Application for standard form of restriction**

None.

**LR14. Declaration of trust where there is more than one person comprising the Tenant**

Not applicable

This lease is made on the date set out in the Particulars

## BETWEEN

- (1) The Landlord and;
- (2) The Tenant

## OPERATIVE PROVISIONS

### 2. Interpretation

The following definitions and rules of interpretation apply in this lease.

#### 1.1 In this Lease, the following words and expressions have the following meanings

Definitions:

**Authorised Use:** the use of the Premises for the purposes permitted by and in accordance with the terms of the Waste Management Services Agreement.

**Derbyshire County Council:** Derbyshire County Council whose address is at County Hall, Matlock DE4 3AG.

**Interest Rate:** 2% above the base lending rate from time to time of Barclays Bank PLC or such other clearing bank reasonably nominated by the Landlord at any time or, if the clearing banks cease at any time to publish a base lending rate, such comparable rate of interest as the Landlord may reasonably determine.

**Sub-Contractor:** has the meaning given to it in the Waste Management Services Agreement.

**Term:** the Contractual Term.

**Term Commencement Date:** the date of this lease.

**Waste Management Services Agreement:** the agreement dated.....2019 entered into between (1) Derby City Council and Derbyshire County Council and (2) Renewi UK Services Limited.

**Yearly Rent:** £1.00 (One Pound per annum)

#### 1.2 In this Lease:

- (a) unless otherwise indicated, references to clauses, Schedules, Paragraphs within Schedules and Appendices are to clauses and Paragraphs of and Schedules and Appendices to this Lease;
- (b) references to any statute or other legislation include references to any subsequent statute or legislation directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute or



legislation and to all orders, by-laws, directions and notices made or served under them;

- (c) references to the Landlord and the Tenant include their respective successors in title and, in the case of individuals, include their personal representatives;
- (d) the Landlord's obligations in this Lease do not bind any Landlord after it has disposed of its interest in the Premises and it will not be liable for any breach of the Landlord's obligations in this Lease arising after the date of that disposal;
- (e) references to the Premises include any part of them unless specific reference is made to the whole of them;
- (f) references to adjoining premises include any premises adjoining or near to the Premises and references to adjoining premises owned by the Landlord include any adjoining premises owned by the Landlord at any time during the Term;
- (g) references to this Lease include any deed or document which is supplemental to, varies or is ancillary to this Lease from time to time;
- (h) references to the end of the "Term" include the determination of the Term before the end of the Contractual Term;
- (i) "including" means "including, without limitation";
- (j) "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the Landlord and all costs, damages, expenses, liabilities and losses incurred by the Landlord;
- (k) references to the Tenant include, and the Tenant's covenants bind, any undertenant or other person in occupation of the Premises or deriving title under the Landlord, their successors in title, and any other person under the Tenant's or their control including employees, agents, workmen and invitees;
- (l) any covenant by the Tenant not to do any act or thing includes a covenant not to permit, suffer or allow the doing of that act or thing;
- (m) where two or more people form a party to this Lease, the obligations they undertake may be enforced against them all jointly or against each of them individually;
- (n) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Lease is to be unaffected; and
- (o) where the question of reasonableness applies to anything in this Lease such reasonableness shall be judged by reference to all the circumstances including what is commercially and financially reasonable.

- 1.3 The Particulars form part of this Lease and words and expressions set out in the Particulars are to be treated as defined terms in this Lease. Clause headings do not affect the construction of this Lease.
- 1.4 The parties to this Lease do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 1.5 This Lease is a "new tenancy" for the purposes of section 1 Landlord and Tenant (Covenants) Act 1995.

### **3. LETTING, TERM AND TERMINATION**

- 3.1 The Landlord lets the Premises to the Tenant for the Contractual Term reserving the rents referred to at clause 5.
- 3.2 The Tenant may quietly enjoy the Premises throughout the Term without any interruption by the Landlord or anyone lawfully claiming under or in trust for the Landlord.
- 3.3 When this Lease ends it will be without prejudice to any outstanding claims between the Landlord and the Tenant or any guarantor of the Tenant.
- 3.4 The Landlord and the Tenant agree to exclude the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 in relation to the tenancy created by this Lease. The Tenant confirms that before it became contractually bound to enter into the tenancy created by this Lease:
- (a) the Landlord served on the Tenant a notice (the "Notice") dated.....2019 in relation to the tenancy created by this Lease in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 ("the 2003 Order");
  - (b) the Tenant, or a person duly authorised by the Tenant, in relation to the Notice made a statutory declaration (the "Declaration") dated.....2019 in a form complying with the requirements of Schedule 2 to the 2003 Order; and
  - (c) where the Declaration was made by a person other than the Tenant, the declarant was duly authorised by the Tenant to make the Declaration on the Tenant's behalf.

### **4. RIGHTS AND RESERVATIONS**

- 4.1 The Premises are let together with the rights set out in Schedule 1 for the benefit of the Tenant so far as the Landlord is able to grant them to be enjoyed in common with the Landlord and any others entitled to use them.

- 4.2 The Rights set out in Schedule 2 are reserved out of the letting for the benefit of the Landlord and any other person having express or implied authority from the Landlord to benefit from them.
- 4.3 The Tenant is to permit the exercise of the rights reserved in clause 3.1 and is not to obstruct or prevent these rights being exercised in accordance with the terms of this Lease.
- 4.4 This Lease does not confer upon the Tenant any rights or privileges over any other property except as expressly set out in this Lease and any rights implied by section 62 Law of Property Act 1925 or the rule in *Wheeldon v Burrows* are expressly excluded.

## **5. SUBJECTION**

- 4.1 The letting is made subject to the matters contained, mentioned or referred to at Schedule 3.
- 4.2 So far as they are still subsisting capable of taking effect and affect the Premises the Tenant is to comply with the matters contained mentioned or referred to at Schedule 3.
- 4.3 The Tenant is not to do or omit to do anything which results or might result in the creation of new rights or easements over the Premises or any adjoining premises of the Landlord or which results or might result in the loss of any rights or easements benefiting the Premises or any adjoining premises of the Landlord and is to comply, at its own cost, with any reasonable requirements of the Landlord to prevent their creation or loss.

## **2. RENTS PAYABLE**

- 5.1 The Tenant is to pay the following rents to the Landlord during the Term without making any legal or equitable set-off, counterclaim or deduction unless required to do so by law:
- (a) the Yearly Rent which shall be paid (if demanded) in advance on each anniversary of the Term Commencement Date throughout the Term; and
  - (b) any other sums due to the Landlord pursuant to this Lease.
- 5.2 The first payment of the Yearly Rent is to be made on the date of this Lease.
- 5.3 The rents and other sums payable by the Tenant under this Lease are exclusive of VAT. An obligation on the Tenant under this Lease to pay money includes an obligation to pay or indemnify the Landlord against any VAT chargeable on that payment. When a taxable supply is made for the purposes of VAT under this Lease, a valid VAT invoice is to be issued in respect of that supply.

## **2. INTEREST**

If the Tenant does not pay any of the rents or sums due to the Landlord under this Lease, whether or not reserved as rent, within 14 days of the due date for payment the Tenant is to pay interest on those sums, both after as well as before judgment, at the Interest Rate for the period from and including the due date for payment to and including the date of actual payment.

## **7. INSURANCE**

The Landlord and the Tenant shall comply with their respective obligations relating to insurance and reinstatement of damage and destruction of the Premises set out in the Waste Management Services Agreement.

## **9. COSTS AND OUT GOINGS**

- a. The Tenant is to pay all outgoings of whatever nature in relation to the Premises including business rates and utilities costs (including standing charges and taxes payable on utility costs) and a fair proportion, to be determined by the Landlord acting reasonably, of any which relate to the Premises and any adjoining premises of the Landlord as a whole in each case in accordance with the Waste Management Services Agreement.
- b. The Tenant is to indemnify the Landlord in respect of any damage to or destruction of the Premises or any adjoining premises of the Landlord, any injury to or death of any person, damage to any property or the infringement, disturbance or destruction of any rights or easements or other matters arising from the act, default or negligence of the Tenant in each case in accordance with the Waste Management Services Agreement

## **10. REPAIRS, MAINTENANCE AND ALTERATIONS**

The Tenant is not to carry out any alterations or additions to the Premises save as may be permitted in accordance with the Waste Management Services Agreement.

## **9. USE OF THE PREMISES**

- 9.1 The Tenant is only to use the Premises for the Authorised Use.
- 9.2 The Landlord gives no warranty to the Tenant that the Authorised Use is or will remain a lawful or permitted use for the Premises under planning legislation or otherwise.

## **10. ASSIGNMENT, UNDERLETTING, CHARGING AND SHARING/PARTING WITH POSSESSION/OCCUPATION**

- 11.1 The Tenant is not to assign, underlet, charge, part with or share possession or occupation of all or any part of the Premises nor hold the Premises on trust for any

other person save as expressly permitted by this Lease or as authorised under the Waste Management Services Agreement.

- 11.2 The Tenant may enter into a bona fide charge of the Premises to a mortgagee who is also providing funding to the Tenant pursuant to the Waste Management Services Agreement.
- 11.3 The Tenant shall not assign the Lease unless (a) to a person to whom the Tenant has novated its interest under the Waste Management Services Agreement on the date of the novation or (b) to any mortgagee or assignee by way of security pursuant to clause 11.2.
- 11.4 The Tenant shall not underlet, share, part possession with or grant any licence or occupational rights over the whole of the Premises other than with any Sub-Contractor.

## **11. LEGISLATION AND PLANNING**

The Tenant is to take any action that the Landlord may properly and reasonably require in respect of any defects in the Premises which might give rise to a duty or liability on the part of the Landlord under the Defective Premises Act 1972, any other statutory provision or at common law where the Tenant is under an obligation to do so in the Waste Management Services Agreement.

## **2. HANDING BACK AT THE END OF THE TERM**

- 11.1 At the end of the Term, the Tenant is to return the Premises to the Landlord in accordance with its obligations under the Waste Management Services Agreement and with vacant possession and return all keys to the Premises to the Landlord.
- 11.2 Subject to the provisions of any legislation which prevents or restricts such an agreement, the Tenant is not entitled to any compensation under statute or otherwise at the end of the Term.
- 11.3 At the end of the Term, the Tenant is to return the original Lease to the Landlord and use all reasonable endeavours to assist the Landlord in removing any notice of the Lease and the rights granted and reserved by it from the Landlord's title to the Premises.

## **3. CONFIDENTIALITY**

The provisions of Clause 40 of the Waste Management Services Agreement will apply to this Lease.

## **14. NOTICES**

The provisions of Clause 54 (Notices) of the Waste Management Services Agreement will apply to this Lease.

## **16. EXECUTION**

The parties have executed this Lease as a deed and it is delivered on the date set out in the Particulars.

## **16. TERMINATION**

If the Waste Management Services Agreement is terminated or expires for any reason whatsoever during the Contractual Term then this Lease shall absolutely determine but without prejudice to any right of action by either party against the other in respect of any antecedent breach of the covenants and conditions herein contained.

## **17. ENFORCEMENT**

This Lease is to be governed by the laws of England and Wales and subject to clause 30 (Dispute Resolution) of the Waste Management Services Agreement, the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

## **SCHEDULE 1**

### **Rights Granted**

1. to use the conduits serving the Premises for the passage or transmission of utilities to and from the Premises;
2. a right of support from the Landlord's adjoining land (if any); and
3. all rights granted to the Tenant as the Contractor pursuant to the Waste Management Services Agreement.

## SCHEDULE 2

### Rights Reserved

1. To enter and remain upon so much as is reasonably required of the Premises on reasonable notice (except in case of emergency) with or without workmen, plant and equipment in each case in accordance with the Waste Management Services Agreement:
  - 1.1. for any purpose permitted by and in accordance with the provisions of the Waste Management Services Agreement;
  - 1.2. to ascertain whether the Tenant has complied with the Tenant's obligations of this Lease;
  - 1.3. to estimate the current value of the Premises or any adjoining premises for any other purposes.
1. To maintain, build on, alter, add to, redevelop or extend in any way any adjoining premises owned by the Landlord or to permit the owner of any adjoining premises to do so in relation to their property provided that the access of light and air to the Premises is not materially adversely affected and without being liable to pay any compensation to the Tenant.
2. To connect to and use any conduits within or passing through the Premises for the passage or transmission of utilities to and from any adjoining premises.
3. To install new conduits within the Premises and connect to them for the passage or transmission of utilities to and from any adjoining premises and any adjoining premises of the Landlord subject to obtaining the Tenant's consent as to the location nature and timing of the works (such consent not to be unreasonably withheld or delayed).
1. Support and protection from the Premises for any adjoining land.



### **SCHEDULE 3**

#### **Subjections**

1. All rights of light and air and other legal or equitable easements and rights belonging to or enjoyed by any other property over the Premises.
2. The letting is made subject to the title matters the matters contained, mentioned or referred to in the entries on title number ◆ shown on the official copy entries attached to this Lease at Appendix 2 insofar as they relate to the Premises.

**EXECUTED** as a Deed (but not )  
delivered until the date hereof) when )  
the Common Seal of **DERBY CITY** )  
**COUNCIL** was hereunto affixed in )  
the presence of: )

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Authorised Signatory

**EXECUTED** as a Deed (but not )  
delivered until the date hereof) on )  
behalf of )  
**RENEWI UK SERVICES LIMITED** )  
acting by a Director in the presence of: )

\_\_\_\_\_  
Director's Signature

WITNESS:

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Occupation: \_\_\_\_\_



## **APPENDIX 1**

### **Plan**

## APPENDIX 2

### Official Copies ♦

**Schedule 9      Contingency Plan**

Not Used

## Schedule 10 Councils' Policies

- 1 The Councils at the date of this agreement have provided to the Contractor the following Councils Policies:
  - 1.1 Equality, Dignity and Respect Policy;
  - 1.2 Equality Objectives Delivery Plan 2017/2020;
  - 1.3 Data Protection Policy;
  - 1.4 Health and Safety Policies and Forms available on the following link:
  - 1.5 <https://www.derbyshire.gov.uk/working-for-us/employment-policies/health-and-safety/health-and-safety-policies-and-forms.aspx>
  - 1.6 Equality and Diversity Policy available on the following link:
  - 1.7 <https://www.derbyshire.gov.uk/council/equalities/equality-diversity-policy/equality-and-diversity-policy.aspx>
  - 1.8 Data Protection Policy available on the following link:  
<https://www.derbyshire.gov.uk/working-for-us/data/gdpr/general-data-protection-regulation-gdpr.aspx>
- 2 The Councils shall provide to the Contractor for the Term of this agreement such other Councils Policies pursuant to clause 5.3.6 of this agreement.

## **Schedule 11      Reporting**

### **1      Reports**

- 1.1      Subject to the provisions of clause 21 and this Schedule 11, the Contractor shall provide Monthly Reports in respect of each Month, shall be submitted at the same time as and in support of the invoice referred to in clause 21 within 10 Business Days after the last day of each Month during the Term.
- 1.2      Failure to provide such reports within the timescales set out above, may result in Performance Deductions as described under KPIs 4 and 5 of Schedule 2 (Performance and Deductions).

### **2      Monthly Reports**

- 2.1      The Contractor shall deliver, or shall procure that there is delivered, to the Councils for each Month an electronic copy, comprising:
  - 2.1.1      a waste data report for the Payment Period (in accordance with paragraph 3 of this Schedule 11 (the **“Waste Data Report”**);
  - 2.1.2      an operational report (in accordance with paragraph 4 of this Schedule 11 (the **“Operational Report”**); and
  - 2.1.3      a payment report for the Month, including deductions for performance and availability monitoring (in accordance with paragraph 5 of this Schedule 11 (the **“Payment 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 11, 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 11, provide to the Councils comprehensive data relating to all Waste Handled in the relevant Month via a spreadsheet or reporting tool, which can also be interrogated but not directly altered remotely by the Councils.
- 3.2.2      The waste data report referred to in paragraph 3.2.1 above, shall include the following:
  - (a)      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;

- (b) 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(a) above and broken down by WCA where applicable; and
- (c) any other information reasonably requested by the Councils.

#### **4 Operational Report**

4.1 Each Monthly Report shall include information on the operation of the Services in respect of the Month to which that report relates and, where appropriate, in respect of the Contract Year up to the end of that Month. Such information shall include:

- 4.1.1 health, safety and welfare incidents and reports;
- 4.1.2 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;
- 4.1.3 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;
- 4.1.4 incidences of non-compliance with the Method Statement prepared in response to paragraph 1.5 of Schedule 1 (Specification);
- 4.1.5 incidences of Environmental Management System non-compliances; and
- 4.1.6 all incidences of plant, vehicle and equipment failures and any other issues affecting the provision of the Services,

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 KPI 5 (Monthly 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 Performance Monitoring Report.

## 5 Payment Report

- 5.1 Each Monthly Report shall contain a payment report which shall include following:
  - 5.1.1 an invoice detailing the Monthly Payment, calculated in accordance with Schedule 4 (Payment Mechanism);
  - 5.1.2 a detailed breakdown of the components of the Monthly Payment, as set out in Schedule 4 (Payment Mechanism), including payment in respect of:
    - (a) HWRC Payment;
    - (b) Contract Transfer Station Payment;
    - (c) Landfill Payment;
    - (d) Diverted Residual Waste Payment;
    - (e) NNDR Payment;
    - (f) Hazardous Waste Payment (being Clinical Waste and Specified Hazardous Waste);
    - (g) Insurance Payment;
    - (h) Lifecycle Payment;
    - (i) Other Amounts;
  - 5.1.3 a detailed breakdown of all Deductions and Adjustments in respect of:
    - (a) Unavailability Deductions;
    - (b) Performance Deductions;
    - (c) Tipping Away Payments;
    - (d) Diversion Saving Sharing;
  - 5.1.4 a table showing invoices submitted (including reference number, date and amount) and the cumulative payments made to date to cover the period since the Effective Date;
  - 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 March (for February actuals) shall include a calculation of the Indexation Factor applicable to relevant payments from the period commencing on the forthcoming 1st April, determined in accordance with Schedule 4 (Payment Mechanism).
- 5.3 The payment report will include, in respect of the Diverted Residual Waste:
  - 5.3.1 a summary of the gate fee costs actually incurred for each applicable alternative energy from waste treatment facility;
  - 5.3.2 a statement signed by the Contractor confirming that the information provided pursuant to this represents an accurate summary of the costs actually incurred in delivering such diversion from Landfill in the relevant Month together with such supporting information, on an open book basis, as the Councils may reasonably require in order to verify that information.
- 5.4 The payment report shall summarise all Performance Failures for the relevant Payment Period, comprising:
  - 5.4.1 the time and date the event first came to the attention of the Contractor or any Sub-Contractor;
  - 5.4.2 whether the Performance Failures were monitored by the Contractor or brought to the attention of the Contractor by the Councils;
  - 5.4.3 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;
  - 5.4.4 the time and date at which action was initiated to effect rectification of the KPI;
  - 5.4.5 the time and date at which rectification has been effected;
  - 5.4.6 the score for each KPI calculated in accordance with Schedule 2 (Performance and Deductions);
  - 5.4.7 in respect of each Month, a total of the Monthly Performance Points incurred;
  - 5.4.8 a cumulative position of the total Performance Points incurred since the Effective Date;
  - 5.4.9 for annual KPIs a calculation of the year to date performance in the Contract Year in which the Month occurs;
  - 5.4.10 all Reporting Failures identified and not previously reported;

- 5.4.11 total hours that any HWRC and / or Delivery Point that was Unavailable, comparing this with the hours that such Facility should have been Available, including:
- (a) detail of the time and date the period of Unavailability commenced and finished for each Facility;
  - (b) the reason for the Unavailability; and
  - (c) a calculation of the cumulative Unavailability for each facility during the relevant Contract Year;
- 5.4.12 details of incidences where vehicles from WCAs delivering Contract Waste to Delivery Points were diverted to alternative Delivery Points (or otherwise), including:
- (a) details of the time and date of the diversion;
  - (b) 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 4 (Payment Mechanism); and
  - (c) the Tonnage of each load of Contract Waste diverted.

## **6 Reporting Errors**

- 6.1 Any errors or discrepancies identified by the Councils in Monthly Reports submitted by the Contractor shall be verified and corrected as appropriate by the Contractor and the relevant Monthly Report shall be resubmitted within (10) Business Days following receipt of notification from the Councils.

## Schedule 12 Lifecycle

### Definitions

“Unforeseen Failure” means any unforeseen failure of the Council’s Premises or any Assets which would materially impede the Contractor from providing the Services;

“Final Condition” means the condition of the Councils’ Premises, including the state and condition of the buildings, the ground conditions by reference to a visual inspection and the Assets and shall include an estimate of both the net book value and the market value of the Assets;

“Final Condition Survey” means a survey of the Councils Premises, including the state and condition of the buildings, a visual inspection of the ground conditions and the production of the Initial Asset List;

“Identified Rectification Works” means any items highlighted as such within the Initial Condition Survey which may have an impact on the performance of the Services or the compliance by the Contractor or its sub-contractors with any Necessary Consents;

“Initial Asset List” means the list included within the Initial Condition Survey setting out the Assets used at the Councils’ Premises and including the approximate age of the asset, the current net book value and any comments as to its state and condition;

“Initial Condition” means the condition of the Councils’ Premises, including the state and condition of the buildings, the ground conditions by reference to a visual inspection and the Assets;

“Initial Condition Survey” means a survey of the Councils Premises, including the state and condition of the buildings, a visual inspection of the ground conditions and the production of the Initial Asset List set out at Annexure 1 to this Schedule 12 by the Initial Condition Independent Surveyor;

“Initial Condition Independent Surveyor” means a suitably qualified and experienced independent surveyor who exercises reasonable skill and care and acts impartially between the Parties, appointed jointly by the Parties to carry out the Initial Condition Survey ;

### Initial Condition Survey and Identified Rectification Works

- 1 The Contractor shall (or shall procure that a Sub-Contractor shall) procure that the Initial Condition Independent Surveyor appointed to carry out the Initial Condition Survey shall provide a collateral warranty for the benefit of the Councils.
- 2 The Parties acknowledge that pursuant to the terms of the Initial Condition Survey, the Initial Condition Independent Surveyor has determined the Initial Condition including any Identified Rectification Works.
- 3 Subject to paragraph 7 below, the Councils shall be entitled to instruct the Contractor whether or not to carry out any or all of the Identified Rectification Works.
- 4 Where the Councils determine to instruct the Contractor to carry out any or all of the Identified Rectification Works, the Contractor shall provide the Councils with

any reasonable assistance that the Councils may require including providing information relating to the costs being incurred.

- 5 In the event that the Councils instruct the Contractor to carry out one or more of the Identified Rectification Works the Contractor shall, or shall procure that a Sub-Contractor shall, carry out such Identified Rectification Works in accordance with Good Industry Practice and the requirements of this Agreement and so as to cause the minimum reasonably practicable level of disruption to the Services.
- 6 Following the completion of the Identified Rectification Works the Councils and the Contractor shall conduct a joint inspection of the Identified Rectification Works and upon satisfactory completion of the same, the Contractor shall be entitled to invoice the Councils for the costs of the Identified Rectification Works.
- 7 In the event that the Councils instruct the Contractor not to carry out any of the Identified Rectification Works then the Contractor shall not be obliged to carry out such Identified Rectification Works, provided that the Council shall not be entitled to instruct the Contractor not to carry out any Identified Rectification Works that are required in order to comply with Necessary Consents.
- 8 In the event that there is any impact on the provision of the Services as a result of:
  - 8.1 any Identified Rectification Works prior to their completion (including where the Councils instruct the Contractor not to carry out the same);
  - 8.2 any Unforeseen Failure,

that is not the result of a failure by the Contractor to comply with the provision of this Agreement then the Contractor shall be entitled to relief from any Deductions and shall not be in breach of this Agreement.

#### **Final Condition Survey**

- 9 No later than 3 Months before the expiry of the Term, the Contractor shall or shall procure that a Sub-Contractor shall procure the carrying out of the Final Condition Survey by an independent surveyor who exercises reasonable skill and care and acts impartially between the Parties, appointed jointly by the Parties which shall determine the Final Condition.
- 10 In the event that the Final Condition is not to an equivalent standard as the Initial Condition as should have been improved by any works carried out pursuant to this Schedule, the Contractor shall be obliged to carry out any necessary rectification works at its own cost.
- 11 The Councils shall be entitled to withhold, from the final Monthly Payment the estimated costs of carrying out any rectification works which have not been completed at the due date for such payment.
- 12 Following the completion of such works the Councils and the Contractor shall conduct a joint inspection and upon satisfactory completion of the same, the Councils shall release any such withheld sums.

## **Schedule 13 Insurance**

### **Part A**

#### **1 Insureds:**

Common to each insurance specified in this Part A of Schedule 13 (unless stated otherwise):

- 1.1 the Councils; and
- 1.2 Contractor
- 1.3 any immediate Sub-Contractor of the Contractor to whom the Contractor has subcontracted control and responsibility in respect of the Council Premises

each for their respective rights and interests

#### **2 Property Damage Insurance**

##### **2.1 Insured Property**

The Assets which are the property of the Contractor or the Council Premises for which the Contractor is responsible and/or has care, custody and/or control of from time to time.

##### **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 Council Premises 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**

From the Service Commencement Date and throughout the remainder of the Term (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).

## 3 Business Interruption Insurance

### 3.1 Insureds

- 3.1.1 Contractor,



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 this Schedule 13.

### 3.5 Minimum Indemnity Period

6 months.

### 3.6 Period of Insurance

As per Property Damage Insurance specified in paragraph 2 of this Schedule 13.

### 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 this Schedule 13, other than for consequential financial losses.
  - 3.8.2 Delayed response by a public body or state authority.

## **Part B - Environmental Impairment Liability Insurance**

Common to each insurance specified in this Part B of Schedule 13 (unless stated otherwise):

### **1 INSUREDS:**

- 1.1 the Councils
- 1.2 Contractor
- 1.3 any immediate sub-contractor of the Operating Contractor to whom the Operating Contractor has subcontracted control and responsibility in respect of the HWRCs or the Project Transfer Stations

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 3.3 of Part C of this Schedule 11 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 Services Commencement Date and throughout the Term (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.

### Part C - Insurance for the Sinfin Site only

#### 1 Insureds:

Common to each insurance specified in this Part C of Schedule 13 (unless stated otherwise):

- 1.1 the Councils;
- 1.2 Contractor
- 1.3 Sub-contractors of the Contractor of any tier
- 1.4 Consultants and suppliers - for their site activities only

each of their respective rights and interests.

#### 2 Construction Third Party Liability Insurance

##### 2.1 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:

- 2.1.1 death or bodily injury, illness, death, disease contracted by any person;
- 2.1.2 loss or damage to property;
- 2.1.3 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 Works.

##### 2.2 Limit of Indemnity

Sinfin Site: not less than £50,000,000 in respect of any occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

##### 2.3 Maximum Deductible

£20,000 for each and every occurrence of property damage (personal injury claims will be paid in full).

##### 2.4 Territorial Limits

United Kingdom (and elsewhere in the world in respect of non manual visits)

##### 2.5 Jurisdiction

Worldwide jurisdiction (subject to North American Conditions); Applicable law for the policy: English law.

## 2.6 Period of Insurance

As per the Contractors 'All Risks' Insurance specified in paragraph 2 of Part 1 of Schedule 11 of the PPP Contract, including all defects liability periods (maintained throughout on a losses occurring basis).

## 2.7 Cover Features and Extensions

- 2.7.1 Munitions of war.
- 2.7.2 Cross liability clause.
- 2.7.3 Legal defence costs.
- 2.7.4 Contractual liability.
- 2.7.5 Health and Safety at Work Act.
- 2.7.6 Data Protection Act.
- 2.7.7 Defective Premises Act.
- 2.7.8 Contingent motor cover.

## 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 Liability for death, illness, disease or bodily injury sustained by employees for the Insured.
- 2.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 2.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insureds.
- 2.8.6 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 the Insured.
- 2.8.7 Events more properly covered under a professional indemnity policy.
- 2.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 2.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

- 2.8.10 Losses indemnified under the Contractors 'All Risks' Insurance or Delay Start Up insurances specified in Part 1 of Schedule 11 of the PPP Contract.
- 2.8.11 Cyber risks.
- 2.8.12 Other Council liabilities (being those not arising from the Project Works as defined in the PPP Contract).
- 2.8.13 Liability arising from toxic mould.
- 2.8.14 Liability arising from asbestos.

### 3 Environmental Impairment Liability Insurance (EIL) for the Sinfin Site only

#### 3.1 Insureds

- 3.1.1 the Councils
- 3.1.2 Contractor
- 3.1.3 Any immediate Sub-contractor of the Contractor to whom the Contractor has subcontracted control and responsibility in respect of the Council Premises

each of their respective rights and interests.

#### 3.2 Interest

To indemnify the Insured Parties in respect of all sums that they 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.

#### 3.3 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 Contractor's Pollution Liability Insurance in paragraph 2.2 of Part B of this Schedule 13 to be linked.

#### 3.4 Maximum Deductible

£100,000 for each and every loss.

#### 3.5 Territorial Limits

Sinfin Site and off site migration of contamination from this site.

#### 3.6 Jurisdiction

English law and jurisdiction

### 3.7 Period of Insurance

From the Commencement Date and throughout the Contract Period (the policy period not to exceed three years).

### 3.8 Cover Features and Extensions

- 3.8.1 Regulatory claims and 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.
- 3.8.2 Regulatory or third party claims for off-site clean-up of pre-existing and new conditions.
- 3.8.3 Third party claims for on-site and off-site property damage from pre-existing and new conditions.
- 3.8.4 Third party claims for on-site and off-site bodily injury from pre-existing and new conditions.
- 3.8.5 Legal costs.
- 3.8.6 Costs incurred under the Environmental Damages Regulations 2009.
- 3.8.7 No retroactive date.
- 3.8.8 Liability arising from any works.

### 3.9 Principal Exclusions

- 3.9.1 War and related perils (UK market agreed wording).
- 3.9.2 Nuclear/radioactive risks (UK market agreed wording).
- 3.9.3 Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).
- 3.9.4 Intentional, wilful or deliberate non-compliance with any EU Authority decision or any UK or EU regulation.
- 3.9.5 Criminal fines and penalties.
- 3.9.6 Known Conditions.

## Schedule 14 NWTF Services

### 1 Scope

1.1 1.1 The Contractor shall, from the Services Commencement Date for the duration of the NWTF Term, deliver the following Services in respect of the NWTF:

1.1.1 **Stage 1:** Stabilise, as further detailed in section 1.3 below; and

1.1.2 **Stage 2:** Condition Survey, as further detailed in section 1.4 below;

and, subject to section 2 below, the following:

1.1.3 **Stage 3:** Fix critical to comply, as further detailed in section 1.5 below

1.1.4 **Stage 4:** Performance Survey, as further detailed in section 1.6 below

1.1.5 **Stage 5:** Evaluate Status, as further detailed in section 1.7 below; and

1.1.6 **Stage 6:** Transition Services, as further detailed in section 1.8 below

together the 'NWTF Services'.

### 1.2 General

1.2.1 In delivering the NWTF Services, the Contractor shall:

- (a) manage the transition of the services from the existing contractors at the Services Commencement Date and to new contractors at the Termination Date;
- (b) obtain, maintain and comply with relevant quality assurance and environmental management standards for the NWTF Services;
- (c) develop and maintain an NWTF Services Delivery Plan containing the information set out in Annex 1 ("NWTF SDP") that details how the requirements of section 1 of this Schedule 14 shall be delivered;
- (d) provide an effective interface with the public and other service users, community groups and stakeholders including consultation, user feedback, complaints, re-use and recycling activities;
- (e) develop, operate and maintain appropriate monitoring and reporting systems for the performance and payment of the NWTF Services;



- (f) manage health, safety and welfare requirements for the safe operation of the NWTF Services; and
  - (g) provide to the Councils copies of all relevant Necessary Consents for the delivery of the NWTF Services (including Environment Agency authorisations, permits, exemptions and licences) and copies of all material correspondence with regulators.
- 1.2.2 The NWTF Services shall be undertaken in accordance with the NWTF SDP.
- 1.2.3 The NWTF Services shall be undertaken in such a manner as to preserve the integrity and efficacy of all NWTF Assets (unless the Parties have agreed that any NWTF Asset is no longer required).
- 1.2.4 The Contractor shall comply with the requirements of the planning permission, environmental permit and other Necessary Consents when undertaking the NWTF Services.
- 1.2.5 The Contractor shall maintain (and if necessary obtain) all Necessary Consents (including the planning permission and environmental permit) which are from time to time during the NWTF Term required or necessary for the delivery of the NWTF Services in accordance with the terms of this Agreement.
- 1.2.6 The Contractor shall, and shall procure that all Sub-Contractors shall comply with the conditions of and requirements attached to all Necessary Consents; and notify the Councils promptly of any notices or other material communications received (whether from any regulatory 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.
- 1.2.7 The following general provisions of the Specification shall apply to the NWTF Services provided that references to the "Services" therein shall be deemed for the purposes of this paragraph 1.2.7 to be references to "NWTF Services":
  - (a) 3.5 (Contract Monitoring, Records and Management Information Systems);
  - (b) 3.6 (Enforcement);
  - (c) 3.7 (Safety and Security);
  - (d) 3.8 (Customer Care);
  - (e) 3.9 (Signage);
  - (f) 3.10 (Emergency Services);
  - (g) 3.11 (Environmental Management);

- (h) 3.12 (Quality Assurance);
- (i) 3.13 (Management, Supervisory and Operational Employees);
- (j) 3.14 (Health Safety and Welfare, Equipment (which shall apply to NWTF Equipment), Employees, Facilities and Records and Reporting); and
- (k) 3.18 (Sale and Marketing of Recovered materials).

To the extent that there are any conflicts or inconsistencies between these provisions and the requirements of this Schedule 14, the latter shall prevail.

#### Employees

- 1.2.8 All relevant employees (of the Contractor and Sub-Contractors) delivering NWTF Services shall be trained in all relevant aspects of operational procedures, requirements of Necessary Consents and customer care.
- 1.2.9 The Contractor shall ensure that all aspects of the NWTF Services are supervised by sufficient numbers of persons who have adequate knowledge, training and professional experience for the satisfactory and safe performance of the NWTF Services in accordance with the Agreement.
- 1.2.10 The Contractor shall ensure that all operators/drivers of NWTF Equipment are:
  - (a) appropriately trained and competent having particular regard to the hazards inherent in Contract Waste handling machinery; and
  - (b) in possession of the applicable statutory or other approved training certificates as evidence of this training and competence.
- 1.2.11 The Contractor shall employ sufficient qualified employees with appropriate Certificates of Technical Competence (or equivalent nationally-recognised qualifications) for delivery of the NWTF Services at all times.
- 1.2.12 From the Services Commencement Date, the Contractor shall appoint a competent and suitably experienced services manager to act as the day-to-day point of contact for the Councils in relation to the NWTF Services and shall provide the Councils with the contact details for this manager. The contact details shall include a telephone number and business address during normal working hours, an out of hours and emergency telephone number and an email address.
- 1.2.13 The Contractor shall provide the Councils with any information the Councils reasonably request in relation to employees engaged in delivering the NWTF Services including but not limited to:

- (a) the number of persons employed or engaged in delivering the NWTF Services, their roles and where they are based; and
- (b) the training, skills and competencies of those persons.

#### Site Security

- 1.2.14 The Contractor shall ensure that the NWTF and the Sinfin Site remain at all times capable of being secured and have appropriate security in place so as to prevent unauthorised access.
- 1.2.15 The Contractor shall operate and maintain a colour CCTV camera system that covers the security at the NWTF and the Sinfin Site and shall monitor site security using the CCTV system on a 24-hour basis.
- 1.2.16 The Contractor shall be responsible for the maintenance and repair of all fences, walls, landscaping, hedges and gates enclosing the perimeter of the Sinfin Site such that they provide an effective barrier to unauthorised entry.
- 1.2.17 In the event of any unauthorised access to the NWTF and/or the Sinfin Site, the Contractor shall notify the Councils within 1 Business Day of the nature and extent of the security breach together with the Contractor's proposed measures to repair any damage caused and to eliminate or mitigate against such events recurring.

#### Maintenance

- 1.2.18 The Contractor shall undertake routine maintenance of all NWTF Equipment at the NWTF (other than NWTF Equipment which the Councils have agreed is no longer required) to preserve its operational efficacy at all times, including times when the NWTF (or any part thereof) is not handling Contract Waste.
- 1.2.19 Maintenance shall comply with applicable:
  - (a) Law,
  - (b) Good Industry Practice,
  - (c) manufacturer's guidance
  - (d) prevailing operating and maintenance manuals; and
  - (e) the NWTF SDP.
- 1.2.20 The Contractor shall facilitate access to the NWTF and the Sinfin Site to allow the Councils to undertake a survey (or surveys) of the condition of the NWTF.
- 1.2.21 The Contractor shall maintain the physical and visual integrity of all buildings, cladding, external boundaries and fencing at the

NWTF and the Sinfin Site such that these are in no worse a condition at the expiry of the NWTF Term than they were at the Services Commencement Date (as amended by any subsequent rectification works).

1.2.22 In the event of a defect that materially and adversely affects the NWTF and/or any NWTF Equipment and/or the Contractor's ability to deliver the NWTF Services in accordance with the requirements of the Agreement, the Contractor shall:

- (a) notify the Councils' Authorised Officer as soon as reasonably practicable and in any event within 4 hours of becoming aware of the fault, providing available details of the nature of the fault and its impact;
- (b) as soon as reasonably practicable make a full assessment of the defect and advise the Councils of its detailed nature and the intended remedy and the timescales within which the repair will be fully completed and agree the same with the Councils; and
- (c) carry out the required repairs and formally advise the Councils as and when repairs are effected.

1.2.23 The Contractor shall compile and maintain a full record of all maintenance procedures carried out. The Contractor shall make these available for inspection by the Councils upon request during normal working hours.

#### Programme

1.2.24 The Contractor shall provide and maintain a programme of activities it plans to undertake in implementing the NWTF Services, including details of start dates, durations and dependencies.

#### Documentation and Data Management

1.2.25 Within 90 days of the Services Commencement Date, or such other period as may be agreed by the Parties (acting reasonably), the Contractor shall develop, maintain and utilise an electronic Information Management System ("NWTF IMS") (which does not need to be a single system) to act as a repository for all documentation, performance data and other information related to the delivery of the NWTF Services which shall include but not be limited to the following documentation:

- 3. process and instrumentation drawings;
- 4. electrical single line drawings;
- 5. general layout and elevation drawings;
- 6. environmental risk assessments;
- 7. records of all environmental monitoring data (including data required to be captured in accordance with Necessary Consents);

8. health and safety risk assessments;
9. health and safety file;
10. operating and maintenance manuals;
11. health and safety records;
12. records of complaints;
13. correspondence with regulators;
14. operational SCADA data; and
15. performance data for the NWTF and components thereof;

and the following records:

4. daily logs of all activities;
5. weekly and monthly reports as set out below;
6. records of all persons engaged in the delivery of the NWTF Services;
7. records of all Contract Waste received at the NWTF;
8. records of all Contract Waste leaving the NWTF, broken down by type and destination;
9. records of all surveys and tests;
10. a record of all maintenance procedures carried out; and
11. all other information which the Councils reasonably request is included in the NWTF IMS.

- 1.2.26 The Contractor shall use the NWTF IMS (which shall have the functionality) to compile, analyse, summarise and report performance data and trends.
- 1.2.27 The NWTF IMS shall include a robust change management system to ensure that all changes are managed and captured effectively, all as detailed in the NWTF SDP.
- 1.2.28 The NWTF IMS shall be updated as and when any new relevant information becomes available, and as a minimum on a weekly basis.
- 1.2.29 The Contractor shall provide the Councils with unfettered access to all information and data in the NWTF IMS.
- 1.2.30 The Contractor shall backup all information and data entered into the NWTF IMS in accordance with Good Industry Practice and as a minimum, full information and data backup shall be carried out every 24 hours throughout the NWTF Term. In the event of NWTF IMS unavailability the Contractor shall implement backup and contingency arrangements to ensure that electronic information and data continues to be provided to the Councils.
- 1.2.31 Unless prohibited by Law, or otherwise agreed by the Parties to be commercially confidential:
  - (a) the Contractor shall make available all relevant documentation, data and other information held within the NWTF IMS to the Council to make available to all

bidders preparing tenders for a successor contract (with such information being as such to enable all bidders to submit a tender on a fair and equitable basis with the Contractor (even if the Contractor is not a bidder)); and

- (b) at the Termination Date, the NWTF IMS and all information included therein shall be transferred to the Councils or, instructed to a successor contractor to maintain.

#### Reporting

1.2.32 The Contractor shall be required to provide:

- (a) weekly reports, covering activities for each week (Monday to Sunday), which shall be provided no later than close of play on the following Monday; and
- (b) monthly reports in respect of each Month which shall be provided no later than 7 days following the end of each Month.

1.2.33 Weekly reports shall include, as appropriate, a summary of:

- (a) activities undertaken;
- (b) persons engaged in the NWTF Services and what they were doing;
- (c) Contract Waste received;
- (d) Contract Waste processed through the MRF/MBT;
- (e) Contract Waste processed through each ACT line (see 1.3.2 below);
- (f) electricity generated;
- (g) Contract Waste exported from the site, broken down by type and destination;
- (h) interface with regulators;
- (i) accidents and other incidents which have disrupted the normal delivery of the NWTF Services;
- (j) complaints received; and
- (k) any other information reasonably requested to be included by the Councils.

1.2.34 Monthly reports shall include, as appropriate:

- (a) a compilation of the information required to be included in weekly reports, as listed above;

- (b) a summary of activities undertaken during the Month, progress made against programme and a schedule of activities planned for the forthcoming Month (including an update to the programme to the extent necessary);
- (c) a log of the resources deployed in delivering the NWTF Services in the relevant Month, including hours worked and activities undertaken and corresponding cost;
- (d) details of other costs incurred in the following categories:
  - (i) plant and equipment;
  - (ii) consumables;
  - (iii) materials; and
  - (iv) other, as reasonably requested by the Councils;
- (e) details of revenues generated;
- (f) a summary of health and safety data and trends;
- (g) a summary of environmental monitoring data and trends; and
- (h) any other information reasonably requested to be included by the Councils.

#### Meetings

- 1.2.35 The Contractor shall attend meetings to discuss the implementation of the NWTF Services and associated outcome as and when such meetings are called by the Councils ;

#### Offices

- 1.2.36 Not Used
- 1.2.37 The Contractor shall make available an office at the NWTF for the exclusive use of representatives of the Councils, and shall provide all utilities and welfare facilities for use by those representatives.

#### Fire Safety

- 1.2.38 The Contractor shall implement the NWTF Services in such a manner as to minimise fire risk, prevent the causation and minimise the spread of any fire, so far as is reasonably practicable, including ensuring that:
- (a) there is a rapid reaction to the occurrence of fires and smoke at the NWTF and/or the Sinfin Site;
  - (b) maintenance and cleaning procedures are implemented in such a manner as to prevent the development of hot spots

and minimise the presence of flammable materials within the NWTF; and

- (c) any fire safety, detection and suppression requirements of insurers are adhered to,

all as detailed in the fire safety plan included in the NWTF SDP.

- 1.2.39 The Contractor shall ensure that a fire safety risk assessment is completed for the NWTF and the Sinfin Site no later than 20 (twenty) Business Days from the Services Commencement Date. The fire safety risk assessment shall identify sources of ignition, substances that burn, and the people who may be at risk. The Contractor shall develop a specific fire plan for the NWTF that addresses the findings of the fire safety risk assessment and which is consistent with the Environment Agency's extant fire prevention plan Guidance for Environmental Permits ("NWTF Fire Plan"), and shall ensure that this plan is notified to the relevant fire authority as soon as available.

1.2.40

- 1.2.41 The Contractor shall ensure that, in the event of fire, the NWTF Fire Plan is implemented.

- 1.2.42 The Contractor shall continually review fire risks associated with the NWTF Services, including taking account of operational experience and best practice within the industry, and shall amend the NWTF Fire Plan to reflect such operational experience and best practice.

- 1.2.43 The Contractor shall identify a quarantine bay for the holding of any vehicle that may pose a fire (or other) risk. Management of hot-loads will be in accordance with the NWTF Fire Plan.

- 1.2.44 The NWTF Fire Plan shall be displayed in the Sinfin Site office and at other suitable locations at the NWTF.

- 1.2.45 The Contractor shall ensure all employees are at all times demonstrably conversant with the prevailing NWTF Fire Plan.

- 1.2.46 The Contractor shall provide all necessary fire-fighting equipment at the NWTF and the Sinfin Site, commensurate with the requirements of the relevant fire service and insurers.

### 1.3 Stage 1: Stabilise

- 1.3.1 In addition to the general requirements detailed in section 1.2 above, during this stage the Contractor shall undertake the activities detailed below.

#### Suspend Operations at the NWTF

- 1.3.2 At the Services Commencement Date, the Contractor shall:



- (a) suspend the commissioning and/or testing of the NWTF;
- (b) suspend inputs of Contract Waste to the NWTF; and
- (c) suspend the operation of the three gasification lines at the NWTF ("ACTs") with such de-commissioning being undertaken in a safe manner,

with such activities not re-commencing without the Councils prior agreement before the commencement of Stage 4 (Performance Survey).

#### Necessary Consents

1.3.3 Following the Services Commencement Date, the Contractor shall, in the context of the NWTF Services to be delivered:

- (a) review the status of the Sinfin Site and the NWTF against the requirements of Necessary Consents in the context of the NWTF Services to be delivered;
- (b) agree with the Environment Agency and include in the NWTF SDP details and a programme of all activities required to be undertaken during Stages 1, 2 and 3 to comply with the Environmental Permit, to include, as appropriate:

- 7. proposals to remove Contract Waste from the NWTF;
- 8. proposals to clean the NWTF and components thereof;
- 9. proposals to maintain air extraction and/or odour control systems (including the biofilter);
- 10. proposals to clean drainage systems; and
- 11. proposals for monitoring.

1.3.4 The Contractor shall then implement the activities required to be undertaken pursuant to 1.3.3(b) above.

1.3.5 If required, the Contractor shall be entitled to operate the MRF/MBT solely for the purpose of removing Contract Waste from the NWTF and/or the Sinfin Site.

#### Assets

1.3.6 Following the Services Commencement Date, the Contractor shall, on behalf of the Councils, secure and take custody of all NWTF Assets (comprising buildings, infrastructure, NWTF Equipment, plant and machinery, documentation, IT hardware and software, data, intellectual property) on the Sinfin Site and the NWTF.

#### Safety

1.3.7 Not used

1.3.8 The Contractor shall use reasonable endeavours, on the Councils' behalf to secure and take custody of the health and safety file in

respect of works undertaken prior to the Services Commencement Date

#### Security

- 1.3.9 Not Used
- 1.3.10 Not Used
- 1.3.11 Not Used
- 1.3.12 The Contractor shall be responsible for the security of the NWTF and the Sinfin Site.
- 1.3.13 The Contractor shall maintain all fences, walls, hedges and gates around the perimeter of the Sinfin Site, and effect a suitable temporary repair of any material damage to the perimeter within 24 hours of such damage. The Contractor shall ensure that all visitors have left the Sinfin Site and the NWTF before securing the Sinfin Site and the NWTF at the end of each Business Day.
- 1.3.14 The Contractor shall include in the NWTF SDP details of the procedures to be followed in the event of safety and/or security incidents.

#### Programme

- 1.3.15 Stage 1 shall be completed within 1 month of the Services Commencement Date, unless agreed otherwise by the Parties (acting reasonably).
- 1.4 Stage 2: Condition Survey
- 1.4.1 In addition to the general requirements detailed in section 1.2 above and relevant provisions of Stage 1 above, during this stage the Contractor shall undertake the activities detailed below.

#### Condition of NWTF Equipment

- 1.4.2 The Contractor shall undertake a survey of the condition of the NWTF and the NWTF Equipment which shall be undertaken in conjunction with relevant suppliers and vendors, as appropriate, who shall (jointly with the Contractor) inspect the installation and status of their equipment.
- 1.4.3 This review shall consider how the status of the NWTF Equipment compares with:
  - (a) the required standards as advised by the Councils no later than 10 Business Days of the Services Commencement Date ("Contract Standard");
  - (b) the required functionality and performance of the relevant NWTF Equipment; and
  - (c) supplier's design specifications.

#### Documentation

- 1.4.4 The Contractor shall undertake a review of the status of the documentation listed in paragraph 1.2.25 above (to the extent available).
- 1.4.5 This review shall consider how the documentation compares to:
- (a) the Contract Standard; and
  - (b) that which would be required by an incoming competent operator in operating the NWTF:
    - (i) in accordance with the Law and Good Industry Practice; and
    - (ii) cost effectively and with performance optimised.
- 1.4.6 To the extent that this review identifies deficiencies in documentation which can be readily rectified as part of (as opposed to distinct from) the documentation review process, the relevant document shall be amended, as appropriate to address the deficiency.

#### NWTF IMS

- 1.4.7 During this stage, the Contractor shall establish the NWTF IMS, as required pursuant to paragraph 1.2.25 and ensure that all relevant information is included within it, as and when it becomes available (including any updated information).

#### Reporting

- 1.4.8 The Contractor shall provide the Councils with a report (or reports as appropriate) specifying the works required to be undertaken to rectify the NWTF to the required standard detailed in paragraph 1.4.3 above including:
- (a) a list of priority recommendations detailing works which are required to be undertaken:
    - (i) before the NWTF can resume receiving and processing Contract Waste in accordance with the Law and Necessary Consents;
    - (ii) to improve the operational effectiveness of the NWTF, including an assessment of expected outcomes; and
    - (iii) to improve the longevity of components of the NWTF;
  - (b) forecast costs; and
  - (c) a proposed implementation plan and programme.

- 1.4.9 The Contractor shall provide the Councils with a gap analysis which details deficiencies in documentation (pursuant to paragraph 1.4.5 above) including:
- (a) a list of priority recommendations detailing deficiencies which are required to be undertaken:
    - (i) before the NWTF can resume receiving and processing Contract Waste in accordance with the Law and Necessary Consents; and
    - (ii) to improve the operational effectiveness of the NWTF, including an assessment of expected outcomes;
  - (b) forecast resource implication (and associated) costs to address; and
  - (c) a proposed implementation plan and programme.

#### Fix Critical Plan

- 1.4.10 The Contractor shall update the NWTF SDP to include a "Fix Critical Plan", detailing those activities it is proposed to undertake during Stage 3 pursuant to 1.4.8(a)(i) and 1.4.9(a)(i) above, for review and approval by the Councils (acting reasonably).

#### Programme

- 1.4.11 Stage 2 shall be completed within a timescale to be agreed by the Parties.

### 1.5 Stage 3: Fix Critical

- 1.5.1 In addition to the general requirements detailed in section 1.2 above and relevant provisions of Stage 1 above, during this stage the Contractor shall undertake the activities detailed below.
- 1.5.2 The Contractor shall implement the approved Fix Critical Plan.
- 1.5.3 The Contractor shall ensure that standards of relevant works and services are sufficient to ensure that they can be certified by an appropriately qualified engineer as complying with:
- (a) the Law;
  - (b) Necessary Consents;
  - (c) Good Industry Practice; and
  - (d) other standards to be agreed by the Parties.
- 1.5.4 As and when elements of the Fix Critical Plan are implemented, the NWTF IMS shall be updated accordingly.

- 1.5.5 Prior to the commencement of Stage 4, the Contractor shall re-commission the NWTF, as set out in the NWTF SDP, as required prior to the processing of Contract Waste.
- 1.5.6 Following the end of Stage 3, the NWTF shall be in a condition such that Stage 4 (Performance Survey), comprising the assessment of the NWTF's performance in treating Contract Waste, can commence, provided always that, where detailed in the Fix Critical Plan, the Contractor shall be entitled to commence Stage 4 in relation to relevant elements of the NWTF before Stage 3 in respect of other elements has been completed.

#### Programme

- 1.5.7 Stage 3 shall be completed within a timescale to be agreed by the Parties (acting reasonably).
- 1.6 Stage 4: Performance Survey
  - 1.6.1 In addition to the general requirements detailed in section 1.2 above and relevant provisions of Stage 1 above, during this stage the Contractor shall undertake the activities detailed below.
  - 1.6.2 The Contractor shall process Contract Waste through the NWTF in order to understand its performance and identify any defects which were not identified and/or rectified in previous stages.
  - 1.6.3 The detailed scope of this stage shall be agreed by the Parties (acting reasonably) and incorporated into the NWTF SDP.
  - 1.6.4 The Contractor shall maintain records and performance data throughout this stage.

#### Programme

- 1.6.5 Stage 4 shall be completed within a timescale to be agreed by the Parties (acting reasonably).
- 1.7 Stage 5: Evaluate Status
  - 1.7.1 Based on the outcome of the Performance Survey, the Contractor shall evaluate the status of the NWTF and prepare a report, for review and approval by the Councils including:
    - (a) details of the actual performance of the NWTF;
    - (b) details of the status of NWTF Equipment and documentation;
    - (c) an assessment of outstanding defects and/or documentation deficiencies;
    - (d) the forecast cost of their rectification and expected outcomes;
    - (e) a proposed rectification plan and programme; and

- (f) other information as may reasonably be required by the Councils.

1.7.2 The Contractor shall update the NWTF IMS to ensure that it includes all information to enable the Contractor to comply with its obligations pursuant to paragraph 1.2.31.a) above.

#### Programme

1.7.3 Stage 5 shall be completed within a timescale to be agreed by the Parties (acting reasonably).

### 1.8 Stage 6: Transition Services

1.8.1 In addition to the general requirements detailed in section 1.2 above and relevant provisions of Stage 1 above, during this stage the Contractor shall undertake the activities detailed below.

1.8.2 The Contractor shall operate the NWTF up to the Termination Date pending its handover to a successor contractor.

1.8.3 The detailed scope of this stage shall be agreed by the Parties (acting reasonably) and incorporated into the NWTF SDP.

1.8.4 The Contractor shall update the NWTF IMS to ensure that it includes all information to enable the Contractor to comply with its obligations pursuant to paragraph 1.2.31.b) above.

1.8.5 The Contractor shall co-operate with the Councils and/or a successor contractor to facilitate the transition of the NWTF Services including:

- (a) the provision of all relevant information and the NWTF IMS;
- (b) the provision of all information regarding staff who are eligible for TUPE, which shall be provided as and when required by the Councils (acting reasonably);
- (c) co-operation with any incoming contractor regarding the training and induction of staff prior to the Termination Date;
- (d) the transfer of all NWTF Equipment and other NWTF Assets at the NWTF to any incoming contractor; and
- (e) the transfer of the Environmental Permit.

## 2 Development of NWTF Services

2.1 Not Used.

2.2 Within 3 months of the Services Commencement Date (or such other period as may be agreed by the Parties), the Parties shall negotiate in good faith and seek to agree these issues, including:

- 2.2.1 the time for completion of Stage 2;
  - 2.2.2 the detailed scope of and required contents of the NWTF SDP for Stages 3 to 6;
  - 2.2.3 required standards for any rectification works to be undertaken;
  - 2.2.4 other requirements for the undertaking of rectification works;
  - 2.2.5 arrangements for the certification of rectification works;
  - 2.2.6 arrangements for the review and approval of the Fix Critical Plan and other plans to be developed by the Contractor from time to time;
  - 2.2.7 the "Contract Governance Process" which shall set out the method for: establishing key outcomes and deliverables for subsequent Stages; sharing base budget forecasts with the Councils; agreeing variance analysis for budgeted forecast versus actuals with the Councils; and agreeing whether costs incurred where planned costs exceed the base budget forecast for each Stage are reasonable, pursuant to section 3 of this Schedule 14;
  - 2.2.8 details of incentive payments pursuant to section 3 of this Schedule 14;
  - 2.2.9 review procedure for the review and approval of amendments to the NWTF SDP; and
  - 2.2.10 timescales for the implementation of Stages 3 to 6.
- 2.3 Both Parties shall bear their own costs associated with such negotiations. Pursuant to paragraph 3 below, the Contractor's costs shall not, therefore, form part of its cost of delivering the NWTF Services.
- 2.4 The Parties agree that, following such agreement, a deed of variation will be executed amending this Schedule 14 (and any other consequential amendments to other parts of the Agreement).
- 2.5 In the event that the Parties fail to agree these provisions, the NWTF Services shall come to an end on the date falling 3 months from the Services Commencement Date (or such other dates the Parties may agree) and any remaining outstanding components of Stage 2 and all of Stages 3 to 6 shall not apply.

### 3 Payment

#### 3.1 General Principles

- 3.1.1 Payments for the NWTF Services will be made to the Contractor on the basis of:
  - (a) Cost, as defined by section 3.2 below; plus
  - (b) Overheads, as defined by section 3.4 below.

3.1.2 The aggregate of Costs and Overheads shall then be subject to a mark-up described in section 3.6 below.

## 3.2 Cost

3.2.1 Cost shall be derived based on the following principles:

- (a) Costs shall relate to the delivery of the NWTF Services, as defined in the agreed NWTF SDP. The Contractor shall not be entitled for payment of NWTF Services which are not included in the agreed NWTF SDP;
- (b) in delivering the NWTF Services, the Contractor shall apply the same principles to its management of Cost as it would apply were it delivering the services itself without any cost recovery;
- (c) the Contractor will use reasonable endeavours to mitigate Costs by effective utilisation of the operational staff it retains to carry out the NWTF Services;
- (d) should the Contractor require to replace staff during the NWTF Term, such recruitment costs will be deemed to be included in Overheads (see below);
- (e) Costs shall be net of third party revenues (see paragraph 3.3 below);
- (f) the Contractor shall not be entitled to receive payment to the extent that Costs are materially different to the relevant base budget forecast (see section 3.8 below) for the relevant Stage and no credible explanation is provided; and
- (g) there shall be no double counting.

3.2.2 The table below indicates the Cost categories which are expected to be incurred provided that such Cost categories are not exhaustive and additional Cost categories may arise during the NWTF Term.

Costs category expected	Basis
Security	Maintaining a secure NWTF and the Sinfin Site and monitoring accordingly throughout the Stages.
Removed Waste Disposal	As required for Stage 1, covering the cost of haulage and relevant disposal outlet.
Survey and Inspection Costs	To cover the condition survey, documentation survey, inspection reports, gap analysis etc as stated in Stage 2.



Operational Staffing Costs	To cover the 47 staff currently employed whom will be efficiently utilised throughout the Stages, which may be subject profile change as role requirements change through the stages (noting could be toward 54 staff in later stages).
Specialists Contractors	Where required to provide appropriate specialist services throughout the Stages.
Specialist Consultants / Vendor	Where required to provide appropriate specialist services throughout the Stages, but expected to mainly be in Stages 2 and 3.
Tradesmen and ancillary services	Additional support, such as scaffolders, cleaners and pest control etc throughout the Stages.
Utility Costs	For running equipment, providing heat, light and water at the NWTF throughout the Stages.
Critical rectification costs	Costs incurred in undertaking rectification works as detailed in the agreed Fix Critical Plan.
Non-critical rectification costs	Costs incurred in undertaking rectification works which are not included in the Fix Critical Plan but are agreed by the Councils as being beneficial (for example, to avoid / save plant deterioration, or which may need to be incurred due to lead times).
Mobile Plant and NWTF Equipment hire	As required to enable operation at the NWTF and maintain such mobile plant and equipment throughout the stages.
Materials, tools and spares	To enable appropriate stock supplies for efficient and effective NWTF Service provision throughout the Stages.
Maintenance services	As required to maintain the state and avoid deterioration of the NWTF throughout the Stages.
Consumables	As required be consumed by the NWTF through its operation throughout the Stages.
Waste handling costs	To cover operations associated with the receipt and handling of Contract Waste.
RDF Tonnage Disposal	As derived from MBT/MRF operation throughout the Stages, but likely to be more so during Stages 3 to 6.
Bottom Ash Tonnage Disposal	As derived from ACT operation throughout the Stages,

	but likely to be more so during Stages 3 to 6.
Fly Ash Tonnage Disposal	As derived from ACT operation throughout the Stages, but likely to be more so during Stages 3 to 6.
Business Rates	Where applicable to the NWTF and as charged by the City Council.
Insurance Premium	To cover the Required Insurances to be taken out as per the Contract throughout the Stages.
IT Systems and Software (e.g. IMRIS/SCADA/Document Management System/BIW/CCTV/CMMS System)	To comply with the Specification.
Permits and legislative requirements (e.g. ROCS/Environment Permit/PPE)	To comply with the Specification.
Sampling & Monitoring (Fly monitoring/Ash Sampling etc)	To comply with the Contractor's obligations for Stage 3 onwards.
Staff Training	Training required to deliver the NWTF Services.

3.2.3 The Councils shall be provided with access to all the information and/or data which it reasonably requires for the purposes of confirming and agreeing payments to be made under the Agreement in respect of the NWTF Services, on an open book basis, with all costs incurred being demonstrated by the Contractor as being reasonable and proper, as defined in 3.2.1 above.

### 3.3 Third Party Income

3.3.1 During the undertaking of the NWTF Services, 95% of any electricity and ROCs income generated from the operation of the NWTF and income from the sale of Recyclate materials (extracted from the waste via the NWTF) will be for the benefit of the Councils.

3.3.2 To act as an incentive for the Contractor to operate the NWTF and maximise these income revenues, the Contractor will retain 5% of the third party income it generates from the NWTF in each Month.

### 3.4 Overheads

- 3.4.1 Overheads shall be deemed to be £46,000 per Month (pro-rated for incomplete Months) (subject to indexation - see paragraph 3.5 below), to include, without limitation, head office costs and the costs of all staff who are not involved in the direct implementation of the NWTF Services and would not be eligible for TUPE were the undertaking to transfer to a new provider at the relevant time).

### 3.5 Indexation

- 3.5.1 Payments made by the Councils to cover the employment costs of operation staff and Overheads will be increased each April to take account of inflation. Specifically such payment for operational staffing costs will be deemed to increase on the following basis:

- (a) On the 1st April 2020, the increase in payment for operational staffing costs and Overheads (i.e. the indexation factor) will be based on using the published RPIx value for January 2020 divided by the published RPIx value for January 2019.
- (b) On the 1<sup>st</sup> April 2021, the increase in payment for operational staffing costs and Overheads (i.e. the indexation factor) will be based on using the published RPIx value for January 2021 divided by the published RPIx value for January 2020.

- 3.5.2 The Contractor will be responsible for managing any variance between deemed and actual operational staffing costs.

### 3.6 Mark Up

- 3.6.1 Each stage of the NWTF Services has key activity work streams, outcomes and deliverables. These outputs will enable the Councils to make informed decisions in a timely manner and subsequently such information (e.g. documents, manuals, drawings etc) will be used to underpin a well-informed procurement process with the market for the future service provision of the NWTF.

- 3.6.2 The mark up to be accounted for will be 4% and applied to all costs properly incurred, with the exception of non-critical capital rectification costs (if any are agreed to be undertaken) where the mark up will be agreed between the Parties prior to such non-critical capital rectification costs being incurred.

- 3.6.3 In relation to Stages 1 and 2,

- (a) the mark-up of 4% will be applied to the aggregate of Costs and Overheads in respect of all periods other the last 30 day period of Stage 2;

- (b) The mark-up of 4% applicable to Costs and Overheads in the last 30 day period of Stage 2 shall be payable upon:
  - (i) the Contractor completing the NWTF SDP in respect of general provisions and for Stages 1 and 2 within required timescales;
  - (ii) completion of Stage 1 in accordance with the requirements of this Agreement; and
  - (iii) the execution of a deed of variation pursuant to section 2 above.

3.6.4 Key outcomes and deliverables for subsequent Stages are to be agreed between the Parties. An agreed proportion of the mark up applicable to each stage shall be payable upon the successful achievement of these outcomes and deliverables at the end of each stage, as determined through the Contract Governance Process.

### 3.7 Payment timing and documentary evidence

3.7.1 Payment made by the Councils will be 1 month in arrears. The Contractor will invoice the Councils for the Costs incurred by the 15th Business Day after the last day of the relevant Month. Payment will be due from the Councils to the Contractor within 10 Business Days of receipt of each invoice.

3.7.2 The invoice will be accompanied and supported by a detailed cost breakdown schedule, itemising the Costs incurred by the Contractor, including the calculation of the mark-up. Where there are individual cost items included in the cost breakdown schedule that are greater than £10,000 (or such other value as may be agreed by the Parties), the Contractor shall provide documentary evidence to support the cost incurred (e.g. copies of third party invoices, payroll records or equivalent supporting source documentation). Should this documentation not be provided to the Councils, or does not provide such evidence to the Councils, the Councils will be entitled to withhold payment for that element in respect of which such evidence has not been provided (including the associated mark-up) until such evidence has been provided.

### 3.8 Base Budget Forecast

3.8.1 Within 28 days of the Services Commencement Date, the Contractor will be required to provide, in good faith, a base budget forecast which sets out, in an appropriate level of detail, the forecast costs to be incurred by the Contractor and the payments to be made by the Councils, covering Stages 1 and 2 above.

3.8.2 The Contractor will be required to provide, in good faith, a base budget forecast for subsequent Stages prior to their commencement.

- 3.8.3 Base budget forecasts will be in an excel form, showing the Costs forecast to be properly and reasonably incurred in delivering the NWTF Services on a weekly / Monthly basis for the duration of the Agreement, updated weekly and provided to the Councils.
- 3.8.4 At the end of each Month, the Contractor will provide variance analysis on the previous Month's budgeted forecast versus actuals, and any projected changes to forecast costs in future Months, including reasonable justification and explanations for such variances, which will be discussed between Parties as part of the Contract Governance Process, and the base budget forecast shall be updated as appropriate.
- 3.8.5 To the extent that Costs are planned to exceed the base budget forecast for each Stage, the Contractor shall provide justification, and the Parties shall meet to resolve whether Costs incurred are reasonable. In the event that the Parties cannot agree, this will be addressed as part of the Contract Governance Process.

## **Annex 1 - Requirements for the NWTF SDP Plan**

1. The Contractor shall develop and maintain an NWTF SDP detailing how it will deliver the NWTF Services.
2. The required contents of the NWTF SDP, and required timescales for their development are detailed below.
3. Any amendments and/or updates to the NWTF SDP shall be reviewed and agreed in accordance with the Contract Governance Process (to be agreed by the Parties).
4. General Provisions
  - 4.1. These provisions are required to be drafted by the Contractor within 1 month of the Services Commencement Date.
  - 4.2. Health and Safety Plan - the Contractor's plan to manage health and safety in the implementation of the NWTF Services
  - 4.3. Environmental Monitoring Plan - the Contractor's plan to monitor the environmental performance of and emissions from the NWTF
  - 4.4. Fire Safety Plan - the plan developed pursuant to paragraph 1.2.38 of this Schedule 14
  - 4.5. Maintenance Plan - the plan for maintaining the NWTF pursuant to paragraphs 1.2.19 to 1.2.23 of this Schedule 14
  - 4.6. IMS Plan - the plan to develop and the structure of the NWTF IMS and details of how the requirements of paragraph 1.2.25 to 1.2.31 will be implemented
  - 4.7. Change Control Plan - the plan to manage any changes made to the NWTF and any associated documentation
5. Stage 1: Stabilise
  - 5.1. These provisions are required to be completed within 7 days of the Services Commencement Date.
  - 5.2. Details of all activities required to comply with Necessary Consents and an associated programme of work pursuant to paragraph 1.3.3b) of this Schedule 14.
  - 5.3. Details of resources to be deployed.
  - 5.4. List of suppliers and their role.
6. Stage 2: Condition Survey
  - 6.1. These provisions are required to be completed within 1 month of the Services Commencement Date.
  - 6.2. Identification of all NWTF Equipment to be surveyed
  - 6.3. Identification of all documentation to be reviewed

- 6.4. Details of resources to be deployed.
- 6.5. List of suppliers and their role.
- 6.6. A programme of activities.
- 7. Stage 3: Fix critical to Comply  
To be completed
- 8. Stage 4: Performance Survey  
To be completed
- 9. Stage 5: Evaluate Status  
To be completed
- 10. Stage 6: Transition Services  
To be completed

This Agreement has been entered into on the date stated at the beginning of this Agreement.

THE COMMON SEAL of )  
DERBY CITY COUNCIL )  
was hereunto affixed )  
in the presence of: )

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of )  
DERBYSHIRE COUNTY COUNCIL )  
was hereunto affixed )  
in the presence of: )

Authorised Signatory



Signed on behalf of the **Contractor** by

.....

Director