

DATED 20[•]

WASTE TREATMENT AND DISPOSAL CONTRACT

(1) DORSET COUNCIL

(2) [•]

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DATE

20[●]

PARTIES

- (1) **DORSET COUNCIL** of South Walks House, South Walks Road, Dorchester DT1 1UZ (**Authority**); and
 - (2) [●] whose registered office is at [●] company number [●] (**Contractor**),
- together the **Parties** and each a **Party**.

BACKGROUND

- (A) The Authority is the waste collection authority and waste disposal authority for Dorset Council for the purposes of the Environmental Protection Act 1990. As such the Authority has a statutory duty to make arrangements for the disposal and recycling of waste collected by, or on behalf of, the Authority or delivered to its facilities.
- (B) By an advertisement dated [●] in the Supplement to the Official Journal of the European Union, the Authority sought proposals for the provision of a waste disposal service and, following a selection process, the Authority has selected the Contractor and the Contractor has agreed to provide such services on the terms set out below.

IT IS AGREED

PART 1: PRELIMINARY

1 DEFINITIONS AND INTERPRETATION

- 1.1 The provisions of Schedule 1 (Definitions and Interpretation) shall apply to the interpretation of this Contract.

1.2 Responsibility for Related Parties

Subject to the provisions of this Contract, the Contractor shall be responsible to the Authority for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Authority shall be responsible to the Contractor for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Contractor shall, as between itself and the Authority, be responsible for the selection of and pricing by all Contractor Related Parties.

2 COMMENCEMENT AND DURATION

- 2.1 This Contract and the rights and obligations of the Parties shall take effect on the Commencement Date and shall continue until 23:59:59 on the earlier of:

2.1.1 the Expiry Date; or

2.1.2 the Termination Date.

- 2.2 The Authority may elect (at its sole discretion) to extend the Expiry Date for a period or succession of consecutive periods (each to be not less than twelve (12) months in duration) in total not exceeding three (3) years, on each occasion by giving not less than three (3) months' written notice to the Contractor.

3 PERFORMANCE SECURITY

- 3.1 [No later than the date which is five (5) Business Days before the [first] Services Commencement Date, the Contractor shall procure the execution and delivery to the Authority of a Bond in the sum of *[insert amount in words]* pounds sterling (£[●]) in favour of the Authority to secure the due performance by the Contractor of its obligations to the Authority and shall maintain the Bond for the first Contract Year.
- 3.2 On each anniversary of the [first] Services Commencement Date, the Contractor shall procure the execution and delivery to the Authority of a Bond in a sum to be notified to the Contractor by the Authority which shall be no greater than ten per cent (10%) of the forecast Annual Services Payment in respect of the new Contract Year in favour of the Authority to secure the due performance by the Contractor of its obligations to the Authority and shall maintain the Bond for the relevant Contract Year.]

OR

- 3.3 No later than the date which is [five (5) Business Days] before the [first] Services Commencement Date, the Contractor shall procure the execution and delivery to the Authority of a Parent Company Guarantee to secure the due performance by the Contractor of its obligations to the Authority.]

[NOTE TO BIDDERS: the inclusion of either clause 3.1/3.2 or 3.3 will be dependent on the financial information received by DWP as part of the tender process – see Tender Guidance Document]

- 3.4 Any breach of this clause 3 by the Contractor shall constitute a Contractor Default.

4 DUE DILIGENCE

- 4.1 Subject to clause 4.4, the Authority makes no representation as to the accuracy or completeness of any information provided by or on behalf of the Authority prior to the Commencement Date and shall accept no responsibility for any statement, representation or omission in any document or other instruction provided by the Authority prior to the Commencement Date.
- 4.2 Subject to clause 4.4, the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority (whether for additional payment or otherwise) on grounds that any information, whether or not provided by or on behalf of the Authority, is incorrect or insufficient and the Contractor shall make its own enquiries as to the accuracy and adequacy of that information.
- 4.3 Without prejudice to clauses 4.1 and 4.2, the Contractor shall be deemed to have satisfied itself as regards the means of communication with the Authority, the nature of the Services, the conditions under which the Services may be carried out, the supply of and conditions affecting labour and generally is deemed to have obtained its own information on all matters affecting the execution of the Services and the price of delivering of the Services (whether reflected in the Monthly Services Payment or otherwise).
- 4.4 Nothing in this clause 4 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the Commencement Date.

PART 2 THE SERVICES

5 PROVISION OF THE SERVICES

5.1 Mobilisation and Environmental Permits

5.1.1 During [the] [each] Mobilisation Period, the Contractor shall provide all such assistance and cooperation (at its own cost) as is necessary to procure that the Services shall be implemented in a manner which ensures a seamless continuity of the Services with no material reduction in the quality of the Services received by the Authority.

5.1.2 Without prejudice to clause 5.1.1, the Parties agree to take all reasonable steps and to cooperate with each other and the Environment Agency in order to procure that the Environmental Permit for each Facility is in place with effect from 00:00.00 on [the] [each] Services Commencement Date. The obligation for the Contractor to obtain an Environmental Permit for each Facility shall be a condition precedent to commencement of the Services.

5.2 Obligation to provide

5.2.1 Without prejudice to clause 5.1 but subject to clause 5.3, the Contractor shall provide:

5.2.1.1 [Option 1 – Where the Contractor is **not** undertaking Services with different Services Commencement Dates]¹ the Services with effect from the Services Commencement Date; and

OR

[Option 2 – Where the Contractor **is** undertaking Services with two different Services Commencement Dates]² the Phase 1 Services with effect from the Phase 1 Services Commencement Date and the Phase 2 Services with effect from the Phase 2 Services Commencement Date; and

5.2.1.2 any Additional Services, including those resulting from Envisaged Variations, as may be agreed in accordance with the Variation Procedure.

5.2.2 The Contractor shall provide the Services to the Authority in accordance with:

5.2.2.1 this Contract;

5.2.2.2 the Specifications;

5.2.2.3 the SDP;

5.2.2.4 all applicable Legislation;

¹ **NOTE TO BIDDERS:** This will apply where the Contractor is only awarded the Residual Waste Service or is not awarded the Residual Waste Service.

² **NOTE TO BIDDERS:** This will only apply where the Contractor is awarded the Residual Waste Service and another Service.

5.2.2.5 all Planning Permissions and Necessary Consents; and

5.2.2.6 Good Industry Practice.

5.3 Save to the extent provided for in the Specifications, the Contractor acknowledges and agrees that nothing in this Contract shall be deemed to provide the Contractor with an exclusive right to:

5.3.1 perform or procure the performance of waste disposal on behalf of the Authority; or

5.3.2 receive any particular proportion of the Contract Waste arising in the Administrative Area from the Authority.

5.4 **Acceptance, rejection and processing of Waste**

5.4.1 Without prejudice to clause 5.2, the Contractor shall:

5.4.1.1 accept, in the manner prescribed in the Waste Acceptance Protocol, all Contract Waste which is delivered to a Delivery Point and which satisfies the Technical Requirements;

5.4.1.2 identify and segregate, in the manner prescribed in the Waste Acceptance Protocol, any Objectionable Waste and/or Prohibited Waste which is delivered to a Delivery Point;

5.4.1.3 perform any ancillary services in respect of Objectionable Waste and/or Prohibited Waste which are set out in the Technical Requirements;

5.4.1.4 procure the transportation of all Contract Waste which is accepted by the Contractor at a Delivery Point to a Treatment Facility or Disposal Facility;

5.4.1.5 procure the Treatment and/or Disposal of all Contract Waste at a Treatment Facility or Disposal Facility in the manner prescribed in the Specifications and the SDP; and

5.4.1.6 procure the Treatment and/or Disposal of all Treatment Residues at a Treatment Facility or Disposal Facility in the manner prescribed in the Specifications and the SDP.

5.4.2 The Parties acknowledge and agree that:

5.4.2.1 each load of Waste shall be assessed by the Contractor in accordance with the Waste Acceptance Protocol following acceptance of that Waste by the Contractor at a Delivery Point; and

5.4.2.2 if it is agreed or determined in accordance with the Waste Acceptance Protocol that more than the Threshold Percentage of the relevant load is Waste which is not the expected Material Category for that load, the entire vehicle load of Waste shall be deemed to be **Objectionable Waste** for the purposes of this Contract.

5.5 Management of Contract Waste

- 5.5.1 The Contractor shall ensure that fit and proper entities are used for:
 - 5.5.1.1 the handling, haulage, Treatment and/or Disposal of Contract Waste (including final destinations for materials);
 - 5.5.1.2 the handling, haulage, Treatment and/or Disposal of Objectionable Waste and/or Prohibited Waste; and
 - 5.5.1.3 the handling, haulage, Treatment and/or Disposal of Treatment Residues (including final destinations for materials).
- 5.5.2 The Contractor shall use all reasonable endeavours to ensure no embarrassment or reputational damage to the Authority results from any activity undertaken by the Contractor or a Contractor Related Party in connection with:
 - 5.5.2.1 the handling, haulage, Treatment, Disposal and/or end of use of Contract Waste;
 - 5.5.2.2 the handling, haulage, Treatment, Disposal and/or end use of Objectionable Waste and/or Prohibited Waste; or
 - 5.5.2.3 the handling, haulage, Treatment, Disposal and/or end of use of Treatment Residues.
- 5.5.3 To the extent the Contractor has knowledge, or should have reasonably been expected to have such knowledge, that current or past hauliers, operators of Treatment Facilities or Disposal Facilities or other reprocessors of Contract Waste, Objectionable Waste, Prohibited Waste and/or Treatment Residues are under investigation by regulatory bodies (in the UK and/or overseas) for suspected illegal practices, it shall inform the Authority immediately on becoming aware of such investigations.

5.6 Service Scope Reductions

- 5.6.1 The Contractor acknowledges and agrees that, pursuant to the Variation Procedure:
 - 5.6.1.1 the Authority shall be entitled to remove elements of the Services from the scope of this Contract (a **Service Scope Reduction**);
 - 5.6.1.2 following any Service Scope Reduction, the Contractor shall have no right or obligation to perform those elements of the Services which have been removed from the scope of this Contract; and
 - 5.6.1.3 the Contractor shall be entitled to receive compensation in respect of any reasonable and unavoidable demobilisation and breakage costs which result directly from a Service Scope Reduction but, otherwise, shall not be entitled to receive any compensation in connection with any Service Scope Reduction (including in respect of loss of profit, risk premia or overheads).

5.7 Additions to the Services

The Contractor acknowledges and agrees that, pursuant to the Variation Procedure, the Authority may seek to increase the scope of the Services, including by way of implementation of an Envisaged Variation, as set out in Schedule 8 (Envisaged Variations).

6 MAINTENANCE OF THE FACILITIES

6.1 Obligation to Maintain Delivery Points

6.1.1 The Contractor shall ensure on a continuing basis that at all times during [the] [each] Services Period its maintenance and operating procedures set out in the SDP are sufficient to and do ensure that:

6.1.1.1 the Delivery Points are available;

6.1.1.2 the Delivery Points are operated in a safe and efficient manner in accordance with the Specifications;

6.1.1.3 without prejudice to clause 6.3, the Delivery Points are kept in good structural and working order in accordance with this Contract; and

6.1.1.4 the Contractor can deliver the Services in accordance with this Contract.

6.2 Surveys and Inspections

6.2.1 If the Authority believes that the Contractor is in breach of its obligations under clause 6.1 (Obligation to Maintain Delivery Points), then it may carry out or procure the carrying out of a survey or inspection of any of the Delivery Points in accordance with this clause 6.2 to assess whether the relevant Delivery Point and associated Site has been and is being maintained by the Contractor in accordance with its obligations under clause 6.1 (Obligation to Maintain Delivery Points).

6.2.2 If a survey or inspection shows that the Contractor has not complied or is not complying with its obligations under clause 6.1 (Obligation to Maintain Delivery Points), the Contractor shall rectify the condition of the relevant Delivery Point and associated Site within the period specified by the Authority (acting reasonably) and reimburse the Authority for the cost of the survey or inspection and any administrative costs incurred by the Authority in relation to the survey or inspection.

6.3 Planned Maintenance

During [the] [each] Services Period, the Contractor shall undertake routine repair and maintenance of the Delivery Points in accordance with the Specifications and the SDP.

7 SECURITY

7.1 During [the] [each] Services Period:

- 7.1.1 the Contractor shall be responsible for twenty four (24) hour security at the Delivery Points and shall employ such security measures as are required in the Specifications;
- 7.1.2 the Contractor shall keep a log of all security incidents at the Delivery Points and shall promptly notify the Authority of any serious security incident which occurs at any of the Delivery Points; and
- 7.1.3 the Contractor shall co-operate fully with the police and other emergency services during the occurrence of any security incidents at the Delivery Points and/or during the course of any investigation of such incidents.

8 ENVIRONMENTAL ISSUES

- 8.1 Without prejudice to its obligations to comply with all applicable Legislation, the Contractor shall at all times during [the] [each] Services Period comply with its duty of care under Section 34 of the Environmental Protection Act 1990.
- 8.2 The Contractor shall take all and any steps as are necessary to ensure that the impact of the Services upon the environment is adequately and sufficiently assessed, considered, supervised, controlled, monitored, mitigated and remedied as required by all appropriate enforcement agencies, Legislation and Good Industry Practice.
- 8.3 The Contractor shall use its reasonable endeavours to provide the Services in such a way as to minimise any actual or potential damage to the environment.
- 8.4 The Contractor shall carry out environmental monitoring of the Services in accordance with the Specifications on the basis proposed in the SDP and the results of such monitoring shall be provided to the Authority in the Service Report pursuant to clause 15 (Service Report).
- 8.5 The Contractor shall promptly notify the Authority of all circumstances which shall or might reasonably be regarded as a breach of this clause 8 and shall act at all times in good faith in respect of this clause 8.

9 OWNERSHIP OF WASTE

- 9.1 Subject to clause 9.2, as between the Authority and the Contractor, ownership and risk in all Waste delivered to a Delivery Point by or on behalf of the Authority shall transfer to the Contractor at the point in time at which such Contract Waste is delivered to the relevant Delivery Point and the Contractor shall take full responsibility for it.
- 9.2 In the event that:
 - 9.2.1 the Contractor identifies and segregates any Objectionable Waste and/or Prohibited Waste delivered to a Delivery Point in circumstances where the Authority has agreed to procure the removal such Objectionable Waste and/or Prohibited Waste from the relevant Delivery Point, ownership and risk in such Objectionable Waste and/or Prohibited Waste shall transfer back to the Authority at the point in time at which such Objectionable Waste and/or Prohibited Waste is placed onto the vehicle made available by the Authority;

- 9.2.2 the Contractor identifies and segregates any Objectionable Waste and/or Prohibited Waste delivered to a Delivery Point in circumstances where the Contractor is required to transport such Objectionable Waste and/or Prohibited Waste to a site designated by the Authority, ownership and risk in such Objectionable Waste and/or Prohibited Waste shall transfer back to the Authority at the point in time at which such Objectionable Waste and/or Prohibited Waste is delivered to the site designated by the Authority; or
- 9.2.3 the Contractor identifies and segregates any Objectionable Waste and/or Prohibited Waste delivered to a Delivery Point in circumstances where the Contractor is required to dispose of such Objectionable Waste and/or Prohibited Waste on behalf of the Authority, ownership and risk in such Objectionable Waste and/or Prohibited Waste shall transfer to the Contractor in accordance with clause 9.1.

10 EMERGENCIES

- 10.1 If an Emergency arises during the Contract Period (and whether or not an Emergency has arisen shall be determined in the case of any dispute by the Authority's Representative acting reasonably) which cannot be dealt with by performance of the Services, the Authority may issue a Stop Notice to cover the period of Emergency on the Contractor to:
 - 10.1.1 suspend delivery of Waste to any Delivery Point;
 - 10.1.2 remove all or part of the Services from this Contract; or
 - 10.1.3 require the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the relevant Delivery Point is resumed as soon as is reasonably practicable.
- 10.2 The proper cost incurred by the Contractor of any additional or alternative services provided to the Authority under clause 10.1.3 shall be borne by the Authority and paid in accordance with clause 21 (Monthly Services Payment), except where the Emergency arises from the act or omission, breach, neglect or default of the Contractor or any Contractor Related Party in which case any associated costs shall be borne by the Contractor.
- 10.3 As soon as reasonably practicable following the point in time at which the Authority becomes aware that the relevant Emergency has ceased or will cease, the Authority will notify the Contractor in writing of the date on which the Services are to recommence (such date to be not less than 1 day following the date of the Authority's notice) and the Contractor shall ensure that the Services shall recommence on that date.

11 CONTINUOUS IMPROVEMENT

- 11.1 The Contractor acknowledges that the Authority is subject to the Best Value Duty.
- 11.2 The Contractor shall, but only to the extent of its obligations in this Contract, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

- 11.3 The Contractor shall undertake such actions as the Authority shall reasonably request to enable the Authority to comply with part 1 of the Local Government Act 1999, including:
- 11.3.1 supporting and assisting the Authority in conducting Best Value Reviews in relation to the Services;
 - 11.3.2 complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty; and
 - 11.3.3 permitting any officer, agent or employee of any competent authority empowered to inspect the Authority's compliance with part 1 of the Local Government Act 1999, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to the Facilities and any document or data relating to the Services.

PART 3 PERFORMANCE MONITORING AND RECORDS

12 PERFORMANCE MONITORING

- 12.1 The Contractor shall monitor its performance in the delivery of the Services in accordance with Specifications, the SDP and the Performance Framework. In particular, the Contractor shall perform such monitoring as may be required in order to enable the Contractor to develop and submit the Service Reports to be provided pursuant to clause 15 (Service Report).
- 12.2 The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage during [the] [a] Services Period for any purpose, including in order to ensure that:
- 12.2.1 the Services are being provided in accordance with this Contract; and/or
 - 12.2.2 any information submitted by the Contractor to the Authority (including the information contained in the Service Reports) is accurate.
- 12.3 The Contractor shall use its reasonable endeavours to assist the Authority in undertaking performance monitoring activities under clause 12.2.
- 12.4 The Authority shall be entitled to notify the Contractor of the outcome of the performance monitoring activities undertaken under clause 12.2 and the Contractor shall respond to and, where required by the Authority, take action to address the Authority's comments in relation to the future provision of the Services.

13 INSPECTION

13.1 Right of Inspection

The Contractor shall procure that the Authority or any representative or adviser of the Authority shall have, at all reasonable times, the right (but not so as to delay or impede the provisions of the Services) to enter any of the Facilities in order to inspect the state and progress of the Services and to monitor compliance by the Contractor with its obligations under this Contract (including for the purposes of performance monitoring in accordance with clause 12.2 (Performance Monitoring)).

13.2 Contractor's Assistance

The Contractor shall procure that satisfactory welfare facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of clause 13.1 (Right of Inspection), subject to the provision of the Services not being adversely affected.

13.3 Supply of Information

The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting any of the Facilities pursuant to clause 13.1 (Right of Inspection) such information in respect of the Services as may reasonably be required.

13.4 Damage

If the Authority or its representative causes material damage to any of the Facilities in exercising any right under clause 13.1 (Right of Inspection), then the Authority shall

be liable to the Contractor for the reasonable costs incurred by the Contractor in rectifying such damage (provided that the Contractor uses reasonable endeavours to mitigate such costs).

14 RECORDS AND AUDIT

14.1 Records

The Contractor shall provide to the Authority's Representative all information, documents, records and the like in the possession of, or available to, the Contractor (and to this end the Contractor shall use all reasonable endeavours to procure that all such items in the possession of the Contractor or any Contractor Related Party shall be available to the Authority's Representative and the Contractor has included, or shall include, relevant terms in all contracts with Contractor Related Parties to this effect) as may be reasonably requested by the Authority's Representative for any purposes in connection with this Contract.

14.2 Audit

14.2.1 Any relevant competent authority (including any successor body to the Audit Commission) may examine such documents as he/she or it may reasonably require which are owned, held or otherwise within the control of the Contractor and any Contractor Related Party and may require the Contractor and any Contractor Related Party to produce such oral or written explanations as he/she or it considers necessary for the purposes of:

14.2.1.1 the examination and certification of the Authority's accounts;

14.2.1.2 the Local Audit and Accountability Act 2014 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts); and/or

14.2.1.3 an examination pursuant to the Local Government Act 1999 of the economy, efficiency and effectiveness with which the Authority has performed its functions.

15 SERVICE REPORT

15.1 The Contractor shall provide to the Authority a service report (the **Service Report**) within five (5) Business Days of the end of each month which commences during [the] [a] Services Period in electronic form in the format specified in the Core Specification or as otherwise notified by the Authority's Representative from time to time (acting reasonably) and any other reporting requirements set out in the Core Specification.

15.2 Each Service Report shall include the information prescribed by the Core Specification in respect of the immediately preceding month.

PART 4 PROPERTY ISSUES

16 FACILITIES

- 16.1 The Contractor shall be responsible for providing all Facilities.
- 16.2 The Contractor shall:
- 16.2.1 obtain and maintain any Necessary Consents to use the Facilities for the Services;
 - 16.2.2 ensure that the Delivery Points are available during [the] [each] Services Period or such shorter term as the Parties may agree in writing;
 - 16.2.3 be responsible for the payment of all fees, charges, rates and all other outgoings or expenses (including, but not limited to all Environmental Liability) in relation to the Facilities;
 - 16.2.4 operate, keep in repair and maintain the Facilities in accordance with all Legislation and Good Industry Practice;
 - 16.2.5 be solely responsible for the condition of the Facilities;
 - 16.2.6 insure the Facilities in accordance clause 27 (Insurance); and
 - 16.2.7 ensure that it possesses such property rights (whether via a freehold interest, leasehold interest or licence) as may be required to enable it to lawfully occupy and operate each Site.

17 PLANNING PERMISSIONS AND NECESSARY CONSENTS

- 17.1 Subject to clause 5.1 (Mobilisation and Environmental Permits), the Contractor shall comply with and maintain all Planning Permissions and Necessary Consents required or necessary to provide the Services in accordance with this Contract.
- 17.2 With effect from [the] [each] Services Commencement Date, the Contractor shall and shall procure that all Contractor Related Parties shall:
- 17.2.1 comply with the conditions and requirements attached to all Planning Permissions and Necessary Consents;
 - 17.2.2 take all reasonable steps to ensure that none of the Planning Permissions or Necessary Consents are revoked and that all Planning Permissions and Necessary Consents continue in full force and effect;
 - 17.2.3 notify the Authority immediately of any complaints, investigative procedures or enforcement notices received by the Contractor relating in any way to the Facilities and supply a copy of every such notice to the Authority within five (5) Business Days after the receipt of the same; and
 - 17.2.4 notify the Authority promptly of any notices received relating in any way to any Planning Permission or Necessary Consent and shall provide a copy of any such notice within two (2) Business Days of receipt of the same to the Authority by email and by post.

PART 5 EMPLOYMENT MATTERS

18 EMPLOYMENT MATTERS

18.1 No Employee Transfer

The Authority and the Contractor agree that there are no individuals presently employed by the Authority whose contracts of employment will, by virtue of the transfer to the Contractor of responsibility for the provision of any part of the Services in accordance with this Contract and in accordance with TUPE, have effect after [the] [each] Services Commencement Date as if originally made between those persons and the Contractor.

18.2 Exit Provisions

It is acknowledged by the Parties that a Relevant Transfer may occur upon the Contractor (or any Contractor Related Party) ceasing to provide the Services or any part of the Services upon expiry or termination of this Contract (a **Service Transfer**). It is agreed that the following provisions of this clause 18.2 shall apply in relation to each Service Transfer which amounts to a Relevant Transfer:

18.2.1 The Contractor agrees that, within fourteen (14) days of the earliest of:

18.2.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

18.2.1.2 receipt or the giving of notice of early termination of this Contract or any part thereof; or

18.2.1.3 the date which is twelve (12) months before the Expiry Date, and, in any event, on receipt of a written request of the Authority at any time,

it shall provide the Contractor's Provisional Personnel List and the Personnel Information to the Authority or, at the direction of the Authority, to a New Contractor and it shall provide an updated Contractor's Provisional Personnel List when reasonably requested by the Authority or any New Contractor.

18.2.2 At least twenty eight (28) days before the Service Transfer Date, the Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the New Contractor, the Contractor's Final Personnel List, which shall be complete and accurate in all material respects. The Contractor's Final Personnel List shall identify which of the Personnel named are Transferring Employees.

18.2.3 The Authority shall be permitted to use and disclose the Contractor's Provisional Personnel List, the Contractor's Final Personnel List and the Personnel Information for informing any tenderer or other prospective New Contractor for any services which are substantially the same type of services (or any part thereof) as the Services.

18.2.4 On reasonable request by the Authority the Contractor shall provide the Authority or at the request of the Authority, the New Contractor, with access (on reasonable notice and during normal working hours) to such

employment records (and provide copies) as the Authority reasonably requests.

18.2.5 The Contractor warrants that the Contractor's Provisional Personnel List, the Contractor's Final Personnel List and the Personnel Information will be true and accurate in all material respects.

18.2.6 From the date of the earliest event referred to in clause 18.2.1 above, the Contractor agrees that it shall not without the prior written consent of the Authority, 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 Personnel List and shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

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

18.2.6.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Personnel List;

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

18.2.6.4 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 Personnel List; and/or

18.2.6.5 replace any of the Personnel listed on the Contractor's Provisional Personnel List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Personnel List.

18.2.7 The Contractor will promptly notify the Authority or, at the direction of the Authority, the New Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Personnel List regardless of when such notice takes effect.

18.2.8 At least twenty eight (28) days before the expected Service Transfer Date, the Contractor shall provide to the Authority or any New Contractor, in respect of each person on the Contractor's Final Personnel List who is a Transferring Employee, their:

18.2.8.1 pay slip data for the most recent month;

18.2.8.2 cumulative pay for tax and pension purposes;

- 18.2.8.3 cumulative tax paid;
 - 18.2.8.4 tax code;
 - 18.2.8.5 voluntary deductions from pay; and
 - 18.2.8.6 bank or building society account details for payroll purposes.
- 18.2.9 In connection with a Service Transfer which is a Relevant Transfer, the Parties agree that 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 Authority and any New Contractor in full for and against all Direct Losses and Indirect Losses whatsoever and howsoever arising, incurred or suffered by the Authority or any New Contractor including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 18.2.9.1 the Contractor's failure to perform and discharge any such obligation;
 - 18.2.9.2 any act or omission by the Contractor or any Contractor Related Party on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
 - 18.2.9.3 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 contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
 - 18.2.9.4 any claim arising out of the provision of, or proposal by the Contractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;
 - 18.2.9.5 any claim made by or in respect of any person employed or formerly employed by the Contractor or any Contractor Related Party other than a Transferring Employee for which it is alleged the Authority or any New Contractor may be liable by virtue of this Contract and/or TUPE;
 - 18.2.9.6 any act or omission of the Contractor in relation to its obligations under regulation 11 of TUPE, or in respect of an award of compensation under regulation 12 of TUPE except to the extent that the liability arises from the Authority or New Contractor's failure to comply with regulation 11 of TUPE; and
 - 18.2.9.7 any statement communicated to or action done by the Contractor or any Contractor Related Party in respect of any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Authority in writing.

- 18.2.10 The Contractor shall indemnify the Authority and any New Contractor in respect of any claims arising from any act or omission of the Contractor or any Contractor Related Party in relation to any other member of Personnel who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
- 18.2.11 The Authority shall indemnify the Contractor against all claims arising from the Authority's or the New Contractor's failure to perform and discharge any obligation and against any claims in respect of any Transferring Employees arising from or as a result of:
- 18.2.11.1 any act or omission by the Authority or the New Contractor relating to a Transferring Employee occurring on or after the Service Transfer Date; and
- 18.2.11.2 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) accrued and payable after the Service Transfer Date.
- 18.2.12 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. The Contractor agrees that it will consent to, and co-operate with, pre-transfer consultation by any New Contractor under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992.
- 18.2.13 Each party (the **notifying party**) shall promptly notify the other party (the **indemnifying party**) in writing of any claims in respect of which the notifying party may be entitled to claim indemnity under this clause 18 and the notifying party shall not settle any such claims without prior written authority from the indemnifying party (which shall not be unreasonably withheld or delayed) and, if the indemnifying party shall so request in writing, the notifying party shall entrust to the indemnifying party the care and conduct of contesting any such claim.
- 18.2.14 The Authority shall assume (or shall procure that the New 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.
- 18.2.15 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to clauses 18.2.1 to 18.2.14 of this Contract to the extent necessary to ensure that any New Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the New Contractor by the Contractor or the Authority to the Contractor under clauses 18.2.1 to 18.2.14 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 18.2.16 Notwithstanding clause 18.2.15, the Authority and the Contractor do not require the consent of the New Contractor to terminate or vary this Contract at any time, even if that termination or variation affects the benefits conferred on such New Contractor.

- 18.2.17 In the event of a Service Transfer which is not a Relevant Transfer and to which TUPE does not apply, the following provisions shall apply:
- 18.2.17.1 the Authority or the New Contractor can, at its discretion, make to any of the Personnel listed on the Contractor's Provisional Personnel List or any other member of Personnel assigned to the Services an offer, in writing, to employ or engage the relevant individual under a new contractual arrangement to take effect at the earliest reasonable opportunity;
 - 18.2.17.2 when the offer has been made by the Authority or New Contractor and accepted by a member of the Personnel, the Contractor shall permit the relevant individual to leave his or her employment or engagement as soon as practicable depending on the business needs of the Contractor, which could be without the individual having worked his or her full notice period if the individual so requests and where operational obligations allow;
 - 18.2.17.3 if the relevant member of the Personnel does not accept an offer of employment or engagement made by the Authority or New Contractor, the individual shall remain employed or engaged by the Contractor or the relevant Contractor Related Party and all claims in relation to the individual shall remain with the Contractor or relevant Contractor Related Party; and
 - 18.2.17.4 if the Authority or the New Contractor does not make an offer to any of the Personnel on the Contractor's Provisional Personnel List or any other member of Personnel, then any such individual and all claims in relation to that individual remains with the Contractor or relevant Contractor Related Party.

19 SUITABILITY OF EMPLOYEES

19.1 Skills and training

- 19.1.1 Without prejudice to the requirements of the Core Specification:
- 19.1.1.1 the Contractor shall (and shall procure that any Contractor Related Parties shall) procure that only such Personnel who are skilled and experienced and have such qualifications and training as may be required by Legislation are employed or engaged in the provision of the Services; and
 - 19.1.1.2 the Contractor shall (and shall procure that any Contractor Related Parties shall) procure that all Personnel engaged in the provision of the Services are at all times properly and adequately trained, notified and instructed with regard to the duties of their job, all relevant health and safety rules, fire risks and fire precautions and any other statutory or mandatory requirements.

19.2 Conduct of Employees

19.2.1 The Contractor shall (and shall procure that any Contractor Related Parties shall):

19.2.1.1 comply with any reasonable requirements specified by the Authority from time to time relating to the conduct of staff and security arrangements and shall ensure that Personnel do likewise; and

19.2.1.2 with effect from the [relevant] Services Commencement Date, comply with such rules, regulations and requirements relating to the conduct of Personnel (including those in respect of security arrangements) as may be made and enforced by the Authority from time to time (acting reasonably).

19.2.2 The Contractor shall take and/or procure appropriate disciplinary action against any Personnel or Contractor Related Parties who transgress any Legislation, rules, regulations and requirements (which may include the removal from the provision of the Services of any such person).

19.3 Removal of Personnel

The Contractor shall comply with and/or procure compliance with any notice issued by the Authority from time to time requiring the removal from any of the Services of any member of the Personnel who in the opinion of the Authority (which it shall not be required to explain or disclose to the Contractor) is engaging or has engaged in conduct which is detrimental to the reputation of the Authority and the Contractor shall further procure that such persons shall not be engaged again in connection with the provision of the Services without the written consent of the Authority.

19.4 Contractor's Employees

Other than as expressly provided in this Contract, the Contractor shall be entirely responsible for all of the costs and obligations in respect of the employment and conditions of service of the Personnel and shall procure that any Contractor Related Party is likewise responsible for its employees and other Personnel.

20 EQUAL OPPORTUNITIES, HUMAN RIGHTS ACT 1998 AND MODERN SLAVERY ACT 2015

20.1 The Contractor shall comply with the Equality Act 2010 and any other legislation or binding guidance relating to equality and non-discrimination. The Contractor shall adopt a policy to comply with its statutory obligations relating to equality and non-discrimination and, accordingly, will not treat one group of people less favourably than others because of any protected characteristic (for example, their age, disability, gender reassignment, marriage or civil partnership status, pregnancy and maternity status, race, religion or belief, sex or sexual orientation) in relation to decisions to recruit, train, promote, discipline or dismiss its personnel.

20.2 In the event of any finding of unlawful racial discrimination being made against the Contractor by any court or employment tribunal, or of any adverse finding in any formal investigation by the Equality and Human Rights Commission, the Contractor shall inform the Authority of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

- 20.3 The Contractor shall, on request, provide the Authority with details of any steps taken under clause 20.2.
- 20.4 The Contractor shall set out its policy on equal opportunities in:
- 20.4.1 instructions to those concerned with recruitment, training and promotion;
 - 20.4.2 documents available to its personnel, recognised trade unions or other representative groups of its personnel; and
 - 20.4.3 recruitment advertisements and other literature.
- 20.5 The Contractor shall procure that any Contractor Related Party which employs or engages Personnel in connection with the delivery of the Services complies with the obligations set out in this clause 20.
- 20.6 In the performance of the Services the Contractor shall comply with the Human Rights Act 1998 (**HRA**) as if it was a “Public Authority” within the meaning of the HRA and where necessary, the Contractor shall comply with any instructions of the Authority to make modifications to this Contract to enable the Parties to comply with such obligations. The Contractor shall not in any way cause the Authority to breach the HRA.
- 20.7 The Contractor undertakes, warrants and represents that neither the Contractor nor any of its Employees, agents or Sub-Contractors:
- 20.7.1 has committed an offence under the Modern Slavery Act 2015 (a **MSA Offence**);
 - 20.7.2 has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - 20.7.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.
- 20.8 The Contractor shall comply with the Modern Slavery Act 2015 at all times (and procure the compliance of its Sub-Contractors and Employees).
- 20.9 The Contractor warrants that its responses to any modern slavery and human trafficking due diligence questionnaire issued to it by the Authority are and will at all times be complete and accurate.
- 20.10 The Contractor shall notify the Authority immediately in writing if it becomes aware or has reason to believe that it or any of its Employees, agents or Sub-Contractors have breached or potentially breached any of the Contractor’s obligations under this clause 20.7 or committed a MSA Offence. Such notice shall set out full details of the circumstances concerning the breach or potential breach of the Contractor’s obligations or the Modern Slavery Act 2015.
- 20.11 Any breach of any of clauses 20.6 to 20.10 by the Contractor shall be deemed a material breach of the Contract and shall entitle the Authority to terminate the Contract in accordance with clause 30 (Termination for Contractor Default).

PART 6 PAYMENT

21 MONTHLY SERVICES PAYMENT

- 21.1 In consideration for receiving the Services from the Contractor, the Authority shall pay the Monthly Services Payment to the Contractor.
- 21.2 The Monthly Services Payment shall be calculated in accordance with Schedule 4 (Payment Mechanism) and shall become due and payable on a monthly basis within thirty (30) days of receipt by the Authority of a valid invoice in accordance with clause 22 (Invoices).
- 21.3 The Contractor shall be responsible for payment of National Non-Domestic Rates, consents to discharge under the Environmental Permitting (England and Wales) Regulations 2010 and trade effluent agreements under the Water Industry Act 1991 and the Contractor shall be responsible for payment of all other taxes, levies and/or charges arising in relation to this Contract (including those arising in respect of or pursuant to any Necessary Consent or Planning Permission).

22 INVOICES

- 22.1 The Contractor shall submit a single invoice to the Authority in arrears within five (5) Business Days of the end of each month which commences during [the] [a] Services Period.
- 22.2 Each invoice shall contain:
- 22.2.1 the Contractor's name and contact address;
 - 22.2.2 a purchase order number;
 - 22.2.3 the invoicing period to which the invoice relates; and
 - 22.2.4 the Contractor's registration details for VAT purposes.
- 22.3 The Contractor must ensure that the invoice includes (in each case in respect of the relevant month) details of:
- 22.3.1 each of the Component Payments which form part of the Monthly Services Payment, as specified in Schedule 4 (Payment Mechanism), together with the underlying calculations;
 - 22.3.2 each of the adjustments which form part of the Monthly Services Payment, together with the underlying calculations; and
 - 22.3.3 the total sum due to the Contractor in respect of the relevant month,
- in the form reasonably specified by the Authority from time to time.
- 22.4 Each invoice shall be accompanied by the Service Report for the corresponding month in accordance with clause 15 (Service Report).
- 22.5 Invoices are payable within thirty (30) days from the date of receipt by the Authority of a valid invoice in accordance with Part 6 (Payment) of this Contract.

- 22.6 Disputed invoices will be dealt with in accordance with the Dispute Resolution Procedure.

23 INTEREST ON LATE PAYMENT

In the event that any sum properly due by either party to the other party under this Contract becomes overdue, the party at fault shall pay such overdue amount to the other party as soon as reasonably practicable, together with interest on that amount calculated on a daily basis at the Interest Rate until all relevant monies have been paid in full, whether before or after judgment.

24 SET OFF AND VAT

24.1 Set Off

24.1.1 The Contractor shall not be entitled to retain or set off any amount due to the Authority by it.

24.1.2 The Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.

24.2 VAT

24.2.1 VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

24.2.2 Any invoice or other request for payment of monies due to the Contractor under this Contract, shall, if it is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

24.2.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of VAT chargeable on the value of the Services and payable by the Authority to the Contractor in addition to the Monthly Services Payment. Any overpayments by the Authority to the Contractor shall be a sum of money recoverable from the Contractor on demand for the purposes of this Contract.

PART 7 INDEMNITIES, LIABILITY AND INSURANCE

25 CONTRACTOR INDEMNITY

25.1 The Contractor indemnifies and keeps indemnified the Authority against all Direct Losses whatsoever arising out of, in respect of or in connection with the provision of the Services or this Contract during the Contract Period other than where the same is caused by or arises from the negligence, breach of this Contract, breach of statutory duty, breach of Legislation or other wrongful act or omission of the Authority.

25.2 The Contractor indemnifies and keeps indemnified the Authority against all Direct Losses (including additional costs) which have been or will be incurred or suffered by the Authority in connection with the implementation of the Delivery Point Contingency Plan, the TD Facilities Contingency Plan or any other contingency arrangement. The

Contractor acknowledges and agrees that the Authority shall be entitled to claim and recover any additional haulage costs which it incurs as a result of the implementation of the Delivery Point Contingency Plan, the TD Facilities Contingency Plan or any other contingency arrangement pursuant to the indemnity set out in this clause 25.2. The Authority shall be entitled to submit an invoice in respect of any indemnity claim pursuant this clause 25.2 at any time and Contractor shall (subject to clause 22.6) pay the amount specified in any such invoice within thirty (30) days of receipt.

26 LIMITATIONS OF LIABILITY

26.1 Contractor Limitation of Liability

26.1.1 Subject to clauses 26.2 and 26.4, the maximum aggregate liability of the Contractor to the Authority under, pursuant to or in connection with this Contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise), including liabilities arising from termination of this Contract, shall not during the Mobilisation Period or in any Contract Year (as appropriate) exceed:

26.1.1.1 during the Mobilisation Period, fifty thousand pounds sterling (£50,000) (Indexed); and

26.1.1.2 during each Contract Year, twenty percent (20%) of the forecast Annual Services Payment in respect of the relevant Contract Year,

(the **Contractor Annual Cap**).

26.2 Insured Liabilities

26.2.1 Notwithstanding the provisions of clause 26.1 but subject to the provisions of clause 26.3:

26.2.1.1 the maximum aggregate liability of either party under, pursuant to or in connection with this Contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) for any loss, damage, cost or expense arising as a result of the occurrence of an insurable risk which is insured under a policy of insurance maintained by the relevant party (an **Insured Liability**) shall be limited to the amount actually recoverable from the relevant insurer; and

26.2.1.2 all Insured Liabilities shall be excluded from the scope of (and not count towards) the Contractor Annual Cap.

26.3 Subject to any express provision of this Contract to the contrary, neither party shall be liable to the other party in connection with the provision of the Services or this Contract for any Indirect Losses howsoever caused.

26.4 Notwithstanding any other provision of this Contract, neither party limits or excludes its liability:

26.4.1 for fraud or fraudulent misrepresentation;

26.4.2 for death or personal injury caused by that party's negligence;

- 26.4.3 in the case of the Contractor only:
- 26.4.3.1 arising from breach of any obligation as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 26.4.3.2 arising under or in connection with clause 18 (Employment Matters), clause 19.4 (Contractor's Employees), clause 38.2 (Intellectual Property) or clause 39.3 (Data Protection);
 - 26.4.3.3 for any liability incurred by the Authority or any Authority Related Party as a result of failure by the Contractor to comply with the requirements of the Environmental Permits or any related instructions of the Environment Agency (whether any such failure becomes apparent before or after termination or expiry of this Contract).

27 INSURANCE

27.1 The Contractor shall take out and maintain in force or procure the taking out and maintenance of:

- 27.1.1 public liability insurance in the sum of ten million pounds (£10,000,000) per claim or series of connected claims;
- 27.1.2 employers liability insurance in the sum of ten million pounds (£10,000,000) per claim or series of connected claims;
- 27.1.3 [if and only to the extent that:
 - 27.1.3.1 the Contractor is required to procure the performance of works pursuant to the Variation Procedure as set out in clause 35 (Variation Procedure) of this Contract; and
 - 27.1.3.2 the performance of such works necessitates the performance by the Contractor of design services,

professional indemnity insurance with an indemnity limit of [five million] pounds (£[5,000,000]) per claim or series of connected claims;] and

[NOTE TO BIDDERS: Bidders are not required to hold Professional Indemnity insurance as at the Commencement Date. This will only be required in the event that a Variation requires design work to be carried out by the Contractor in relation to a works variation]

27.1.4 any other insurances as may be required by Legislation.

27.2 The Contractor shall provide, on request, to the Authority:

- 27.2.1 copies of all policies relating to the insurances required under clause 27.1 (including all documents evidencing any amendments, extensions or variations to all such policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
- 27.2.2 evidence that the premiums payable under the insurances required under

clause 27.1 have been paid and that the insurances are in full force and effect.

27.3 The Contractor shall:

27.3.1 notify the Authority within twenty (20) Business Days of any claim arising in connection with the provision of the Services or this Contract in excess of ten thousand pounds (£10,000) under the insurances required under clause 27.1 and (if required by the Authority) give full details of the incident giving rise to the claim; and

27.3.2 promptly and diligently deal with all claims received relating to the insurances required under clause 27.1 in accordance with insurers' requirements.

27.4 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.

PART 8 DISPUTE RESOLUTION AND TERMINATION

28 DISPUTE RESOLUTION

28.1 Escalation

If a dispute arises in relation to any aspect of this Contract which cannot be resolved between the Authority's Representative and the Contractor's Representative within a reasonable period (not to exceed twenty (20) Business Days or such other period as the parties may agree, both acting reasonably), the dispute shall be escalated to the relevant Executive Director of the Authority and the Contractor, and the Parties shall use all reasonable endeavours to resolve the dispute to the Parties' mutual satisfaction.

28.2 Mediation

28.2.1 If the dispute is not resolved within twenty (20) Business Days of escalation of the dispute in accordance with clause 28.1, the Parties shall refer the dispute to mediation in accordance with the CEDR Model Mediation Procedure.

28.2.2 If the Parties cannot agree on a mediator, the Parties shall appoint a mediator nominated by CEDR.

28.2.3 The Parties shall use their best endeavours to conclude the mediation within forty (40) Business Days of referral of the dispute to mediation.

28.2.4 The parties shall bear their own costs in relation to any mediation undertaken in accordance with this clause 28.2 and the costs and expenses of the mediator shall be shared equally between the parties, save to the extent that the parties agree otherwise (both acting reasonably).

28.3 Litigation

28.3.1 If the dispute is not resolved in accordance with clause 28.2 within forty (40) Business Days of referral of the dispute to mediation, either party may refer the dispute to the courts of England and Wales for final determination. For the avoidance of doubt, the Parties cannot commence court proceedings prior to the expiry of the period referred to in clause 28.2.3.

28.3.2 Nothing in this clause 28.3 shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

28.4 No suspension of obligations during a dispute

Subject to the operation of clause 36 (Supervening Events), during the subsistence of any dispute between the parties (including in any period during which the parties are engaged in any form of dispute resolution process pursuant to this clause 28), each party shall continue to perform its obligations under this Contract in accordance with the terms of this Contract, save to the extent that the parties agree otherwise.

29 TERMINATION FOR CORRUPT GIFTS AND FRAUD

- 29.1 The Authority shall be entitled to terminate this Contract by serving a termination notice on the Contractor if the Contractor or any Sub-Contractor commits a Prohibited Act. Following service of a termination notice, this Contract will terminate on the date specified in the termination notice (which shall be not less than twenty (20 Business Days and not more than six (6) months following the date of issue of the termination notice).

30 TERMINATION FOR CONTRACTOR DEFAULT

- 30.1 Within a reasonable period (which shall not be less than ninety (90) days) following the occurrence of a Contractor Default, the Authority may serve a termination notice on the Contractor specifying the type and nature of the Contractor Default.

- 30.2 Without prejudice to clause 33 (Consequences of Termination or Expiry) and subject to clause 30.3, this Contract will terminate:

30.2.1 in the case of a Contractor Default which is remediable, where:

30.2.1.1 the Contractor fails to put forward a remediation plan which has been approved by the Authority; or

30.2.1.2 the Contractor fails to take the actions specified in a remediation plan which has been approved by the Authority within the timescales set out therein,

on the date specified in the termination notice (which shall be not less than twenty (20 Business Days and not more than six (6) months following the date of occurrence of the Contractor Default; or

30.2.2 in the case of a Contractor Default which is not remediable, on the date specified in the termination notice (which shall be not less than twenty (20 Business Days and not more than six (6) months following the date of issue of the termination notice).

- 30.3 [In the event that a Contractor Default of the type described in limb (o) of that definition occurs, the Authority and the Contractor acknowledge and agree that, subject to the provisions of clause 30.4, the trustee, executor and/or administrator of the Contractor's assets and/or estate shall promptly give effect to the terms of the Succession Plan in order to procure the novation of this Contract (and the associated transfer of the Environmental Permits) to a person or body corporate that is capable of performing this Contract in accordance with its terms.

- 30.4 Notwithstanding clause 30.3, in the event that a Contractor Default of the type described in limb (o) of that definition occurs, the Authority shall be entitled, in its sole and absolute discretion, to terminate this Contract by serving a termination notice on the trustee, executor and/or administrator of the Contractor's assets and/or estate. The Parties acknowledge and agree that:

- 30.4.1 the Authority shall be entitled to exercise this right to terminate the Contract at any time between occurrence of the Contractor Default and the date of execution and delivery of a novation agreement which operates to novate the Contractor's rights, benefits, obligations and liabilities under this Contract to a replacement contractor approved by the Authority in its absolute discretion;
- 30.4.2 subject to clause 30.4.1, the Authority's right to terminate this Contract shall not be fettered or limited in any way as a result of any steps taken or committed to be taken by trustee, executor and/or administrator of the Contractor's assets and/or estate, whether pursuant to clause 30.3 or otherwise; and
- 30.4.3 this Contract shall terminate on the date specified in the termination notice (which shall be not less than twenty (20 Business Days and not more than six (6) months following the date of issue of the termination notice).]

[NOTE TO BIDDERS: Clauses 30.3 and 30.4 are to be retained only to the extent the Contractor is a natural person/comprised of natural people.]

31 TERMINATION FOR AUTHORITY DEFAULT

- 31.1 The Contractor shall not exercise, or purport to exercise, any right to terminate this Contract (or accept any repudiation of this Contract) except as expressly set out in this Contract.
- 31.2 If an Authority Default has occurred and the Contractor wishes to terminate this Contract, the Contractor must serve a termination notice on the Authority within twenty (20) Business Days of becoming aware of the Authority Default.
- 31.3 The termination notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.
- 31.4 Without prejudice to clause 33 (Consequences of Termination or Expiry), this Contract will terminate on the day falling six (6) months after the date the Authority receives the Contractor's termination notice, unless the Authority rectifies the Authority Default within thirty (30) Business Days of receipt of the Contractor's termination notice.

32 PERSISTENT BREACH

- 32.1 If a particular breach during [the] [a] Services Period (other than any breach for which adjustments and/or deductions could have been made in accordance with Schedule 4 (Payment Mechanism)) has continued for more than twenty (20) days or occurred more than three times in any six (6) month period then the Authority may serve a notice on the Contractor:
- 32.1.1 specifying that it is a formal warning notice;
- 32.1.2 giving reasonable details of the breach; and
- 32.1.3 stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

32.2 If, following service of a warning notice the breach specified has continued beyond twenty (20) Business Days or recurred two (2) or more times in the six (6) month period after the date of service, then the Authority may serve another notice (a **Final Warning Notice**) on the Contractor:

32.2.1 specifying that it is a Final Warning Notice;

32.2.2 stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and

32.2.3 stating that if the breach continues or recurs for more than twenty (20) days or recurs two (2) or more times within the six (6) month period after the date of service of the Final Warning Notice, this Contract may be terminated.

32.3 A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.

33 CONSEQUENCES OF TERMINATION OR EXPIRY

33.1 Compensation on Termination for Corrupt Gifts and Fraud and Contractor Default

The Contractor acknowledges and agrees that termination of this Contract pursuant to clause 28.4 (Termination for Corrupt Gifts and Fraud) or clause 30 (Termination for Contractor Default) shall be deemed to be a termination for breach of condition and the Authority shall, subject to clause 26 (Limitations of Liability), be entitled to claim and recover its Direct Losses in respect of such termination as flowing from the relevant breach of condition.

33.2 Compensation on Termination for Authority Default

33.2.1 The Authority acknowledges and agrees that on termination for Authority Default the Authority shall be liable to pay the Termination Payment (AD) to the Contractor within twenty (20) Business days of the Termination Date. The Contractor acknowledges and agrees that any payment by the Authority of the Termination Payment (AD) pursuant to this clause 33.2.1 shall:

33.2.1.1 be in full satisfaction of any claim which can be made against the Authority in relation to termination of this Contract; and

33.2.1.2 constitute the sole remedy of the Contractor against the Authority in respect of termination of this Contract.

33.3 Compensation on Termination for Force Majeure

33.3.1 The Authority acknowledges and agrees that on termination for a continuing Force Majeure Event pursuant to clause 36.2.4 (Force Majeure), the Authority shall be liable to pay the Termination Payment (FM) to the Contractor within twenty (20) Business Days of the Termination Date. The Contractor acknowledges and agrees that any payment by the Authority of the Termination Payment (FM) pursuant to this clause 33.3.1 shall:

- 33.3.1.1 be in full satisfaction of any claim which can be made against the Authority in relation to termination of this Contract; and
- 33.3.1.2 constitute the sole remedy of the Contractor against the Authority in respect of termination of this Contract.

33.4 Accrued Rights

The Parties acknowledge and agree that, save where this Contract expressly provides otherwise, termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.

33.5 Survival

Clauses 14 (Records and Audit), 18.2 (Exit Provisions), 22 (Invoices), 24 (Set Off and VAT), 26 (Limitations of Liability), 28 (Dispute Resolution), 33 (Consequences of Termination or Expiry), 38 (Intellectual Property), 39 (Data Protection), 40 (Confidentiality), 41 (Publicity), 47 (Notices), 48 (Severability), 49 (No Waiver), 50 (Third Party Rights) and 51 (Governing Law and Jurisdiction) and any provision of the Specifications or Payment Mechanism which is stated to apply following expiry or termination of this Contract shall continue to be enforceable notwithstanding expiry or termination of this Contract.

33.6 Transition to a New Contractor

- 33.6.1 Subject to clause 33.6.2, during the final six (6) months prior to the Expiry Date or during the period of any notice of termination of this Contract, and in either case for a period of six (6) months thereafter, the Contractor shall (at no cost to the Authority) co-operate fully with the transfer of responsibility for the Services (or any of the Services) to the Authority or any New Contractor, including:
 - 33.6.1.1 liaising with the Authority/any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the New Contractor;
 - 33.6.1.2 providing to the Authority/any New Contractor all and any information concerning the Facilities and the Services which is required for the efficient transfer of responsibility for their performance; and
 - 33.6.1.3 not taking any action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult the transfer of the Services to the Authority/any New Contractor.
- 33.6.2 Notwithstanding clause 33.6.1, the Contractor shall not be required to perform the Services (or any services equivalent to the Services) following expiry of the period of notice of termination of this Contract.

PART 9 CHANGE IN LAW AND VARIATIONS

34 CHANGE IN LAW

- 34.1 The Contractor acknowledges and agrees that it shall not be entitled to any:
- 34.1.1 relief from any of its obligations under this Contract; or
 - 34.1.2 payment or other form of compensation from the Authority,
- as a result of the occurrence of a General Change in Law during the Contract Period.
- 34.2 In the event that a Services Specific Change in Law occurs, the Parties acknowledge and agree that the Services Specific Change in Law shall be discussed and implemented in accordance with the Variation Procedure, as modified by the procedure set out in this clause 34.
- 34.3 As soon as a Party becomes aware that a Services Specific Change in Law has occurred or is reasonably likely to occur during the Contract Period, that Party shall promptly notify the other Party. As soon as reasonably practicable and in any event within twenty (20) Business Days following the date upon which the Contractor becomes aware of the Services Specific Change in Law, the Contractor shall issue to the Authority an Estimate which includes details of:
- 34.3.1 the Services Specific Change in Law; and
 - 34.3.2 the consequences of such Services Specific Change in Law for this Contract including:
 - 34.3.2.1 whether any Variation is required to any of the Services or any term of this Contract; and
 - 34.3.2.2 whether any relief from compliance with the Contractor's obligations under this Contract is required.
- 34.4 As soon as practicable after receipt of an Estimate pursuant to clause 34.3, the Parties shall discuss and agree the matters referred to in the Variation Procedure and any ways in which the Contractor can mitigate the effect of the Services Specific Change in Law.
- 34.5 During such discussions, the Contractor shall:
- 34.5.1 provide evidence that the Contractor and relevant Contractor Related Parties have taken all reasonable steps to minimise any increase in costs and/or maximise any reduction in costs;
 - 34.5.2 give evidence as to how the Services Specific Change in Law has affected the cost of providing the Services; and
 - 34.5.3 demonstrate that any expenditure that has been avoided has been taken into account in amending the Monthly Services Payment.
- 34.6 In relation to a Services Specific Change in Law, any increase in or reduction to the Monthly Services Payment pursuant to this clause 34 shall be calculated on the basis that the Contractor shall be placed in no better or worse position than it would have been in had the Services Specific Change in Law not occurred.

35 VARIATION PROCEDURE

- 35.1 The Authority's Representative may require a Variation (including but without limitation the provision of Additional Services and/or a Service Scope Reduction) by serving a Variation Notice on the Contractor.
- 35.2 The Authority's Representative shall not issue a Variation Notice which:
- 35.2.1 requires the Services to be performed in a way that infringes Legislation;
 - 35.2.2 would cause any Planning Permission or Necessary Consent to be revoked;
 - 35.2.3 would materially and adversely affect the health and safety of any person; or
 - 35.2.4 would substantially reduce the scope of the Services, provided that the Authority's Representative shall be entitled to issue a Variation Notice (and the Contractor shall provide an Estimate) in respect of any Variation which is intended to give effect to an Envisaged Variation.
- 35.3 Subject to clause 35.4, within fifteen (15) Business Days of receipt of the Variation Notice, the Contractor shall provide to the Authority an Estimate setting out:
- 35.3.1 an estimate of any changes required to Schedule 4 (Payment Mechanism), including any changes required to the Monthly Services Payment, which are necessary in order to effect the Variation;
 - 35.3.2 any amendments required to this Contract which are necessary in order to effect the Variation; and
 - 35.3.3 any new Planning Permissions and/or Necessary Consents required or any changes to existing Planning Permissions and/or Necessary Consents which are necessary in order to effect the Variation.
- 35.4 Notwithstanding the provisions of clause 35.3, the Contractor acknowledges and agrees that, where the Authority issues a Variation Notice in respect of any Variation which is intended to give effect to an Envisaged Variation, the associated Estimate to be provided by the Contractor pursuant to clause 35.3 shall:
- 35.4.1 incorporate the relevant amendments required to be made to the Contract in order to implement the Envisaged Variation, as set out in Schedule 8 (Envisaged Variations); and
 - 35.4.2 incorporate the relevant amendments (if any) to the Services and/or the terms of this Contract, any Planning Permission or Necessary Consent as specified in the relevant paragraphs of the Core Specification.
- 35.5 Subject to clause 35.6, the Authority may (in its absolute discretion):
- 35.5.1 confirm in writing the Estimate in the form submitted by the Contractor;

- 35.5.2 suggest reasonable amendments to the Estimate (which shall be deemed to be incorporated into the Estimate) and either concurrently or subsequently confirm in writing the Estimate (in the form incorporating the Authority's reasonable amendments); or
 - 35.5.3 withdraw the Variation Notice.
- 35.6 If the Authority does not confirm in writing the Estimate within twenty (20) Business Days of the provision of the Estimate, the Variation Notice shall be deemed to have been withdrawn, provided that the Parties may agree to extend this period in the event that discussions are required in relation to the terms of the Estimate.
 - 35.7 If the Authority confirms in writing the Estimate, the Variation shall be effected as an agreed Variation to this Contract.
 - 35.8 The Contractor may request that the Authority issues a Variation Notice pursuant to this clause 35 and the Authority shall decide in its absolute discretion whether or not to issue such a Variation Notice.

PART 10 GENERAL

36 SUPERVENING EVENTS

36.1 *Not Used*

36.2 Force Majeure

- 36.2.1 No party shall be entitled to bring a claim for a breach of obligations under this Contract by the other party or incur any liability to the other party for any Direct Losses (including Performance Deductions) or Indirect Losses incurred by that other party to the extent that a Force Majeure Event occurs.
- 36.2.2 On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable and in any event within ten (10) Business Days, including details of the Force Majeure Event, its effect on the obligations of the affected party and action proposed to mitigate its effect.
- 36.2.3 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 36.2.4 If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequences remain such that the affected party is unable to comply with all or substantially all of its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days then, subject to clause 33 (Consequences of Termination or Expiry), either party may terminate this Contract by giving twenty (20) Business Days' written notice to the other party.
- 36.2.5 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Contract and, following such notification, this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 36.2.6 The Parties agree that a Brexit Trigger Event shall not constitute a Force Majeure Event.

36.3 Relief Events

- 36.3.1 If and to the extent that a Relief Event adversely affects the ability of the Contractor to perform any of its obligations under this Contract then the Contractor shall be entitled to apply from relief from any rights of the Authority arising under clause 30 (Termination for Contractor Default).
- 36.3.2 To obtain relief from termination, the Contractor must:
- 36.3.2.1 as soon as practicable, any in any event within ten (10) Business Days after it becomes aware that the Relief Event

has adversely affected or is likely to adversely affect the ability of the Contractor to perform its obligations, give to the Authority a notice of its claim for relief from termination, including full details of the Relief Event and its likely duration; and

36.3.2.2 demonstrate to the reasonable satisfaction of the Authority that:

36.3.2.2.1 the Contractor or relevant Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

36.3.2.2.2 the Relief Event directly caused the need for relief from termination;

36.3.2.2.3 the relief from termination claimed could not have been mitigated or overcome by the Contractor acting in accordance with Good Industry Practice; and

36.3.2.2.4 the Contractor is using reasonable endeavours to perform its obligations under this Contract.

36.3.3 In the event that the Contractor has complied with its obligations under clause 36.3.2, the Authority shall not be entitled to exercise its right terminate this Contract under clause 30 (Termination for Contractor Default) as a result of the failures and/or breaches caused by the relevant Relief Event.

36.3.4 *Not used*

37A RIGHT TO RENEGOTIATE OR TERMINATE FOR BREXIT

37A.1 Subject to clause 37A.3, within thirty (30) Business Days of the Authority confirming that it agrees a Brexit Trigger Event has occurred, the Contractor may:

37A.1.1 require (subject to clause 37A.4) the Parties to negotiate in good faith an amendment to this Contract to alleviate the Brexit Trigger Event; and

37A.1.2 if no such amendment to this Contract is agreed between the Parties (each using reasonable endeavours and acting in good faith) within a period of three (3) months from occurrence of the Brexit Trigger Event, terminate (subject to clause 37A.5) this Contract by giving the Authority not less than six (6) months' written notice and not more than twelve (12) months' written notice.

37A.2 The Contractor shall not be entitled to claim that a Brexit Trigger Event has occurred more than 12 months after the date on which Brexit occurs.

37A.3 The Contractor shall only be entitled to exercise its rights pursuant to clause 37A.1.1 and/or 37A.1.2 to the extent that the Contractor has been able to demonstrate to the Authority's reasonable satisfaction that a Brexit Trigger Event has occurred.

37A.4 Any amendment agreed between the Parties pursuant to clause 37A.1.1 shall leave the Contractor in no better position than as at the date of this Contract (including, but

not limited to, in relation to the margin, overhead and/or risk premia recoverable by the Contractor under this Contract).

- 37A.5 Neither Party shall incur any liability to the other Party in connection with any Direct Losses (including Performance Deductions) or Indirect Losses incurred by that other Party as a result of termination of this Contract pursuant to clause 37A.1.2.

37 COMMON LAW RIGHTS

Where this Contract provides specifically for any right of a party on breach of the other party's obligations under this Contract, the entitlement to exercise (and conferring of) that right will be to the exclusion of all other rights (other than available equitable remedies including injunction or their equivalent in any other jurisdiction) of the first mentioned party howsoever arising at common law, under statute or in equity in respect of the circumstances constituting such breach.

38 INTELLECTUAL PROPERTY

- 38.1 The Contractor shall not in connection with this Contract use, manufacture, supply or deliver any process, article, matter or thing which would be an infringement of Intellectual Property Rights.
- 38.2 The Contractor shall indemnify and keep indemnified the Authority against all Direct Losses and Indirect Losses incurred by it in respect of any breach of clause 38.1 by the Contractor and/or any related act or omission of any Contractor Related Party.
- 38.3 All Intellectual Property Rights created in connection with this Contract shall vest in and be the property of the Authority.
- 38.4 The Authority grants to the Contractor a royalty free non-exclusive non-transferable licence for the Contract Period to use any Intellectual Property Rights which vest in it under clause 38.3 solely for the purpose of providing the Services.

39 DATA PROTECTION

- 39.1 The Contractor shall and shall procure that any Contractor Related Parties only undertake processing of Personal Data reasonably required in connection with the provision of the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 39.2 In relation to all Personal Data, the Contractor shall and shall procure that any Contractor Related Parties comply with the provisions of the applicable Data Protection Legislation.
- 39.3 The Contractor shall indemnify and keep indemnified the Authority against all Direct Losses and Indirect Losses incurred by it in respect of any breach of this clause 39 by the Contractor and/or any related act or omission of any Contractor Related Party.

40 CONFIDENTIALITY

40.1 Duty of Confidentiality

- 40.1.1 Subject to clause 40.1.2, the Parties shall, and shall use reasonable endeavours to ensure that their employees, agents and sub-contractors shall, keep confidential all information and documents received by them in

connection with and all matters relating to the Services and/or this Contract.

40.1.2 Clause 40.1.1 shall not apply to:

- 40.1.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Contract for the performance of their obligations;
- 40.1.2.2 any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 40;
- 40.1.2.3 any disclosure which is required by Legislation or by an order of a court of competent jurisdiction, any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;
- 40.1.2.4 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 40.1.2.5 any disclosure by the Authority of information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed new contractor or its advisers should the Authority decide to re-tender the Services;
- 40.1.2.6 any registration or recording of the Planning Permissions or Necessary Consents and any property registration required;
- 40.1.2.7 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisors for the purpose of the examination and certification of the Authority's accounts or any examination or investigation; or
- 40.1.2.8 any disclosure of information which is required to ensure compliance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

40.1.3 Where disclosure is permitted under clause 40.1.2, the party providing the information shall:

- 40.1.3.1 in the circumstances described in clauses 40.1.2.1, 40.1.2.2, 40.1.2.4 and 40.1.2.5, procure that; or
- 40.1.3.2 in the circumstances described in clauses 40.1.2.3, 40.1.2.6, 40.1.2.7 and 40.1.2.8, use best endeavours to procure that,

the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

40.1.4 The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Authority in connection with this Contract otherwise than for the purposes of this Contract, except with the

written consent of the Authority.

- 40.1.5 On or before the Expiry Date or the Termination Date (as relevant), the Contractor shall ensure that all documents or computer records in its possession, custody or control which contain Personal Data, including any documents in the possession, custody or control of a Contractor Related Party are delivered up to the Authority or destroyed (as directed by the Authority).

40.2 Freedom of Information

- 40.2.1 Where the Authority receives a request for information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 in relation to information that the Contractor is holding on its behalf, the Authority shall transfer to the Contractor such request for information that it receives as soon as practicable and the Contractor shall:

40.2.1.1 provide the Authority with a copy of all such information in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may specify) of the Authority's request; and

40.2.1.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such information to enable the Authority to respond to the request for information within the time for compliance set out in the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

- 40.2.2 The Authority shall be responsible for determining at its absolute discretion:

40.2.2.1 whether information is exempt from disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004; and

40.2.2.2 whether the existence of information is to be confirmed or denied, and whether information is to be disclosed in response to a request for information,

and in no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Authority.

- 40.2.3 Without prejudice to the rest of this clause 40, the Authority may (at its absolute discretion) consult with the Contractor to ascertain whether the Contractor believes that information provided by or relating to the Contractor is exempt from disclosure under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004, provided that the Authority's decision as to whether or not an exemption does in fact apply is final for the purposes of this Contract.

41 PUBLICITY

The Contractor shall not and shall procure that the Contractor Related Parties shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Services

without the prior written approval of the Authority.

42 **NOT USED**

43 **ASSIGNMENT AND SUB-CONTRACTING**

43.1 The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than any public body (being a single entity) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority.

43.2 In the event that this Contract is assigned, novated or otherwise transferred to a public body having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority, the Contractor shall enter into and give effect to any such assignment or novation of this Contract and the Contractor hereby irrevocably and unconditionally appoints the Authority as the Contractor's lawful attorney (and to the complete exclusion of any rights that the Contractor may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this clause 43.2 as the attorney may think fit.

43.3 The Contractor shall not assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority.

44 **NO AGENCY**

44.1 Nothing in this Contract shall be construed as creating a partnership, a trust or a contract of employment between the Authority and the Contractor.

44.2 Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

45 **ENTIRE AGREEMENT**

Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

46 **REPRESENTATIVES**

46.1 The Authority's Representative and the Contractor's Representative shall act as the Parties' representatives in connection with the provision of the Services and generally in connection with this Contract.

46.2 The Contractor cannot replace its representative without the prior approval of the Authority.

46.3 The Authority is permitted to replace its representative in accordance with the Contract Management Plan.

46.4 Each party's representative shall have full authority to act on behalf of that party for

all purposes of this Contract.

47 **NOTICES**

- 47.1 All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post, email (confirmed by hard copy notice delivered by first class post) or by hand, or leaving the same at:

Contractor

[•]

Authority

Executive Director of Place

Dorset Council

South Walks House

South Walks Road

Dorchester

DT1 1UZ

- 47.2 Notices given by:

47.2.1 post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing;

47.2.2 hand shall be effective upon delivery; and

47.2.3 email shall be deemed to have been received by the other party:

47.2.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

47.2.3.2 by 11am on the next following Business Day, if sent after 4pm, on a Business Day but before 9am on that next following Business Day,

provided that the sending party can provide evidence of the time of transmission of the relevant email, the sending party has not received an automated confirmation that the email has not been received by the receiving party and a hard copy of the information in the relevant email is sent to the other party by first class post.

48 **SEVERABILITY**

If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

49 **NO WAIVER**

No term or provision of this Contract shall be considered as waived by any party to this Contract unless a waiver is given in writing by that party.

50 **THIRD PARTY RIGHTS**

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Contract, other than clause 18.2.15 (Exit Provisions).

51 **GOVERNING LAW AND JURISDICTION**

This Contract shall be governed by and construed in all respects in the accordance with the laws of England and Wales. Subject to clause 28 (Dispute Resolution), the courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Contract.

52 **COUNTERPARTS**

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

THIS CONTRACT has been signed on the date stated at the beginning of this Contract.

EXECUTED as a **Deed** by
affixing the **COMMON SEAL** of
DORSET COUNCIL
in the presence of:-

Authorised Signatory

EXECUTED as a **Deed** by
[●] acting by [●] (a Director)

In the presence of

Witness signature:

Witness name:

Witness address

SCHEDULE 1 DEFINITIONS AND INTERPRETATION

1 DEFINITIONS

- 1.1 In this Contract unless the context otherwise requires the following terms shall have the meanings given to them below:

| | |
|-----------------------------------|---|
| Additional Services | means any services which: <ul style="list-style-type: none">(a) are additional to the Services described in the Specifications as at the Commencement Date; and(b) the Authority requires the Contractor to provide following the [relevant] Services Commencement Date pursuant to a Variation which is agreed pursuant to the Variation Procedure. |
| Administrative Area | means the area defined within Schedule 2 (Wards of Dorset) of The Bournemouth, Dorset and Poole (Structural Changes) Order 2018. |
| Annual Services Payment | means an amount equal to the aggregate of the Monthly Services Payments payable in respect of the twelve (12) months comprising a Contract Year. |
| Annual Tonnage | means the annual tonnages set out in paragraph 2 of the Material Category Specifications. |
| Authority Default | means one or more the following events: (a) a failure by the Authority to make payment of any amount of money exceeding [<i>insert amount in words</i>] pounds sterling (£[●]) ³ (Indexed) that is due and payable by the Authority under this Contract within twenty (20) Business Days of service of a formal written demand by the Contractor, where that amount fell due and payable twenty (20) or more Business Days prior to the date of service of the written demand; (b) any breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of forty (40) Business Days; or (c) a breach by the Authority of clause 43.1 (Assignment and Sub-contracting). |
| Authority Related Party | means any officer, servant, employee or agent or the Authority or any contractor or sub-contractor of the Authority and their directors, officers, servants, employees or agents acting in that capacity, but excluding in any case the Contractor and any Contractor Related Parties. |
| Authority's Representative | means the Executive Director, or such other person as notified to the Contractor by the Authority in accordance with the scheme of delegation set out in the Contract |

³ **NOTE TO BIDDERS:** Figure will be inserted following DWP receipt of financial information from Contractor.

Management Plan.

| | |
|--------------------------------------|--|
| Best Value Duty | means the duty imposed on the Authority by section 3 of the Local Government Act 1999 in relation to, inter alia, any one or more of the Services. |
| Best Value Review | means the review which is required to be conducted by the Authority in accordance with section 5 of the Local Government Act 1999. |
| [Bond | means a Bond in favour of the Authority in the form set out in Schedule 6 (Form of Bond).] |
| Brexit | means the UK ceasing to be a member state of the European Union and ceasing to be subject to any transitional arrangements which substantively treat the UK as a member state of the European Union, regardless of which countries comprise the UK at such date. |
| Brexit Trigger Event | means a material adverse impact on a Party's ability to perform this Contract in accordance with its terms and the law occurring as a direct result of Brexit. |
| Bulky Waste | means any bulky waste which satisfies the requirements of the Bulky Waste Material Category Specification. [NOTE TO BIDDERS: This will only be included to the extent the Contractor has been awarded this Service] |
| Business Day | means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London. |
| CEDR | means the Centre for Effective Dispute Resolution. |
| Change in Law | means the coming into effect after the date of this Contract of: <ul style="list-style-type: none">(a) Legislation;(b) any binding guidance; or(c) any applicable judgment of a relevant court of law which changes a binding precedent. |
| Commencement Date | means the date of this Contract. |
| Compliance Assessment Reports | means any report issued pursuant to any monitoring carried out by the Environment Agency. |
| Component Payments | means the payments calculated pursuant to paragraphs 2.2 to 2.9 (inclusive) of Schedule 4 (Payment Mechanism) which are used in the calculation of the Monthly Services Payment. |
| Compost | means Organic Waste that has been processed such that it |

satisfies the requirements set out in the former N1192 definition.

| | |
|---|---|
| Composted | means the controlled biological decomposition and stabilisation of Organic Waste, under conditions that are permanently aerobic and that allow the development of thermophilic temperatures as a result of biologically produced heat, in order to produce Compost and Composting shall be construed accordingly. |
| Contingency Delivery Points | means the contingency Delivery Points for acceptance of Waste specified in Part B of Schedule 5 (Delivery Points), or any other delivery point specified by the Authority pursuant to paragraph 19.2 of the Core Specification. |
| Contingency Disposal Facilities | means the contingency Disposal Facilities specified by the Contractor and listed in Part F of Schedule 5 (Facilities). |
| Contingency Event | has the meaning given to it paragraph 19.1.2 of the Core Specification. |
| Contingency Facilities | means the Contingency Treatment Facilities and the Contingency Disposal Facilities, or such other location specified by the Authority pursuant to paragraph 19.3 of the Core Specification. |
| Contingency Treatment Facilities | means the contingency Treatment Facilities specified by the Contractor and listed in Part D of Schedule 5 (Facilities). |
| Contract | means this contract, including the Schedules, Appendices and Annexures. |
| Contract Management Plan | means the plan set out in Schedule 10 (Contract Management Plan). |
| Contract Month | means any calendar month falling in a Contract Year. |
| Contract Period | means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date. |
| Contract Waste | means those of the Material Categories allocated to the Contractor in Schedule 9 (Selected Services), excluding Objectionable Waste and Prohibited Waste, which arise in the Administrative Area and which are delivered by or on behalf of the Authority to a Delivery Point for acceptance, removal and disposal by the Contractor. |
| Contract Year | means a period of twelve (12) months commencing on the [first] Services Commencement Date. |
| Contractor Annual Cap | has the meaning given to it in clause 26.1.1 (Contractor Limitation of Liability). |

Contractor Assets

means any assets, plant or equipment provided or procured by the Contractor in order to enable the Contractor to deliver the Services.

Contractor Default

means any one or more of the following:

- (a) a court makes an order that the Contractor and/or the Surety be wound up or a resolution for a voluntary winding-up of the Contractor [and/or the Surety] is passed;
- (b) any receiver or manager in respect of the Contractor [and/or the Surety] is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- (c) any voluntary arrangement is made against the Contractor [and/or the Surety] for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006;
- (d) an administration order is made against the Contractor [and/or the Surety];
- (e) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services;
- (f) the occurrence of the circumstances described in clause 3.4 (Performance Security);
- (g) the occurrence of the circumstances described in clause 20.11 (Equal Opportunities, Human Rights Act 1998 and Modern Slavery Act 2015);
- (h) a breach by the Contractor of its obligations under clause 27 (Insurance);
- (i) a material breach by the Contractor of health and safety Legislation;
- (j) a material breach by the Contractor of any Planning Permission or Necessary Consent;
- (k) a breach by the Contractor of its obligations under clause 43.3 (Assignment and Sub-contracting);
- (l) the Contractor incurs relevant liabilities to the Authority in the Mobilisation Period or in any Contract Year in an amount equal to or greater than eighty percent (80%) of the value of the Contractor Annual Cap;
- (m) a Persistent Breach occurs;

- (n) the Contractor receives five (5) or more Performance Failure Notices during any Contract Year; or
- (o) [where the Contractor is a natural person, the Contractor dies or becomes incapable of performing his or her obligations under this Contract for any reason whatsoever other than the occurrence of a Force Majeure Event or Relief Event;] **[NOTE TO BIDDERS: This limb (and the associated provisions in clause 31.3) to be removed if the Contractor is a body corporate]**
- (p) the occurrence of any of the specified termination events set out in the relevant Material Category Specifications.

Contractor's Final Personnel List

means 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 Personnel List

means 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.

Contractor Related Party

means the Contractor's agents and sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Services and any person on or at any of the Facilities at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party).

Contractor's Representative

means a person appointed by the Contractor to represent the Contractor on all day to day activities relating to this Contract or, if no-one is appointed, the Contractor.

Core Specification

means the specification containing the Authority's general service requirements set out in Part 1 of Schedule 2 (Specifications).

Data Protection Legislation

means the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the General Data Protection Regulation 2016 (EU 2016/679), the Data Protection Act 2018 and all applicable laws and regulations that relate to the protection and processing of personal data and privacy, including together with any mandatory guidance and codes of practice issued by the United Kingdom's Information Commissioner, all as amended, replaced or superseded

from time to time.

Delivery Points

means the Primary Delivery Points and the Contingency Delivery Points and **Delivery Point** means any one of them, as the context may require.

Delivery Point Contingency Plan

has the meaning given to it in paragraph 19.1.1 of the Core Specification.

Demobilisation Payment

means the lesser of:

- (a) the Direct Losses reasonably and properly incurred by the Contractor as a direct result of being required to demobilise and vacate the Facilities due to termination of this Contract, but only to the extent that:
 - (i) such Direct Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
 - (ii) the Contractor has used all reasonable endeavours to mitigate such Direct Losses; or
- (b) fifty thousand pounds (£50,000).

Direct Losses

means all damages, losses, liabilities, claims, actions, costs, expenses (including legal and professional expenses), proceedings, demands and charges whether arising under statute, contract or common law, excluding Indirect Losses.

Disposal

means the permanent disposal of Contract Waste [by way of Landfill and **Dispose** shall be construed accordingly.

Disposal Facilities

means the Primary Disposal Facilities and/or Contingency Disposal Facilities, as the context may require.

Dispute Resolution Procedure

means the procedure for the resolution of disputes set out in clause 28 (Dispute Resolution).

Disposal Diversion

means the Treatment of Contract Waste (and any associated Treatment Residues) such that the Contract Waste (and any associated Treatment Residues) are Recycled, Reused or Recovered (and are therefore not subject to Disposal).

Emergency

means an event causing or, in the reasonable opinion of the Authority, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, which prevents the Services operating

under normal circumstances and which either:

- (a) is on a scale beyond the capacity of the emergency services; or
- (b) requires the mobilisation and organisation of the emergency services.

Employees means the Contractor's employees engaged in the provision of the Services.

Environmental Liability all costs, expenses, liabilities, claims, damages, penalties or fines arising from any criminal or civil liability under any Law or any obligation under any Law to take, or to pay for, remedial action or to prevent pollution of the environment.

Environmental Permit means a permit required and issued by the Environment Agency (or any successor or replacement body which assumes responsibility for issuing Environmental Permits) in respect of any Facility pursuant to the Environmental Permitting (England and Wales) Regulations 2010 or any predecessor or successor Legislation.

Envisaged Variation has the meaning given to it in Schedule 8 (Envisaged Variations).

Estimate means the estimate to be provided by the Contractor to the Authority in accordance with the Variation Procedure.

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

European Waste Catalogue Code means those codes set out in The List of Wastes (England) Regulations 2005.

an **Excusing Cause** shall occur where:

- (a) an Emergency which is not caused by any act or omission of the Contractor or any Contractor Related Party arises at any Facility which cannot be dealt with by the performance of the Services; or
- (b) there has been a material breach of this Contract by the Authority.

Expiry Date means 26 August 2027.

Facility means any Delivery Point, Disposal Facility or Treatment Facility, each as listed in the relevant part of Schedule 5 (Facilities), and **Facilities** shall be construed accordingly.

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| Final Warning Notice | has the meaning given to it in clause 32.2 (Persistent Breach). |
| Force Majeure Event | <p>means the occurrence after the date of this Contract of:</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of the action of the Contractor or any Contractor Related Party; or (c) pressure waves caused by devices travelling at supersonic speeds, which directly causes either party to be unable to comply with all or substantially all of its obligations under this Contract, <p>excluding any Brexit Trigger Event.</p> |
| Foreseeable Change in Law | <p>means:</p> <ul style="list-style-type: none"> (a) a Change in Law which on the date of this Contract has been published: <ul style="list-style-type: none"> (i) in a draft bill as part of a government departmental consultation paper; (ii) in a bill; (iii) in a draft statutory instrument; (iv) as a proposal in the Official Journal of the European Union; and/or (b) any of the following Changes in Law, including but not limited to: <ul style="list-style-type: none"> (i) the introduction by any customs authority or non-UK government regulatory body of any tax or duty in respect of the export of Waste from the UK. |
| Food Waste | <p>means food waste which satisfies the requirements of the Food Waste Material Category Specification. [NOTE TO BIDDERS: This will only be included to the extent the Contractor has been awarded this Service]</p> |
| General Change in Law | means any Change in Law (including a Foreseeable Change in Law) other than a Services Specific Change in Law. |
| Good Industry Practice | means that 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 contractor engaged in the same type of |

undertaking as that of the Contractor under the same or similar circumstances.

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| Green Waste | means vegetation and other garden waste which satisfies the requirements of the Green Waste Material Category Specification. [NOTE TO BIDDERS: This will only be included to the extent the Contractor has been awarded this Service] |
| Household Recycling Centre or HRC | means a waste management facility provided to fulfil the statutory duty of the Authority as waste disposal authority under section 51(1)(b) of the Environmental Protection Act 1990 at which service users may deposit Contract Waste. |
| Indirect Losses | means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential or indirect loss of any nature, excluding the Lost Profit Payment (which shall constitute Direct Losses for the purposes of this Contract). |
| Insured Liability | has the meaning given to it in clause 26.2.1.1 (Insured Liabilities). |
| Intellectual Property Rights | means any and all patents, trademarks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto. |
| Interest Rate | means the rate of two per cent (2%) above the base rate of the Bank of England current at the day for payment of the relevant sum. |
| Key Performance Indicators or KPIs | has the meaning given to it in the Performance Framework. |
| Landfill | has the meaning given to it in section 65(1) of the Finance Act 1996. |
| Legislation | means in relation to the United Kingdom: <ul style="list-style-type: none">(a) any Act of Parliament;(b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;(c) any exercise of the Royal Prerogative; and(d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972. |

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| Lost Profit Payment | means an amount which is the lower of £[●] or [●] per cent ([●]%) of the aggregate forecast Annual Services Payment in respect of the relevant Contract Year in which termination occurs (assuming for the purposes of calculation that termination did not occur). [NOTE TO BIDDERS: This will be agreed following submission of financial information by the Contractor] |
| Maintenance Plan | has the meaning given to it in paragraph 20.1 of the Core Specification. |
| Material Category | means the categories of Contract Waste set out in Schedule 9 (Selected Services) and Material Categories shall be construed accordingly. |
| Material Category Specifications | means each of the specifications which applies solely to a Material Category set out in Part 2 of Schedule 2 (Specifications) and Material Category Specification means any one of them. |
| MHSAWR | means the Management of Health and Safety at Work Regulations 1999. |
| Mobilisation Period | means the period between the Commencement Date and the date immediately preceding [the] [each] Services Commencement Date. |
| Monthly Services Payment | is the sum payable to the Contractor in accordance with clause 21 (Monthly Services Payment) and calculated in accordance with paragraph 2.1 of Schedule 4 (Payment Mechanism). |
| MSA Offence | has the meaning given to it in clause 20.7.1 (Equal Opportunities, Human Rights Act 1998 and Modern Slavery Act 2015). |
| Necessary Consents | means all rights, agreements, approvals, consents, permits, facilities, permissions and certificates, including for the avoidance of doubt all Environmental Permits, lawfully and necessarily required from any competent regulatory or licensing authority or any other persons whatsoever in connection with the provision of the Services. |
| New Contractor | means the person or persons (which may include the Authority) which take over provision of all or part of the Services immediately after the Contractor. |
| Objectionable Waste | has the meaning given to it in clause 5.4.2.2 (Acceptance, rejection and processing of Waste). |
| Opening Hours | means, in respect of each Facility, the Opening Hours designated in the Specifications. |

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| [Parent Company Guarantee | means a parent company guarantee in favour of the Authority in the form set out in Schedule 6 (Form of Parent Company Guarantee).] |
| Performance Framework | means the performance framework set out in Appendix 1 to Schedule 4 (Payment Mechanism). |
| Performance Deductions | has the meaning given to it in the Performance Framework. |
| Performance Points | has the meaning given to it in the Performance Framework. |
| Persistent Breach | means a breach for which a Final Warning Notice (referred to in clause 32.2 (Persistent Breach)) has been issued, which has continued or recurs for more than twenty (20) days or recurs two (2) or more times within six (6) Months after the date on which such Final Warning Notice is served on the Contractor. |
| Personal Data | shall have the meaning given to it in the applicable Data Protection Legislation. |
| Personnel | means the Employees and any other individuals engaged by the Contractor or any Contractor Related Party (whether on an agency or consultancy basis or otherwise) to perform any element of the Services from time to time. |
| Personnel Information | <p>means, in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Authority may reasonably request, but including in an anonymised format:</p> <ul style="list-style-type: none"> (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 customer 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).

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| [Phase 1 Services | means [●] [NOTE TO BIDDERS: If the Contractor is delivering multiple Lots with different Services Commencement Dates, the Phase 1 Services will be the Services commencing on the first Services Commencement Date]. |
| [Phase 1 Services Commencement Date | means 27 August 2020. |
| [Phase 2 Services | means [●] [NOTE TO BIDDERS: If the Contractor is delivering multiple Lots with different Services Commencement Dates, the Phase 2 Services will be the Services commencing on the second Services Commencement Date]. |
| [Phase 2 Services Commencement Date | means 01 September 2021. |
| Planning Authority | means any local or national Planning authority. |
| Planning Permission | means all planning permissions in respect of the Facilities which are in place at the [relevant] Services Commencement Date or which may be granted in respect of any new facility pursuant to the Variation Procedure during the Contract Period. |
| Primary Delivery Points | means the primary delivery points for acceptance of Waste specified in Part A of Schedule 5 (Delivery Points). |
| Primary Disposal Facilities | means the primary Disposal Facilities specified by the Contractor and listed in Part E of Schedule 5 (Facilities). |
| Primary Treatment Facilities | means the primary Treatment Facilities specified by the Contractor and listed in Part C of Schedule 5 (Facilities). |
| Prohibited Act | means: <ul style="list-style-type: none">(a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as |

an inducement or reward:

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- (b) entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority; or
- (c) committing any offence:
 - (i) under the Bribery Act 2010 or the Prevention of Corruption Acts 1889 - 1916;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority.

Prohibited Waste

means any Waste delivered to a Delivery Point which the Contractor is unable to accept for Treatment or Disposal pursuant to the terms of the Environmental Permit and/or or Planning Permission which applies to the relevant Delivery Point, provided that Prohibited Waste shall not include anything listed as being "Acceptable" in the Material Category Specifications.

Recovery

means anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy fuels (fuels, heat and power) and materials from waste, and **Recovered** shall be construed accordingly.

Recycling

means the reprocessing of material separated from the waste stream to produce a usable and marketable product, and **Recycling** shall be construed accordingly.

Relevant Transfer

has the meaning given to it in TUPE.

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| Relief Event | <p>means:</p> <ul style="list-style-type: none"> (a) explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion; (b) failure by any statutory undertaker, utility company, local authority or other like body (but excluding for the avoidance of doubt the Authority as purchaser) to carry out works or provide services; (c) failure or shortage of power, fuel or transport; (d) blockade or embargo which does not constitute a Force Majeure Event; (e) official or unofficial strike, lockout, go-slow or other dispute generally affecting the haulage, construction or waste management industries or a significant sector of them; or (f) the delivery to any Facility as part of a delivery of Waste of munitions or human remains which directly results in a closure of the relevant Facility, provided that such Waste has been accepted and processed by the Contractor in accordance with this Contract, unless any of the events listed above arises (whether directly or indirect) as a result of any wilful default, wilful act or negligence of the Contractor or any Contractor Related Party. |
| Residual Waste | <p>means any residual which satisfies the requirements of the Residual Waste Material Category Specification. [NOTE TO BIDDERS: This will only be included to the extent the Contractor has been awarded this Service]</p> |
| Reused | <p>means that products or components within Contract Waste have been used again for the same purpose for which they were conceived.</p> |
| RIDDOR | <p>means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.</p> |
| Schedule of Rates | <p>means the schedule of rates set out in Appendix 2 to Schedule 4 (Payment Mechanism).</p> |
| SDP or Service Delivery Plan | <p>means the Contractor's method statement contained in Schedule 3 (Service Delivery Plan).</p> |
| Service Report | <p>has the meaning given to it in clause 15 (Service Report).</p> |

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| Service Scope Reduction | has the meaning given to it in clause 5.6.1.1 (Service Scope Reductions). |
| Services | means, in respect of the Material Categories allocated to the Contractor in Schedule 9 (Selected Services) only, the acceptance of Contract Waste at the Delivery Points, the identification and segregation of Objectionable Waste and/or Prohibited Waste at the Delivery Points (and performance of ancillary services), the transportation of Contract Waste from Delivery Points to Treatment Facilities or Disposal Facilities, the Treatment and/or Disposal of Contract Waste at Treatment Facilities or Disposal Facilities and the performance of other services as may be required to satisfy the Specifications and the SDP, including the any Additional Services introduced pursuant to a Variation in respect of which the Authority has approved the associated Estimate in accordance with the Variation Procedure. |
| Services Commencement Date | <p>means</p> <p>[Option 1 – Where the Contractor is <i>not</i> undertaking Services with different Services Commencement Dates]⁴ 00:00:00 on [●] 20[●] or earlier as agreed in writing between the Parties;</p> <p>OR</p> <p>[Option 2 – Where the Contractor <i>is</i> undertaking Services with two different Services Commencement Dates]⁵ means either the Phase 1 Services Commencement Date or the Phase 2 Services Commencement Date, as the context may require.</p> |
| Services Period | means[, in respect of each Service,] the period from and including the [relevant] Services Commencement Date to the Expiry Date, or if earlier, the Termination Date. |
| Services Specific Change in Law | <p>means any Change in Law which:</p> <ul style="list-style-type: none"> (a) specifically refers to the provision of services the same as or similar to the Services; (b) specifically refers to the provision of waste management services by local authorities; and/or (c) is not a Foreseeable Change in Law. |
| Service Transfer | has the meaning given to it in clause 18.2 (Exit Provisions). |
| Service Transfer Date | means the date on which the Services (or any part of the Services) for whatever reason transfer from the Contractor |

⁴ **NOTE TO BIDDERS:** This will apply where the Contractor is only awarded the Residual Waste Service or is not awarded the Residual Waste Service.

⁵ **NOTE TO BIDDERS:** This will only apply where the Contractor is awarded the Residual Waste Service and another Service.

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| | or any Contractor Related Party to the Authority or any New Contractor. |
| Site | means any site upon which a Facility is situated. |
| Specifications | means the Core Specification and the Material Category Specifications contained in Schedule 2 (Specification). |
| Stop Notice | means a notice issued by the Authority in accordance with clause 10 (Emergencies). |
| Street Sweepings | means street sweepings waste which satisfies the requirements of the Street Sweepings Material Category Specification. <i>[NOTE TO BIDDERS: This will only be included to the extent the Contractor has been awarded this Service]</i> |
| Sub-Contractor | means any sub-contractor engaged by the Contractor in connection with the provision of the Services. |
| [Succession Plan | means the plan agreed by the Authority and the Contractor prior to the date of this Contract which describes the steps to be taken in order to ensure the continued performance of the Contractor's obligations under this Contract in the event that a Contractor Default of the type described in limb (o) of that definition occurs.] |
| [Surety | means [●] or such other bank or other financial institution as may be approved by the Authority.] |
| TD Facilities Contingency Plan | has the meaning given to it in paragraph 19.3.1 of the Core Specification. |
| Technical Requirements | means the Core Specification, the relevant Material Category Specification(s), the Waste Acceptance Protocol and the SDP. |
| Termination Date | means the date of early termination of this Contract in accordance with clauses 30 (Termination for Contractor Default) or 31 (Termination for Authority Default). |
| Termination Payment (AD) | means an amount equal to the aggregate of: <ul style="list-style-type: none"> (a) the Demobilisation Payment; and (b) the Lost Profit Payment. |
| Termination Payment (FM) | means an amount equal to the Demobilisation Payment. |
| Third Party Waste | means any Waste which may be accepted, handled, processed, treated or disposed of by the Contractor but which has not been supplied to the Contractor pursuant to the operation of this Contract. |

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| Threshold Percentage | means, for the purposes of assessing whether a load of Waste constitutes Objectionable Waste, the maximum percentage (by weight) of that load which is not the expected Material Category for that load, as specified in the relevant Material Category Specification. |
| Transferring Employee | means a person whose employment transfers to the Authority or a New Contractor under the provisions of TUPE in the event of a Service Transfer. |
| Treatment | <p>means a process whereby waste is treated by a physical, thermal, chemical or biological process (including sorting), provided that;</p> <ul style="list-style-type: none"> (a) the aim of that process is to reduce the waste's volume, reduce its hazardous nature, facilitate its handling or enhance its recovery; and (b) the result of that process is that the characteristics of the relevant Material Category are intentionally permanently changed, <p>and Treat shall be construed accordingly, including but not limited to Composting, Recovery and/or Recycling.</p> |
| Treatment Facilities | means the Primary Treatment Facilities and/or Contingency Treatment Facilities, as the context may require. |
| Treatment Residues | means the end product of any Treatment process which, to the extent is no longer Waste, is used as a product, or, to the extent such Treatment Residue remains to be Waste, is either Disposed of or submitted for further Treatment. |
| TUPE | means the Transfer of Undertakings (Protection of Employment) Regulations 2006. |
| Turnaround Times | means those time periods referred to in KPI 4 set out in Annex 1 (Key Performance Indicators) to the Performance Framework. |
| Variation | means any variation to this Contract or the arrangements contemplated by it (including the Services) which may be agreed and implemented in accordance with the Variation Procedure. |
| Variation Notice | means a notice served by the Authority on the Contractor requesting a Variation and setting out the requested Variation in sufficient detail to enable the Contractor to provide an Estimate in accordance with the Variation Procedure. |
| Variation Procedure | means the procedure set out in clause 35 (Variation Procedure). |

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| VAT | means value added tax. |
| Waste | means Waste as defined in Section 75 of the Environmental Protection Act 1990. |
| Waste Acceptance Protocol | means the waste acceptance protocol set out in Schedule 7. |
| Waste Data Flow | means the web based system for municipal waste data reporting by UK local authorities to government (http://www.wastedataflow.org/). |
| Wood Waste | means wood waste which satisfies the requirements of the Wood Waste Material Category Specification. [NOTE TO BIDDERS: This will only be included to the extent the Contractor has been awarded this Service] |

2 INTERPRETATION

2.1 In this Contract except where the context otherwise requires:

- 2.1.1 the masculine includes the feminine and vice-versa;
- 2.1.2 the singular includes the plural and vice versa;
- 2.1.3 a reference in this Contract to any clause, sub-clause, Schedule, Appendix or Annexure is, except where expressly stated to the contrary, a reference to such clause, sub-clause, schedule, appendix or annexure of this Contract;
- 2.1.4 any reference in this Contract to any other document shall include any permitted variation, amendment or supplement to such document;
- 2.1.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 2.1.6 a reference to a person includes firms, partnerships, and corporations and their successors and permitted assignees or transferees;
- 2.1.7 headings are for convenience of reference only; and
- 2.1.8 words preceding **include**, **includes**, **including** and **included** shall be construed without limitation by the words which follow those words.

3.1 In the event of any inconsistency between the provisions of the body of this Contract and the Schedules, or between any of the Schedules, the conflict shall be resolved according to the following descending order of priority:

- 3.1.1 the main body of this Contract;
- 3.1.2 Schedule 2 (Specifications);
- 3.1.3 Schedule 4 (Payment Mechanism); and

3.1.4 the remaining Schedules.

SCHEDULE 2
SPECIFICATIONS

PART 1: CORE SPECIFICATION

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PART 1 – CORE SPECIFICATION

1 CONTRACT SCOPE

This Core Specification is applicable to all Services.

2 SCOPE OF SERVICE

2.1 The Contractor will undertake the Services in respect of the Material Categories allocated to the Contractor in Schedule 9 (Selected Services) and manage their mutual integration and the integration of each of them with other Services and other Waste management and/or disposal services procured or performed by the Authority.

2.2 The Contractor shall:

2.2.1 provide, manage, develop and operate the Facilities for the management of Contract Waste in accordance with the Technical Requirements;

2.2.2 accept, in the manner prescribed in this Core Specification, the Waste Acceptance Protocol, the relevant Material Category Specification(s) and the SDP, all Contract Waste which is delivered to a Delivery Point and which satisfies the Technical Requirements;

2.2.3 identify and segregate, in the manner prescribed in this Core Specification, the Waste Acceptance Protocol and the SDP, any Objectionable Waste and/or Prohibited Waste which is delivered to a Delivery Point;

2.2.4 manage all waste in accordance with the waste hierarchy and principals of the circular economy;

2.2.5 achieve the levels of Disposal Diversion required by the relevant Material Category Specification(s) to ensure the waste is Treated;

2.2.6 perform any ancillary services in respect of Objectionable Waste and/or Prohibited Waste which are set out in this Core Specification, the SDP and/or the Waste Acceptance Protocol;

3.1.5 procure the transportation of all Contract Waste which is accepted by the Contractor at a Delivery Point to a Treatment Facility or Disposal Facility; and

2.2.7 transport and either Treat or Dispose of any Treatment Residues in accordance with this Core Specification and the SDP.

3 GENERAL OBJECTIVES

3.1 In performing its obligations under the Contract, the Contractor shall use all reasonable endeavours to:

3.1.1 perform the Services at the least cost to the Authority and the environment;

3.1.2 assist the Authority to achieve its strategic Waste management targets and objectives, implementation of the Authority's Joint Municipal Waste Management Strategy (**JMWMS**) for Dorset⁶, including achieving or

⁶ www.dorsetcouncil.gov.uk/wastestrategyreview

exceeding the KPIs;

- 3.1.3 conserve energy and raw materials and promote increased public awareness, education and involvement in the management of Waste;
 - 3.1.4 focus on positive action to protect and improve the environment and prevent pollution, applying the principles of the circular economy through managing Waste as a resource, using appropriate methods and technologies, and adopting measures for the efficient use of energy; and
 - 3.1.5 assist the Authority to reduce the costs of procuring the Services throughout the Contract Period.
- 3.2 The Contractor shall deliver a flexible Waste management system capable of responding to usage, technical, regulatory and economic developments within the Waste management industry during the Contract Period.
- 3.3 The Contractor shall comply with all reasonable verbal or written instructions issued by the Authority's Representative within the timescale notified at the time the instructions are issued. If the Contractor considers that an instruction would (if implemented) constitute a Variation, the Contractor shall, within five (5) Business Days, notify the Authority. If the Authority agrees with the Contractor's assessment of the relevant instruction, the instruction shall be implemented in accordance with the Variation Procedure. If the Authority does not agree with the Contractor's assessment of the relevant instruction, the matter shall be referred to the Dispute Resolution Procedure for determination.

4 MEASUREMENT

- 4.1 Contract Waste which is reported as being Reused, Recycled, Composted, Recovered or Diverted from Landfill shall not subsequently be Landfilled or disposed of by or on behalf of the Contractor by any means other than the means by which it has been reported to have been disposed.
- 4.2 The Contractor shall submit as part of the Service Report an end destination report. The Authority shall be entitled to carry out annual duty of care checks.
- 4.3 The Treatment and Disposal of Contract Waste and the nature of the relevant end destinations shall be calculated and reported in accordance with the Environment Agency's prescribed method(s) or in accordance with any other means of measurement as agreed in writing between the Parties from time to time.

5 TYPES OF WASTE

5.1 Contract Waste

The Contractor shall accept all Contract Waste in the manner prescribed in the Technical Requirements.

5.2 Prohibited Waste and Objectionable Waste

Prohibited Waste and Objectionable Waste shall be handled in accordance with the Waste Acceptance Protocol.

5.3 Priority of Contract Waste over Third Party Waste

Where practicable, the processing of Contract Waste shall take priority over the processing of Third Party Waste at the Site(s). In the event the quantity of Contract Waste increases in accordance with the terms of the Contract such that Contractor's ability to perform its Third Party Waste contracts is adversely affected, the Contractor acknowledges and agrees that it shall not be entitled to bring a claim against the Authority for any losses it may suffer under or in connection with such Third Party Waste contracts.

5.4 Composition of Waste

5.4.1 The Authority gives no guarantee or undertaking as to the composition of Contract Waste. The Contractor shall accept and make provision for potential changes in quantity and composition of Contract Waste over the Contract Period.

5.4.2 The Contractor shall be responsible for making all necessary assessments of possible future trends in Contract Waste composition and shall make allowances for these factors in the tendered solution. All data gathered by the Contractor on Contract Waste composition shall be made available to the Authority within a reasonable period following receipt of a request from the Authority.

6 QUANTITY OF WASTE

The Contractor shall be required to accept, manage, Treat and/or Dispose of the tonnage of each Material Category which is allocated to the Contractor pursuant to this Contract (as specified in Schedule 9 (Selected Services)).

7 KEY PERFORMANCE INDICATORS (KPIs)

7.1 The Contractor's performance of the Services will be assessed against the KPIs.

7.2 Subject to paragraph 7.3 below, the KPIs shall be reviewed annually by the Authority and the Contractor, who shall each use reasonable endeavours to agree any additional or revised KPIs and monitoring methods prior to each 31 March during the Contract Period which occurs following the Service Commencement Date.

7.3 Changes to the KPIs pursuant to paragraph 7.2 above:

7.3.1 shall be kept to a minimum in order to ensure continuity of data collection and to establish performance trends; and

7.3.2 must, when considered globally, place the Contractor in a no better and no worse position than it would have been in had the relevant KPIs not been changed.

7.4 In the event that a change to a KPI has the effect of changing the Services, this shall give rise to a Variation which shall be agreed and implemented in accordance with Clause 35 (Variation Procedure) of this Contract.

8 SERVICE DELIVERY PLAN

8.1 Subject to paragraph 5.2, the Contractor shall comply with the SDP included at

Schedule 3 (Service Delivery Plan) of this Contract.

- 8.2 The SDP shall at all times reflect and give effect to the requirements of the KPIs, this Core Specification and the Material Category Specifications.
- 8.3 To the extent any changes to the SDP are proposed by either Party and these changes are agreed between the Parties to be minor in nature and therefore outside of the Variation Procedure, such changes to the SDP shall be agreed in writing between the Parties.

9 MANAGEMENT STAFF

The Contractor shall identify and name at least one senior member of staff to act as a direct contact point 24 hours a day with the Authority, to be available for regular meetings upon reasonable notice with the Authority or other competent body, as and when required.

10 ENVIRONMENTAL & QUALITY MANAGEMENT SYSTEMS MANAGEMENT

- 10.1 The quality standard accreditations held by the Contractor as at the Commencement Date are set out in the SDP.
- 10.2 Save to the extent the Authority agrees this is not required (in the Authority's absolute discretion) the Contractor shall be required to:
 - 10.2.1 deliver the Services in accordance with the requirements of ISO 9001 (or such equivalent standard as agreed with the Authority) during the Services Period; and
 - 10.2.2 obtain accreditation of its organisation to the standard of ISO14001 (or such equivalent standard as agreed with the Authority) no later than the end of the first Contract Year. Once obtained, this accreditation must be maintained by the Contractor during the remainder of the Contract Period.

11 MANAGEMENT INFORMATION SYSTEMS

- 11.1 The Contractor shall install, implement and operate such management information system(s) and equipment as may be required throughout the Contract Period to ensure that the Authority is charged for and pays only such amounts as it is obliged to under the terms of this Contract. The Contractor's arrangements shall provide an auditable trail for all Contract Waste through each stage of the process, from receipt to Treatment and/or Disposal.
- 11.2 The management information system(s) shall incorporate all performance data generated or received by the Contractor and a register of customer complaints and queries received by the Contractor.
- 11.3 The Contractor shall provide all electronic data to the Authority in csv format, MS Word, Excel or pdf format, as specified by the Authority from time to time. The Contractor shall comply with any reasonable requests by the Authority for such data to be provided in other formats.
- 11.4 All instructions issued by the Authority's Representative shall be issued in accordance with Clause 47 (Notices), or via such other system as agreed between the Parties from time to time.

12 CONTRACT MONITORING

- 12.1 The Authority shall, on reasonable notice, have the right to undertake spot checks of the Contractor's systems and working methods and its Site(s) to ensure compliance with the Contract and, in particular, environmental and health & safety Legislation. These spot checks may be undertaken at any time during the Contract Period.
- 12.2 Any non-compliance and/or failures by the Contractor shall be recorded and measured against the KPIs set out in Annex 1 of the Performance Framework and any related Performance Points and Performance Deductions shall be calculated and applied, where applicable, in accordance with Schedule 4 (Payment Mechanism).
- 12.3 The Contractor shall deliver to the Authority, within a reasonable period following receipt of a request from the Authority, copies of the Necessary Consents and Planning Permission(s) for the Site(s) utilised in performance of the Services.
- 12.4 Each Party shall supply to the other Party, on reasonable request, copies of the waste carrier licences for all parties involved in the transportation of any Contract Waste, Objectionable Waste or Prohibited Waste to or from the Sites pursuant to the Contract.
- 12.5 The Contractor shall use its reasonable endeavours to reduce the Operational Risk Appraisal (**Opra**) rating for the Site(s) and Facilities. The Authority may, from time to time, request sight of and/or a copy of the Compliance Assessment Reports produced by the Environment Agency in respect of the Site(s) and Facilities and the Contractor shall promptly comply with any such request.
- 12.6 Without prejudice to Clause 17.2 (Planning Permissions and Necessary Consents), the Contractor shall inform the Authority, by telephone and email within 24 hours, of any incidents or compliance issues raised by the Environment Agency, Planning Authority or other appropriate bodies which may affect the environmental, health and safety or any other operational issue relating to this Contract and the Authority shall be copied into any correspondence in this connection.

13 PERFORMANCE MONITORING

- 13.1 The Contractor shall provide the Service Report to the Authority, in accordance with Clause 15.1 (Service Report), for the purposes of assessing:
 - 13.1.1 the payments due under this Contract;
 - 13.1.2 the Contractor's compliance with the terms of this Contract; and
 - 13.1.3 the Contractor's performance against the KPIs.
- 13.2 The Contractor shall, at all times, maintain and make available to the Authority sufficient data to allow the Authority to comply with its Waste Data Flow reporting obligations and its duty of care pursuant to section 34 of the Environmental Protection Act 1990 (as amended). This will include all data relating to Contract Waste, Objectionable Waste and/or Prohibited Waste as well as the Treatment Residues and the end destination of each Material Category.
- 13.3 The Service Report shall clearly set out:
 - 13.3.1 the tonnage of Contract Waste per Material Category:

- 13.3.1.1 diverted from Landfill;
- 13.3.1.2 Recovered;
- 13.3.1.3 Reused;
- 13.3.1.4 Recycled;
- 13.3.1.5 Composted; and
- 13.3.1.6 Landfilled;
- 13.3.2 a summary of all weighbridge data recorded in the relevant Contract Month, to include:
 - 13.3.2.1 unique weigh ticket serial number;
 - 13.3.2.2 operator name;
 - 13.3.2.3 name of Site/Facility;
 - 13.3.2.4 type of waste, including European Waste Catalogue Code;
 - 13.3.2.5 in the case of Delivery Points, the Authority collection round number/origin of the waste;
 - 13.3.2.6 delivery vehicle registration number;
 - 13.3.2.7 date of delivery;
 - 13.3.2.8 time of entry and exit;
 - 13.3.2.9 gross, tare and net vehicle weight;
 - 13.3.2.10 unit price;
 - 13.3.2.11 cost per load; and
 - 13.3.2.12 Landfill Tax, where applicable;
- 13.3.3 the Contractor's performance against the KPIs in the relevant Contract Month;
- 13.3.4 all information reasonably required by the Authority to enable it to verify payments to be made to the Contractor and any Performance Deductions or other claims which the Authority is entitled to make under the terms of this Contract;
- 13.3.5 a summary and a tonnage and a percentage breakdown of the European Waste Catalogue Codes of all Contract Waste handled by the Contractor;
- 13.3.6 all Performance Deductions and Performance Points, together with confirmation of:
 - 13.3.6.1 the time and date the Performance Failure first came to the attention of the Contractor or the Authority;

- 13.3.6.2 the time and date at which action was initiated to effect rectification of the Performance Failure;
 - 13.3.6.3 the time and date at which rectification of the Performance Failure was effected.
- 13.3.7 for each Performance Failure, an explanation as to why the KPI was not met, what efforts were taken to rectify it and the outcome of those efforts;
- 13.3.8 any changes to information contained in preceding Service Reports; and
- 13.3.9 on a quarterly basis, the percentage of Waste rejected from any Treatment system, and where practicable, the percentage attributable to the Authority and any other information specifically requested by the Authority in relation to the Contract (acting reasonably).
- 13.4 The Contractor shall, if requested by the Authority, within ten (10) Business Days of the end of the relevant Contract Month, provide to the Authority copies of the Contractor's returns to the Environment Agency and reports to HMRC in respect of Landfill Tax and other environmental taxes which are submitted in the relevant Contract Month.
- 13.5 The Contractor shall ensure that the Service Reports are provided in a format reasonably required by the Authority, such as an electronic copy in the format of a spreadsheet, database or as agreed with the Authority in accordance with Good Industry Practice, which is capable of being interrogated (but not altered) by the Authority.
- 13.6 The records kept by the Contractor pursuant to this paragraph 13 may be used to comply with the provisions of any Environmental Permit, waste management licence or exemption, and the Contractor shall keep any additional records which might reasonably be required for this purpose, or which might be requested by the Environment Agency or HMRC.
- 13.7 The Contractor shall implement and comply with a procedure for the back up and off site storage of copies of its performance monitoring records and the data required to produce such records. Such procedure shall be set out in the SDP.
- 13.8 Without prejudice to Clause 14 (Records and Audit), the Authority has the right to observe, inspect and satisfy itself as to the adequacy and accuracy of the Contractor's performance monitoring and all other procedures carried out or undertaken by the Contractor in respect of:
 - 13.8.1 reports generated by the Contractor's management information systems or building management systems;
 - 13.8.2 work plans;
 - 13.8.3 completion of programmed work;
 - 13.8.4 adherence to Rectification Periods;
 - 13.8.5 complaints, comments and compliments;
 - 13.8.6 back-up and off-site storage of data; and

13.8.7 compliance with the KPIs.

14 HEALTH AND SAFETY

14.1 General

- 14.1.1 The Contractor shall ensure that the Services are provided in accordance with the requirements of the Health and Safety at Work Act 1974, RIDDOR and all other Legislation regarding health and safety of members of the public, Authority Related Parties and the Contractor's staff.
- 14.1.2 The Contractor shall provide the Authority with a copy of its health and safety policy statement within the SDP which shall meet the requirements of the Health and Safety at Work Act 1974.
- 14.1.3 The Contractor shall carry out detailed health and safety risk assessments for all working practices on the Site(s) used for the purposes of this Contract. These risk assessments shall be such that safe working practices are adopted, monitored and controlled by the Contractor at all times and will be reviewed at an appropriate frequency dependant on the nature and significance of any risks identified. Copies of all subsisting health and safety risk assessments shall be provided by the Contractor within ten (10) Business Days following the Commencement Date. Copies of any reviews and/or updates of such health and safety risk assessments shall be provided to the Authority throughout the Contract Period as soon as reasonably practicable following their production.
- 14.1.4 The Contractor shall provide and maintain written records of all accidents, incidents and near misses that occur at the Site(s). Any such accidents, incidents or near misses involving members of the public or any Authority Related Party shall be reported to the Authority within 24 hours by email and telephone. An incident report and the result of any investigation undertaken by the Contractor shall be provided to the Authority within ten (10) Business Days of the incident initially being reported to the Authority.
- 14.1.5 The Contractor shall be required to supervise the operation of the Site(s) throughout the opening hours and ensure that there are, at all times when Waste is being received, a sufficient number of staff engaged in the provision of the Services who have the necessary skill and competence in accordance with MHSAWR.
- 14.1.6 The Contractor's staff assigned to the Services shall be suitably qualified to drive and operate any vehicle and/or machinery which they are using to perform the Services. The Contractor's staff shall be of good standing and treat site staff and visitors with tact and courtesy. The Authority will not tolerate the use of abusive/bad language or intolerant behaviour to any staff or visitors to the Site(s). The Contractor shall not permit children (with the exception of organised visits) or domestic animals on to any Site or in any vehicles/machines used in the performance of the Services.
- 14.1.7 When requested, the Contractor shall provide a relevant induction and training to any Authority Representative or Authority Related Party assigned to delivering Waste to the Site(s). As a minimum, this induction and training must include:

- 14.1.7.1 provision of a copy of the Site rules;
 - 14.1.7.2 reporting and recording procedures on Site;
 - 14.1.7.3 identification of hazards on Site;
 - 14.1.7.4 traffic flow arrangements and speed restrictions;
 - 14.1.7.5 access and egress arrangements;
 - 14.1.7.6 correct use of facilities;
 - 14.1.7.7 specific safe unloading practices and considerations;
 - 14.1.7.8 accident/incident reporting procedures;
 - 14.1.7.9 breakdown procedures; and
 - 14.1.7.10 Site emergency procedures.
- 14.1.8 Without prejudice to Clause 17 (Planning Permissions and Necessary Consents), the Contractor shall provide to the Authority's Representative:
- 14.1.8.1 copies of all notices from the Environment Agency which may, if not rectified to the satisfaction of the Environment Agency, lead to a change in the ability of the Contractor to provide the Services; and
 - 14.1.8.2 copies of all correspondence between the Contractor and the Environment Agency relating to any Necessary Consent or any other aspect of the Services and which relates to the Contractor's ability to provide the Services as soon as reasonably practicable and in any event within two (2) Business Days of receipt or dispatch by the Contractor (as appropriate) by email and post.
- 14.1.9 The Contractor shall maintain a daily diary to record significant events in the operation of the Site(s). The format and contents will be agreed with the Authority's Representative (acting reasonably) and may include business and official visitors, unauthorised access incidents, transport movements, deliveries of any materials, servicing contractors, weather, timing of orders, communications directly relating to operations, and any matters which could possibly subsequently substantiate or refute Site user's or contractor's claims or complaints.
- 14.2 Accidents
- 14.2.1 The Contractor shall maintain an official accident book at each Site and shall record details of any incidents or accidents involving injury to any person or any near miss.
 - 14.2.2 The Contractor shall provide such assistance as is practicable to persons involved in any incident or accident at a Site, without making any prejudicial statement or comment, and shall record all relevant details in the daily diary, pursuant to paragraph 14.1.9.

- 14.2.3 The Contractor shall provide the Authority's Representative with any report provided to the Health and Safety Executive (**HSE**) and inform the Authority's Representative of any action taken by the HSE. In addition, the Contractor shall provide the Authority's Representative with an updated SDP which shall include the improvements made by the Contractor following the investigation of any accident, incident or near miss. All relevant documents are to be received by the Authority's Representative within ten (10) Business Days of any accident, incident or near miss.
- 14.2.4 The Contractor shall provide the Authority's Representative with an annual report comprising an analysis of all incidents and accidents which are recordable under the Health and Safety at Work Act 1974.

15 SUPPLY AND MAINTENANCE OF SUITABLE VEHICLES AND EQUIPMENT

- 15.1 The Contractor shall supply all necessary vehicles, plant, equipment and labour for the purpose of providing the Services. The Contractor shall maintain all equipment provided by the Contractor for the purpose of providing the Services in accordance with Law (and in particular the Provision and Use of Work Equipment Regulations 1998 (**PUWER**) and Good Industry Practice.
- 15.2 The Contractor shall ensure that reserve vehicles, plant and equipment are available, as set out in the SDP, in the event of breakdown or failure and electrical power generators sufficient for the purposes of allowing the Facility to operate at the same capacity and in the same manner are available for use during periods of electricity power failures, irrespective of cause.
- 15.3 The Contractor shall ensure the maintenance of all vehicles used to provide the Services, such that they remain roadworthy at all times, in accordance with all relevant Legislation and Good Industry Practice.

16 WEIGHBRIDGE

- 16.1 The Contractor shall provide, or have access to, a weighbridge which is manufactured, operated and maintained in accordance with the Non-automatic Weighing Instruments Regulations 2016, is calibrated at least annually and has a capacity of at least 50 tonnes (unless otherwise agreed in writing by the Authority's Representative) at each Delivery Point. Subject to paragraph 16.4 below, estimated weights or calculations of average loads will not be accepted by the Authority. All costs associated with the weighbridge and production of weighbridge tickets shall be met by the Contractor.
- 16.2 The weighbridge shall incorporate equipment which is capable of:
- 16.2.1 recording the gross weight of the vehicle on arrival at the Site, the weight of that vehicle on its departure immediately after depositing or collecting the load, and the net weight of the Waste transferred at the Delivery Point;
 - 16.2.2 issuing a pre numbered weighbridge ticket in respect of each delivery which is franked with a code number which identifies the registration number of the vehicle making the delivery concerned, the origin and Material Category and the date and time of that delivery and the European Waste Catalogue Codes;
 - 16.2.3 issuing a sufficient number of copies of each weighbridge ticket so that, in

addition to any tickets which the Contractor may require for its own use, two copies are issued to the driver on leaving the Site as a receipt for the delivery concerned and a copy is retained by the Contractor for submission to the Authority in support of any payment;

- 16.2.4 having the recording equipment housed in a suitable weatherproof and secure shelter; and
 - 16.2.5 integrating and uploading duty of care records to the Electronic Duty of Care System (<https://www.edoconline.co.uk/>).
- 16.3 Weighbridge tickets shall only be issued by an appropriately trained and qualified person.
- 16.4 The Contractor must immediately advise the Authority of any circumstances that prevent him from measuring the weight of materials at any Delivery Point in accordance with this Contract. If the Contractor's weighbridge at any Delivery Point becomes inoperable for any period, the Authority will take as a basis for payment its own weight ticket appertaining to the Waste delivered. If one does not exist, it will take as a basis for the period, the average recorded input of the same Waste for each vehicle on the same day of the week over the previous four (4) weeks, excluding Bank Holidays.
- 16.5 The Contractor shall use its best endeavours to make any required repair to the weighbridge to ensure weighbridge availability as soon as reasonably practicable following the point in time at which the relevant weighbridge becomes inoperable.
- 16.6 Only Waste which has been weighed and recorded in accordance with this Core Specification shall be included in the calculation of the Contractor's performance against the KPIs and the Monthly Services Payment due to the Contractor in respect of its performance of the Services.
- 16.7 The Contractor, acting reasonably, shall assist the Authority from time to time in the performance of test weighing of vehicles at the Facilities. This shall include, but shall not be limited to, the following:
- 16.7.1 multiple weighing of vehicles carrying multiple Material Categories to determine individual Material Category weights, over a maximum ten (10) day period;
 - 16.7.2 providing weight records of these Material Categories; and
 - 16.7.3 a disapplication of KPI 4 (Turnaround Times) during the ten (10) day period referred to above, provided that the Contractor shall nonetheless use reasonable endeavours to achieve the Turnaround Times during this period.

17 SITE OPERATIONS

- 17.1 Each of the Facilities shall, on a continuing basis, satisfy all of the criteria for the operation of that Facility as defined in the SDP.
- 17.2 The Contractor shall be responsible for the monitoring of Authority Related Parties and shall ensure they are complying with the Site rules. Subject to any prevailing requirements of the Necessary Consents, all Delivery Points shall be open (as a

minimum) and ready to receive deliveries of Contract Waste between the hours of:

- 17.2.1 07:30 to 16:30 Monday to Friday;
 - 17.2.2 subject to paragraph 17.2.3 below, 07:30 to 11:30 on Saturdays for Delivery Points receiving Contract Waste; and
 - 17.2.3 07:30 to 15:00 on Saturdays for Christmas catch-up collections for at least three (3) Saturdays following Christmas.
- 17.3 Details of any additional opening hours which may be made available by the Contractor, within the constraints of the relevant Planning Permissions, Environmental Permits or any other statutory requirements regarding opening times, shall be set out in the SDP, along with the hourly rates applicable to such additional hours. **[NOTE TO BIDDERS: The provision of additional hours and the hourly rates for such hours will be a bid back item and will be agreed with the Authority during the procurement process]**
- 17.4 The Contractor, in the design and operation of the Site(s) provided for the performance of the Services, shall have regard to the need for prompt Turnaround Times. The Contractor shall ensure that the average Turnaround Time for all vehicles delivering Contract Waste to a Site in any Contract Month shall be no more than 20 minutes. In no circumstances shall the Turnaround Time for a vehicle delivering Contract Waste be more than 40 minutes.
- 17.5 Contractors shall operate the Facilities in such a manner as to prevent vehicles queuing back onto the highway. Vehicles which are delayed on Site as the result of a vehicle breakdown or other similar circumstances will not lead to the accrual of Performance Points or Performance Deductions and such instances should be notified in writing by the Contractor to the Authority's Representative.
- 18 SITE ACCESS**
- 18.1 The Contractor shall provide and maintain a roadway between the public highway and the point of deposit at the relevant Delivery Point in such a condition as is approved from time to time by the Authority's Representative (acting reasonably). The Contractor shall ensure that the roadway and the tipping area(s) are fit for the safe passage of all types of vehicles delivering Contract Waste, including both small vehicles and those of maximum legal capacity, in such a manner that no damage is caused to delivery vehicles. Special consideration shall be given by the Contractor for the provision of facilities to accept Contract Waste from low clearance vehicles, such as road-sweepers, where appropriate.
- 18.2 In the event of a vehicle breakdown at a Landfill Delivery Point, the Contractor shall use its specialist equipment to recover the vehicle, undamaged, to an area of hard standing, without delay.
- 18.3 The Contractor shall control, in accordance with Good Industry Practice, the conveyance of loose and wet loads on the highway, the removal of mud, refuse, etc. from the wheels of vehicles before passing onto a road and the removal of mud, refuse, etc. falling onto the road from a vehicle.

19 CONTINGENCY

19.1 Delivery Point Contingency Plan

- 19.1.1 The Contractor is required to make arrangements for the diversion of vehicles away from any Primary Delivery Point to a Contingency Delivery Point in the event that the Contractor is unable to accept Waste at the relevant Primary Delivery Point due to any reason beyond the Contractor's reasonable control (including, but not limited to, in the case of planned and unplanned maintenance, plant breakdown, when storage capacity is exhausted or where there is an Emergency). Those arrangements are set out in a plan contained in the SDP which is referred to in the Contract as the Delivery Point Contingency Plan.
- 19.1.2 In the event that the Contractor is unable to accept Waste at a Primary Delivery Point due to reasons outside of its control (a **Contingency Event**), the Contractor shall immediately implement and comply with the Delivery Point Contingency Plan and shall notify the Authority Representative by phone and email as soon as reasonably practicable and, in any event, within one (1) hour of the Contingency Event.
- 19.1.3 Following implementation of the Delivery Point Contingency Plan, the Contractor shall use all reasonable endeavours to re-open the relevant Primary Delivery Point as soon as possible and shall keep Authority's Representative informed as to the status of the Primary Delivery Point and action to be taken by the Contractor to re-open the Primary Delivery Point.
- 19.1.4 The Delivery Point Contingency Plan shall not be modified or amended by the Contractor without the prior authorisation of the Authority's Representative, which shall not be unreasonably withheld. To the extent that the Contractor proposes a new Contingency Delivery Point at any point during the Contract Period, the Contractor shall be required to supply evidence to the Authority (in the form of a signed letter of intent or other legally binding commitment from the operator of the Contingency Delivery Point(s)) confirming that Contract Waste will be accommodated during a Contingency Event, before any such Contingency Delivery Point may be utilised for the purposes of this Contract.
- 19.1.5 The Contingency Delivery Point(s) will be provided and operated at no additional cost to the Authority. If the operation of the Delivery Point Contingency Plan or any other contingency arrangement results in additional costs being incurred by the Authority, the provisions of Clause 25.2 (Contractor Indemnity) shall apply.

- 19.2 Notwithstanding paragraph 19.1, where another delivery point is available to the Authority which in the Authority's reasonable opinion is more convenient than the Contractor's Contingency Delivery Point, the Authority reserves the right to divert Contract Waste to the more convenient delivery point, at the Authority's cost. The Authority shall have no liability whatsoever arising from any reduction in any of the forecast Annual Tonnages of Contract Waste (as set out in the Material Category Specifications) which occurs as a result of the Authority exercising its right under this paragraph 19.2.

19.3 Treatment/Disposal Facilities Contingency Plan

- 19.3.1 The Contractor is required to make arrangements for the Treatment or Disposal of Contract Waste or Treatment Residues which has been diverted from a Primary Treatment Facility or Primary Disposal Facility at a Contingency Facility (which must be similar in nature to the Primary Treatment Facility or Primary Disposal Facility, as appropriate) in the event that the Contractor is unable to accept Waste or Treatment Residues at the relevant Primary Treatment Facility or Primary Disposal Facility due to any reason beyond the Contractor's reasonable control (including, but not limited to, in the case of planned and unplanned maintenance, plant breakdown, when storage capacity is exhausted or where there is an Emergency). Those arrangements are set out in a plan contained in the SDP which is referred to in the Contract as the TD Facilities Contingency Plan.
- 19.3.2 In the event that the Contractor is unable to accept Waste or Treatment Residues at a Primary Treatment Facility or Primary Disposal Facility due to reasons outside of its control (a **Contingency Event**), the Contractor shall immediately implement and comply with the TD Facilities Contingency Plan and shall notify the Authority Representative by phone and email as soon as reasonably practicable and, in any event, within one (1) hour of the Contingency Event.
- 19.3.3 Following implementation of the TD Facilities Contingency Plan, the Contractor shall use all reasonable endeavours to re-open the relevant Primary Treatment Facility or Primary Disposal Facility as soon as possible and shall keep Authority's Representative informed as to the status of the relevant Primary Treatment Facility or Primary Disposal Facility and action to be taken by the Contractor to re-open the relevant Primary Treatment Facility or Primary Disposal Facility.
- 19.3.4 The TD Facilities Contingency Plan shall not be modified or amended by the Contractor without the prior authorisation of the Authority's Representative, which shall not to be unreasonably withheld. To the extent that the Contractor proposes a new Contingency Facility at any point during the Contract Period, the Contractor shall be required to supply evidence to the Authority (in the form of a signed letter of intent or other legally binding commitment from the operator of the Contingency Facility) confirming that Contract Waste and/or Treatment Residues (as appropriate) will be accommodated during a Contingency Event, before any such Contingency Facility may be utilised for the purposes of this Contract.
- 19.3.5 The Contingency Facilities will be provided and operated at no additional cost to the Authority. If the implementation of the TD Facilities Contingency Plan or any other contingency arrangement results in additional costs being incurred by the Authority, the provisions of Clause 25.2 (Contractor Indemnity) shall apply.

20 MAINTENANCE

- 20.1 No later than 20 Business Days prior to the Services Commencement Date, the Contractor shall supply a plan which sets out details of the duration, commencement time and frequency of any planned maintenance to be undertaken in respect of buildings, infrastructure, equipment and/or plant at the Facilities during the next

Contract Year (a **Maintenance Plan**). The Contractor shall supply the Authority with a Maintenance Plan for each subsequent Contract Year no later than 30 Business Days prior to commencement of the relevant Contract Year.

- 20.2 The Contractor shall take account of any comments provided by the Authority in respect of the Maintenance Plan, provided those comments are received within ten (10) Business Days of the date of receipt by the Authority of the relevant Maintenance Plan. If no such comments have been received by the Contractor within this period, the relevant Maintenance Plan shall be deemed to be accepted by the Authority.
- 20.3 In the event that the Contractor proposes to undertake any planned maintenance in respect of buildings, infrastructure, equipment and/or plant at any Facility which is not detailed in the Maintenance Plan, the Contractor shall give the Authority a minimum of twelve (12) weeks' notice of any associated closure of the relevant Facility or change(s) to the operation of the relevant Facility. No planned shutdown of any Facility shall take place during the seven (7) days before and seven (7) days after Christmas Day.

PART 2 – MATERIAL CATEGORY SPECIFICATIONS

MATERIAL CATEGORY SPECIFICATION

RESIDUAL WASTE

1 EXTENT OF SERVICE

1.1 This Waste is derived from fortnightly domestic kerbside refuse collections from households which have access to a weekly food waste collection within the Administrative Area, including residual waste collected from commercial waste customers, litter bins, street cleaning, beach cleaning and municipal parks and gardens.

1.2 This Waste consists of material having the following European Waste Catalogue Codes:

| Category of waste | EWG - European Waste Catalogue Code |
|-------------------|---|
| Municipal Waste | 20 03 01 mixed municipal waste 20 03 03 street cleansing residues and 20 03 02 waste from markets |

1.3 The Contractor shall provide, manage, develop and operate Facilities for the Recycling, Composting Treatment, Recovery and Disposal of this Waste stream in accordance with the Contract, Core Specification and this Material Category Specification.

2 WASTE INPUTS – QUANTITY OF WASTE

2.1 The Authority forecasts to deliver the following Annual Tonnage of Residual Waste [*Insert Forecast*]. The Authority will use reasonable endeavours to maintain this tonnage throughout the Contract Period except where background trends in waste arisings or events outside the control of the Authority do not allow this.

2.2 For Contract Year 1 (September 2021 – August 2022), the anticipated Annual Tonnage of Residual Waste will be [●] tonnes.

2.3 The Contractor shall be informed of the anticipated Annual Tonnage of Residual Waste to be delivered to the Delivery Point(s) one month prior to the Service Commencement Date and each subsequent anniversary of that date for the Contract Period. The Contractor shall accept and make provision for potential changes in the quantity of Residual Waste up to 10% of the anticipated Annual Tonnage over the Contract Period, provided that the total Annual Tonnage of Residual Waste does not exceed the relevant Facility capacities.

2.4 The Authority will use reasonable endeavours to ensure that the Annual Tonnage of Residual Waste is delivered in a consistent pattern during each Contract Year and the Contractor shall accept reasonable seasonal variation in the delivery of Residual Waste by the Authority.

3 TREATMENT OPERATIONS

- 3.1 The Contractor shall Treat all Residual Waste.
- 3.2 The Contractor shall employ Treatment and Recovery systems which can accept Residual Waste in accordance with the SDP at all times of the year and which cannot be rendered inoperable due to inclement weather.
- 3.3 The Contractor shall ensure that the Treatment and Recovery of Residual Waste is thoroughly controlled to minimise pollution to air, land and water courses. The Contractor shall set out pollution prevention methods in the SDP and shall comply with such provisions at all times.

4 DISPOSAL OF TREATMENT RESIDUES

The Contractor shall use reasonable endeavours to ensure Treatment Residues are Reused, Recycled or Composted before Disposal is considered. For the avoidance of doubt, the Contractor shall be responsible for the payment of any Landfill Tax arising from such Disposal.

5 PERFORMANCE REQUIREMENTS

The proposed Treatment and Recovery of Residual Waste must achieve at least 90% (by weight) diversion from Landfill.

6 WASTE ACCEPTANCE CRITERIA

- 6.1 The Contractor shall apply the Waste Acceptance Protocol in the receipt of all Residual Waste from the Authority.
- 6.2 The Contractor shall accept all Residual Waste.
- 6.3 The Contractor shall accept up to 5% (by weight) of Objectionable Waste in any load of Residual Waste delivered to a Facility.
- 6.4 The Authority will encourage its collection operatives, HRC and transfer station operator to maximise separation of Residual Waste so far as is reasonably practicable in accordance with the acceptance criteria as set out in Table 1.

7 DEFINITION OF RESIDUAL WASTE

Residual Waste shall include all residual waste collected in accordance with paragraph 1.1, including those types of waste listed as "Acceptable" in Table 1 below.

| Acceptable | Objectionable |
|---|--|
| All Municipal waste not listed as objectionable Waste | Mattresses Wheeled Bins Waste consisting of either separately collected Bulky Waste or a mixture of Bulky and Residual Municipal Waste from HWRC's / transfer stations and as further defined in EPA 1990 and CWR 2012 |

| Acceptable | Objectionable |
|------------|--|
| | <p>Waste consisting of:</p> <ul style="list-style-type: none"> any article of waste which exceeds 25 kilograms in weight; and/or any article of waste which does not fit, or cannot be fitted into a receptacle for household waste provided in accordance with section 46 of the Environmental Protection Act 1990; or where no such receptacle is provided, a cylindrical container 750 millimetres in diameter and 1 metre in length. |

Table 1.

8 TREATMENT FACILITY - OUTPUT(S) MARKETING PLAN

The Contractor shall include a marketing plan in its SDP for the handling of Treatment Residues arising from Residual Waste and shall actively market and promote all such Treatment Residues in accordance with its marketing plan.

MATERIAL CATEGORY SPECIFICATION STREET SWEEPINGS

1 ~~EXTENT OF SERVICE~~

- ~~1.1 This Waste is derived from the Authority's mechanical and manual street sweeping activity carried out within the Administrative Area.~~
- ~~1.2 This Waste consists of material having the following European Waste Catalogue Code:~~

| Category of waste | EWG – European Waste Catalogue Code |
|--------------------------|--|
| Street Cleaning Residues | 20-03-03 |

- ~~1.3 The Contractor shall provide, manage, develop and operate Facilities for the Recycling, Composting, Treatment, Recovery and Disposal of this Waste stream in accordance with the Contract, the Core Specification and this Material Category Specification.~~

2 ~~WASTE INPUTS – QUANTITY OF WASTE~~

- ~~2.1 The Authority forecasts to deliver the following Annual Tonnage of Residual Waste [Insert Forecast]. The Authority will use reasonable endeavours to maintain this tonnage throughout the Contract Period except where background trends in waste arisings or events outside the control of the Authority do not allow this.~~
- ~~2.2 For Contract Year 1 (September 2020 – August 2021), the anticipated Annual Tonnage of Street Sweepings will be [•] tonnes.~~
- ~~2.3 The Contractor shall be informed of the anticipated Annual Tonnage of Street Sweepings to be delivered to the Delivery Point(s) one month prior to the Service Commencement Date and each subsequent anniversary of that date for the Contract Period. The Contractor shall accept and make provision for potential changes in the quantity of Street Sweepings up to 10% of the anticipated Annual Tonnage set out in paragraph 2.1 over the Contract Period, provided that the total Annual Tonnage of Street Sweepings does not exceed the relevant Facility capacities.~~

3 ~~TREATMENT OPERATIONS~~

- ~~3.1 The Contractor shall Treat all Street Sweepings.~~
- ~~3.2 The Contractor shall employ Treatment systems which can accept Street Sweepings in accordance with the SDP at all times of the year and which cannot be rendered inoperable due to inclement weather.~~
- ~~3.3 The Contractor shall ensure that the Treatment of Street Sweepings is thoroughly controlled to minimise pollution to air, land and water courses. The Contractor shall set out pollution prevention methods in the SDP and shall comply with such provisions at all times.~~

~~4 — DISPOSAL OF TREATMENT/ PROCESSING RESIDUES~~

~~The Contractor shall use reasonable endeavours to ensure Treatment Residues are Reused, Recycled or Composted before Disposal is considered. For the avoidance of doubt, the Contractor shall be responsible for the payment of any Landfill Tax arising from such Disposal.~~

~~5 — PERFORMANCE REQUIREMENTS~~

~~The proposed Treatment of Street Sweepings must:~~

~~5.1 — divert at least 90% of Street Sweepings meeting the Waste Acceptance Criteria from Landfill; and~~

~~5.2 — ensure Recycling and Composting performance of >60%.~~

~~6 — WASTE ACCEPTANCE CRITERIA~~

~~6.1 — The Contractor shall apply the Waste Acceptance Protocol in the receipt of all Street Sweepings from the Authority.~~

~~6.2 — The Contractor shall accept all Street Sweepings.~~

~~6.3 — The Authority will encourage its collection operatives, HRC and transfer station operator to maximise separation of Street Sweepings so far as is reasonably practicable in accordance with the acceptance criteria set out in Table 1.~~

~~6.4 — The Contractor shall accept up to 5% (by weight) of Objectionable Waste in any load of Street Sweepings delivered to a Facility.~~

~~7 — DEFINITION OF STREET SWEEPINGS~~

~~Street Sweepings shall include all street waste collected within the Administrative Area, including those types of waste listed as "Acceptable" in Table 1 below.~~

| Acceptable | Objectionable |
|--|---|
| Street Cleansing Materials Leaf litter Weeds Sand Grit Gravel Glass Soil Litter & Detritus | Any other non-street cleaning derived Waste |

| | |
|----------|--|
| Paper | |
| Plastics | |

Table 1.

~~8 TREATMENT FACILITY - OUTPUT(S) MARKETING PLAN~~

- ~~8.1 The Contractor shall include a marketing plan in its SDP for the handling of Treatment Residues arising from Street Sweepings and shall actively market and promote all such Treatment Residues in accordance with its marketing plan.~~
- ~~8.2 The Contractor will be required to produce evidence (as part of the Service report) to confirm that the Treatment Residues arising from Street Sweepings comply with Good Industry Practice and to demonstrate that such Treatment Residues have either been Recycled, Reused or Recovered and are no longer considered Waste. The Contractor shall also be required to provide details to the Authority of the end destination of the Treatment Residues.~~

MATERIAL CATEGORY SPECIFICATION

WOOD WASTE

1 EXTENT OF SERVICE

- 1.1 This Waste is derived from separated collected wood from across the Authority's HWC network within the Administrative Area, collected from bulky household waste collections and wood arising from fly tipped materials.
- 1.2 Wood separated at HRCs is subject to limited supervision and is not separated into different grades.
- 1.3 This Waste consists of material having the following European Waste Catalogue Code:

| Category of waste | EWC – European Waste Catalogue Code |
|--|-------------------------------------|
| Wood other than that mentioned in 20-01-37 | 20-01-38 |

- 1.4 The Contractor shall provide, manage, develop and operate Facilities for the Recycling, Treatment, Recovery and Disposal of this Waste stream in accordance with the Contract, Core Specification and this Material Category Specification.

2 WASTE INPUTS

- 2.1 The Authority forecasts to deliver the following Annual Tonnage of Residual Waste *[Insert Forecast]*. The Authority will use reasonable endeavours to maintain this tonnage throughout the Contract Period except where background trends in waste arisings or events outside the control of the Authority do not allow this.
- 2.2 For Contract Year 1 (September 2020 – August 2021), the anticipated Annual Tonnage of Wood Waste will be [•] tonnes.
- 2.3 The Contractor shall be informed of the anticipated Annual Tonnage of Wood Waste to be delivered to the Delivery Point(s) one month prior to the Service Commencement Date and each subsequent anniversary of that date for the Contract Period. The Contractor shall accept and make provision for potential changes in the quantity of the Wood Waste up to 10% more of the anticipated Annual Tonnage set out in paragraph 2.1 over the Contract Period, provided that the total Annual Tonnage of Wood Waste does not exceed the relevant Facility capacities.

3 TREATMENT OPERATIONS

- 3.1 The Contractor shall Treat all Wood Waste.
- 3.2 The Contractor shall employ Treatment and Recovery systems which can accept Wood Waste in accordance with the SDP at all times of the year and which cannot be rendered inoperable due to inclement weather.
- 3.3 The Contractor shall ensure that the Treatment of Wood Waste is thoroughly controlled to minimise pollution to air, land and water courses. The Contractor shall

~~set out pollution prevention methods in the SDP and shall comply with such provisions at all times.~~

~~4 DISPOSAL OF TREATMENT RESIDUES~~

~~The Contractor shall use reasonable endeavours to ensure Treatment Residues are Reused, Recycled, Composted and Recovered before Disposal is considered. For the avoidance of doubt, the Contractor shall be responsible for the payment of any Landfill Tax arising from such Disposal.~~

~~5 PERFORMANCE REQUIREMENTS~~

~~The proposed Treatment of Wood Waste must divert at least 99% (by weight) of Wood Waste from Landfill.~~

~~6 WASTE ACCEPTANCE CRITERIA~~

~~6.1 The Contractor shall apply the Waste Acceptance Protocol in the receipt of all Wood Waste from the Authority.~~

~~6.2 The Contractor shall accept all Waste Wood.~~

~~6.3 The Authority will encourage its collection operatives, HRC and transfer station operator to maximise separation of Wood Waste so far as is reasonably practicable in accordance with the acceptance criteria as set out in Table 1.~~

~~6.4 The Contractor Shall accept up to 1% (by weight) of Objectionable Waste~~

~~7 DEFINITION OF WOOD WASTE~~

~~Wood Waste shall include all wood waste collected within the Administrative Area, including those types of waste listed as "Acceptable" in Table 1 below.~~

| Acceptable | Objectionable |
|---|--|
| Particleboard products | Metal items (larger than standard door furniture) |
| Timber in flat sheets comprising of: | Whole panes of glass in doors or windows frames |
| • Chipped wood | Wood treated with proscribed products which include creosote and tar |
| • Wood flakes | Melamine |
| • Shavings | Formica |
| • Sawdust etc | Plastic coated wood |
| Medium density fibreboard (MDF), | Lumps of concrete on ends of fence posts |
| Painted or wood treated with non-hazardous products | Brickwork connected to windows or doorframes |
| Laminated products | |
| Furniture | |

| Acceptable | Objectionable |
|-------------------------------|--|
| Doors | UPVC doors and windows frames in wood surrounds |
| Timber | Upholstered furniture |
| Hardboard | Any other Waste |
| Softboard | |
| Orientated strand board (OSB) | |
| Block board | |
| Plywood | |

Table 1.

~~8 TREATMENT FACILITY OUTPUT(S) MARKETING PLAN~~

- ~~8.1 The Contractor shall include a marketing plan in its SDP for the handling of Treatment Residues arising from Wood Waste and shall actively market and promote all such Treatment Residues in accordance with its marketing plan.~~
- ~~8.2 The Contractor will be required to produce evidence (as part of the Service Report) to confirm that the Treatment Residues arising from Wood Waste comply with Good Industry Practice and to demonstrate that such Treatment Residues have either been Recycled, Reused or Recovered and are no longer considered Waste. The Contractor shall also be required to provide details to the Authority of the end destination of the Treatment Residues.~~

MATERIAL CATEGORY SPECIFICATION FOOD WASTE

1 EXTENT OF SERVICE

- 1.1 This Waste is derived from food waste collected from weekly household food waste collections within the Administrative Area, including food waste from commercial waste collections provided by the Authority.
- 1.2 This Waste consists of material having the following European Waste Catalogue Code:

| Category of waste | EWG – European Waste Catalogue Code |
|---|--|
| Biodegradable kitchen and canteen waste | 20 01 08 |

- 1.3 The Contractor shall provide, manage, develop and operate Facilities for the Recycling, Composting Treatment, Recovery and Disposal of this Waste stream in accordance with the Contract, Core Specification and this Material Category Specification.

2 WASTE INPUTS – QUANTITY OF WASTE

- 2.1 The Authority forecasts to deliver the following Annual Tonnage of Residual Waste *[Insert Forecast]*. The Authority will use reasonable endeavours to maintain this tonnage throughout the Contract Period except where background trends in waste arisings or events outside the control of the Authority do not allow this.
- 2.2 For Contract Year 1 (September 2020 – August 2021), the anticipated Annual Tonnage of Food Waste will be [●] tonnes.
- 2.3 The Contractor shall be informed of the anticipated Annual Tonnage of Food Waste to be delivered to the Delivery Point(s) one month prior to the Service Commencement Date and each subsequent anniversary of that date for the Contract Period. The Contractor shall accept and make provision for potential changes in the quantity of Food Waste up to 10% of the anticipated Annual Tonnage set out in paragraph 2.1 over the Contract Period, provided that the total Annual Tonnage of Food Waste does not exceed the relevant Facility capacities.

3 TREATMENT OPERATIONS

- 3.1 The Contractor shall Treat all Food Waste.
- 3.2 The Contractor shall employ Treatment and Recovery systems which can accept Food Waste in accordance with the SDP at all times of the year and which cannot be rendered inoperable due to inclement weather.
- 3.3 The Contractor shall ensure that the Treatment of Food Waste process is thoroughly controlled to minimise pollution to air, land and water courses. The Contractor shall set out pollution prevention methods in the SDP and shall comply with such provisions at all times.

~~4 DISPOSAL OF TREATMENT/ PROCESSING RESIDUES~~

~~The Contractor shall use reasonable endeavours to ensure Treatment Residues are Reused, Recycled or Composted before Disposal is considered. For the avoidance of doubt, the Contractor shall be responsible for the payment of any Landfill Tax arising from such Disposal.~~

~~5 PERFORMANCE REQUIREMENTS~~

~~The proposed Treatment of Food Waste must:~~

~~5.1 produce a Treatment Residue that complies with BSI Publicly Available Specification (PAS 110); and~~

~~5.2 divert at least 95% of Food Waste meeting the Waste Acceptance Criteria from Landfill.~~

~~6 WASTE ACCEPTANCE CRITERIA~~

~~6.1 The Contractor shall apply the Waste Acceptance Protocol in the receipt of all Food Waste from the Authority.~~

~~6.2 The Contractor shall accept all Food Waste.~~

~~6.3 The Authority will encourage its customers, HRC and transfer station operator to maximise separation of Food Waste so far as is reasonably practicable in accordance with the acceptance criteria set out in Table 1.~~

~~6.4 The Contractor shall accept up to 1% (by weight) of Objectionable Waste in any load of Food Waste delivered to a Facility.~~

~~7 DEFINITION OF FOOD WASTE~~

~~Food Waste shall include all food waste collected in accordance with paragraph 1.1, including those types of waste listed as "Acceptable" in Table 1 below.~~

| Acceptable | Objectionable |
|--|--|
| All Category 3 ABPs cooked and uncooked food, including: <ul style="list-style-type: none">• meat, fish and bones;• fruit and vegetable peelings;• cheese and dairy produce;• cakes, bread and pastries;• leftovers, including plate scrapings;• tea bags and coffee grounds;• pasta, rice and egg shells; | • Metal • Glass • Any other Waste |

| Acceptable | Objectionable |
|---|---------------|
| <ul style="list-style-type: none"> • cut Flowers; and • compostable and newspaper caddy liners. | |

Table 1.

~~8 TREATMENT FACILITY - OUTPUT(S) MARKETING PLAN~~

- ~~8.1 The Contractor shall include a marketing plan in its SDP for the handling of Treatment Residues arising from Food Waste and shall actively market and promote all such Treatment Residues in accordance with its marketing plan.~~
- ~~8.2 The Contractor will be required to produce evidence (as part of the Service Report) to confirm that the Treatment Residues arising from Food Waste comply with Good Industry Practice and to demonstrate that such Treatment Residues have either been Recycled, Reused or Recovered and are no longer considered Waste. The Contractor shall also be required to provide details to the Authority of the end destination of the Treatment Residues.~~

MATERIAL CATEGORY SPECIFICATION GREEN WASTE

1 — EXTENT OF SERVICE

- 1.1 This Waste is derived from green waste collected separately from across the Authority's HRC and transfer station network within the Administrative Area, as well as garden waste collected from households as part of a fortnightly garden waste collection service.
- 1.2 This Waste consists of material having the following European Waste Catalogue Code:

| Category of waste | EWG – European Waste Catalogue Code |
|--------------------------|--|
| Biodegradable waste | 20 02 01 |

- 1.3 The Contractor shall provide, manage, develop and operate Facilities for the Recycling, Composting, Treatment, Recovery and Disposal of this Waste stream in accordance with the Contract, Core Specification and this Material Category Specification.

2 — WASTE INPUTS — QUANTITY OF WASTE

- 2.1 The Authority forecasts to deliver the following Annual Tonnage of Residual Waste *[Insert Forecast]*. The Authority will use reasonable endeavours to maintain this tonnage throughout the Contract Period except where background trends in waste arisings or events outside the control of the Authority do not allow this.
- 2.2 For Contract Year 1 (September 2020 — August 2021), the anticipated Annual Tonnage of Green Waste will be [●] tonnes.
- 2.3 The Contractor shall be informed of the anticipated Annual Tonnage of Contract Waste to be delivered to the Delivery Point(s) one month prior to the Service Commencement Date and each subsequent anniversary of that date for the Contract Period. The Contractor shall accept and make provision for potential changes in the quantity of Green Waste up to 10% of the anticipated Annual Tonnage set out in paragraph 2.1 over the Contract Period, provided that the total Annual Tonnage of Green Waste does not exceed the relevant Facility capacities.

3 — TREATMENT OPERATIONS

- 3.1 The Contractor shall Treat all Green Waste.
- 3.2 The Contractor shall employ Composting systems which can accept Green Waste in accordance with the SDP at all times of the year and which cannot be rendered inoperable due to inclement weather.
- 3.3 The Contractor shall ensure that the Composting of Green Waste is thoroughly controlled to minimise pollution to air, land and water courses. The Contractor shall set out pollution prevention methods in the SDP and shall comply with such provisions at all times.

~~4 DISPOSAL OF COMPOSTING RESIDUES~~

~~The Contractor shall make reasonable endeavours to ensure Compost Residues are Reused or Recycled or Composted before final disposal is considered. For the avoidance of doubt, the Contractor shall be responsible for the payment of any Landfill Tax arising from such disposal.~~

~~5 PERFORMANCE REQUIREMENTS~~

~~The proposed Composing of Green Waste must:~~

~~5.1 produce Compost which complies with BSI Publicly Available Specification (PAS 100); and~~

~~5.2 Compost at least 95% of Green Waste meeting the Waste Acceptance Criteria from Landfill.~~

~~6 WASTE ACCEPTANCE CRITERIA~~

~~6.1 The Contractor shall apply the Waste Acceptance Protocol in the receipt of all Green Waste from the Authority.~~

~~6.2 The Contractor shall accept Green Waste.~~

~~6.3 The Authority will encourage its customers, HRC and transfer station operator to maximise separation of Green Waste so far as is reasonably practicable in accordance with the acceptance criteria as set out in Table 1.~~

~~6.4 The Contractor shall accept up to 1% (by weight) of Objectionable Waste in any load of Green Waste delivered to a Facility.~~

~~7 DEFINITION OF GREEN WASTE~~

~~Green Waste shall include all green waste collected in accordance with paragraph 1.1, including those types of waste listed as "Acceptable" in Table 1 below.~~

| Acceptable | Objectionable |
|---|---|
| Flowers, plants and weeds | Any other household waste |
| Grass cuttings | Large stones, cobbles, bricks, concrete etc |
| Leaves and bark | Textiles |
| Hedge prunings | Logs, stumps and branches in excess of 300mm diameter |
| Branches – less than 300mm diameter only | Treated and painted timber or timber products |
| Straw and sawdust (if bedding material, only from vegetarian animals) | Processed foodstuffs |
| Christmas trees | Ferrous and non-ferrous metals |
| Paper collection sacks | |

| Acceptable | Objectionable |
|-------------------------------------|---------------|
| Garden-derived fruit and vegetables | |

Table 1.

~~8 TREATMENT FACILITY – OUTPUT(S) MARKETING PLAN~~

- ~~8.1 The Contractor shall include a marketing plan in its SDP for the Composting of Treatment Residues arising from Green Waste and shall actively market and promote all such Treatment Residues in accordance with its marketing plan.~~
- ~~8.2 The Contractor will be required to produce evidence (as part of the Service Report) to confirm that the Treatment Residues arising from Green Waste comply with Good Industry Practice and to demonstrate that such Treatment Residues have either been Recycled, Reused or Recovered and are no longer considered Waste. The Contractor shall also be required to provide details to the Authority of the end destination of the Treatment Residues.~~

MATERIAL CATEGORY SPECIFICATION BULKY WASTE

1 EXTENT OF SERVICE

- 1.1 This Waste is derived from the Authority's bulky household waste collection activity, fly tip clearance, and HRCs. Historically, this Waste has been Landfilled.
- 1.2 This Waste consists of material having the following European Waste Catalogue Code:

| Category of waste | EWC – European Waste Catalogue Code |
|-------------------|--|
| Municipal Waste | 20 03 01 mixed municipal waste 20 03 07 bulky waste |

- 1.3 The Contractor shall provide, manage, develop and operate Facilities for the Recycling, Composting, Treatment, Recovery and Disposal of this Waste stream in accordance with the Contract, the Core Specification and this Material Category Specification.

2 WASTE INPUTS QUANTITY OF WASTE

- 2.1 The Authority forecasts to deliver the following Annual Tonnage of Residual Waste *[Insert Forecast]*. The Authority will use reasonable endeavours to maintain this tonnage throughout the Contract Period except where background trends in waste arisings or events outside the control of the Authority do not allow this.
- 2.2 For Contract Year 1 (September 2020 – August 2021), the anticipated Annual Tonnage of Bulky Waste will be [●] tonnes.
- 2.3 The Contractor shall be informed of the anticipated Annual Tonnage of Bulky Waste to be delivered to the Delivery Point(s) one month prior to the Service Commencement Date and each subsequent anniversary of that date for the Contract Period. The Contractor shall accept and make provision for potential changes in the quantity of Bulky Waste up to 10 % of the anticipated Annual Tonnage set out in paragraph 2.1 over the Contract Period, provided that the total Annual Tonnage of Bulky Waste does not exceed the relevant Facility capacities.
- 2.4 The Council will use reasonable endeavours to ensure that the tonnage of Contract Waste is delivered in consistent pattern over each year and the Contractor shall accept reasonable seasonal variation in the delivery of Contract Waste.

3 TREATMENT OPERATIONS

- 3.1 The Contractor shall Treat all Bulky Waste.
- 3.2 The Contractor shall employ Treatment, Recovery or Disposal systems which can accept Bulky Waste in accordance with the SDP at all times of the year and which cannot be rendered inoperable due to inclement weather.

~~3.3 The Contractor shall ensure that the Treatment, Recovery or Disposal of Bulky Waste is thoroughly controlled to minimise pollution to air, land and water courses. The Contractor shall set out pollution prevention methods in the SDP and shall comply with such provisions at all times.~~

~~4 DISPOSAL OF TREATMENT RESIDUES~~

~~The Contractor shall use reasonable endeavours to ensure Treatment Residues are Reused, Recycled or Composted before Disposal is considered. For the avoidance of doubt, the Contractor shall be responsible for the payment of any Landfill Tax arising from such Disposal.~~

~~5 PERFORMANCE REQUIREMENTS~~

~~There is no performance requirement in terms of Disposal Diversion. The Contractor should set out within the SDP how Bulky Waste will be managed in accordance with the waste hierarchy.~~

~~6 WASTE ACCEPTANCE CRITERIA~~

~~6.1 The Contractor shall apply the Waste Acceptance Protocol in the receipt of all Bulky Waste from the Authority.~~

~~6.2 The Contractor shall accept all Bulky Waste.~~

~~6.3 The Contractor shall accept up to 5% (by weight) of Objectionable Waste I any load of Bulky Waste delivered to a Facility.~~

~~6.4 The Authority will encourage its collection operatives, HRC and transfer station operator to maximise separation of Bulky Waste so far as is reasonably practicable in accordance with the acceptance criteria as set out in Table 1.~~

~~7 DEFINITION OF BULKY WASTE~~

~~Bulky Waste shall include all bulky household waste collected within the Administrative Area, including those types of waste listed as "Acceptable" in Table 1 below.~~

| Acceptable | Objectionable |
|--|-------------------------|
| All Municipal Waste not listed as Objectionable Waste Furniture Dog Waste Waste consisting of either separately collected Bulky Waste or a mixture of Bulky Waste and Residual Waste from HWRC's/transfer stations and as further defined in EPA 1990 and CWR 2012 Waste consisting of [•?] | • Mattresses |

| Acceptable | Objectionable |
|--|---------------|
| <p>Any article of waste which exceeds 25 kilograms in weight</p> <p>Any article of waste which does not fit, or cannot be fitted into a receptacle for household waste provided in accordance with section 46 of the Environmental Protection Act 1990; or where no such receptacle is provided, a cylindrical container 750 millimetres in diameter and 1 metre in length</p> | |

Table 1.

8 ~~TREATMENT FACILITY - OUTPUT(S) MARKETING PLAN~~

The Contractor shall include a marketing plan in its SDP for the handling of Treatment Residues arising from Bulky Waste and shall actively market and promote all such Treatment Residues in accordance with its marketing plan.

SCHEDULE 3
SERVICE DELIVERY PLAN

[•] **[NOTE TO BIDDERS:** *To be developed by the Contractor]*

SCHEDULE 4

PAYMENT MECHANISM

1 DEFINITIONS AND INTERPRETATION

1.1 In this Schedule 4, the following terms shall bear the following meanings:

"Additional Services Payment" means the Component Payment relating to the cost of the Contractor performing Additional Services as agreed pursuant to the Variation Procedure, which is calculated in accordance with paragraph 2.10 below;

~~**"Bulky Waste Service Payment"** means the Component Payment relating to the performance of Services by the Contractor in respect of Bulky Waste and any associated Treatment Residues, which is calculated in accordance with paragraph 2.2 below;~~

"Extra Hours Payment" means the Component Payment relating to the Contractor making the Delivery Points available to receive Contract Waste outside of the opening hours specified in the Core Specification, which is calculated in accordance with paragraph 2.11 below;

~~**"Food Waste Service Payment"** means the Component Payment relating to the performance of Services by the Contractor in respect of Food Waste and any associated Treatment Residues, which is calculated in accordance with paragraph 2.3 below;~~

~~**"Green Waste Service Payment"** means the Component Payment relating to the performance of Services by the Contractor in respect of Green Waste and any associated Treatment Residues, which is calculated in accordance with paragraph 2.4 below;~~

"Objectionable Waste Payment" means the Component Payment relating to the performance by the Contractor of Services in respect of Objectionable Waste, which is calculated in accordance with paragraph 2.8 below;

"Prohibited Waste Payment" means the Component Payment relating to the performance by the Contractor of Services in respect of Prohibited Waste, which is calculated in accordance with paragraph 2.9 below;

"Residual Waste Service Payment" means the Component Payment relating to the performance of Services in respect of Residual Waste and any associated Treatment Residues, which is calculated in accordance with paragraph 2.5 below;

~~**"Street Sweepings Service Payment"** means the Component Payment relating to the performance of Services in respect of Street Sweepings and any associated Treatment Residues, which is calculated in accordance with paragraph 2.6 below; and~~

~~**"Wood Waste Service Payment"** means the Component Payment relating to the performance of Services in respect of Wood Waste and any associated Treatment Residues, which is calculated in accordance with paragraph 2.7 below;~~

- 1.2 Unless otherwise provided, references in this Payment Mechanism to Clauses and Schedules shall be references to the relevant Clauses and Schedules in this Contract.
- 1.3 Unless otherwise provided, references to paragraphs, Appendices and Annexures shall be references to paragraphs, Appendices and Annexures in this Schedule 4.
- 1.4 Subject to the express provisions of this Contract, the parties agree that this Schedule constitutes the sole basis of payment by the Authority to the Contractor.
- 1.5 VAT properly chargeable on any component of the Monthly Services Payment shall be payable as set out in Clause 25 (Set-Off and VAT) of this Contract.
- 1.6 Where the symbol \sum is used, it shall mean 'sum of'.
- 1.7 Unless otherwise stated in this Payment Mechanism, if the collection, transport, storage, Treatment, Disposal or Recycling of an item of Waste (or any associated Treatment Residue) is paid for under one Component Payment it shall not also be paid for under another Component Payment and the Contractor shall not make any claim for double payment from the Authority.

2 PAYMENTS

2.1 Monthly Services Payment

2.1.1 The Authority shall pay to the Contractor, in accordance with Clause 22 (Monthly Services Payment) of this Contract, a Monthly Services Payment. The Monthly Services Payment shall be the sole payment due from the Authority to the Contractor in respect of:

2.1.1.1 the establishment of the arrangements contemplated by this Contract; and

2.1.1.2 the performance of the Services and all ancillary obligations pursuant to this Contract.

2.1.2 The Monthly Service Payment payable in respect of month 't' during the Services Period (**MSP_t**) shall be calculated using the following formula:

$$\mathbf{MSP_t = BULK_t + FOOD_t + GREEN_t + RES_t + SWEEP_t + WOOD_t + OBJ_t + PRO_t + ExtrHrs_t + AddServ_t - PD_t}$$

where:

BULK_t = ~~the Bulky Waste Service Payment in respect of month 't';~~

FOOD_t = ~~the Food Waste Service Payment in respect of Month t;~~

GREEN_t = ~~the Green Waste Service Payment in respect of month 't';~~

RES_t = the Residual Waste Service Payment in respect of month 't';

SWEEP_t = ~~the Street Sweepings Service Payment in respect of~~

month 't';

~~WOOD_t~~ = the ~~Wood Waste Service Payment in respect of month 't';~~

~~OBJ_t~~ = the ~~Objectionable Waste Service Payment in respect of month 't';~~

~~PRO_t~~ = the ~~Prohibited Waste Service Payment in respect of month 't';~~

~~AddServ_t~~ = the ~~Additional Services Payment in respect of month 't';~~

~~ExtrHrs_t~~ = the ~~Extra Hours Payment in respect of month 't'; and~~

~~PD_t~~ = the ~~Performance Deductions payable by the Contractor in respect of month 't'.~~

[NOTE TO BIDDERS: The MSP formula included in the Contract awarded to each successful bidder will include each of the Component Payments which relate to the Services which have been awarded to that bidder, plus the monthly Performance Deductions (as a negative adjustment).]

~~2.2 Bulky Waste Service Payment~~

~~2.2.1 The Bulky Waste Service Payment is payable in respect of the receipt, storage, handling, transportation and Disposal, Treatment and/or Recycling of Bulky Waste delivered:~~

~~2.2.1.1 from the Authority's waste transfer stations;~~

~~2.2.1.2 from the Authority's HRCs; or~~

~~2.2.1.3 directly by the Authority or its agents,~~

~~and the Treatment, Disposal and/or Recycling of any associated Treatment Residues and performance of all ancillary Services.~~

~~2.2.2 The Bulky Waste Service Payment in respect of month 't' (**BULK_t**) is calculated as follows:~~

$$\mathbf{BULK_t} = \sum (\mathbf{BWT(Fac A)_t} \times \mathbf{BWR(Fac A)}) + (\mathbf{BWT(Fac B)_t} \times \mathbf{BWR(Fac B)})$$

~~where:~~

~~**BWT(Fac A)_t** = the actual tonnage of Bulky Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'A' (as per the designation in the Schedule of Rates) for Treatment, Disposal and/or Recycling during month 't';~~

~~**BWR(Fac A)_t** = the rate (per tonne) payable in respect of the Disposal, Treatment and/or Recycling of Bulky Waste at Facility 'A' and the performance of all ancillary Services, as set out in the Schedule of~~

Rates;

~~**BWT(Fac B)_t** = the actual tonnage of Bulky Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'B' (as per the designation in the Schedule of Rates) for Treatment, Disposal and/or Recycling during month 't'; and~~

~~**BWR(Fac B)_t** = the rate (per tonne) payable in respect of the Disposal, Treatment and/or Recycling of Bulky Waste at Facility 'B' and the performance of all ancillary Services, as set out in the Schedule of Rates.~~

[NOTE TO BIDDERS: The formula will contain sub-payments in respect of each Bulky Waste Treatment / Disposal / Recycling Facility which the Contractor makes available for the purposes of the Services. Please note that where a Disposal Facility is landfill, the costs of disposing of Bulky Waste at that Facility are expected to be a charged on a pass through basis.]

2.3 Food Waste Service Payment

~~2.3.1 The Food Waste Service Payment is payable in respect of the receipt, storage, handling, transportation and Treatment of Food Waste delivered:~~

~~2.3.1.1 from the Authority's waste transfer stations;~~

~~2.3.1.2 from the Authority's HRCs; or~~

~~2.3.1.3 directly by the Authority or its agents,~~

~~and the Treatment, Disposal and/or Recycling of any associated Treatment Residues and performance of all ancillary Services.~~

~~2.3.2 The Food Waste Service Payment in respect of month 't' (**FOOD_t**) is calculated as follows:~~

$$\text{FOOD}_t = \sum (\text{FWT}(\text{Fac A})_t \times \text{FWR}(\text{Fac A})) + (\text{FWT}(\text{Fac B})_t \times \text{FWR}(\text{Fac B}))$$

~~where:~~

~~**FWT(Fac A)_t** = the actual tonnage of Food Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'A' (as per the designation in the Schedule of Rates) for Treatment during month 't';~~

~~**FWR(Fac A)_t** = the rate (per tonne) payable in respect of the Treatment of Food Waste at Facility 'A' and the performance of all ancillary Services, as set out in the Schedule of Rates;~~

~~**FWT(Fac B)_t** = the actual tonnage of Food Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'B' (as per the designation~~

~~in the Schedule of Rates) for Treatment during month 't'; and~~

~~**FWR(Fac B)_t** = the rate (per tonne) payable in respect of the Treatment of Food Waste at Facility 'B' and the performance of all ancillary Services, as set out in the Schedule of Rates.~~

[NOTE TO BIDDERS: The formula will contain sub-payments in respect of each Food Waste Treatment Facility which the Contractor makes available for the purposes of the Services.]

2.4 Green Waste Service Payment

~~2.4.1 The Green Waste Service Payment is payable in respect of the receipt, storage, handling, transportation and Treatment of Green Waste delivered:~~

~~2.4.1.1 from the Authority's waste transfer stations;~~

~~2.4.1.2 from the Authority's HRCs; or~~

~~2.4.1.3 directly by the Authority or its agents,~~

~~and the Treatment, Disposal and/or Recycling of any associated Treatment Residues and performance of all ancillary Services.~~

~~2.4.2 The Green Waste Service Payment in respect of month 't' (**GREEN_t**) is calculated as follows:~~

$$\text{GREEN}_t = \sum (\text{GWT}(\text{Fac A})_t \times \text{GWR}(\text{Fac A})) + (\text{GWT}(\text{Fac B})_t \times \text{GWR}(\text{Fac B}))$$

~~where:~~

~~**GWT(Fac A)_t** = the actual tonnage of Green Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'A' (as per the designation in the Schedule of Rates) for Treatment during month 't';~~

~~**GWR(Fac A)_t** = the rate (per tonne) payable in respect of the Treatment of Green Waste at Facility 'A' and the performance of all ancillary Services, as set out in the Schedule of Rates;~~

~~**GWT(Fac B)_t** = the actual tonnage of Green Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'B' (as per the designation in the Schedule of Rates) for Treatment during month 't'; and~~

~~**GWR(Fac B)_t** = the rate (per tonne) payable in respect of the Treatment of Green Waste at Facility 'B' and the performance of all ancillary Services, as set out in the Schedule of Rates.~~

~~**[NOTE TO BIDDERS: The formula will contain sub-payments in respect of each Green Waste Treatment Facility which the Contractor makes available for the purposes of the Services.]**~~

2.5 Residual Waste Service Payment

2.5.1 The Residual Waste Service Payment is payable in respect of the receipt, storage, handling, transportation and Treatment, Disposal and/or Recycling of Residual Waste delivered:

2.5.1.1 from the Authority's waste transfer stations;

2.5.1.2 from the Authority's HRCs; or

2.5.1.3 directly by the Authority or its agents,

and the Treatment, Disposal and/or Recycling of any associated Treatment Residues and performance of all ancillary Services.

2.5.2 The Residual Waste Service Payment in respect of month 't' (**RES_t**) is calculated as follows:

$$\mathbf{RES_t = \sum(RWT(Fac A)_t \times RWR(Fac A)) + (RWT(Fac B)_t \times RWR(Fac B))}$$

where:

RWT(Fac A)_t = the actual tonnage of Residual Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'A' (as per the designation in the Schedule of Rates) for Treatment, Disposal and/or Recycling during month 't';

RWR(Fac A)_t = the rate (per tonne) payable in respect of the Treatment, Disposal and/or Recycling of Residual Waste at Facility 'A' and the performance of all ancillary Services, as set out in the Schedule of Rates;

RWT(Fac B)_t = the actual tonnage of Residual Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'B' (as per the designation in the Schedule of Rates) for Treatment, Disposal and/or Recycling during month 't'; and

RWR(Fac B)_t = the rate (per tonne) payable in respect of the Treatment, Disposal and/or Recycling of Residual Waste at Facility 'B' and the performance of all ancillary Services, as set out in the Schedule of Rates.

[NOTE TO BIDDERS: The formula will contain sub-payments in respect of each Residual Waste Treatment / Disposal / Recycling Facility which the Contractor makes available for the purposes of the Services.]

2.6 Street Sweepings Service Payment

2.6.1 The Street Sweepings Service Payment is payable in respect of the receipt, storage, handling, transportation and Treatment of Street Sweepings delivered:

2.6.1.1 from the Authority's waste transfer stations;

2.6.1.2 from the Authority's HRCs; or

2.6.1.3 directly by the Authority or its agents,

and the Treatment, Disposal and/or Recycling of any associated Treatment Residues and performance of all ancillary Services.

2.6.2 The Street Sweepings Service Payment in respect of month 't' (**SWEEP_t**) is calculated as follows:

$$\mathbf{SWEEP_t = \sum (SST(Fac A)_t \times SSR(Fac A)) + (SST(Fac B)_t \times SSR(Fac B))}$$

where:

SST(Fac A)_t = the actual tonnage of Street Sweepings accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'A' (as per the designation in the Schedule of Rates) for Treatment during month 't';

SSR(Fac A)_t = the rate (per tonne) payable in respect of the Treatment of Street Sweepings at Facility 'A' and the performance of all ancillary Services, as set out in the Schedule of Rates;

SST(Fac B)_t = the actual tonnage of Street Sweepings accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'B' (as per the designation in the Schedule of Rates) for Treatment during month 't'; and

SSR(Fac B)_t = the rate (per tonne) payable in respect of the Treatment of Street Sweepings at Facility 'B' and the performance of all ancillary Services, as set out in the Schedule of Rates.

[NOTE TO BIDDERS: The formula will contain sub-payments in respect of each Street Sweepings Treatment Facility which the Contractor makes available for the purposes of the Services.]

2.7 Wood Waste Service Payment

2.7.1 The Wood Waste Service Payment is payable in respect of the receipt,

storage, handling, transportation and Treatment of Wood Waste delivered:

2.7.1.1 from the Authority's waste transfer stations;

2.7.1.2 from the Authority's HRCs; or

2.7.1.3 directly by the Authority or its agents,

and the Treatment, Disposal and/or Recycling of any associated Treatment Residues and performance of all ancillary Services.

2.7.2 The Wood Waste Service Payment in respect of month 't' (**WOOD_t**) is calculated as follows:

$$\text{WOOD}_t = \sum (\text{WWT}(\text{Fac A})_t \times \text{WWR}(\text{Fac A})) + (\text{WWT}(\text{Fac B})_t \times \text{WWR}(\text{Fac B}))$$

Where:

WWT(Fac A)_t = the actual tonnage of Wood Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'A' (as per the designation in the Schedule of Rates) for Treatment during month 't';

WWR(Fac A)_t = the rate (per tonne) payable in respect of the Treatment of Wood Waste at Facility 'A' and the performance of all ancillary Services, as set out in the Schedule of Rates;

WWT(Fac B)_t = the actual tonnage of Wood Waste accepted in accordance with the Waste Acceptance Protocol and delivered to Facility 'B' (as per the designation in the Schedule of Rates) for Treatment during month 't'; and

WWR(Fac B)_t = the rate (per tonne) payable in respect of the Treatment of Wood Waste at Facility 'B' and the performance of all ancillary Services, as set out in the Schedule of Rates.

[NOTE TO BIDDERS: The formula will contain sub-payments in respect of each Wood Waste Treatment Facility which the Contractor makes available for the purposes of the Services.]

2.8 Objectionable Waste Service Payment

2.8.1 The Objectionable Waste Service Payment is payable in respect of the receipt and handling and, where appropriate, transportation and Disposal of Objectionable Waste which is accepted at any Delivery Point in accordance with the Waste Acceptance Protocol.

2.8.2 The Objectionable Waste Service Payment in respect of month 't' (**OBJ_t**) is calculated as follows:

$$\text{OBJ}_t = \sum (\text{OWT}(\text{Tr})_t \times (\text{OWR}(\text{Tr}) + \text{OWM})) + (\text{OWT}(\text{Dis})_t + \text{OWR}(\text{Dis}))$$

where:

OWT(Tr)_t = the actual tonnage of Objectionable Waste received at Delivery Points during month 't' which is transported by the Contractor from the Delivery Points to a disposal facility (whether operated by the Contractor or Authority);

OWR(Tr)_t = the reasonable and demonstrate costs (expressed on a "per tonne" basis) incurred by the Contractor (without the application of any form of margin, overhead or contingencies) in procuring the transportation of Objectionable Waste from Delivery Points;

OWM = the aggregate number of miles travelled by the Contractor's haulage vehicles (whilst loaded) carrying Objectionable Waste between the Delivery Points and disposal facilities during month 't';

OWT(Dis)_t = the actual tonnage of Objectionable Waste Disposed of by the Contractor during month 't'; and

OWR(Dis)_t = the rate (per tonne) payable in respect of the Disposal of Objectionable Waste as set out in the Schedule of Rates.

2.9 Prohibited Waste Service Payment

2.9.1 The Prohibited Waste Service Payment is payable in respect of the receipt and handling and, where appropriate, transportation and Disposal of Prohibited Waste which is accepted at any Delivery Point in accordance with the Waste Acceptance Protocol.

2.9.2 The Prohibited Waste Service Payment in respect of month 't' (**PRO_t**) is calculated as follows:

$$\mathbf{PRO_t = \sum(PWT(Tr)_t \times (PWR(Tr)) \times PWM) + (PWT(Dis)_t + PWR(Dis))}$$

where:

PWT(Tr)_t = the actual tonnage of Prohibited Waste received at Delivery Points during month 't' which is transported by the Contractor from the Delivery Points to a disposal facility (whether operated by the Contractor or Authority);

PWR(Tr)_t = the reasonable and demonstrate costs (expressed on a "per tonne" basis) incurred by the Contractor (without the application of any form of margin, overhead or contingencies) in procuring the transportation of Prohibited Waste from Delivery Points;

- PWM** = the aggregate number of miles travelled by the Contractor's haulage vehicles (whilst loaded) carrying Prohibited Waste between the Delivery Points and disposal facilities during month 't';
- PWT(Dis)_t** = the actual tonnage of Prohibited Waste Disposed of by the Contractor during month 't'; and
- PWR(Dis)_t** = the rate (per tonne) payable in respect of the Disposal of Prohibited Waste as set out in the Schedule of Rates.

2.10 Additional Services Payment

- 2.10.1 The Additional Services Payment is payable in respect of the Contractor performing Additional Services as agreed pursuant to the Variation Procedure.
- 2.10.2 The Additional Services Payment in respect of month 't' (**AddServ_t**) is the aggregate of each monthly payment agreed in respect of each Additional Service performed during month 't' following agreement of the associated Variation in accordance with the Variation Procedure.

2.11 Extra Hours Service Payment

- 2.11.1 The Extra Hours Service Payment is payable in respect of the Contractor making the Delivery Points available to receive Contract Waste outside of the opening hours specified in the SDP.
- 2.11.2 The Extra Hours Service Payment in respect of month 't' (**ExtrHrs_t**) is calculated as follows:

$$\text{ExtrHrs}_t = \text{EH}_t \times \text{EHR}$$

where:

- EH_t** = the actual number of hours outside of the opening hours specified in the SDP during which the Contractor makes the Delivery Points available to receive Contract Waste during month 't'; and
- EHR** = the rate (per hour) payable in respect of extra hours, as set out in the Schedule of Rates.

2.12 Monthly Performance Deductions

- 2.12.1 Performance Points and Performance Deductions shall be calculated in accordance with the Performance Framework. Subject to paragraph 2.13 below, to the extent that Performance Points are allocated to the Contractor in respect of month 't' and these Performance Points give rise to Performance Deductions, such Performance Deductions (**PD_t**) shall be deducted from the Monthly Services Payment payable in respect of month 't'.
- 2.12.2 The parties acknowledge and agree that the Performance Deductions set

out in the Performance Framework:

- 2.12.2.1 are a price reduction (rather than damages) which reflect the reduction in the quality of service received by the Authority; and
- 2.12.2.2 in any event, are genuine pre-estimates of the loss which would be incurred by the Authority as a result of Performance Failures.

2.13 Overall Deductions Cap

- 2.13.1 Notwithstanding the preceding provisions of this Payment Mechanism, the maximum aggregate value of the Performance Deductions which may be deducted in any month is an amount equal to the value of the Monthly Services Payment in respect of that month. Accordingly, the Authority acknowledges and agrees that the balance of the aggregate of the Performance Deductions arising in any month which are in excess of the value of the Monthly Services Payment shall be written off.

3 INDEXATION

3.1 Calculation

- 3.1.1 With effect from 1 April 2020, each of the rates set out in the Schedule of Rates and any other amount or sum in this Contract which is stated to be "Indexed" or "subject to indexation" shall be subject to indexation on 1 April of that Contract Year (the "**Indexation Date**") to reflect changes in the Index (being the Consumer Prices Index) in accordance with the following formula:

$$IR_a = (I_y \div I_{BASE}) \times R_a$$

Where:

IR_a = the relevant rate or sum following the application of indexation;

I_y = the value published for the Index on the 1 December immediately preceding the relevant Indexation Date;

I_{BASE} = the value published for the Index on the 1 December of 2019; and

R_a = the relevant rate or sum as set out in this Contract as at the Commencement Date.

- 3.1.2 Following the calculation of each of the Indexed rates, the parties acknowledge and agree that the Schedule of Rates shall be replaced with a new Schedule of Rates showing the revised Indexed rates. Each revised Schedule of Rates shall be produced by the Authority as soon as reasonably practicable following calculation off the Indexed rates and provided to the Contractor.

3.2 Changes to the Index

- 3.2.1 If the Index is replaced by the Office of National Statistics with another index which has substantially the same nature and basis as the Index, the replacement index shall automatically become the Index for the purposes of this Contract with effect from the date upon which such replacement index becomes effective (and paragraph 3.2.2 shall not apply).
- 3.2.2 If there is a material change in the nature or basis of the Index (or where the Index is replaced with another index which is materially different in nature or basis), the parties shall seek to agree upon an alternative to the Index which as closely replicates the Index as is possible and such consequential changes shall be made to the calculations provided for in paragraph 3.1 as are necessary to ensure that all payments to be made pursuant to this Contract shall be the same as if such change had not occurred.
- 3.2.3 If any error or mistake occurs in the figures published for the Index which have been used in any calculation performed pursuant to paragraph 3.1 which is subsequently duly acknowledged by the Office of National Statistics (or relevant replacement or alternative body), the calculations in which the incorrect figures were used shall be recalculated using the correct figures. Any dispute regarding changes to the Index and/or calculations may be referred by either party to the Dispute Resolution Procedure. Any overpayment or underpayment by either party to the other which has occurred as a result of the relevant errors shall be paid or repaid by the relevant party within ten (10) Business Days of the recalculation being agreed or determined.

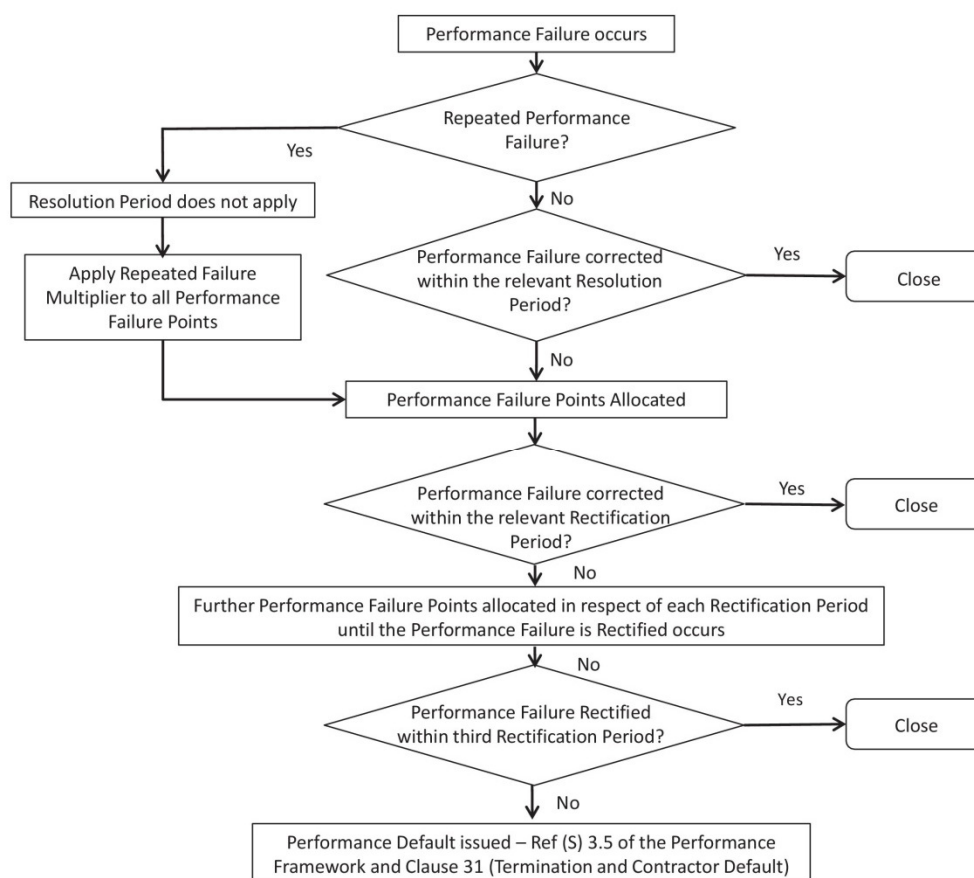
APPENDIX 1

PERFORMANCE FRAMEWORK

1 INTRODUCTION

- 1.1 This Appendix sets out the mechanism for monitoring the performance of the Contractor's obligations under this Contract, and for calculating the Performance Points to be allocated to the Contractor.

The methodology for calculating the Performance Points to be allocated to the Contractor is summarised in the schematic below:



2 DEFINITIONS

- 2.1 In this Performance Framework, the following terms shall bear the following meanings:

"Key Performance Indicators or KPIs" means the key performance indicators relating to the Services or other obligations of the Contractor pursuant to this Contract which are set out in Annex 1 to this Performance Framework;

"Performance Deductions" means the output of the calculation set out in paragraph 3.7 of this Performance Framework;

"Performance Failure" means any failure by the Contractor to achieve any KPI;

"Performance Failure Notice" means a notice submitted by the Authority to the Contractor pursuant to paragraph 0 of this Performance Framework;

"Performance Points" means the notional points which, subject to the provisions of this Performance Framework, shall be allocated to the Contractor in respect of each Performance Failure;

"Rectification Period" means, in respect of the relevant KPIs, the period set out in column 10 of the table in Annex 1;

"Repeated Failure Multiplier" has the meaning given to it in paragraph 3.4 of this Performance Framework;

"Repeated Performance Failure" has the meaning given to it in paragraph 3.3 of this Performance Framework; and

"Resolution Period" means, in respect of the relevant KPIs, the period set out in column 8 of the table in Annex 1.

3 MECHANISM FOR CALCULATING AND ALLOCATING PERFORMANCE POINTS

3.1 Resolution Periods

3.1.1 Subject to paragraph 3.1.3, upon the occurrence of a Performance Failure, the Contractor may rectify that failure during the relevant Resolution Period without being liable for Performance Points.

3.1.2 If a Performance Failure has not been rectified before the end of the relevant Resolution Period, the relevant number of Performance Points shall be allocated to the Contractor at the end of the relevant Resolution Period. In the event that the relevant KPI has no specified Resolution Period, the relevant number of Performance Points shall be allocated to the Contractor upon the occurrence of the relevant Performance Failure.

3.1.3 Resolution Periods only apply in respect of the initial occurrence of a Performance Failure. As such, Resolution Periods do not apply to any Repeated Performance Failure.

3.2 Rectification Periods

3.2.1 If the Contractor fails to rectify a Performance Failure within the relevant Rectification Period then a further set of relevant Performance Points will be allocated to the Contractor. If the Performance Failure is rectified during the Rectification Period then no further Performance Points shall be allocated to the Contractor in respect of that Performance Failure.

3.2.2 The first Rectification Period shall start at the end of the relevant Resolution Period (if any).

3.2.3 In accordance with paragraph 3.3, the expiry of each subsequent Rectification Period until the Performance Failure is rectified will be considered a Repeated Performance Failure and accordingly:

- 3.2.3.1 the Contractor will suffer further Performance Points at the expiry of each Rectification Period in which that Performance Failure is not rectified; and
- 3.2.3.2 the Repeated Failure Multiplier set out in paragraph 3.4 will be applied to the relevant Performance Point allocations.

3.3 Repeated Performance Failure

- 3.3.1 A "**Repeated Performance Failure**" arises where a Performance Failure occurs that is not rectified during the first Rectification Period applicable to that Performance Failure.
- 3.3.1 In this Performance Framework, references to a Performance Failure shall be deemed to be references to a Repeated Performance Failure where the context requires.

3.4 Repeated Failure Multiplier

The "**Repeated Failure Multiplier**" as set out in the table below will be applied to all Performance Points relating to the relevant Repeated Performance Failure.

| Number of Performance Failures comprising the relevant Repeated Performance Failure | Repeated Failure Multiplier applied to Performance Points allocation |
|---|--|
| 2 | 1.0 |
| 3 | 1.5 |
| 4 | 2.0 |
| 5 | 2.5 |
| >5 | 3.0 |

3.5 Performance Failure Notice

If the Contractor fails to rectify a Performance Failure in respect of which there is Rectification Period by the expiry of the third (3rd) Rectification Period, the Authority may issue a notice to the Contractor directing the Contractor to rectify that Performance Failure within the "Performance Failure Longstop Period" specified in the Annex to this Appendix (a "**Performance Failure Notice**").

3.6 Performance Default

In the event that the Contractor receives five (5) Performance Failure Notices in any Contract Year, the Authority shall be entitled to terminate this Contract pursuant to Clause 31 (Termination for Contractor Default).

3.7 Calculation of Total Performance Deduction

For each month during the Contract Period, the Performance Deductions in respect

of the Services shall be calculated by reference to the number of Performance Points allocated to the Contractor in respect of such month, subject to the application of the minimum Performance Points threshold, as follows:

$$PD_m = PP_m \times \text{Value}$$

Where:

PD_m = the Performance Deductions in respect of month 'm';

PP_m = the total number of Performance Points in respect of the Services which were allocated to the Contractor during month 'm' (after application of the Repeated Failure Multiplier, where appropriate), provided that where the total number of Performance Points allocated to the Contractor during month 'm' is less than sixteen (16) Performance Points, **PP_m** shall be deemed to be zero (0); and

Value = Sixty One Pounds (£61).

3.8 KPIs

The columns in the table in the Annex to this Appendix describe for each KPI:

- 3.8.1 the KPI reference number (column 1);
- 3.8.2 the name of the KPI (column 2);
- 3.8.3 the cross reference to the relevant requirement of this Contract (column 3);
- 3.8.4 details of the relevant KPI (column 4)
- 3.8.5 details of the associated Performance Failure (column 5);
- 3.8.6 the Monitoring Period (column 6);
- 3.8.7 the frequency at which the Contractor is required to report performance against the relevant KPI (column 7);
- 3.8.8 the Resolution Period, if any (column 8);
- 3.8.9 the number of Performance Points to be allocated on each application (subject to Repeated Failure Multipliers as appropriate) (column 9); and
- 3.8.10 the Rectification Period, if any (column 10).

4 MONITORING AND REPORTING

- 4.1 The Contractor will be responsible for the monitoring and accurate recording at all times of its own performance of the Services and of compliance with, or default under, the requirements of this Performance Framework.
- 4.2 The Contractor will notify the Authority of any Performance Failures (including any Repeated Performance Failures) in respect of each month in the associated Service Report or invoice.

- 4.3 The reporting frequency set out in column 7 of the table in Annex 1 is the minimum frequency with which the Contractor is required to monitor and report as necessary on all elements of the Services.

5 PROVISION OF RECORDS

- 5.1 The Contractor shall keep up to date records of its monitoring of its performance for each KPI, in an accessible and readable format and shall permit access to them free of charge to the Authority on reasonable notice.
- 5.2 Where the Authority reasonably believes that the Contractor has not monitored its performance properly in respect of any KPI or any other aspect of the Services, the Authority can direct the Contractor to improve the manner in which it conducts its inspections or monitors its performance and the Contractor shall promptly comply with such direction at its own cost.

ANNEX 1 – KEY PERFORMANCE INDICATORS

| Treatment & Disposal Contract Key Performance Indicators | | | | | | | | | |
|--|--|--|--|--|-------------------|---------------------|-------------------|--------------------|----------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| KPI No | Key Performance Indicator | Contract Reference | Details | Performance Failure | Monitoring Period | Reporting Frequency | Resolution Period | Performance Points | Rectification Period |
| Reporting | | | | | | | | | |
| 1 | Monthly Service Report | Clause 12, 15 / Core Spec 13 | The Contractor shall provide monthly performance reports to the Authority within five Business Days of the end of each month | Failure to provide monthly performance within five Business Days of the End of Each month | Monthly | Monthly | 1 day | 1 per occurrence | 1 day |
| 2 | Non Contract Waste as Contract Waste or End Destination Info | Core Spec 4 | To ensure all contract waste is received and measured in accordance with the specification and that onward destination is made available to the authority. | Reporting non contract waste as contract waste. Failure to provide Duty of Care End Destination information within the prescribed time frame when requested by the authority | Daily | Monthly | 1 day | 2 per occurrence | 1 day |
| Facilities Availability | | | | | | | | | |
| 3 | Operation of Facilities | Clause 6.1/ Core Spec 17.1 | Ensuring all Facilities are open and available in accordance with the Core Specification and SDP | Failure to have facilities available in accordance with the specification and SDP | Daily | Monthly | n/a | 5 per occurrence | 1 day |
| 4 | Turnaround Times | Core Spec 17.4 | The Contractor shall ensure that the average Turnaround Time for all vehicles delivering Contract Waste to a Site in any Contract Month shall be no more than 20 minutes. In no circumstances shall the Turnaround Time for a vehicle delivering Contract Waste be more than 40 minutes: A vehicle Turnaround Time will be measured from the moment a Authority vehicle weighs in over the weighbridge until the point it weighs out over the weighbridge of the Delivery Point. | Average turn around time is greater than 20 minutes for all vehicles over a calendar month. Or a single vehicle turnaround time is greater than 40 minutes. | Monthly | Monthly | n/a | 1 per occurrence | 1 month |
| 5 | Contingency Facilities | Core Spec 19 | The Contractor is required to make arrangements for the diversion of vehicles or Contract Waste away from any Primary Delivery Point, Primary Disposal Facility or Primary Treatment Facility to a Contingency Delivery Point, Contingency Disposal Facility or Contingency Treatment Facility, in the event that the Contractor is unable to accept or process Contract Waste at the relevant Primary Delivery Point, Primary Disposal Facility or Primary Treatment Facility | Failure to provide contingency delivery point or processing facility | Daily | Monthly | n/a | 10 per occurrence | 1 day |
| Performance | | | | | | | | | |
| 6 | Disposal Diversion | Core Spec 2.2.5 & relevant Material Category Specification(s) | To achieve the levels of Disposal Diversion required by the relevant Material Category Specification(s) to ensure the waste is Treated | Failure to achieved levels of Disposal Diversion over one contract year | Monthly | Annually | n/a | 10 per occurrence | 1 month |
| 7 | Contribution toward recycling and composting | Material Category Specification(s) | To achieve the levels of Recycling and Composting required by the relevant Material Category Specification(s) and as detailed in the SDP | Failure to achieved levels of recycling and composting performance over one contract year | Monthly | Annually | n/a | 10 per occurrence | 1 month |
| Service Delivery Plan (SDP) | | | | | | | | | |
| 8 | Changes to SDP | Core Spec 8.3 | All changes in the SDP to be agreed in writing with the Authority | Failure to notify and agree changes in writing with the Authority | Monthly | Monthly | 3 days | 5 per occurrence | 1 day |
| 9 | Waste Acceptance Protocol | Core Spec 2.2 , Waste Acceptance Protocol & Relevant Material Category | Accept, identify and segregate waste in accordance with the Core Specification, Waste Acceptance Protocol and relevant Material category Specification | Failure to Accept, identify and segregate waste in accordance with the Core Specification, Waste Acceptance Protocol and relevant Material category Specification | Daily | Monthly | 1 day | 1 per occurrence | 1 day |
| Health & Safety | | | | | | | | | |
| 10 | Risk Assessments | Core Spec 14. | The Contractor shall carry out detailed health and safety risk assessments for all working practices on the Site(s) used for the purposes of this Contract. These risk assessments shall be such that safe working practices are adopted, monitored and controlled by the Contractor at all times and will be reviewed at an appropriate frequency dependant on the nature and significance of any risks identified. Copies of all subsisting health and safety risk assessments shall be provided by the Contractor within 10 Business Days following the Commencement Date and copies of any reviews and/or updates of such health and safety risk assessments shall be provided to the Authority throughout the Contract Period as soon as reasonably practicable following their production. | Failure to adopt, monitor and control work activities via risk assessment or failure to report any update in risk assessments to the Authority in writing | Monthly | Monthly | 1 day | 3 per occurrence | 1day |

APPENDIX 2

SCHEDULE OF RATES

| Lot 1 – Residual Waste | | | |
|---|---------------------|-----------------------------|---|
| Delivery Point | Annual Tonnage Bid* | Gate Fee – Per Tonne (£) ** | Additional opening hours – Hourly Rate (£)# |
| Facility Name: | | | |
| Address: | | | |
| Post Code: | | | |
| <i>For additional Delivery Points please add extra rows</i> | | | |

*Minimum bid for residual waste is 10,000 tonnes per annum

**Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year.

Additional opening hours - are those over and above those bid as part of the tender process

| Lot 2 – Bulky Waste | | | |
|---|---------------------|----------------------------|---|
| Delivery Point | Annual Tonnage Bid* | Gate Fee – Per Tonne (£) * | Additional opening hours – Hourly Rate (£)# |
| Facility Name: | | | |
| Address: | | | |
| Post Code: | | | |
| <i>For additional Delivery Points please add extra rows</i> | | | |

*Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year

Additional opening hours - are those over and above those bid as part of the tender process

| Lot 3 – Green Waste | | | |
|--|---------------------|----------------------------|---|
| Delivery Point | Annual Tonnage Bid* | Gate Fee – Per Tonne (£) * | Additional opening hours – Hourly Rate (£)# |
| Facility Name: | | | |
| Address: | | | |
| | | | |
| Post Code: | | | |
| For additional Delivery Points please add extra rows | | | |

*Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year

Additional opening hours - are those over and above those bid as part of the tender process

| Lot 4 – Food Waste | | | |
|--|---------------------|----------------------------|---|
| Delivery Point | Annual Tonnage Bid* | Gate Fee – Per Tonne (£) * | Additional opening hours – Hourly Rate (£)# |
| Facility Name: | | | |
| Address: | | | |
| | | | |
| Post Code: | | | |
| For additional Delivery Points please add extra rows | | | |

*Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year

Additional opening hours - are those over and above those bid as part of the tender process

| Lot 5 – Wood Waste | | | |
|--|---------------------|----------------------------|---|
| Delivery Point | Annual Tonnage Bid* | Gate Fee – Per Tonne (£) * | Additional opening hours – Hourly Rate (£)ⁱ |
| Facility Name: | | | |
| Address: | | | |
| | | | |
| Post Code: | | | |
| For additional Delivery Points please add extra rows | | | |

*Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year

Additional opening hour - are those over and above those bid as part of the tender process

| Lot 6 – Street Sweeping Waste | | | |
|--|---------------------|----------------------------|---|
| Delivery Point | Annual Tonnage Bid* | Gate Fee – Per Tonne (£) * | Additional opening hours – Hourly Rate (£)# |
| Facility Name: | | | |
| Address: | | | |
| | | | |
| Post Code: | | | |
| For additional Delivery Points please add extra rows | | | |

*Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year

Additional opening hours - are those over and above those bid as part of the tender process

| Lot 7 – Residual & Bulky Waste Exclusivity | | | | |
|--|--|---------------------|----------------------------|---|
| Delivery Point | Waste Category | Annual Tonnage Bid* | Gate Fee – Per Tonne (£)** | Additional opening hours – Hourly Rate (£)# |
| Facility Name: | Residual/ Bulky (delete as appropriate) | | | |
| Address: | | | | |
| Post Code: | | | | |
| For additional Delivery Points please add extra rows | | | | |

*Minimum bid for residual waste is 10,000 tonnes per annum

**Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year

Additional opening hours - are those over and above those bid as part of the tender process

| Lot 8 – Organic Waste Exclusivity | | | | |
|--|--|---------------------|---------------------------|---|
| Delivery Point | Waste Category | Annual Tonnage Bid* | Gate Fee – Per Tonne (£)* | Additional opening hours – Hourly Rate (£)# |
| Facility Name: | Green, Food, Wood, Sweepings (delete as appropriate) | | | |
| Address: | | | | |
| Post Code: | | | | |
| For additional Delivery Points please add extra rows | | | | |

*Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year

Additional opening hours - are those over and above those bid as part of the tender process

| Lot 9 – All Waste Exclusivity | | | | |
|--|---|---------------------|----------------------------|---|
| Delivery Point | Waste Category | Annual Tonnage Bid* | Gate Fee – Per Tonne (£)** | Additional opening hours – Hourly Rate (£)# |
| Facility Name: | Residual, Bulky, Green, Food, Wood, Sweepings (delete as appropriate) | | | |
| Address: | | | | |
| Post Code: | | | | |
| For additional Delivery Points please add extra rows | | | | |

*Minimum bid for residual waste is 10,000 tonnes per annum

**Gate Fees & Hourly Rates should be bid at 19/20 rates – uplifts in accordance with the Payment Mechanism will be applied from the 1st April 2020 and each subsequent year

Additional opening hours - are those over and above those bid as part of the tender process

SCHEDULE 5 FACILITIES
PART A: PRIMARY DELIVERY POINTS

[•]

PART B: CONTINGENCY DELIVERY POINTS

[•]

PART C: PRIMARY TREATMENT FACILITIES

[•]

PART D: CONTINGENCY TREATMENT FACILITIES

[•]

PART E: PRIMARY DISPOSAL FACILITIES

[•]

PART F: CONTINGENCY DISPOSAL FACILITIES

[•]

SCHEDULE 6

FORM OF [PERFORMANCE BOND] [PARENT COMPANY GUARANTEE]

[•]

SCHEDULE 7

WASTE ACCEPTANCE PROTOCOL

1 GENERAL REQUIREMENTS

1.1 This Waste Acceptance Protocol:

- 1.1.1 sets out the protocol for the receipt, inspection, segregation (where required), acceptance and subsequent management of Contract Waste by the Contractor at the Delivery Points; and
- 1.1.2 identifies the procedures to be implemented by the Contractor if it identifies any Prohibited Waste and/or Objectionable Waste in any load of Waste delivered by or on behalf of the Authority to any Delivery Point.

1.2 This Waste Acceptance Protocol shall apply to all deliveries of Waste to any Delivery Point.

2 CONTRACTOR'S RESPONSIBILITIES

2.1 Without prejudice to the requirements of the Specifications, the Contractor shall:

- 2.1.1 accept all Contract Waste which is delivered to any Primary Delivery Point and procure the acceptance of all Contract Waste which is delivered to any Contingency Delivery Point following implementation of the Delivery Point Contingency Plan (as defined in the Core Specification);
- 2.1.2 be responsible for monitoring and recording details of all incoming Waste at each Delivery Point; and
- 2.1.3 make all arrangements necessary for the subsequent management of Waste, including Treatment and/or Disposal of all Contract Waste Delivered to a Delivery Point.

2.2 Each load of Contract Waste shall be managed by the Contractor at the relevant Delivery Point in accordance with the Specifications and the Service Delivery Plan except to the extent that:

- 2.2.1 it is Prohibited Waste, in which case it shall be dealt with in accordance with paragraph 3
- 2.2.2 of this Waste Acceptance Protocol; or
- 2.2.3 it is Objectionable Waste, in which case it shall be dealt with in accordance with paragraph 4 of this Waste Acceptance Protocol.

2.3 The Parties acknowledge and agree that the Authority will only accept responsibility for Prohibited Waste and Objectionable Waste to the extent that that the Contractor is able to provide evidence that such Prohibited Waste and Objectionable Waste originated from a Waste load which was delivered by or on behalf of the Authority pursuant to this Contract.

3 PROHIBITED WASTE

- 3.1 The categories of material which constitute Prohibited Waste will automatically vary to reflect any changes to the Environmental Permits which apply to the Delivery Points which are imposed by the Environment Agency. In addition, the categories of material which constitute Prohibited Waste may be varied by agreement between the Parties (acting reasonably). In the event that the Contractor wishes to propose such a change, it shall provide a written justification to the Authority with its request for Authority consent. Within ten (10) Business Days of receipt of such written justification, the Authority shall either confirm its agreement to the proposed changes or otherwise provide reasons for refusal of the change.
- 3.2 Where the Contractor identifies Waste in a load delivered to the Delivery Point which, in its reasonable opinion, is Prohibited Waste, this material shall be segregated from the remainder of the load, where this is possible, in a manner which is safe and compliant with Good Industry Practice. Where the Contractor is unable to segregate the Prohibited Waste in a manner which is safe and compliant with Good Industry Practice, the Contractor shall handle the whole load as if it were Prohibited Waste.
- 3.3 Subject to paragraph 3.15 below, Prohibited Waste shall be stored at the Delivery Point until transported to a facility appropriate for the Treatment and/or Disposal of the material in question in accordance with paragraph 3.11 below.
- 3.4 The Contractor shall use reasonable endeavours to manage Prohibited Waste in accordance with the waste hierarchy where this is practicable and economically viable.
- 3.5 Subject to paragraph 3.15 below, the Contractor shall inform the Authority by telephone and by email on discovery by the Contractor of Prohibited Waste within any load of Waste delivered to a Delivery Point. Such notification shall be provided within two (2) hours in respect of any load delivered on a Business Day before 4pm and otherwise by 12pm on the following Business Day.
- 3.6 In addition to the notification required by paragraph 3.5, the Contractor shall also provide a **Prohibited Waste Notification** which shall contain:
- 3.6.1 digital photographs of the Prohibited Waste in-situ; and
 - 3.6.2 details of the Contractor's assessment of why the material constitutes Prohibited Waste,
- as soon as reasonably practicable and in any event within two (2) Business Days after having accepted what it considers to be Prohibited Waste at a Delivery Point.
- 3.7 The Authority's Representative may, by [2pm on the next Business Day following the date of receipt of a Prohibited Waste Notification] either:
- 3.7.1 agree with the Contractor's assessment that the material should be handled as Prohibited Waste and authorise the Contractor to manage and/or dispose of the material in accordance with paragraph 3.11; or
 - 3.7.2 request a joint inspection of the relevant material which shall be carried out by the Authority's Representative and the Contractor's Representative at a date and time agreed between the Parties (such date to be within two (2) Business Days of the date of the Authority's request for a joint inspection).

- 3.8 In the event that:
- 3.8.1 neither paragraph 3.7.1 or 3.7.2 above is implemented, the material shall be deemed to be Prohibited Waste as per the Contractor's notifications under paragraphs 3.5 and 3.6;
 - 3.8.2 the Authority's Representative and the Contractor's Representative agree that the material should be handled as Prohibited Waste, the material shall be deemed to be Prohibited Waste as per the Contractor's notification under paragraphs 3.5 and 3.6;
 - 3.8.3 the Authority's Representative and the Contractor's Representative agree that the material is not Prohibited Waste, it shall be handled in accordance with paragraph 3.13 of this Waste Acceptance Protocol; and
 - 3.8.4 the Authority's Representative and the Contractor's Representative cannot agree whether the material is Prohibited Waste, paragraphs 3.9 to 3.12 of this Waste Acceptance Protocol shall apply.
- 3.9 Where the Contractor and the Authority cannot agree whether the relevant material is Prohibited Waste, the Contractor shall procure that the relevant material is subjected to independent testing by an appropriate third party (identity to be agreed in writing by both Parties, acting reasonably) with the relevant expertise and in accordance with Good Industry Practice. Such independent testing shall involve the testing of an agreed sample, or the entire Waste load in the event of failure to agree a sample, to determine whether or not the material constitutes Prohibited Waste.
- 3.10 Where such independent testing determines that the material is not Prohibited Waste, the cost of the independent testing shall be borne by the Contractor; otherwise the cost of the independent testing pursuant to paragraph 3.9 shall be borne by the Authority.
- 3.11 In the event that it is agreed or determined pursuant to this Waste Acceptance Protocol that material delivered to a Delivery Point by or on behalf of the Contractor constitutes Prohibited Waste, the Authority shall be entitled to elect that either:
- 3.11.1 the Contractor will manage and Treat or Dispose of such Prohibited Waste at an appropriately permitted facility at its own risk;
 - 3.11.2 the Authority will remove the Prohibited Waste from the Delivery Point and manage and dispose of the Prohibited Waste at an appropriately permitted facility at its own risk; or
 - 3.11.3 the Contractor will transport the Prohibited Waste on behalf of the Authority to a site designated by the Authority, following which ownership and risk for such Prohibited Waste transfers back to the Authority.
- 3.12 The Authority shall provide written confirmation of its election pursuant to paragraph 3.11 to the Contractor by phone and email within one (1) Business Day of the agreement or determination being concluded and the Contractor shall promptly take all reasonable steps to ensure that the Authority's election is complied with. In the event the Authority makes an election under paragraph 3.11.1:
- 3.12.1 the Contractor shall report the details of the management and Treatment or Disposal of the Prohibited Waste in the next Service Report to be supplied

in accordance with the Core Specification; and

- 3.12.2 the Contractor shall be entitled to be paid for the performance of such management, Treatment and/or Disposal activities in accordance with the provisions of Schedule 4 (Payment Mechanism).
- 3.13 In the event that it is agreed or determined pursuant to this Waste Acceptance Protocol that material delivered to a Delivery Point by or on behalf of the Contractor does not constitute Prohibited Waste, the Contractor shall accept and Treat or Dispose of the material on the basis that it constitutes Contract Waste.
- 3.14 The Contractor shall separately weigh all loads of Prohibited Waste as they leave the Delivery Point (irrespective of whether the Prohibited Waste is removed by the Contractor or the Authority).
- 3.15 To the extent that storage of the relevant Prohibited Waste at the relevant Delivery Point would give rise to a threat to health and safety (in each case other than as a result of the breach, neglect or default of the Contractor or any Contractor Related Party), then the Contractor shall be entitled to arrange for the prompt removal from the Delivery Point and Treatment or Disposal of the Prohibited Waste.
- 3.16 In the case of an incident as described by paragraph 3.15, the Contractor shall inform the Authority in writing of the details of the Prohibited Waste and Treatment or Disposal facility utilised by the Contractor within four (4) hours of identification of such materials where identified before 3pm on any Business Day or otherwise by 12pm the following Business Day, providing a full justification and evidence of reasons. The Contractor shall bear the cost of the Treatment/Disposal in these circumstances, unless the Contractor can demonstrate to the Authority's reasonable satisfaction that the materials were Prohibited Waste and paragraph 3.15 in fact applied.
- 3.17 The Contractor shall report the details of Prohibited Waste to the Authority on a monthly basis to assist in identifying any required improvement measures.

4 OBJECTIONABLE WASTE

- 4.1 Where the Contractor reasonably considers that any single load of Waste delivered to a Delivery Point pursuant to this Contract constitutes Objectionable Waste, the relevant load shall be segregated from all other Waste at the Delivery Point and retained for inspection by the Authority.
- 4.2 Subject to paragraph 4.12 below, Objectionable Waste shall be stored at the Delivery Point until transported to a facility appropriate for the Treatment and/or Disposal of the material in question in accordance with this paragraph 4.
- 4.3 The Contractor shall use reasonable endeavours to manage Objectionable Waste in accordance with the waste hierarchy where this is practicable and economically viable.
- 4.4 Subject to paragraph 4.12 below, the Contractor shall inform the Authority by telephone and by email on discovery by the Contractor of Objectionable Waste within any load of Waste delivered to a Delivery Point. Such notification shall be provided within four (4) hours in respect of any load delivered on a Business Day before 4pm and otherwise by 12pm on the following Business Day.

- 4.5 In addition to the notification required by paragraph 4.4, the Contractor shall also provide an **Objectionable Waste Notification** which shall contain:
- 4.5.1 digital photographs of the Objectionable Waste in-situ; and
 - 4.5.2 details of the Contractor's assessment of why the material constitutes Objectionable Waste,
- as soon as reasonably practicable and in any event within four (4) Business Days after having accepted what it considers to be Objectionable Waste at a Delivery Point.
- 4.6 The Authority's Representative may, by [4pm on the next Business Day following the date of receipt of an Objectionable Waste Notification] either:
- 4.6.1 agree with the Contractor's assessment that the material should be handled as Objectionable Waste and authorise the Contractor to manage and/or dispose of the material in accordance with paragraph 4.8; or
 - 4.6.2 request a joint inspection of the relevant material which shall be carried out by the Authority's Representative and the Contractor's Representative at a date and time agreed between the Parties (such date to be within four (4) Business Days of the date of the Authority's request for a joint inspection).
- 4.7 In the event that:
- 4.7.1 neither paragraph 4.6.1 or 4.6.2 above is implemented, the material shall be deemed to be Objectionable Waste as per the Contractor's notifications under paragraphs 4.4 and 4.5;
 - 4.7.2 the Authority's Representative and the Contractor's Representative agree that the material should be handled as Objectionable Waste, the material shall be deemed to be Objectionable Waste as per the Contractor's notification under paragraphs 4.4 and 4.5;
 - 4.7.3 the Authority's Representative and the Contractor's Representative agree that the material is not Objectionable Waste, it shall be handled in accordance with paragraph 4.10 of this Waste Acceptance Protocol; or
 - 4.7.4 the Authority's Representative and the Contractor's Representative cannot agree (both acting reasonably) whether the material is Objectionable Waste, paragraph 4.8 of this Waste Acceptance Protocol shall apply.
- 4.8 In the event that it is agreed pursuant to this Waste Acceptance Protocol that material delivered to a Delivery Point by or on behalf of the Contractor constitutes Objectionable Waste, or the Parties are unable to agree (both acting reasonably), the Authority shall be entitled to elect that either:
- 4.8.1 the Contractor will manage and Treat or Dispose of such Objectionable Waste at an appropriately permitted facility at its own risk; or
 - 4.8.2 the Authority will remove the Objectionable Waste from the Delivery Point and manage and dispose of the Objectionable Waste at an appropriately permitted facility at its own risk.

- 4.8.3 the Contractor will transport the Objectionable Waste on behalf of the Authority to a site designated by the Authority, following which ownership and risk for such Objectionable Waste transfers back to the Authority.
- 4.9 The Authority shall provide written confirmation of its election pursuant to paragraph 4.8 to the Contractor by phone and email within one (1) Business Day of the agreement or determination being concluded and the Contractor shall promptly take all reasonable steps to ensure that the Authority's election is complied with. In the event the Authority makes an election under paragraph 4.8.1:
- 4.9.1 the Contractor shall report the details of the management and Treatment or Disposal of the Objectionable Waste in the next Service Report to be supplied in accordance with the Core Specification; and
- 4.9.2 the Contractor shall be entitled to be paid for the performance of such management, Treatment and/or Disposal activities in accordance with the provisions of Schedule 4 (Payment Mechanism).
- 4.10 In the event that it is agreed pursuant to this Waste Acceptance Protocol that material delivered to a Delivery Point by or on behalf of the Contractor does not constitute Objectionable Waste, the Contractor shall accept and Treat or Dispose of the material on the basis that it constitutes Contract Waste.
- 4.11 The Contractor shall separately weigh all loads of Objectionable Waste as they leave the Delivery Point (irrespective of whether the Objectionable Waste is removed by the Contractor or the Authority).
- 4.12 To the extent that storage of the relevant Objectionable Waste at the relevant Delivery Point would give rise to a threat to health and safety (in each case other than as a result of the breach, neglect or default of the Contractor or any Contractor Related Party), then the Contractor shall be entitled to arrange for the prompt removal from the Delivery Point and Treatment or Disposal of the Objectionable Waste.
- 4.13 In the case of an incident as described by paragraph 4.12, the Contractor shall inform the Authority in writing of the details of the Objectionable Waste and Treatment or Disposal facility utilised by the Contractor within six (6) hours of identification of such materials where identified before 4pm on any Business Day or otherwise by 2pm the following Business Day, providing a full justification and evidence of reasons. The Contractor shall bear the cost of the Treatment/Disposal in these circumstances, unless the Contractor can demonstrate to the Authority's reasonable satisfaction that the materials were Objectionable Waste and paragraph 4.12 in fact applied.
- 4.14 The Contractor shall report the details of Objectionable Waste to the Authority on a monthly basis to assist in identifying any required improvement measures.

SCHEDULE 8

ENVISAGED VARIATIONS

- 1 The following Variations are envisaged by the Authority at the date of entering into this Contract:

- 1.1 **Clinical Waste Collection, Treatment and Disposal Service**

Provision of an Administrative Area wide collection and Disposal service for clinical waste from households and businesses. This would include the provision of containers, collection and appropriate Recovery or Disposal.

- 1.2 **Hazardous Waste Treatment and Disposal Services**

Provision of hazardous waste disposal outlets for waste arising from Authority services.

- 1.3 **Bulky/Former Landfill Tonnage Increase (applicable to Contracts awarded under Bulky Waste Service or Exclusive Lots)**

From the earlier of expiry or termination of the Authority's existing contractual arrangements, the provision of Recovery and Disposal outlets for Residual Waste arising from the Authority's HRC network (to be Recovered or Disposed of in accordance with the Bulky Waste Material Category Specification) until new arrangements are re-procured (~17,000 tonnes per annum).

- 2 The services set out in this Schedule 8 may be sub-contracted.

SCHEDULE 9

SELECTED SERVICES

The Services shall comprise the following Material Categories:

[NOTE TO BIDDERS: *This will only include the material categories which are allocated to the Contractor]*

| Material | Tonnage or Exclusivity |
|--------------------|------------------------|
| [Residual Waste] | Tonnage / exclusivity |
| [Street Sweepings] | Tonnage / exclusivity |
| [Wood Waste] | Tonnage / exclusivity |
| [Food Waste] | Tonnage / exclusivity |
| [Green Waste] | Tonnage / exclusivity |
| [Bulky Waste] | Tonnage / exclusivity |

SCHEDULE 10
CONTRACT MANAGEMENT PLAN

[NOTE TO BIDDERS: *See separate attachment*]