

## CONFIRMATION IN RELATION TO GUARANTEE BOND DATED 22 DECEMBER 1998

**From: Banco Bilbao Vizcaya Argentaria, S.A., London Branch (formerly known as Argentaria, Caja Postal y Banco Hipotecario S.A.) (the "Guarantor")**

One Canada Square  
44th Floor  
Canary Wharf  
London  
E14 5AA

**To: Mercia Waste Management Limited ("MWML")**

The Marina  
Kings Road  
Evesham, Worcestershire  
WR11 3XZ

**The County of the Herefordshire District Council ("Herefordshire")**

Brockington  
35 Hafod Road  
Hereford HR1 1SH

**Worcestershire County Council (together with Herefordshire, the "Councils")**

County Hall  
Spetchley Road  
Worcester WR5 2NP

Date: 2014

Dear Sirs

**Waste Management Service Contract dated 22 December 1998, as amended by the Variation Agreement (as defined below), and made between MWML and the Councils (the "WMSC")**

Words and expressions defined in the WMSC bear the same meaning in this letter.

We hereby confirm that the Bond relating to WMSC and related contracts made between us as Guarantor, MWML as Contractor and the Councils and dated 22 December 1998 shall:

- (a) continue in full force and effect in relation to all of the obligations specified therein and otherwise notwithstanding the amendments to the WMSC effected by a variation agreement of even date herewith made between the Councils and MWML (the "**Variation Agreement**");
- (b) continue in full force and effect in relation to the obligations set out in Clause 59 of the WMSC; and
- (c) be construed as if all references in the Bond to the "Contract" are references to the WMSC as amended by the Variation Agreement.

For the avoidance of doubt it is hereby confirmed that:

(a) the liability of the Guarantor pursuant to the Bond shall not exceed [REDACTED]  
[REDACTED] in aggregate for the Contract Period (unless previously agreed in writing between the Contractor and the Guarantor); and

(b) Banco Bilbao Vizcaya Argentaria, S.A, London Branch is the same legal entity as the issuer of the Bond, Argentaria, Caja Postal y Banco Hipotecario S.A.

This letter is governed by English law.

Yours faithfully

.....

For and on behalf of  
**Banco Bilbao Vizcaya Argentaria, S.A., London Branch**

Acknowledged by

.....

for and on behalf of **Mercia Waste Management  
Limited**

Acknowledged by

.....

for and on behalf of **The County of the Herefordshire  
District Council**

Acknowledged by

.....

for and on behalf of **Worcestershire County Council**

**ANNEX 2**  
**CERTIFICATES TO BE ISSUED UNDER THE LOCAL GOVERNMENT**  
**(CONTRACTS) ACT 1997**

[This document is already publicly available and so is not included here or elsewhere in the  
revised disclosure]

**ANNEX 3**  
**VOLUNTARY EX ANTE TRANSPARENCY NOTICE**

[This document is already publicly available and so is not included here or elsewhere in the revised disclosure]

**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/26  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 26**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Sites:**

Final disposal sites – Use of Coventry Waste to Energy Plant

**Details:**

Confirmed Variation Instruction 8 is terminated by consent at 23:59 hours on 31 March 2012.

To use the Coventry Waste to Energy Plant as a final disposal site in accordance with the relevant Service Delivery Plan.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 8 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/44  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 44**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Sites:**

Final disposal site – Rose Hill Farm, Dymock

**Details:**

To use the third party licensed in-vessel compost facility at Dymock as a final disposal site for food waste.

The Contractor will ensure that the O&M Contractor will enter into a contract with MF Bennion (Potatoes) Limited for the acceptance and disposal of food waste (the "Bennion Contract"), and Focsa Services (UK) Limited for the collection and delivery of food waste (the "Focsa Letter"). The terms of the "Bennion Contract" and "Focsa Letter" are approved by the Council.

**Reason for Change:**

Wychavon District Council introduced separate food waste collections on 29 September 2008.

**Commencement Date of this Confirmed Variation Instruction:**

29 September 2008.

**End Date:**

10 January 2014 or the expiry or earlier termination of the Waste Management Service Contract whichever occurs first.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**





**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/50  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 50**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Legislation/Regulations:**

The Environmental Permitting (England and Wales) Regulations 2010 (as amended), the Landfill Directive (1999/31/EC) and the Council Decision (2003/33/EC).

**Sites:**

Hill & Moor Landfill Site and all Household Waste Sites.

**Details:**

To divert all plasterboard deposited at the Household Waste Sites or delivered by the constituent WCA away from Landfill in accordance with the relevant Service Delivery Plan and arrange for it to be taken to a suitably permitted disposal site where it will be Recycled.

**Reason for Change:**

From 01 April 2009 the Environment Agency amended their guidelines relating to the disposal of gypsum and other high sulphate bearing wastes along with biodegradable waste by removing the 10% tolerance and banning the co-disposal of these waste streams.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2009.

The expiry or earlier termination of the Waste Management Service Contract.

[illegible]

\_\_\_\_\_

[illegible]

[REDACTED]

Signed as Superintendent Officer

## John Hobbs



**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref:       RW/U131/03/06/51  
Ask for:       John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 51**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Sites:**

Hill & Moor Presorted MRF  
Kidderminster Presorted MRF  
Rotherwas Presorted MRF  
Bromsgrove Transfer Station  
Kidderminster bulk bays  
Redditch bulk bays  
New Presorted MRF ("EnviroSort")

**Details:**

Confirmed Variation Instructions 5, 10, 27, 31, 33 and 34 are terminated by consent at 23.59 hours on 01 November 2009.

To remove the requirement to provide a Presorted MRF at Kidderminster from 22 December 1998.



Bulk bays will continue to be provided at Redditch, Kidderminster and Bromsgrove Transfer Station and a new bulk bay will be provided at Rotherwas, to receive Recyclable Material from WCA collections, for onward transportation to EnviroSort or third parties for processing. Additionally, a new bulk bay at Hill & Moor will be

made available from time to time, by prior arrangement, in the event that another agreed Delivery Point is not available.

The Pre-sorted MRFs at Hill & Moor and Rotherwas will be decommissioned, and EnviroSort will be designed, built and operated at Norton, Worcestershire.

EnviroSort is located on 5.5 acres of land (Area 7, Norton) leased to the Contractor by the Council.

To operate:

EnviroSort

Bromsgrove bulk bays

Kidderminster bulk bays

Redditch bulk bays

Rotherwas MRF as a bulk bay

Hill & Moor MRF as a bulk bay, on a contingency basis only, and by prior arrangement, in the event that another Delivery Point is not available.

in accordance with the relevant SDP.

The Contractor will ensure that they transport Recyclable Material between Bulk Bays and EnviroSort and for recycling/disposal either using their fleet or via a third party.

Unavailability:

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Not less than [REDACTED] of Contract Waste processed at EnviroSort will be Recycled.



[REDACTED]

[REDACTED]

[REDACTED]

EnviroSort shall be handed back to the Council at the expiry of the Waste Management Service Contract in working order, having been maintained in accordance with the manufacturer's instructions.

**Reason for Change:**

To divert Contract Waste away from Landfill and improve Recycling performance.

**Commencement Date:**

02 November 2009.

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**



**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/57  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 57**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Legislation/Regulations:**

Licence conditions at Hill and Moor compost facility.

**Sites:**

All Household Waste Sites and Transfer Stations.

**Details:**

Confirmed Variation Instruction 55 is terminated by consent at 23:59 hours on 31 March 2011.

To divert all green waste deposited at the Household Waste Sites or delivered by the constituent WCA in excess of the licensed capacity of the Hill & Moor compost facility away from Landfill in accordance with the relevant Service Delivery Plan and arrange for it to be taken to a suitably permitted third party composting facility where it will be Composted.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 55 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2011.



**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]


[REDACTED]

I hereby approve the above Contract Variation.

Signed as Superintendent Officer

**John Hobbs**

**Director of Business Environment and Communities**



**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/58  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**

**NOTICE OF VARIATION UNDER SCHEDULE 2**

**CONFIRMED VARIATION INSTRUCTION No 58**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Legislation/Regulations:**

Waste Emissions Trading Act 2003

**Sites:**

Hill & Moor Landfill Site and all Household Waste Sites.

**Details:**

Confirmed Variation Instruction 53 is terminated by consent at 23.59 hours on 31 March 2013.

To divert all timber deposited at the Household Waste Sites or delivered by the constituent WCA away from Landfill in accordance with the relevant Service Delivery Plan and arrange for it to be taken to a suitably permitted disposal site.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 53 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2013.

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.



**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**



**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/59  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 59**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Legislation/Regulations:**

EU Landfill Directive.

Landfill (England and Wales) Regulations 2002.

**Sites:**

Hill & Moor Landfill Site and all Household Waste Sites.

**Details:**

Confirmed Variation Instruction 18 is terminated by consent at 23:59 hours on 31 March 2006.

To divert all asbestos deposited at the Household Waste Sites in accordance with the relevant Service Delivery Plan and arrange for it to be taken to a suitably permitted Landfill for disposal.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 18 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2006.



**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

I hereby approve the above Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**



**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/60  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**

**NOTICE OF VARIATION UNDER SCHEDULE 2**

**CONFIRMED VARIATION INSTRUCTION No 60**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Legislation/Regulations:**

- The Environmental Permitting (England & Wales) Regulations 2010 (as amended) the Landfill Directive (1999/31/EC) and the Council Decision (2003/33/EC)
- Waste Electrical and Electronic Equipment Regulations 2006 "WEEE Regulations"
- Waste Emissions Trading Act 2003
- EU Landfill Directive Landfill (England and Wales) Regulations 2002

**Sites:**

All Household Waste Sites.

**Details:**

Confirmed Variation Instruction 37 and 53 are terminated by consent at 23.59 hours on 31 March 2013.

To provide additional staffing at the Household Waste Sites in order to provide the following services in accordance with the relevant Service Delivery Plan:

- Manage the Residents Permit Scheme.
- Manage the Commercial Vehicle and Trailer Permit Scheme to ensure that only commercial vehicles and vehicles with trailers that are suitably permitted are allowed to access the Household Waste Sites.
- To maximise Recycling and minimise Contract Waste going to Landfill from the Household Waste Sites.
- To service requirements for separate collections of timber, tyres, plasterboard and items covered under the WEEE Regulations.
- To provide re-use facilities at agreed sites.

**Reason for Change:**

To reflect changes in pricing following the agreement on Confirmed Variation Instruction 53.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2013.

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XL

21 May 2014

Our Ref: RW/U131/03/06/61  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 61**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Legislation/Regulations:**

Hazardous Waste (England and Wales) Regulations 2005  
Landfill (England and Wales) Regulations 2002

**Sites:**

All Household Waste Sites, and other sites as appropriate.

**Details:**

Confirmed Variation Instruction 28 is terminated by consent at 23:59 hours on 31 March 2012.

To ensure recovery of administration and consignment fees associated with compliance with the regulations detailed above.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 28 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.



**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
Director of Business Environment and Communities



**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/62  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 62**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Sites:**

Bromsgrove Transfer Station and Redditch Transfer Station.

**Details:**

Confirmed Variation Instruction 46 is terminated by consent at 23:59 hours on 31 March 2012.

To continue to operate Bromsgrove Transfer Station and provide additional vehicles for Bromsgrove Transfer Station and Redditch Transfer Station in accordance with the relevant Service Delivery Plan.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 46 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**Contractor's Representative**

Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/63  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT****NOTICE OF VARIATION UNDER SCHEDULE 2****CONFIRMED VARIATION INSTRUCTION No 63****Variation under Schedule 2 of the Waste Management Service Contract****Sites:**

Kington Household Waste Site

**Details:**

Confirmed Variation Instruction 48 is terminated by consent at 23:59 hours on 4 December 2009.

For the Contractor to enter into a lease (attached at appendix 1 to this Confirmed Variation Instruction) with [REDACTED] and [REDACTED] in relation to the use of land for Kington Household Waste Site ("the Lease").

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 48 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

5 December 2009

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Special Conditions:**

[REDACTED]

The Kington Household Waste Site will constitute a New Property for the purposes of clause 7 of the Property Transfer Agreement.

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/64  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 64**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Legislation/Regulations:**

The Environmental Permitting (England and Wales) Regulations 2010 (as amended), the Landfill Directive (1999/31/EC) and the Council Decision (2003/33/EC).

**Sites:**

Hill & Moor Landfill Site and all Household Waste Sites.

**Details:**

Confirmed Variation Instruction 50 is terminated by consent at 23.59 hours on 31 March 2012.

To divert all plasterboard deposited at the Household Waste Sites or delivered by the constituent WCA away from Landfill in accordance with the relevant Service Delivery Plan and arrange for it to be taken to a suitably permitted processing facility where it will be Recycled.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 50 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.





**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/65  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**

**NOTICE OF VARIATION UNDER SCHEDULE 2**

**CONFIRMED VARIATION INSTRUCTION No 65**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Sites:**

Wyre Forest District Council Depot, Green Street, Kidderminster and Hill & Moor Composting Plant.

**Details:**

On request to arrange the transportation of all garden waste collected separately by Wyre Forest District Council and deposited at their Green Street Depot to the Hill & Moor Composting Plant.

**Reason for Change:**

To enable the garden waste collected separately by Wyre Forest District Council and deposited at their Green Street Depot to be transported to Hill & Moor Composting Plant for processing.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**



**Contractor's Representative**

Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/66  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**

**NOTICE OF VARIATION UNDER SCHEDULE 2**

**CONFIRMED VARIATION INSTRUCTION No 66**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Legislation/Regulations:**

Pollution, Prevention and Control (England & Wales) Regulations 2000 and the Landfill (England & Wales) Regulation 2002.

**Sites:**

Hill & Moor Landfill Site.

**Details:**

Confirmed Variation Instruction 54 is terminated by consent at 23:59 on 31 March 2012.

This Confirmed Variation Instruction covers the additional costs incurred by the introduction of the requirement to have a Pollution, Prevention and Control (PPC) permit in order to operate the Landfill Site at Hill & Moor, in accordance with the Hill & Moor Landfill Site Service Delivery Plan.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 54 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.

**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref:       RW/U131/03/06/65  
Ask for:       John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 67**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Legislation/Regulations:**

Waste Electrical and Electronic Equipment Regulations 2006 ("the Regulations").

**Sites:**

Hill & Moor Landfill Site, all Transfer Stations and all Household Waste Sites.

**Details:**

Confirmed Variation Instruction 52 is terminated by consent at 23:59 hours on 31 March 2012.

To Recycle all Waste Electrical and Electronic Equipment (WEEE) collected at Designated Collection Facilities (DCF) via a Producer Compliance Scheme (PCS) to an Approved Authorised Treatment Facility (AATF) in accordance with the relevant Service Delivery Plan.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 52 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.



**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve the above Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/68  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 68**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Legislation/Regulations:**

EU Landfill Directive.  
Landfill (England and Wales) Regulations 2002.

**Sites:**

All Household Waste Sites and WCA Delivery Points.

**Details:**

Confirmed Variation Instruction 17 is terminated by consent at 23:59 hours on 31 March 2012.

To divert all tyres deposited at the Household Waste Sites or delivered by the constituent WCA away from Landfill in accordance with the relevant Service Delivery Plan and arrange for them to be taken to a suitably permitted disposal site where they will be Recycled.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 17 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.



**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**



**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/69  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 69**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Sites:**

Biffa landfill sites at Hartlebury.

**Details:**

Confirmed Variation Instruction 4 is terminated by consent at 23.59 hours on the Waste to Energy Plant Variation Agreement Effective Date.

To divert enable the continued use of the Biffa landfill sites at Hartlebury for the disposal of waste from Wyre Forest in undertaking their activities as a WCA.

**Reason for Change:**

To reflect changes in the availability of landfill sites since Confirmed Variation Instruction 4 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

The day after the Waste to Energy Plant Variation Agreement Effective Date.

**End Date:**

The day following the Take-over Date of the Energy from Waste Plant.



**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**Contractor's Representative**

Mercia Waste Management Limited

The Marina

Kings Road

Evesham

Worcestershire

WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/70

Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT****NOTICE OF VARIATION UNDER SCHEDULE 2****CONFIRMED VARIATION INSTRUCTION No 70****Variation under Schedule 2 of the Waste Management Service Contract****Legislation/Regulations:**

Licence conditions at Hill & Moor compost facility.

**Sites:**

All Household Waste Sites and Transfer Stations.

**Details:**

Confirmed Variation Instruction 57 is terminated by consent at 23:59 hours on 31 March 2012.

To divert all green waste deposited at the Household Waste Sites or delivered by the constituent WCA in excess of the licensed capacity of the Hill & Moor compost facility away from Landfill in accordance with the relevant Service Delivery Plan and arrange for it to be taken to a suitably permitted third party composting facility where it will be Composted.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 57 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.



**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

I hereby approve the above Contract Variation.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**



**Contractor's Representative**

Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/71  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**

**NOTICE OF VARIATION UNDER SCHEDULE 2**

**CONFIRMED VARIATION INSTRUCTION No 71**

**Variation under Schedule 2 of the Waste Management Service Contract –  
Change in Law**

**Legislation/Regulations:**

EU Landfill Directive.

Landfill (England and Wales) Regulations 2002.

**Sites:**

Hill and Moor Landfill Site and all Household Waste Sites.

**Details:**

Confirmed Variation Instruction 59 is terminated by consent at 23:59 hours on 31 March 2012.

To divert all asbestos deposited at the Household Waste Sites in accordance with the relevant Service Delivery Plan and arrange for it to be taken to a suitably permitted Landfill for disposal.

**Reason for Change:**

To reflect changes in price since Confirmed Variation Instruction 59 was agreed.

**Commencement Date of this Confirmed Variation Instruction:**

01 April 2012.



**End Date:**

The expiry or earlier termination of the Waste Management Service Contract.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

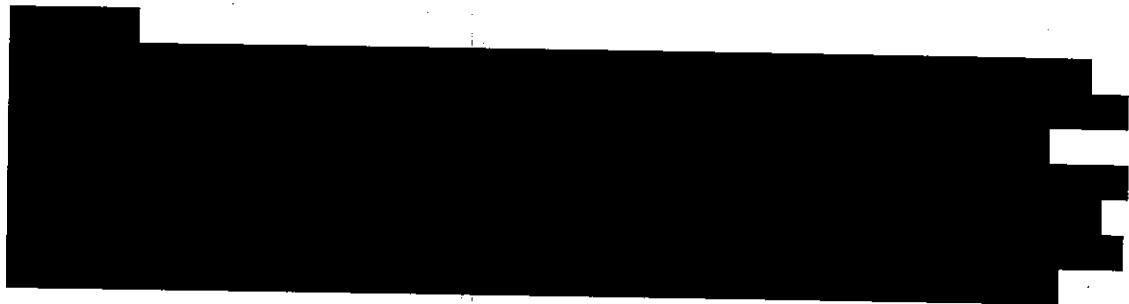
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



I hereby approve the above Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**



**Contractor's Representative**  
Mercia Waste Management Limited  
The Marina  
Kings Road  
Evesham  
Worcestershire  
WR11 3XZ

21 May 2014

Our Ref: RW/U131/03/06/72  
Ask for: John Hobbs

**WASTE MANAGEMENT SERVICE CONTRACT**  
**NOTICE OF VARIATION UNDER SCHEDULE 2**  
**CONFIRMED VARIATION INSTRUCTION No 72**

**Variation under Schedule 2 of the Waste Management Service Contract**

**Sites:**

Rotherwas Composting Plant

**Details:**

Confirmed Variation Instruction 49 is terminated by consent at 23:59 hours on 2 December 2013.

The Contractor will terminate the leasehold agreement dated 5 January 2010 for land at Upper House Farm, Moreton on Lugg, Herefordshire between [REDACTED] and [REDACTED] and Mercia Waste Management Limited ('the Lease'). Save where indicated references in this Confirmed Variation Instruction are to the Lease

**Reason for Change:**

There is no requirement for a Compost Plant in Herefordshire.

[REDACTED]

**Commencement Date of this Confirmed Variation Instruction:**  
3 December 2013



**End Date:**  
30 April 2014.

**Effect on Contract Price:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Special Conditions:**

[REDACTED]

[REDACTED]

I hereby approve this Confirmed Variation Instruction.

Signed as Superintendent Officer

**John Hobbs**  
**Director of Business Environment and Communities**

**ANNEX 5**  
**FINANCING AGREEMENTS**

*(inserted overleaf)*

**ashurst**

## Senior Term Loan Facilities Agreement

**Mercia Waste Management Limited**

as Borrower

and

**Worcestershire County Council**

and

**The County of Herefordshire District Council**

as Lead Arrangers and Original Lenders

and

**The Law Debenture Trust Corporation p.l.c.**

as Security Agent

relating to the Herefordshire and Worcestershire  
Waste Project

May 2014

PLC  
GHA  
WJ  
JF



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THIS AGREEMENT is dated May 2014

and made between:

- (1) **MERCIA WASTE MANAGEMENT LIMITED**, registered number 03525188 whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom, WR11 3XZ (the "**Borrower**");
- (2) **WORCESTERSHIRE COUNTY COUNCIL AND THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** as lead arrangers (the "**Lead Arrangers**");
- (3) **WORCESTERSHIRE COUNTY COUNCIL AND THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** as original lenders (the "**Original Lenders**"); and
- (4) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.** as security trustee for itself and the Lenders from time to time under the Finance Documents (the "**Security Agent**").

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement, except to the extent that the context requires otherwise:

"**Account Bank**" means HSBC Bank plc as holder of the Project Accounts or any other person with whom the Project Accounts are maintained pursuant to the terms of this Agreement;

"**Account Bank Agreement**" means the account bank agreement dated on or about the date of this Agreement between, among others, the Borrower and the Account Bank, together with the Mandates;

"**Actual Construction Period Cashflow Remedy Amount**" means the minimum amount necessary following a failure by the Borrower of

"**Actual Construction Period Excess Cashflow Amount**" means the amount of Operating Cash generated in any quarter during the Construction Period which is greater than the amount required to satisfy the Actual Construction Period Cashflow Test;

"**Additional Equity Contribution**" has the meaning given to it in the Equity Agreement;

**"Additional Equity Funding Notice"** has the meaning given to it in the Equity Agreement;

**"Advance"** means the principal amount of each borrowing under the Facilities or any of them;

**"Advance Payment Bond"** means the advance payment bond procured by the EPC Contractor as set out in clause 3.10 of the EPC Contract;

**"Adviser"** means the Technical Adviser, the Lenders' Insurance Adviser, the Model Auditor or any other adviser appointed under this Agreement;

**"Affiliate"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

**"Agreement"** means this senior term loan facilities agreement;

**"Aggregate Retained Earnings"** means:

- (a) as at Financial Close
- or
- (b) at any other time, Retained Earnings brought forward from previous Financial Years, plus Retained Earnings in respect of the current Financial Year to date;

**"Annual Debt Service Cover Ratio"** means, in respect of any Ratio Testing Period, the ratio of:

- (a) Cash Flow Available for Debt Service for that Ratio Testing Period; to
- (b) the Debt Service Requirement payable in that Ratio Testing Period, determined by reference to the Approved Financial Model in respect of the relevant Ratio Testing Date;

**"APC Direct Agreement"** means the direct agreement between, amongst others, the APC Processor and the Security Agent relating to the APC Disposal Contract;

**"APC Disposal Contract"** means the sub-contract between the APC Processor and the Operating Contractor relating to the treatment of fly ash;

**"APC Processor"** means FCC Environment Ltd.;

**"Applicable Accounting Principles"** means generally accepted accounting principles and practices in England, including IFRS;

**"Approved Budget"** means for any period prior to Completion (other than with respect to the period from Financial Close to 15 December 2014), a budget for Project Costs (other than Life Cycle Maintenance Costs) and Operating Costs and, following Completion, a budget for Project Costs (other than Bid Costs and Building Costs) and Operating Costs which is delivered pursuant to clause 17.2 (Financial and Project Information) and which is in sufficient detail as the Technical Adviser or, following Completion, the Lenders, may reasonably require and such that it is consistent with the Approved Financial Model, with effect that the Approved Budget shall contain the required projected expenditure;

**"Approved Financial Model"** means the Base Case Financial Model and each Updated Financial Model, which shall be in electronic form;

**"Assignment Agreement"** means an agreement substantially in the form set out in schedule 12 (Form of Assignment Agreement) or any other form agreed between the relevant assignor, assignee and the Borrower;

**"Assumptions"** means the Economic Assumptions and the Technical Assumptions;

**"Authorised Investment"** has the meaning given to it in the Account Bank Agreement;

**"Available Commitment"** means, in relation to a Facility, a Lender's Commitment under that Facility minus:

- (a) the amount of its participation in any outstanding Loans under that Facility; and
- (b) In relation to any proposed Drawdown, the amount of its participation in any other Advances that are due to be made under that Facility on or before the proposed Drawdown Date;

**"Availability Period"** means, subject to clause 5 (Drawdown), for each of the Facilities, the period commencing on Financial Close and ending on the earliest of:

- (a) Completion;
- (b) the Planned Completion Date; and
- (c) the date on which the relevant Facility is fully drawn,

or, in any case, the date if earlier on which the total Commitments under the relevant Facility are cancelled or terminated;

**"Base Case Financial Model"** means the computer model, agreed between the Lenders and the Borrower at Financial Close, as amended from time to time by agreement between the Lenders and the Borrower and delivered pursuant to paragraph 11.1 (Part I - Initial Conditions Precedent) of schedule 3;

**"Bid Costs"** means those costs (without double counting) as set out in the Base Case Financial Model and thereafter in each Approved Budget and Approved Financial Model, and any VAT thereon (including, without limitation, arranging, upfront and adviser fees and costs of the Shareholders and the Original Lenders incurred in connection with the Project before Financial Close);

**"Borrower Debenture"** means the fixed and floating security document dated on or about the date of this Agreement given by the Borrower in favour of the Security Agent;

**"Borrower Insolvency Event of Default"** means any Event of Default relating to the Borrower under clauses 19.1(e)(Insolvency) to 19.1(l) (Similar Events) (inclusive);

**"Borrower Loan Note Instrument"** means the loan note instrument dated on or about the date of this Agreement pursuant to which the Borrower Loan Notes are constituted;

**"Borrower Loan Notes"** means the subordinated loan notes constituted by the Borrower Loan Note Instrument and issued in respect of equity contributions pursuant to clause 4.1 (Standby Equity) of the Equity Agreement;

**"Borrower Share Charge (FCC)"** means the share charge dated on or about the date of this Agreement given by FCC Environment Services (UK) Limited in favour of the Security Agent relating to the share capital of the Borrower;

**"Borrower Share Charge (Urbaser)"** means the share charge dated on or about the date of this Agreement given by Urbaser Limited in favour of the Security Agent relating to the share capital of the Borrower;

**"Break Costs"** means on the date when any early repayment is made, the amount (if any) by which :

(a) the present value of the remaining payments of principal and interest, calculated (in accordance with the Circular) on normal actuarial principles using the discount rate in the 'premature repayment' set of rates in force when the repayment is agreed for a notional loan for a period equal to the remaining term of, and repayable by the same method as, the loan being repaid prematurely exceeds

(b) the amount of principal then outstanding;

**"Break Gains"** means on the date when any early repayment is made, the amount (if any) by which:

(a) the amount of principal then outstanding exceeds

(b) the present value of the remaining payments of principal and interest, calculated (in accordance with the Circular) on normal actuarial principles using the discount rate in the 'premature repayment' set of rates in force when the repayment is agreed for a notional loan for a period equal to the remaining term of, and repayable by the same method as, the loan being repaid prematurely;

**"Building Costs"** means those costs (without double counting) as set out in the Base Case Financial Model and thereafter in each Approved Budget and Approved Financial Model, and any VAT thereon, which shall include for the avoidance of doubt commissioning costs payable under the EPC Contract;

**"Bullet Payment"** has the meaning given to it in the Waste Management Service Contract;

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London;

**"BWL"** means Beacon Waste Limited, a company incorporated in England with company no. 02650198 and whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, WR11 3XZ;

**"BWL Debenture"** means the fixed and floating security document dated on or about the date of this Agreement given by BWL in favour of the Security Agent;

**"Calculation Date"** means each 30 June and 31 December after Completion, provided that, if such date is less than six (6) months after Completion, the first Calculation Date shall be the next Calculation Date;

**"Cash Flow Available for Debt Service"** means, without double counting in respect of any Ratio Testing Period:

(a) Gross Revenue; plus

(b) sums transferred to and withdrawn from the Maintenance Reserve Account pursuant to clause 16.10(b) (Maintenance Reserve Account); plus

(c) amounts in respect of liquidated damages from the EPC Contractor under the EPC Contract and the Operating Contractor under the Operating Contract; minus

(d) Project Costs; minus

(e) Taxes,

as shown in the Approved Financial Model, receivable or payable, or received or paid (as the case may be) in that period;

- "CDM Co-ordinator"** means Fichtner Consulting Engineers Ltd.;
- "CDM Co-ordinator's Appointment Deed"** means the appointment agreement between, among others, the Borrower and the CDM Co-ordinator;
- "Circular"** means Public Works Board Circular 156 or any subsequent circular issued by the Public Works Loan Board in replacement of Circular 156;
- "CMA Authority Direct Agreement"** means the direct agreement related to the Construction Management Agreement dated on or about the date of this Agreement between the Borrower, SWSL, FCC S.A., Urbaser S.A. and the Councils;
- "CMA Funders Direct Agreement"** means the direct agreement related to the Construction Management Agreement dated on or about the date of this Agreement between the Borrower, SWSL, FCC S.A., Urbaser S.A., the Lenders and the Security Agent;
- "Collateral Deed"** means the collateral deed to be entered into by the Councils, the Borrower and the Lenders on or around the date of this Agreement;
- "Compensation Account"** means the account opened in the name of Borrower with the Account Bank called the "Compensation Account" as detailed in the Account Bank Agreement or any successor account;
- "Completion"** means the date on which the Project Manager has issued an Acceptance Certificate to the EPC Contractor in accordance with the EPC Contract;
- "Compliance Monitoring Requirements"** means those requirements set out in of schedule 8 (Technical Adviser);
- "Commitments"** means the Facility A Commitments and the Facility B Commitments;
- "Construction Management Agreement"** means the construction management agreement dated 22 December 1998 between the Borrower and SWSL;
- "CMA Guarantee"** means the guarantee related to the Construction Management Agreement dated on or about the date of this Agreement between the Borrower, FCC S.A. and Urbaser S.A.;
- "CMA Parallel Loan Agreement"** means the parallel loan agreement in relation to the Construction Management Agreement dated 22 December 1998 between the Borrower and SWSL;
- "Construction Management Technical Assistance Agreement"** means the technical assistance agreement in relation to the Construction Management Agreement dated 22 December 1998 between the Borrower, SWSL and the Shareholders;
- "Construction Period"** means the period of time from Financial Close until Completion;
- "Construction Programme"** means the schedule referred to in paragraph 10 (Part I - Initial Conditions Precedent) of schedule 3, prepared by the EPC Contractor for the construction of the Project and setting out, amongst other things, the schedule of Works;
- "Contamination"** means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);

**"Councils"** means Worcestershire County Council and the County of Herefordshire District Council, each in their capacity as procuring authority under the Waste Management Service Contract;

**"Councils' Direct Agreement"** means the direct agreement dated on or about the date of this Agreement in relation to the Waste Management Service Contract between the Councils; the Lenders, the Borrower and the Security Agent;

**"Cover Ratio Event of Default"** means any Event of Default under clause 19.1(u) (Cover Ratio Default) of this Agreement;

**"CTA"** means the Corporation Tax Act 2009;

**"Cure Equity Contribution"** means any subscription for shares or subordinated debt on substantially the same terms as the existing Equity or such other terms as the Lenders may approve in each case for the purpose specified in clause 15.11 (Equity Cure);

**"Current Assets"** means:

- (a) cash held by the Borrower;
- (b) any balance on the Debt Service Reserve Account;
- (c) any balance on the Maintenance Reserve Account;
- (d) any prepayments received;
- (e) amounts owed to the Borrower and/or the amounts of any accounts receivable (in each case from trade debtors or HMRC in respect of VAT);
- (f) amounts in respect of deferred taxes;
- (g) Inventory; and
- (h) any cell preparation assets;

**"Current Liabilities"** means:

- (a) amounts owed by the Borrower and/or the amounts of any accounts payable (in each case to trade creditors or HMRC in respect of National Insurance and VAT);
- (b) the amount of any accruals or provisions made;
- (c) the amount of any deferred tax liability;
- (d) any cell restoration liabilities;
- (e) any aftercare liabilities; and
- (f) liabilities in respect of Corporation Tax;

**"Custody Agreement"** means the custody agreement relating to the Base Case Financial Model dated 22 December 1998 between the Lenders, the Borrower and The National Computing Centre Limited;

**"Damages"** means all liquidated damages and other similar sums (not being sums in respect of capital losses) paid or agreed to be payable to the Borrower pursuant to any provision of any of the Project Documents;

**"Debt Service Requirement"** means, in respect of any period, the net aggregate of all amounts paid or payable by the Borrower during such period in respect of:

- (a) Financing Costs;
- (b) Financing Principal; and
- (c) any other payment obligations of the Borrower under any of the Finance Documents (excluding Security Agent fees);

**"Debt Service Reserve Account"** means the account opened in the name of Borrower with the Account Bank called the "Debt Service Reserve Account" as detailed in the Account Bank Agreement or any successor account;

**"Debt to Equity Ratio"** means, at any time, the ratio of:

- (a) the aggregate amount of outstanding Facility A Loans under Facility A and the aggregate amount of outstanding Facility B Loans under Facility B to
- (b) the existing amount of the Shareholder Contributions made plus any amounts paid by the Equity Guarantor (Urbaser) under the Equity Agreement plus the Borrower's Aggregate Retained Earnings;

**"Deed of Accession"** has the meaning given to it in the Intercreditor Deed;

**"Deed of Variation"** means the deed of variation relating to the Waste Management Service Contract to be entered into on or around the date of this Agreement between the Borrower and the Councils;

**"Default"** means an Event of Default or Potential Event of Default;

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Security Agent;

**"Direct Agreements"** means:

- (a) the Councils' Direct Agreement;
- (b) the EPC Contractor's Authority Direct Agreement;
- (c) the EPC Contractor's Funders Direct Agreement;
- (d) the Operating Contractor's Authority Direct Agreement;
- (e) the Operating Contractor's Funders Direct Agreement;
- (f) the CMA Authority Direct Agreement;
- (g) the CMA Funders Direct Agreement;
- (h) the APC Direct Agreement;
- (i) the IBA Direct Agreement;
- (j) the PPA Direct Agreement; and
- (k) any other agreement or document which the Lenders may from time to time designate as a "Direct Agreement" with the consent of the Borrower;



**"Discount Rate"** means the weighted average of the percentage rates per annum at which it is projected on the relevant Calculation Date that interest on the Facility A Loans will accrue;

**"Disruption Event"** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**"Distribution"** means all payments (other than the Shareholder Payment and Permitted Payments) made or to be made by the Borrower to any Shareholder, any Noteholder, or any of their affiliates in respect of, amongst other things:

- (a) any Borrower Loan Notes;
- (b) dividends or redemptions in respect of Equity;
- (c) loans; and
- (d) all Equity, loan notes and other subordinated debt which constitutes a Cure Equity Contribution;

**"Distribution Account"** means the account opened in the name of Borrower with the Account Bank called the "Distribution Account" as detailed in the Account Bank Agreement or any successor account;

**"Drawdown"** means a drawdown under the Facilities;

**"Drawdown Date"** means in relation to an Advance the date on which that Advance is, or is to be, drawn down by the Borrower;

**"Drawdown Notice"** means a notice requesting an Advance substantially in the form set out in Part II of schedule 4 (Form of Notices);

**"Drawdown Schedule"** means the drawdown schedule in respect of the Facilities set out in schedule 7 (Drawdown Schedule);

**"DSRA Required Balance"** means at any time (without double counting) from (and including) the Planned Completion Date, the aggregate of the Financing Costs and Financing Principal (where applicable) in relation to the Facilities which the most recent Forecast demonstrates are payable by the Borrower in the six month period falling after the relevant Calculation Date (or in the case of the first such period, during the period after the first date referred to in paragraph (a) of clause 16.9 (Debt Service Reserve

Account) up to the first Repayment Date), as such amounts are set out in the Approved Financial Model;

**"Economic Assumptions"** means assumptions as to:

- (a) rates of inflation, the GDP deflator or any similar measure, whether over a short term or long term;
- (b) any rate of tax applicable to any person at any time or to VAT at any time;
- (c) any tax allowance applicable to any person or any asset at any time; and
- (d) the accounting policies of any relevant person (including the Borrower),

in each case as used in preparing an Approved Financial Model;

**"Environmental Authorisations"** means all authorisations, permits, licences, consents or approvals and the filing of any notification, report or assessment necessary under Environmental Law for the carrying out of the Works and the operation of the Project;

**"Environmental Claim"** means any claim by any person in connection with:

- (a) any failure to obtain any Environmental Authorisation necessary to carry out the Project;
- (b) a breach of an Environmental Law;
- (c) any accident, fire, explosion or other event of any type involving an emission or substance which is capable of causing harm to any living organism in the environment; or
- (d) any other environmental contamination;

**"Environmental Contaminant"** means any substance (whether a solid, liquid or gas and whether or not combined with one or more other substances) or waste (as defined in the Environmental Protection Act 1990) which is capable of causing harm to the health of living organisms or other interference with the ecological systems of which they form part;

**"Environmental Deed of Indemnity"** means environmental deed of indemnity dated 22 December 1998 between the Borrower and the Councils;

**"Environmental Law"** means:

- (a) any rule of common law, statute, bye-law or regulation having the force of law; or
- (b) any code of practice, rule, consent, licence, requirement, permit, order, decision or judgment the breach of which gives rise to liability or costs enforceable at law,

and which relate to or concern the presence of Environmental Contaminants in, on or under land and/or the contamination thereof and/or the protection of human health or the environment (as defined in the Environmental Protection Act 1990);

**"Environmental Matters"** means any of the following:

- (a) any release, emission, entry or introduction into the air of any Environmental Contaminants including the air within buildings and other natural or man-made structures above or below ground;

- (b) any discharge, release or entry into water of any Environmental Contaminants including into any river, watercourse, lake, loch or pond (whether natural or artificial or above or below ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters (as defined in section 1(12) Environmental Protection Act 1990), sewer of the sea;
- (c) any release, deposit, keeping or disposal in or on land whether or not covered by the sea or other waters) of any Environmental Contaminants;
- (d) any deposit, disposal, keeping, treatment, importation, production or carrying of any waste, including any substance which constitutes a scrap material or any effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled; or
- (e) nuisance, noise, defective premises, health and safety at work, preservation or protection of the natural environment or of man or any living organisms supported by the environment;

**"EPC Collateral Warranties"** means each of the collateral warranties in favour of the Borrower to be entered into between the EPC Contractor and a Major Sub-Contractor (as defined in the EPC Contract) each an "EPC Collateral Warranty";

**"EPC Contract"** means the agreement dated on or about the date of this Agreement between the Borrower and the EPC Contractor for the Works;

**"EPC Contract Guarantee"** means the guarantee dated on or about the date of this Agreement by the EPC Contractor Guarantor in favour of the Borrower and relating to the obligations of the EPC Contractor under the EPC Contract;

**"EPC Contractor"** means Hitachi Zosen Inova AG, a company incorporated under the law of Switzerland whose register office is at Hardturmstrasse 127, p.o. box 680 8037 Zurich, Switzerland;

**"EPC Contractor Guarantor"** means Hitachi Zosen Corporation, a company incorporated under the laws of Japan whose registered office is at 7-89, Nanko-Kita, 1-Chome Suminoe-Ku, Osaka 559-8559 Japan;

**"EPC Contractor's Authority Direct Agreement"** means the direct agreement dated on or about the date of this Agreement between, amongst others, the EPC Contractor, the EPC Contractor Guarantor, the Borrower and the Councils;

**"EPC Contractor's Funders Direct Agreement"** means the direct agreement dated on or about the date of this Agreement between, amongst others, the EPC Contractor, the EPC Contractor Guarantor, the Borrower, the Lenders and the Security Agent;

**"Equity"** means the aggregate of all amounts received in respect of:

- (a) Shares already subscribed for as referenced in clause 3 of the MWML Shareholders' Agreement; or
- (b) Shares or Borrower Loan Notes subscribed for in accordance with the Equity Agreement;

**"Equity Commitment"** has the meaning given to such term in the Equity Agreement;

**"Equity Contribution Account"** means the account opened in the name of Borrower with the Account Bank called the "Equity Contribution Account" as detailed in the Account Bank Agreement or any successor account;

**"Equity Agreement"** means the Equity Agreement dated on or around the date of this Agreement between the Borrower, the Equity Provider (FCC), the Equity Provider (Urbaser), the Equity Guarantor (Urbaser) and the Security Agent;

**"Equity Guarantee (Urbaser)"** means the guarantee by the Equity Guarantor (Urbaser) relating to the obligations of the Equity Provider (Urbaser) under the Equity Agreement, and forming part of the Equity Agreement;

**"Equity Guarantee"** means the Equity Guarantee (Urbaser);

**"Equity Guarantor (Urbaser)"** means Urbaser S.A.;

**"Equity Provider (FCC)"** means FCC Environment Services (UK) Limited;

**"Equity Provider (Urbaser)"** means Urbaser Limited;

**"Event of Default"** means any event or circumstance specified as such in clause 19.1 (Events of Default);

**"Excess Cash Flow Account"** means the account opened in the name of Borrower with the Account Bank called the "Excess Cash Flow Account" as detailed in the Account Bank Agreement or any successor account;

**"Existing Lender"** is as defined in clause 21.1(b) (Procedure for Transfer);

**"Existing Junior Sub-Debt Repayment Amount"** means

**"Expert"** is the person appointed in accordance with clause 15.4 (Expert Determination);

**"Facilities"** means the facilities made available in accordance with this Agreement;

**"Facility A"** means the amortising senior term loan facility made available under clause 2.1 (The Facilities) in an aggregate amount not exceeding the relevant amount set out in schedule 1 (The Original Lenders);

**"Facility A Commitments"** means, in relation to a Lender at any time, and subject to this Agreement, the amount set opposite its name in schedule 1 (The Original Lenders) under the heading Facility A Commitment (or, as provided in any Transfer Agreement or Assignment Agreement by which such Lender acquires a participation in Facility A hereunder, pursuant to clause 21.1 (Assignment and Transfer), in each case to the extent not cancelled, reduced or transferred under this Agreement

**"Facility A Loans"** means the aggregate principal amount of Advances borrowed and outstanding under Facility A from time to time;

**"Facility A Repayment Schedule"** means the repayment schedule set out in schedule 5 (Facility A Repayment Schedule);

**"Facility B"** means the bullet senior term loan facility made available under clause 2.1 (Facilities) in an aggregate amount not exceeding the relevant amount set out in schedule 1 (The Original Lenders);

**"Facility B Commitments"** means, in relation to a Lender at any time, and subject to this Agreement, the amount set opposite its name in schedule 1 (The Original Lenders) under the heading Facility B Commitment (or, as provided in any Transfer Agreement or

Assignment Agreement by which such Lender acquires a participation in Facility B hereunder, pursuant to clause 21.1 (Assignment and Transfer), in each case to the extent not cancelled, reduced or transferred under this Agreement

**"Facility B Loans"** means the aggregate principal amount of Advances borrowed and outstanding under Facility B from time to time;

**"Facility Office"** means:

- (a) In relation to an Original Lender, the office set out under its name in schedule 2 (Initial administrative details of the Parties); and
- (b) in relation to a New Lender which becomes a party to this Agreement after the date of this Agreement, the office set out in the Transfer Agreement or Assignment Agreement by which it becomes a party to this Agreement,

or any other office notified by such Lender to the Parties pursuant to clause 21.5 (Facility Office) as the office through which it will perform its obligations under this Agreement;

**"FCC S.A."** means Fomento de Construcciones y Contratas S.A. a company incorporated in Spain with registered tax number A-28/037224 whose registered office is at Calle Balmes 36, Barcelona, Spain;

**"Fee Letter"** means any letter entered into by reference to this Agreement between one or more Finance Parties and the Borrower setting out the amount of certain fees referred to in this Agreement;

**"Final Repayment Date"** means in the case of:

- (a) Facility A, the earlier of:
  - (i) the date falling on the ninth anniversary of Financial Close; and
  - (ii) the date on which all Advances under Facility A have been repaid in full and all Available Commitments (if any) have been cancelled;
- (b) Facility B, the earlier of:
  - (i) the Expiry Date; and
  - (ii) the date on which all Advances under Facility B have been repaid in full and all Available Commitments (if any) have been cancelled;

**"Finance Documents"** means the Senior Finance Documents and the Junior Finance Documents;

**"Finance Lease"** means any lease or hire purchase contract which would, in accordance with the Applicable Accounting Principles, be treated as a finance or capital lease;

**"Finance Party"** means the Security Agent, the Lead Arrangers, the Lenders, the Account Bank, any New Lender and any Delegate;

**"Financial Close"** means the date on which the Lenders give confirmation to the Borrower of satisfaction or waiver of all the conditions precedent pursuant to clause 4.1 (Initial conditions precedent);

**"Financial Indebtedness"** means any indebtedness for or in respect of:

- (a) moneys borrowed and debt balances at banks or other financial institutions;

- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under the Applicable Accounting Principles);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Final Repayment Date or are otherwise classified as borrowings under the Applicable Accounting Principles);
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Applicable Accounting Principles; and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above;

and so that:

- (l) in relation to any bank accounts subject to netting arrangements, the net balance shall be used; and
- (m) no amount of indebtedness shall be taken into account more than once.

**"Financial Year"** means, in respect of each Material Project Party, each 12 month period ending on 31 December;

**"Financing Costs"** means, in respect of any period, the aggregate of:

- (a) amounts in the nature of interest paid or payable by the Borrower under this Agreement (including default interest and sums payable under clauses 6 (Interest) and 7 (Interest Periods)); and

- (b) any fees (excluding Security Agent fees), commissions, costs and expenses and other payments not in the nature of principal paid or payable by the Borrower under this Agreement or any other Finance Document;

**"Financing Principal"** means, in respect of any period, the aggregate of amounts in the nature of principal paid or payable by the Borrower under this Agreement during that period;

**"Fixed Interest Rate"** means the fixed rate per annum agreed between the Lenders and the Borrower at which interest will accrue on the Commitments at the following rate:

- (a) In the case of Facility A:
- (i) from the date of this Agreement until (and including) Completion, per cent per annum;
  - (ii) for a period of 2 years from Completion, per cent per annum;
  - (iii) for the period commencing on the day after the expiry of the period referred to in paragraph (ii) above and ending 5 (five) years following Completion, per cent per annum; and
  - (iv) for the period commencing on the date after the expiry of the period referred to in paragraph (iii) above and ending on the Final Repayment Date, per cent per annum;
- (b) in the case of Facility B:
- (i) per cent per annum until (and including) Completion; and
  - (ii) thereafter, per cent per annum until the Expiry Date;

**"Forecast"** means the results of running the Approved Financial Model in accordance with this Agreement;

**"Force Majeure Event"** means an event of force majeure (however defined) under any Transaction Document;

**"Funding Shortfall"** means, without double counting, at any time a circumstance in which the aggregate of:

- (a) the Facility A Commitments and the Facility B Commitments available at such time;
- (b) any amount then standing to the credit of a Project Account (other than the Distribution Account) which in accordance with the terms of this Agreement is available for funding any Project Costs, including, for the avoidance of doubt, amounts then standing to the credit of the Excess Cash Flow Account;
- (c) the amount of funds payable (or which may become payable) by the Councils under the Waste Management Service Contract which is (as determined by the Lenders (acting reasonably and in consultation with the Technical Adviser, by reference to the Base Case Financial Model)) available to fund any Project Costs as and when such Project Costs fall due (or within thirty (30) days of falling due);
- (d) any other projected Damages or Insurance Proceeds or other agreed claims and final and binding awards and judgments; and
- (e) the amount of any available Equity Commitment in accordance with the Equity Agreement,

In each case receivable by or available to the Borrower during the period up to the date shown in the most recent Construction Programme as being the date on which Completion is anticipated to occur,

is less than the aggregate of:

- (i) Project Costs Incurred but unpaid;
- (ii) projected Project Costs to be incurred by the Borrower at any time prior to the date shown in the most recent Construction Programme as being the date on which Completion is anticipated to occur;
- (iii) the DSRA Required Balance at the end of the Availability Period for Facility A; and
- (iv) the Maintenance Cushion,

and thereafter the Borrower is unable to demonstrate to the satisfaction of the Lenders that it will have sufficient funds available to it in order for Completion to be achieved by the Financial Longstop Date;

**"Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person acting in good faith and carrying out the same type of activity as the Borrower under the same or equivalent circumstances and conditions and acting generally in accordance with applicable law;

**"Grid Connection Agreement"** means the grid connection agreement to be entered into between Western Power Distribution (West Midlands) plc and the Borrower;

**"Grid Connection Offer"** means the grid connection offer dated 21 December 2012 between Western Power Distribution (West Midlands) plc and the Borrower;

**"Gross Revenue"** means, at any Ratio Testing Date and without double counting, the sum of:

- (a) operating revenue including the Unitary Payment, any interim service payments (if applicable) and any actual or guaranteed third party income, but excluding, for the avoidance of doubt, the Bullet Payment; plus
- (b) interest earned on all cash accounts (other than the Distribution Account); plus
- (c) Damages;
- (d) Insurance Proceeds to the extent received as compensation for loss of revenue;
- (e) income earned on Authorised Investments (other than any Authorised Investments in respect of the Distribution Account (if any));
- (f) rebates of Tax actually received or projected to be received in the latest Approved Budget; and
- (g) all other income or proceeds of a revenue nature from whatever source;

assumed in the Approved Financial Model to be receivable by the Borrower in the period commencing with such Ratio Testing Date and terminating on the Final Repayment Date or, in respect of any Ratio Testing Period ended on that Ratio Testing Date, all such revenues actually received during such Ratio Testing Period;



**"Hartlebury Lease"** means the lease in respect of the land at Site H600, Oak Drive, Hartlebury Trading Estate, Hartlebury, Kidderminster to be entered in on or around the date of this Agreement between the Borrower and Worcestershire County Council to be granted out of title number WR109498;

**"Historic Annual Debt Service Cover Ratio"** or **"Historic ADSCR"** means the Annual Debt Service Cover Ratio calculated in respect of a Ratio Testing Period ending on a Ratio Testing Date;

**"Historic Transaction Documents"** means those documents listed in clause 3.2 and 3.3 of the Deed of Variation;

**"Holding Company"** means, in relation to a person, any other person in respect of which it is a Subsidiary;

**"IBA Direct Agreement"** means the direct agreement between the IBA Processor and the Security Agent relating to the IBA Disposal Contract;

**"IBA Disposal Contract"** means the sub-contract between, amongst others, the IBA Processor and the Operating Contractor relating to the treatment of bottom ash;

**"IBA Processor"** means SWSL;

**"IFRS"** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable;

**"Independent Tester"** means any independent tester appointed by the Borrower pursuant to an Independent Tester Appointment Deed;

**"Independent Tester Appointment Deed"** means an appointment deed between, among others, the Independent Tester and the Borrower;

**"Independent Tester Collateral Warranty"** means the collateral warranty between the Independent Tester, the Borrower, the Councils and the Lenders;

**"Information"** shall have the meaning specified in clause 14.13 or 14.14 as appropriate;

**"Insurance Advisor"** means Aon UK Ltd. or such other person as the Lenders may appoint from time to time to perform this role following consultation with the Borrower;

**"Insurance Broker"** means Marsh Limited;

**"Insurance Proceeds"** means all proceeds of the Insurances payable to or received by or on behalf of the Borrower, but excluding any such proceeds paid directly by any insurer to a third party claimant or employee;

**"Insurance Proceeds Account"** means the account opened in the name of Borrower with the Account Bank called the "Insurance Proceeds Account" as detailed in the Account Bank Agreement or any successor account;

**"Insurance Programme"** means the programme of Insurances reasonably required by the Lenders from time to time following consultation with the Insurance Adviser and the Technical Adviser and notified to the Borrower and being initially in the form set out in schedule 6 (Insurances);

**"Insurances"** means all Insurances effected pursuant to the Insurance Programme;

**"Insurers"** means the Insurers of the Project;

**"Intellectual Property"** means intellectual property of every designation (including patents, copyrights, design registrations, trademarks, service marks and know-how);

**"Intercreditor Deed"** means an intercreditor deed dated on or about the date of this Agreement between the Lenders, the Security Agent, the Borrower, BWL, the Equity Guarantor (Urbaser) and the Shareholders;

**"Interest Payment Date"** means in respect of an Interest Period, the last day of that Interest Period;

**"Interest Period"** means an interest period the commencement and length of which shall be determined in accordance with clause 7 (Interest Periods);

**"ITA"** means the Income Tax Act 2007;

**"Joint Performance Liquidated Damages Account"** means the joint account opened in the name of Borrower and the Councils with the Account Bank called the "Joint Performance Liquidated Damages Account" as detailed in the Account Bank Agreement or any successor account;

**"Junior Creditor"** has the meaning given to it in the Intercreditor Deed;

**"Junior Finance Documents"** means

- (a) the MWML Shareholders' Agreement;
- (b) the SWSL Shareholders' Agreement;
- (c) the Borrower Loan Note Instrument; and
- (d) the Borrower Loan Notes (if any);

**"Lay-off Lease"** means all that leasehold more particularly described in a lease dated on or about the date hereof made between Bristol Road Properties Limited and the Contractor known as 111/117 Hartlebury Trading Estate, Hartlebury, Worcestershire, to be granted out of title number HW123654;

**"Lenders"** means the Original Lenders or any New Lender in accordance with clause 21.1 (Assignment and Transfer);

**"Licence for Alterations"** means the licence for alterations relating to Site H600, Oak Drive, Hartlebury Trading Estate, Hartlebury, Kidderminster entered into on or around the date of this Agreement between British Overseas Bank Nominees Limited and W.G.T.C. Nominees Limited for and on behalf of National Westminster Bank PLC, Worcestershire County Council and the Borrower;

**"Life Cycle Maintenance Costs"** means those costs (without double counting) identified as, or as the case may be, as set out in the Base Case Financial Model and thereafter in each Approved Budget and each Approved Financial Model, and any VAT thereon;

**"Loan Life Cover Ratio"** means, as at any Ratio Testing Date, the ratio of:

- (a) the sum of:
  - (i) the Net Present Value of projected Cash Flow Available for Debt Service for each Ratio Testing Period during the period commencing on that Ratio Testing Date and ending on the Expiry Date; and

- (ii) the amount (if any) standing to the credit of the Debt Service Reserve Account and the Maintenance Reserve Account at the close of business on that Ratio Testing Date; to

- (b) the outstanding principal under Facility A on that Ratio Testing Date,

at that Ratio Testing Date determined by reference to the Approved Financial Model in respect of the relevant Ratio Testing Date;

"Loans" means the Facility A Loans and the Facility B Loans;

"Maintenance Cushion" has the meaning given to it in clause 16.10 (Maintenance Reserve Account);

"Maintenance Reserve Account" means the account opened in the name of Borrower with the Account Bank called the "Maintenance Reserve Account" as detailed in the Account Bank Agreement or any successor account;

"Maintenance Reserve Testing Date" has the meaning given to it in clause 16.10 (Maintenance Reserve Account);

"Mandate" has the meaning given to such term in the Account Bank Agreement;

"Margin" means:

- (a) in the case of Facility A:

- (i) per cent per annum until (and including) Completion;
- (ii) for a period of 2 years from Completion, per cent per annum;
- (iii) for the period commencing on the day after the expiry of the period referred to in paragraph (ii) above and ending 5 (five) years following Completion, per cent per annum; and
- (iv) for the period commencing on the date after the expiry of the period referred to in paragraph (iii) above and ending on the Final Repayment Date, 3.50 (three point five zero) per cent per annum;

- (b) in the case of Facility B:

- (i) per cent per annum until (and including) Completion; and
- (ii) thereafter per cent per annum until the Expiry Date;

"Material Adverse Effect" means a material adverse effect on:

- (a) the ability of the Borrower to perform its obligations under the Senior Finance Documents;
- (b) the ability of the Borrower or a Material Project Party to perform its respective payment obligations under the Transaction Documents to which it is a party and its material obligations under the Transaction Documents to which it is a party;
- (c) the business, operations, assets or financial condition of the Borrower; or
- (d) the legality, validity or enforceability of any provision of, or the effectiveness or ranking of any Security Interest granted or purported to be granted pursuant to

any of the Senior Finance Documents or any material provision of the Project Documents;

**"Material Project Party"** means:

- (a) the Borrower;
- (b) BWL;
- (c) each WMSC Guarantor until such time as it has no obligations under the WMSC Guarantee;
- (d) the EPC Contractor until the expiry of the Defects Liability Period (as defined in the EPC Contract);
- (e) the EPC Contractor Guarantor until such time as it has no obligations under the EPC Contract Guarantee;
- (f) the Operating Contractor until such time as it has no obligations under the Operating Contract;
- (g) the Equity Guarantor (Urbaser) until such time as it has no obligations under the Equity Guarantee; and
- (h) any Shareholder;

**"Minimum Acceptable Rating"** means the required credit ratings relating to the issuer of the Advance Payment Bond, the Performance Bond and the Retention Bond as set out in clause 3.15 of the EPC Contract;

**"Model Auditor"** means Mazars LLP or such other person as the Lenders may appoint from time to time to perform this role following consultation with the Borrower;

**"Month"** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that in respect of any single month or the last month in any period of Months:

- (a) If the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
- (b) If there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month;

**"MWML Shareholders' Agreement"** means the shareholders' agreement dated 22 December 1998 between the Shareholders and the Borrower;

**"Net Present Value"** means, in relation to any amount projected in the Approved Financial Model for any Ratio Testing Period (or part of it) falling after a Calculation Date, an amount equal to such projected amount discounted back to such Calculation Date on an end-point basis using the Discount Rate specified in the Approved Financial Model for the relevant Ratio Testing Period;

**"New Lender"** shall have the meaning given to such term in clause 21.1(c) (Lender);

**"Non-Material Project Documents"** means the Custody Agreement, the Independent Tester Appointment Deed and the CDM Co-ordinator's Appointment Deed and any other Project Document to which a Material Project Party is not party;

**"Operating Account"** means the account opened in the name of Borrower with the Account Bank called the "Operating Account" as detailed in the Account Bank Agreement or any successor account;

**"Operating Cash"** means:

- (a) Gross Revenue; less
- (b) Operating Costs; plus or minus
- (c) changes in Working Capital; less
- (d) Corporation Tax.

in each case, in respect of that Financial Year, as reflected in the operating cashflow calculation in the Approved Financial Model;

**"Operating Contract"** means the agreement dated 22 December 1998 between the Borrower, BWL and the Operating Contractor for the Works;

**"Operating Contract Parallel Loan Agreement"** means the parallel loan agreement relating to the Operating Contract dated 22 December 1998 between the Borrower and SWSL;

**"Operating Contractor"** means SWSL;

**"Operating Contractor's Authority Direct Agreement"** means the direct agreement dated on or about the date of this Agreement between, amongst others, the Operating Contractor, BWL, the Borrower and the Councils;

**"Operating Contractor's Funders Direct Agreement"** means the direct agreement dated on or about the date of this Agreement between, amongst others, the Operating Contractor, BWL, the Borrower, the Lenders and the Security Agent;

**"Operating Costs"** means, without double counting any of those costs, and including any VAT thereon, costs identified as, or as the case may be, falling within the category of:

- (a) costs and expenses of administering, maintaining and operating the Borrower, SWSL and BWL and the Project including, without limitation, all operating costs accrued prior to, or arising after Financial Close relating to the Borrower's, SWSL's and BWL's existing operations under, or related to, the Waste Management Services Contract all costs relating to Environmental Matters and the costs of complying with the requirements of Environmental Laws and the terms and conditions of Environmental Authorisations (together in all cases with any applicable VAT thereon which is irrecoverable VAT);
- (b) the cost of insurance premia (other than in relation to insurances covering the construction and commissioning of the Plant) and all property and occupation charges and rates to which the Project may be subject (together in each case with any applicable VAT thereon which is irrecoverable VAT);
- (c) sums payable by the Borrower under the terms of the Project Documents to which it is a party, other than in relation to construction and commissioning of the Plant (together with any applicable VAT thereon which is irrecoverable VAT);
- (d) Taxes payable (excluding VAT other than "output tax" within the meaning of Section 24(2) of the Value Added Tax Act 1994) other than in relation to the construction and commissioning of the Plant; and

(e) development costs,

and in all cases, the equivalent lines thereafter in each Approved Budget and each Approved Financial Model;

**"Operating Period"** means the period from Completion to the Expiry Date;

**"Operation and Maintenance Services Technical Assistance Agreement"** means the technical assistance agreement dated 23 December 1998 between the Borrower, the Operating Contractor and the Shareholders;

**"Original Financial Statements"** means the audited (or, if not audited, unaudited) financial statements of the Borrower for the period ended as at Financial Close;

**"Owners' Engineer"** means Fichtner Consulting Engineers Ltd.;

**"Owners' Engineer Collateral Warranty"** means the collateral warranty in favour of the Lenders to be entered in on or around the date of this Agreement between the Owners' Engineer, the Lenders and the Security Agent;

**"Performance Bond"** means the performance bond procured by the EPC Contractor as set out in clause 3.10 of the EPC Contract;

**"Permitted Financial Indebtedness"** means:

- (a) Financial Indebtedness under the Transaction Documents;
- (b) Financial Indebtedness of less than (Indexed) in aggregate at any time; and
- (c) Financial Indebtedness incurred with the prior written consent of the Lenders;

**"Permitted Payments"** means:

- (a) Project Costs;
- (b) Taxes;
- (c) any amount set out in the Approved Budget;
- (d) any amount payable under any Project Document; and
- (e) payment of directors fees pursuant to the Shareholders' Agreements of up to (Indexed) per annum;

**"Permitted Reorganisation"** means the assumption of either or both of the Councils' rights and obligations by any successor to either of such Councils pursuant to any legislative provisions made under section 17 of the Local Government Act 1992, as amended from time to time

**"Permitted Security Interests"** means:

- (a) Security Interests in favour of the Secured Creditors or entered into pursuant to any Finance Document;
- (b) any netting or set-off arrangement entered into by the Borrower in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

- (c) any lien arising solely by operation of law in the ordinary course of the business of the Borrower in respect of any obligation which is not overdue for settlement; and
- (d) Security Interests or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangements or arrangements having similar effect in relation to goods supplied to the Borrower in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by the Borrower;
- (e) Security Interests or Quasi-Security securing indebtedness, the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security Interests or Quasi-Security given by the Borrower rather than any permitted by paragraphs (a) to (d) above) does not exceed its equivalent in another currency or currencies); and
- (f) Security Interests or Quasi-Security granted with the prior written consent of the Lenders acting on the instructions of the Lenders;

**"Planned Completion Date"** has the meaning given to the term Planned Takeover Date in the Waste Management Service Contract;

**"Potential Event of Default"** means any event or circumstance which, with the giving of notice and/or lapse of time or determination by the Lenders, or satisfaction of any other applicable condition specified in clause 19 (Events of Default and Remedies), would constitute an Event of Default;

**"Power Purchase Agreement"** or **"PPA"** means the power purchase agreement between the PPA Offtaker and the Borrower;

**"PPA Direct Agreement"** means the direct agreement between, amongst others, the PPA Offtaker and the Security Agent relating to the PPA;

**"PPA Offtaker"** means any counterparty who has entered into a PPA with the Borrower in accordance with clause 18.11(e)(ii)(B);

**"Pre-funding Account"** means the account opened in the name of Borrower with the Account Bank called the "Pre-funding Account" as detailed in the Account Bank Agreement or any successor account;

**"Prepayment Date"** means the date on which all of the Loans are declared immediately due and payable or declared due and payable on demand;

**"Proceeds Account"** means the account opened in the name of Borrower with the Account Bank called the "Proceeds Account" as detailed in the Account Bank Agreement or any successor account;

**"Project Account"** has the meaning given to it in the Account Bank Agreement;

**"Project Costs"** means, without double counting:

- (a) the Shareholder Payment;
- (b) sums payable by the Borrower under the terms of the Project Documents to which it is a party in relation to the construction and commissioning of the Plant, including Bid Costs and Building Costs, (together with any applicable VAT thereon which is irrecoverable VAT);
- (c) development costs as set out in the Approved Financial Model;

- (d) the cost of insurance premia in relation to insurances covering the construction and commissioning of the Plant (together with any applicable VAT thereon which is irrecoverable VAT);
- (e) contingencies;
- (f) interest, expenses, fees (including commitment fees and fees payable to the Security Agent) and other financing charges payable under the Finance Documents (together in each case with any applicable VAT thereon which is irrecoverable VAT);
- (g) fees of professional advisers (together with any applicable VAT thereon which is irrecoverable VAT);
- (h) Taxes payable (excluding VAT other than "output tax" within the meaning of Section 24(2) of the Value Added Tax Act 1994) in relation to the construction and commissioning of the Plant;
- (i) mobilisation, labour costs and other commissioning costs incurred by the Borrower covering the construction and commissioning of the Plant (together with any applicable VAT thereon which is irrecoverable VAT);
- (j) Initial funding of the Debt Service Reserve Account;
- (k) Initial funding of the Maintenance Reserve Account; and
- (l) other sums agreed by the Borrower and Lenders to be categorised as Project Costs;

**"Project Documents" means:**

- (a) the Waste Management Service Contract;
- (b) the Deed of Variation;
- (c) the WMSC Guarantee;
- (d) the EPC Contract;
- (e) the EPC Contractor Guarantee;
- (f) the Advance Payment Bond;
- (g) the Retention Bond;
- (h) the Performance Bond;
- (i) the Construction Management Agreement;
- (j) the CMA Guarantee;
- (k) the CMA Parallel Loan Agreement;
- (l) the Construction Management Technical Assistance Agreement;
- (m) the Operating Contract;
- (n) the Operation and Maintenance Services Technical Assistance Agreement;
- (o) the Operating Contract Parallel Loan Agreement;



- (p) the Hartlebury Lease;
- (q) the Lay-off Lease;
- (r) the Licence for Alterations;
- (s) the Environmental Deed of Indemnity;
- (t) the Property Transfer Agreement;
- (u) the Independent Tester Collateral Warranty;
- (v) the APC Disposal Contract;
- (w) the IBA Disposal Contract;
- (x) any Power Purchase Agreement;
- (y) the Grid Connection Offer;
- (z) the Grid Connection Agreement;
- (aa) the Water Main Connection Agreement;
- (bb) the Collateral Deed; and
- (cc) all other documents designated as such by the Lenders and the Borrower;

**"Project Revenues"** means:

- (a) any and all amounts which the Borrower is entitled to receive in respect of the Unitary Payment under the Waste Management Service Contract as amended by the Deed of Variation; and
- (b) any and all third party revenues of the Borrower;

**"Projected Annual Debt Service Cover Ratio" or "Projected ADSCR"** means the Annual Debt Service Cover Ratio calculated in respect of a Ratio Testing Period commencing on a Ratio Testing Date;

**"Property Transfer Agreement"** means the agreement dated 23 December 1998 between the Councils, the Borrower and BWL relating to the transfer of certain property assets;

**"Proposed Updated Financial Model"** has the meaning given in clause 15.3 (Assumptions);

**"Qualifying Lender"** means either a Lender which is:

- (a) a UK Lender; or
- (b) a Treaty Lender;

**"Quarter Date"** means each 31 March, 30 June, 30 September and 31 December in each calendar year;

**"Quasi-Security"** means:

- (a) a sale, transfer or other disposal of any of assets on terms whereby they are or may be leased to or re-acquired by the Borrower;

- (b) a sale, transfer or other disposal of any of the Borrower's receivables on recourse terms;
- (c) the entry into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) the entry into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset;

**"Ratio Calculations"** means the calculations from time to time of the Loan Life Cover Ratio, the Historic Annual Debt Service Cover Ratio and the Projected Annual Debt Service Cover Ratio, made or to be made in accordance with clause 15 (Ratio Calculations);

**"Ratio Compliance Certificate"** means a certificate substantially in the form set out in Part 3 (Form of Ratio Compliance Certificate) of schedule 4. (Form of Notices);

**"Ratio Testing Date"** means:

- (a) in respect of the Loan Life Cover Ratio, the first Calculation Date to occur following Completion and each Calculation Date thereafter (except the Final Repayment Date);
- (b) in respect of the Historic Annual Debt Service Cover Ratio, the first Calculation Date to occur after Completion and each Calculation Date thereafter;
- (c) in respect of the Projected Annual Debt Service Cover Ratio, the first Calculation Date to occur following Completion and each Calculation Date thereafter (except the Final Repayment Date);
- (d) the Final Repayment Date; and
- (e) the date specified pursuant to clause 15.2 (Additional Calculations) in any written request made after the first Calculation Date following immediately after Completion from the Lenders that there should be a calculation of the Loan Life Cover Ratio and the Annual Debt Service Cover Ratio;

**"Ratio Testing Period"** means:

- (a) a 12 month period starting on the day after a Ratio Testing Date or ending on a Ratio Testing Date (as the case may be) provided that if such 12 month period would end after the Final Repayment Date, the Ratio Testing Period will be the period commencing on the relevant Ratio Testing Date and ending on the Final Repayment Date;
- (b) in the case of the first Ratio Testing Date for the Historic Annual Debt Service Cover Ratio, the period commencing on Completion and ending on the first Calculation Date to occur falling at least 6 months after Completion;

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the Charged Assets (as defined in the Borrower Debenture);

**"Relevant Threshold Amount"** means with respect to the Borrower, the EPC Contractor Guarantor, the WMSG Guarantors and the Equity Guarantor (Urbaser), the amount set out in the table opposite that Material Project Party in clause 19.1(d) (Cross Default);

**"Remedy Amount Backstop Date"** has the meaning given to it in the Equity Agreement;

**"Repayment Date"** means:

- (n) in the case of Facility A, each of the dates referred to in clause 8.1 (Facility A Repayment) for the repayment of a Repayment Sum; and
- (o) in the case of Facility B, the Expiry Date;

**"Repayment Sum"** means, in respect of a Facility, each Loan or part of a Loan repaid or due to be repaid on a Repayment Date;

**"Repeating Representations"** means each of the representations set out in clause 14 other than clauses 14.2 (Ownership of the Borrower) 14.8 (Necessary Consents), 14.12(b), 14.12(c), 14.12(d) (Liabilities), 14.7 (Accounts), 14.10 (Litigation), 14.15 (No winding-up), 14.18(c), 14.18(d) (Environmental matters) 14.19 (Insurance), 14.20 (Intellectual property), 14.13 (Information prior to the date of this Agreement), 14.16(a) (Approved Financial Model), 14.21 (No Material Adverse Change), 14.22(a) (Project Documents), 14.24 (Breach of laws) and 14.25 (Custody Agreement).

**"Reservations"** means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court, the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable limitation laws (including the Limitation Acts), the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void, defences of set-off or counterclaim; and
- (c) any other general principles which are set out as qualifications as to matters of law in the legal opinions delivered to the Lenders under paragraph 6 of Part I (Initial conditions precedent) of Schedule 3 (Conditions Precedent);

**"Retained Earnings"** means, in any Financial Year:

- (a) net profit after Tax for that Financial Year; minus
- (b) dividends paid by the Borrower in that Financial Year;

**"Retention Bond"** means the retention bond procured by the EPC Contractor as set out in clause 3.10 of the EPC Contract;

**"Retention Fund Account"** means the account opened in the name of Borrower with the Account Bank called the "Retention Fund Account" as detailed in the Account Bank Agreement or any successor account;

**"Section 151 Officer"** means an officer appointed by each Council to make arrangements for the proper administration of their financial affairs in accordance with section 151 of the Local Governments Act 1972;

**"Secured Creditors"** has the meaning given to it in the Intercreditor Deed;

**"Security Interest"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**"Security Documents" means:**

- (a) the Borrower Debenture;
- (b) the BWL Debenture;
- (c) the Borrower Share Charge (FCC);
- (d) the Borrower Share Charge (Urbaser);
- (e) the SWSL Share Charge (FCC);
- (f) the SWSL Share Charge (Urbaser);
- (g) the Owners' Engineer Collateral Warranty;
- (h) each Direct Agreement;
- (i) all agreements and other documents executed from time to time pursuant to any of the foregoing; and
- (j) any other agreement or document which the Security Agent may from time to time designate as a Security Document with the consent of the Borrower;

**"Senior Debt" has the meaning given to it in the Intercreditor Deed;**

**"Senior Finance Documents" means:**

- (a) this Agreement;
- (b) each Security Document;
- (c) the Intercreditor Deed;
- (d) the Account Bank Agreement;
- (e) the Equity Agreement;
- (f) each Fee Letter;
- (g) any present or future document confirming or evidencing any Security or guarantee for, or in relation to, the Borrower's, or any Shareholder's obligations under any Finance Document; and
- (h) any other agreement or document which the Lenders may from time to time designate as a Finance Document with the prior consent of the Borrower;

**"Senior Finance Liabilities Discharge Date" has the meaning given to it in the Intercreditor Deed;**

**"Shareholder Contributions" has the meaning given to "Equity Contributions" in the Equity Agreement;**

**"Shareholder Payment" means the aggregate of:**

- (a) the Existing Junior Sub-Debt Repayment Amount; plus
- (b) the Special Distribution,

to be paid by the Borrower to the Shareholders;

**"Shareholders"** means (i) FCC Environment Services (UK) Limited, a company incorporated in England and Wales under registered number 02375726 and having its registered office at 900 Pavilion Drive Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northampton, Northamptonshire, England, NN4 7RG and (ii) Urbaser Limited (company no. 03588422) whose registered office is at Unit F, 2<sup>nd</sup> Floor, Pate Court, St Margaret's Road, Cheltenham GL50 4DY;

**"Shareholders' Agreements"** means the MWML Shareholders' Agreement and the SWSL Shareholders' Agreement;

**"Shares"** has the meaning given to it in the Borrower Debenture;

**"Special Distribution"** means £

**"Standby Contribution"** has the meaning given to it in the Equity Agreement;

**"Standby Equity Funding Notice"** has the meaning given to it in the Equity Agreement;

**"Sterling"** and **"£"** mean the lawful currency for the time being of the United Kingdom;

**"Subordinated Debt"** has the meaning given to it in the Intercreditor Deed;

**"Subsidiary"** means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006;

**"SWSL"** means Severn Waste Services Limited (company no. 03618688) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom, WR11 3XZ, an incorporated joint venture company between (1) Urbaser Limited (company no. 03588422) whose registered office is at Unit F, 2<sup>nd</sup> Floor, Pate Court, St Margaret's Road, Cheltenham GL50 4DY and (2) FCC Environment Services (UK) Limited (company no 02375726) whose registered office is at 900 Pavilion Drive Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northampton, Northamptonshire, England, NN4 7RG;

**"SWSL Share Charge (FCC)"** means the share charge dated on or about the date of this Agreement given by FCC Environment Services (UK) Limited in favour of the Security Agent relating to the share capital of SWSL;

**"SWSL Share Charge (Urbaser)"** means the share charge dated on or about the date of this Agreement given by Urbaser Limited in favour of the Security Agent relating to the share capital of SWSL;

**"SWSL Shareholders' Agreement"** means shareholders' agreement dated 22 December 1998 between the Shareholders and SWSL;

**"Tax Confirmation"** has the meaning give to it in clause 12 (Tax Gross-Up and Indemnities);

**"Tax Credit"** has the meaning give to it in clause 12 (Tax Gross-Up and Indemnities);

**"Tax Deduction"** has the meaning give to it in clause 12 (Tax Gross-Up and Indemnities);

**"Taxes"** means any taxes, levies, duties, deductions and withholdings whatsoever imposed by a government, local authority or other relevant public body, including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same, and **"Tax"** and **"Taxation"** shall be construed accordingly;

**"Technical Adviser"** means Fichtner Consulting Engineers Ltd. or such other person as the Lenders may appoint from time to time to perform this role following consultation with the Borrower;

**"Technical Adviser's Certificate"** means the certificate in the form set out in Part I (Technical Adviser's Certificate) of schedule 4 (Form of Notices) to be issued by the Technical Adviser;

**"Technical Assumptions"** means assumptions as to:

- (a) forecast Project Costs for any period; and
- (b) forecasts of Gross Revenue for any period,

In each case as used in preparing an Approved Financial Model;

**"Terms of Reference"** means the Lenders' waste credit governance committee's terms of reference in the form set out in schedule 10 (Terms of Reference) as may be amended from time to time in accordance with clause 2.6 (Amendments to the Terms of Reference);

**"Total Commitments"** means the aggregate of the Facility A Commitments and the Facility B Commitments;

**"Transaction Documents"** means the Project Documents and the Finance Documents.

**"Transfer Agreement"** means a certificate substantially in the form set out in schedule 11 (Form of Transfer Agreement) or any other form agreed between the Lenders and the Borrower;

**"Transfer Date"** means, in relation to an assignment or a transfer, the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Agreement;

**"Treasury Transactions"** means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;

**"Treaty"** means the Treaty of Rome of 23 March 1954, as amended by the Single European Act 1986 and the Maastricht Treaty which was signed at Maastricht on 7 February 1992 and came into force on 1 November 1993;

**"Treaty Lender"** has the meaning give to it in clause 12 (Tax Gross-Up and Indemnities);

**"UK"** means the United Kingdom;

**"UK GAAP"** means generally accepted accounting principles in the United Kingdom;

**"UK Lender"** has the meaning give to it in clause 12 (Tax Gross-Up and Indemnities);

**"UK Non-Bank Lender"** has the meaning give to it in clause 12 (Tax Gross-Up and Indemnities);

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

- (a) Insurance is not available to the Borrower in respect of the Project in the European Insurance market with reputable insurers of good standing in respect of that risk; or

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

**"Unpaid Sum"** means any sum due and payable but unpaid by the Borrower under the Finance Documents;

**"Updated Financial Model"** means each Approved Financial Model which comes into effect in accordance with clause 15 (Ratio Calculations), provided that where no such Approved Financial Model has yet come into effect under clause 15, the Updated Financial Model shall be deemed to be the Base Case Financial Model;

**"Urbaser S.A."** means a company registered in Spain whose registered office is at Camino de las Hormigueras, 171, 28031, Madrid, Spain;

**"VAT"** means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere;

**"Waste Management Service Contract"** means the waste management service contract dated 22 December 1998 made between the Councils and the Borrower as amended by the Deed of Variation;

**"Water Main Connection Agreement"** means the water main connection agreement entered into on or around the date of this Agreement between the Borrower and Severn Trent Water Limited;

**"WMSC Guarantee"** means the guarantee dated on or about the date of this Agreement between the WMSC Guarantors and the Councils relating to the obligations of the Borrower under the Waste Management Service Contract;

**"WMSC Guarantors"** FCC S.A. and Urbaser S.A.; and

**"Working Capital"** means Current Assets minus Current Liabilities.

## 1.2 Definitions in Project Documents

Unless a contrary indication appears, the following words and expressions defined in the Transaction Documents shall have the same meanings in this Agreement:

- (a) Waste Management Service Contract:
- (i) British Sugar Site;
  - (ii) Bullet Payment;
  - (iii) Change in Legal Requirement;
  - (iv) Compensation;
  - (v) Compensation Event;
  - (vi) Contract Period;

- (vii) Council Change;
  - (viii) Detailed Maintenance Plan;
  - (ix) Environmental Legal Requirements;
  - (x) Event of Council Default;
  - (xi) Expiry Date;
  - (xii) Force Majeure Event;
  - (xiii) Legal Requirement;
  - (xiv) Necessary Consent;
  - (xv) Performance Liquidated Damages;
  - (xvi) Planned Takeover Date;
  - (xvii) Planning Permissions;
  - (xviii) Project;
  - (xix) Relief Event;
  - (xx) Services;
  - (xxi) Unitary Payment;
  - (xxii) Works;
- (b) EPC Contract:
- (i) Acceptance Certificate;
  - (ii) Construction Completion Report;
  - (iii) Facility;
  - (iv) Final Certificate;
  - (v) Major Sub-Contractors;
  - (vi) Milestone Payment Date;
  - (vii) Plant;
  - (viii) Project Manager;
  - (ix) Site;
  - (x) Take-Over Certificate;
  - (xi) Take-Over Date;
  - (xii) Tests
- (c) Operating Contract:



- (I) Agreed Operating Budget;
- (II) Budget Category;
- (III) Dispute Resolution Procedure;
- (iv) Operating Contractor Entitlement;
- (v) Proposed Operating Budget'
- (d) Construction Management Agreement
  - (I) Construction Manager;
  - (II) Reimbursable Cost Item;
  - (III) Reimbursable Costs;
- (e) Councils' Direct Agreement:
  - (I) Councils;
  - (II) Certificate of Discharge;
  - (III) Financing Compensation Event;
- (f) Collateral Deed:
  - (I) Break Costs;
  - (II) Contractor
  - (III) Declaration of Ineffectiveness; and
  - (iv) Interim Measures Notice.

### 1.3 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) the "Account Bank", any "Finance Party", any "Lender", the "Security Agent", any "Shareholder", the "Borrower", any person who is a "Material Project Party" or any "Party", shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) in the "agreed form" means in the form agreed between the Borrower and the Lenders and signed by, or on behalf of, each of them for identification, together with such alterations as may be agreed in writing by them;
  - (iii) an "agreement" includes a deed;
  - (iv) a Finance Document, a Project Document and any other agreement, document or instrument is a reference to it as amended or novated (but where a defined term is incorporated by reference in this Agreement from a document which is not a Finance Document, then unless otherwise agreed between the Parties it shall be treated as having the meaning given to it in the other document as in effect on the date of this Agreement);

- (v) an **"amendment"** includes a supplement, novation, replacement, assignment or re-enactment (and **"amended"** shall be construed accordingly);
- (vi) a Project Document includes any contract novating or replacing that Project Document as a result of the Lenders exercising their rights under the Direct Agreement relating to that Project Document;
- (vii) **"control"** of a person by another means that the other (whether alone or acting in concert with others, whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which controls that person or otherwise controls or has the power to control the affairs and policies of that person or of any other person which controls that person (and **"controlled"** and **"controlling"** shall be construed accordingly);
- (viii) a **"disposal"** of assets includes a sale, transfer and any other kind of disposal of, and the grant of any option in respect of, any right or interest, legal or equitable, in such assets, and any agreement for any of the foregoing, and any reference to **"dispose"** shall be construed accordingly;
- (ix) **"guarantee"** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss or non-performance, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets or services of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness or other obligations (and **"guaranteed"** and **"guarantor"** shall be construed accordingly);
- (x) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xi) a figure being **"indexed"** means that figure as adjusted in direct proportion to the change in the GDP deflator from the GDP deflator published for the fourth quarter of 2013 (subject to any rebasing of the GDP deflator from time to time) to the GDP deflator currently available at the time the relevant calculation is made hereunder;
- (xii) a **"judgment"** includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
- (xiii) a **"law"** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and **"lawful"** and **"unlawful"** shall be construed accordingly);
- (xiv) something being **"material"** is to it being material to, or in the context of, the interests of the Lenders under the Finance Documents except where **"material"** is used in the definition of Material Adverse Effect;
- (xv) any **"obligation"** of any person under this Agreement or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Agreement or, as

the case may be, that other agreement or document (and "due", "owing", "payable" and "receivable" shall be similarly construed);

- (xvi) a "person" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (xvii) "quarter" means a period of three Months;
  - (xviii) "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, being a type which any person to which it applies is accustomed to comply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (xix) "rights" includes rights, authorities, discretions, remedies, liberties, powers, easements, quasi-easements and appurtenances (in each case, of any nature whatsoever);
  - (xx) the "winding-up" of a person also includes the amalgamation, reconstruction, reorganisation, administration, dissolution, liquidation, merger or consolidation of that person, and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled or resident or carries on business or has assets;
  - (xxi) a provision of law is a reference to that provision as amended, extended or re-enacted and includes all laws and official requirements made under or deriving validity from it;
  - (xxii) a reference to a "year" means a calendar year under the Gregorian calendar;
  - (xxiii) a time of day is a reference to London time; and
  - (xxiv) in computing any period of time under this Agreement, the day of the act, event or default from which such period begins to run shall be included.
- (b) Section, clause and schedule headings are for ease of reference only.
  - (c) A Default is "continuing" if it has not been remedied or waived.
  - (d) If the directors of the Borrower obtain a moratorium under section 1A of the Insolvency Act 1986, the ending of such moratorium will not remedy any Event of Default which occurred as a result of such moratorium.
  - (e) The words "include" and "including" are to be construed without limitation.
  - (f) Use of the singular shall include the plural and vice versa.
  - (g) Words denoting any gender shall include any other gender.
  - (h) Business Days
    - (i) Any payment date which is due to occur, or period which is due to end, on a day that is not a Business Day shall occur or end (as applicable) on the next Business Day in the same Month (if there is one) or the preceding Business Day (if there is not).

- (ii) During any such extension of the due date for payment of any principal or any unpaid sum under this Agreement interest is payable on the principal or any unpaid sum at the rate payable on the original due date.

(i) **"pro rata" means:**

- (i) the proportion which each Lender's share of the Advances (if any) bears to all the Advances;
- (ii) If there are no Advances outstanding on that date, the proportion which its Commitment bears to the Total Commitments on that date; or
- (iii) If the Total Commitments have been cancelled, the proportion which its Commitments bore to the Total Commitments immediately before being cancelled.

(j) In this Agreement any reference to:

- (i) a specifically named Project Account is a reference to that Project Account in respect of which details are set out in clause 16 (Project Accounts) and the Account Bank Agreement; and
- (ii) the balance standing to the credit of a Project Account shall include any interest so credited to it after taking account of any Tax attributable to the interest to the extent considered appropriate by the Account Bank.

**1.4 Third party rights**

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement except for any rights expressed to be conferred on the Security Agent who shall exercise such rights in accordance with the terms of the Intercreditor Deed.

**1.5 Inconsistencies**

In the event that there is any discrepancy or inconsistency between the terms of this Agreement and the content of the Base Case Financial Model or Updated Financial Model, then the terms of this Agreement shall prevail.

**1.6 Conflict with other Finance Documents**

In the event that there is any discrepancy or inconsistency between the terms of the Finance Documents (other than the Intercreditor Deed) and the terms of the Intercreditor Deed, the latter shall prevail.

**1.7 Security Agent**

Each Party (other than the Security Agent) acknowledges and agrees that, when it is acting under or pursuant to this Agreement or any of the other Finance Documents, the Security Agent shall be entitled to rely on and shall have all the benefits and protections afforded to it under the Intercreditor Deed.

**2. THE FACILITIES**

**2.1 The Facilities**

Subject to the terms of this Agreement, the Lenders agree to make available to the Borrower the Facilities for the purposes specified in clause 3 (Purpose).

## **2.2 Interests of Lenders**

The rights of the Lenders under this Agreement are several, but no Lender shall have the right unilaterally to require the enforcement of any security provided under any of the Security Documents.

## **2.3 Obligations of Lenders**

- (a) The obligations of the Lenders under this Agreement are several; accordingly, a failure of a Lender to perform its obligations under this Agreement shall not result in the Borrower or any other Lender being discharged (in whole or in part) from its obligations under this Agreement and in no circumstances shall a Lender have any responsibility for a failure of another Lender to perform its obligations under this Agreement.
- (b) The Security Agent shall not have any responsibility for the failure of a Lender to perform any of its obligations under this Agreement.

## **2.4 Rights of the Lenders**

- (a) The Lenders agree that prior to determining whether to exercise any right of termination in respect of the Events of Default set out in clause 19.1 (Events of Default and Remedies):
  - (i) each Lender shall acting reasonably and in good faith by reference to the nature of the breach (other than in the case of a Borrower Insolvency Event of Default), give all due consideration to taking action other than termination of this Agreement including exercising its other contractual rights and remedies under this Agreement (having regard to the nature of such rights and remedies) to deal with the breach or circumstances giving rise to the breach;
  - (ii) each Lender shall be required to act in accordance with the Terms of Reference, and provide written reasons for decisions taken in accordance with the Terms of Reference.
- (b) Notwithstanding clause 21.3 (Remedies, Waivers, Amendments and Consents), the Lenders agree that prior to determining whether to approve or disapprove a waiver or amendment, or withhold or grant a request for consent proposed by the Borrower, each Lender shall be required to act in accordance with the Terms of Reference, unless the Borrower at the time of requesting the relevant waiver, amendment or consent confirms to the Lenders that the Lenders shall not be obliged to act in accordance with the Terms of Reference. Nothing in this clause 2.4(b) shall prevent the Lenders from electing to act in accordance with the Terms of Reference if the Lenders' reasonably believe that this is necessary to protect their interests under the Finance Documents.
- (c) Where the Lenders are required to act in accordance with the Terms of Reference under clause 2.4(a)(ii) or 2.4(b) above, the Lenders shall confirm that the Terms of Reference have been complied with in accordance with clause 2.7(b) (Lender Communications) and provide written reasons for decisions taken in accordance with the Terms of Reference.

## **2.5 Failure to act in accordance with the Terms of Reference**

Where the Lenders have failed to confirm and provide written reasons to the Borrower that the Lenders have acted in accordance with the Terms of Reference, any action taken by the Lenders (including any action pursuant to clause 19.2 (Default Remedies) shall be

void and ultra vires until the Lenders have complied with their obligation under clause 2.4(c).

## **2.6 Amendments to the Terms of Reference**

The Lenders may amend the Terms of Reference :

- (a) only by going through the proper governance routes applicable for each Council which will require the publication of an agenda and a report prior to 5 working days before such a decision. The Councils will give notice to the Borrower of any proposal to change the terms of reference and have regard and give all due consideration to any representations made by the Borrower in respect of the proposed changed terms of reference and any adverse consequences such changed terms of reference may have on the Borrower (if any); or
- (b) where necessary in order for the Councils to comply with any changes to either Council's constitution and other governance documents, having due regard to the desirability of obtaining appropriate legal, technical, financial and/or insurance advice from external advisers which are independent of the advisory teams supporting the Councils in respect of their rights and obligations under the Waste Management Service Contract , as such advice may be necessary in light of the decisions to be made by the Lenders from time to time.

## **2.7 Lender Communications**

- (a) The Borrower shall be entitled to rely and act upon any notice, instruction or information given by or on behalf of the Lenders to the Borrower under this Agreement (a "Lender Communication"), provided that:
  - (i) If such Lender Communication purports to be given by a single Lender it is signed by an officer of that Lender; or
  - (ii) If such Lender Communication purports to be given on behalf of all Lenders it is either:
    - (A) signed on behalf of the waste credit governance committee;
    - (B) signed by an officer of each Lender; or
    - (C) signed on behalf of all Lenders by a Section 151 Officer.
- (b) Where a Lender Communication has been given in accordance with clause 2.7(a)(ii)(A) and relates to the rights of the Lenders under clause 2.4(a)(ii) or 2.4(b) above, such Lender Communication shall include a statement that the Lenders have acted in accordance with the Terms of Reference.
- (c) Where a Lender Communication has been given in accordance with clause 2.7(a)(ii)(A) or 2.7(a)(ii)(C) above, each Lender shall be bound thereby as though an officer of each Lender had signed and delivered such Lender Communication and the Borrower may assume without enquiry that such Lender Communication, has been duly authorised and is delivered on behalf of all of the Lenders.
- (d) The Lenders shall notify the Borrower of any change to the appointed Section 151 Officers by giving the Borrower not less than ten Business Days' notice.

**3. PURPOSE**

**3.1 Facility A**

The Borrower shall apply all amounts borrowed by it under Facility A to finance a proportion of the Project Costs to be repaid from the Project's Operating Cash.

**3.2 Facility B**

The Borrower shall apply all amounts borrowed by it under Facility B to finance a proportion of the Project Costs, which, subject to any modification under the Councils' Direct Agreement shall be repaid from the proceeds of a Bullet Payment from the Councils, as contemplated by the Councils' Direct Agreement.

**3.3 Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

**4. CONDITIONS OF DRAWDOWN**

**4.1 Initial conditions precedent**

As a condition of the availability of any of the Facilities, the Lenders must receive all of the documents and other evidence listed in schedule 3 Part I (Initial conditions precedent) in form and substance satisfactory to them (or waived in accordance with clause 21.3 (Remedies, Waivers, Amendments and Consents). The Lenders shall notify the Borrower promptly upon being so satisfied.

**4.2 Failure to satisfy conditions precedent**

Except as the Lenders may otherwise agree, if the conditions referred to in clause 4.1 (Initial conditions precedent) have not been fulfilled or waived in writing on or before the date which is 45 days from the date of this Agreement:

- (a) the Total Commitments will be automatically cancelled; and
- (b) the Lenders will cease to have any obligation to make any Loans available to the Borrower.

**4.3 Further conditions precedent**

The obligation of the Lenders to make each Advance is subject to the following further conditions, that:

- (a) on the Drawdown Date relating to such Advance:
  - (i) no Default has occurred and is continuing or could result from the making of such Advance;
  - (ii) the Repeating Representations are true and accurate in all material respects as of such Drawdown Date as if made on such Drawdown Date with reference to the facts and circumstances then subsisting and will remain true and accurate in all material respects immediately after that Advance is made;
  - (iii) the undrawn Facilities have not been cancelled in accordance with the terms of this Agreement; and

- (iv) there is no unremedied failure of the Actual Construction Period Cashflow Test;
- (b) the relevant Drawdown Notice is accompanied by a Technical Adviser's Certificate in the form substantially set out in Part I (Technical Adviser's Certificate) of schedule 4 (Form of Notices);
- (c) there are sufficient undrawn Commitments under the relevant Facility to enable an Advance to be made;
- (d) as at the Drawdown Date relating to such Advance, Financial Close has occurred and the Lenders have not revoked any such waiver given on or around the date of this Agreement; and
- (e) as at the Drawdown Date relating to such Advance, the Lenders are satisfied (after consultation with the Technical Adviser) that there is no Funding Shortfall.

#### **4.4 Waiver**

The Lenders may (but shall not be obliged to) waive any of the conditions precedent set out in clause 4.3 (Further conditions precedent) either with or without imposing any conditions thereto.

### **5. DRAWDOWN**

#### **5.1 Delivery of Drawdown Notice**

In order to utilise a Facility, the Borrower shall deliver to the Lenders a duly completed Drawdown Notice, to be received by the Lenders not later than 11.00 a.m. five (5) Business Days (or a shorter period with the consent of the Lenders) prior to the proposed Drawdown Date.

- (a) Each Drawdown Notice delivered to the Lenders shall be in substantially the form set out in Part II (Drawdown Notice) of schedule 4 (Form of Notices) and shall specify the following:
  - (i) which Facility is to be utilised;
  - (ii) the proposed Drawdown Date, which shall be a Business Day falling within the relevant Availability Period;
  - (iii) that the purpose of such borrowing is permitted by clause 2 (Purpose); and
  - (iv) the amount of the relevant Advance, which shall be:
    - (A) equal to or less than the aggregate amount of the undrawn Commitments in respect of the relevant Facility, provided that the amount of the Advance under the Facilities for Project Costs (other than Building Costs) have become due and payable or will become due and payable within 30 days of the relevant Drawdown Date and will not exceed the total cumulative amounts for such costs at such date as set out in the Base Case Financial Model and on and after publication of the first Approved Budget, in each Approved Budget;
    - (B) In Sterling.
  - (v) the duration of the first Interest Period for the Advance, which shall comply with clause 7 (Interest Periods);



- (vi) that no Event of Default has occurred and is continuing and no Default would occur as a result of the proposed Drawdown;
  - (vii) that the Repeating Representations to be made by the Borrower on such date are true and accurate in all material respects and shall be deemed to be made by reference to the facts and circumstances existing at the date the representation is made; and
  - (viii) confirmation (to the satisfaction of the Lenders (acting upon the advice of the Technical Adviser) having regard, to the extent appropriate, to the then latest Approved Financial Model) that as of the date of the proposed Drawdown that there is no Funding Shortfall.
- (b) The relevant Drawdown Notice shall be accompanied:
- (i) in the case of any Drawdown required to meet any Project Costs other than Building Costs, a copy of the Updated Financial Model for the period in which such costs are incurred or paid, showing such costs;
  - (ii) in the case of any Drawdown required to meet Building Costs, by a certificate from the Technical Adviser in the form set out in Part I (Technical Adviser's Certificate) of schedule 4 (Form of Notices); and
  - (iii) in the case of any Drawdown required to meet Financing Costs, by details of such Financing Costs and a copy of the Updated Financial Model for the period in which such costs are incurred or paid, showing such costs.
- (c) Drawdowns under Facility A and Facility B shall be made on a *pro rata* basis and the Borrower shall ensure that each request for an Advance will be made by sending Drawdown Notices for each of the Facilities for amounts *pro rata* to the then Available Commitments under Facility A and Facility B respectively, or as otherwise may be agreed between the Borrower and the Lenders.
- (d) Only one Drawdown may be requested in each Drawdown Notice.
- (e) The Borrower may not give a Drawdown Notice until the Lenders have notified the Borrower that Financial Close has occurred.
- (f) In the event that any Drawdown Date is not a Business Day then the relevant Drawdown Date shall be the immediately succeeding Business Day.

## 5.2 Requests Irrevocable

A Drawdown Notice once given may not be withdrawn or revoked.

## 5.3 Making of Advances

- (a) The amount of each Lender's share of the Advance will be its *pro rata* share on the proposed Drawdown Date.
- (b) No Lender is obliged to participate in an Advance if as a result:
  - (i) its share in the Advances under a Facility would exceed its Commitment; or
  - (ii) the Advances would exceed the Total Commitments.
- (c) If the conditions set out in this agreement have been met, each of the Lenders must make its share in the Advance available on the Drawdown Date.

#### **5.4 Payment of proceeds**

The Lenders shall forthwith transfer all amounts made available by the Lenders following a Drawdown Notice to the Proceeds Account. Amounts drawn on account of Project Costs which are not due and payable as at the Drawdown Date shall be retained in the Proceeds Account until such Project Costs are paid.

#### **5.5 Pre-funding at the end of the Availability Period**

- (a) If, in the period between 15 and 5 Business Days prior to the end of the Availability Period (the "Pre-funding Period") (i) Completion has not occurred and Available Commitments remain hereunder under the Facilities in respect of which no Drawdown Notice has been issued, then the Borrower shall be entitled (the "Pre-funding Option") to issue a Drawdown Notice in an aggregate amount (the "Maximum Pre-funding Amount") equal to such Available Commitments.
- (b) If the Borrower elects to exercise the Pre-funding Option, it shall on any date within the Pre-funding Period:
  - (i) provide a written notice to the Lenders confirming that it is exercising the Pre-funding Option pursuant to paragraph (a) above; and
  - (ii) deliver a Drawdown Notice in an amount not exceeding the Maximum Pre-funding Amount.
- (c) Advances requested by the Borrower pursuant to paragraph (b) above shall only be advanced if each of the conditions under clause 4.3 (Further Conditions Precedent) have been satisfied or waived.
- (d) The proceeds of any Advances received pursuant to the exercise by the Borrower of the Pre-funding Option shall be paid to the Pre-funding Account.
- (e) The Borrower will only be permitted to withdraw monies from the Pre-funding Account in accordance with clause 16.14 (Pre-funding Account).

#### **5.6 Automatic Cancellation**

Any part of the Commitments undrawn by 2.30 p.m. on the last day of the Availability Period for the relevant Facility will be automatically cancelled.

### **6. INTEREST**

#### **6.1 Rate of Interest**

The rate of Interest applicable to each Advance for each Interest Period relating to the Facilities shall be the percentage rate per annum which is the Fixed Interest Rate.

#### **6.2 Payment and calculation of Interest**

- (a) Interest will accrue daily from and excluding the first day of an Interest Period to and including the last day of such Interest Period and shall be calculated on the basis of a 365-day year and the actual number of days elapsed.
- (b) Subject to paragraph (c) below, the Borrower shall pay Interest accrued on each Facility A Loan or Facility B Loan made to it to the Lenders in arrears on the Interest Payment Date for that Facility A Loan or Facility B Loan, as the case may be or, where that Interest Period is longer than six (6) Months, on the last day of each consecutive period of six (6) Months from (and including) the first day of that Interest Period.

- (c) During the Construction Period, (including, without limitation whilst a Force Majeure Event or Relief Event is continuing during such period) interest on the Facility A Loans and Facility B Loans accrued at the end of an Interest Period and commitment fees in relation to the Facility A Loans and Facility B Loans accrued in accordance with clause 10.2 (Commitment Fee) will be capitalised and consolidated with the principal amount of the Facility A Loans and Facility B Loans, as the case may be and will reduce the Facility A Loan Commitment and Facility B Loan Commitment respectively, except where the Availability Period has expired as a result of the Planned Completion Date occurring prior to Completion, in which circumstances, interest will be paid in priority out of any amount standing to the credit of the Pre-funding Account in accordance with clause 16.14(b)(ii).
- (d) Interest shall accrue on each Loan at the relevant Fixed Interest Rate up to and including the Final Repayment Date.
- (e) For the purposes of this clause 6, monies shall be deemed to be due notwithstanding that the Lenders may have agreed that the Borrower may defer payment of the same beyond its due date.

### 6.3 Default Interest

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is the sum of one per cent. (1%) per annum above the Fixed Interest Rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Facility A Loan or Facility B Loan, as the case may be, in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lenders (acting reasonably). Any interest accruing under this clause 6.3 shall be immediately payable by the Borrower on demand by the Lenders.
- (b) If any overdue amount consists of all or part of a Facility A Loan or Facility B Loan, as the case may be which became due on a day which was not the last day of an Interest Period relating to that Facility Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Facility A Loan or Facility B Loan as the case may be; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be the sum of one per cent. (1%) per annum above the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

### 6.4 Notification of rates of interest

The Lenders shall promptly notify the Borrower of the determination of a rate of interest under this Agreement and each determination of a rate of interest shall in the absence of manifest error be conclusive and binding upon all Parties hereto.

## 7. INTEREST PERIODS

- (a) Subject to the other provisions of this agreement, and unless otherwise agreed between the Lenders and the Borrower:

- (I) each Interest Period for an Advance under the Facilities during the Construction Period will be of one (1) Months duration; and
- (II) each Interest Period for an Advance under the Facilities during the Operating Period will be six (6) Months;
- (b) The first Interest Period for any Advance will start on its Drawdown Date and each subsequent Interest Period for that Advance will start on the last day of the immediately preceding Interest Period for that Advance.
- (c) Any Interest Period for a Facility A Loan which would otherwise extend beyond the Final Repayment Date shall be of such duration that it shall end on the Final Repayment Date.
- (d) An Interest Period for a Facility B Loan which would otherwise extend beyond the Final Repayment Date shall be of such duration that it shall end on the Final Repayment Date.
- (e) If any Interest Period would, but for this paragraph (f), end on a day which is not a Business Day, that Interest Period shall be extended to the immediately following Business Day, unless the result of that extension would be to carry that Interest Period into another calendar Month, in which case that Interest Period shall end on the immediately preceding Business Day.
- (f) Interest Periods under this clause 7 (Interest Periods) shall be set in such manner as to ensure that an Interest Period expires on each Repayment Date in respect of an amount of the Loan equal to the repayment instalment which is then due to be repaid under clause 8 (Repayment) on such Repayment Date.

## **8. REPAYMENT**

### **8.1 Repayment of Facility A**

- (a) The Borrower will repay the Facility A Loans on the Repayment Dates in the amounts set out in the Facility A Repayment Schedule, together with all interest capitalised to that date in accordance with clause 6.2 (Payment and calculation of Interest).
- (b) On the Final Repayment Date for Facility A, the Borrower shall repay such amount as is necessary to ensure that all Facility A Loans, all accrued but unpaid interest, fees and all other sums then due under the Finance Documents have been repaid in full.
- (c) The Borrower may not reborrow any part of the Facility A Loans which have been repaid.

### **8.2 Repayment of Facility B**

- (a) The Borrower will, to the extent only of amounts received by it from the Councils in respect of the Bullet Payment pursuant to clause 49A (Payment At Expiry) of the Waste Management Services Agreement (and not otherwise), repay the Facility B Loans in a single bullet instalment on the Expiry Date. The obligation to repay the Facility B Loans to the extent of the amount of any Bullet Payment received under this clause 8.2 (a) may be discharged as contemplated by clause 3 (Money-Go-Round) of the Councils' Direct Agreement, as evidenced by the issue of a Certificate of Discharge.
- (b) The Borrower may not reborrow any part of the Facility B Loans which have been repaid.

**9. PREPAYMENT AND CANCELLATION**

**9.1 Mandatory prepayment - Compensation**

- (a) If the Borrower receives compensation in accordance with the terms of the Waste Management Service Contract then it shall promptly notify the Lenders, and the amount so received shall, on the last day of the Interest Period in which the amounts are received, be applied by the Borrower to prepay the Loans in accordance with 9.1(b) below.
- (b) Any prepayment under this clause 9.1 shall be applied against the remaining Repayment Sums in the manner specified by the Lenders.

**9.2 Mandatory prepayment - Declaration of Ineffectiveness**

- (a) To the extent an Interim Measures Notice is issued as contemplated by the Collateral Deed, then the Borrower shall promptly notify the Lenders and the Borrower shall, on the date falling 5 Business Days after the date of the Interim Measures Notice prepay the Loans in full together with all interest accrued and all other amounts payable hereunder.
- (b) It is acknowledged that the Borrower's obligations under Clause 9.2(a) shall be satisfied in accordance with and to the extent required by the operation of the provisions of Clause 6 (Money-Go-Round) of the Collateral Deed and the Borrower shall not otherwise be obliged to pay such amount.

**9.3 Voluntary cancellation**

Subject to clauses 9.5 (Conditions to prepayment and cancellation) and 9.6 (Additional conditions of cancellation), the Borrower may, if it gives the Lenders not less than 30 Business Days (or such shorter period as the Lenders may agree) prior notice, cancel the whole or any part of the unused Facilities (but, if in part, being a minimum amount of £100,000).

**9.4 Voluntary prepayment**

On giving not less than 5 Business Days prior written notice to the Lenders, the Borrower may, subject to clause 9.5 (Conditions to prepayment and cancellation), prepay the whole or any part (but, if in part, in multiples of £100,000 and subject to a minimum amount of £100,000). Any prepayment under this clause 9.4 shall be applied against the Repayment Sums in the manner specified by the Lenders.

**9.5 Conditions to prepayment and cancellation**

- (a) The Borrower shall not be entitled to prepay all or any part of the Loans:
  - (I) In the period prior to the first anniversary of Financial Close; and
  - (II) In the twelve Month period prior to the Final Repayment Date of the Loans,without the prior written consent of the Lenders. At all other times there shall be no restriction of the Borrower making a voluntary prepayment in accordance with clause 9.4 (Voluntary Prepayment).
- (b) Any notice of cancellation or prepayment given by any Party under this clause 9 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

- (c) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and all other sums due in respect of the amount prepaid or cancelled (including any Break Costs less any Break Gains or, in the case of a prepayment not being made in accordance with a notice of prepayment, an amount payable in respect of the Indemnity under clause 22.2 (Borrower's Indemnity) on the Prepayment Date without premium or penalty.
- (d) The Borrower may not reborrow any part of the Facilities which are prepaid.
- (e) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Facilities except at the times and in the manner expressly provided for in this Agreement.
- (f) No amount of the Commitments cancelled under this Agreement may be subsequently reinstated.
- (g) All undrawn portions under the Facilities will be automatically cancelled at the end of the relevant Availability Period.

#### 9.6 Additional conditions of cancellation

The Borrower's right to cancel all or any part of the Facilities under clause 9.4 (Voluntary cancellation) is subject to:

- (a) payment by the Borrower of all applicable Break Costs on the date of the cancellation; and
- (b) the Lenders being satisfied (acting reasonably and after consultation with the Technical Adviser) that sufficient available funding will remain in place to finance the Project Costs until the end of the Construction Period and that such cancellation would not result in a Funding Shortfall.

### 10. FEES

#### 10.1 Arrangement fee

- (a) The Borrower shall pay to the Lenders on the earlier of
  - (i) the first Drawdown Date; and
  - (ii) ten Business Days after Financial Close,
 a sum equivalent to \_\_\_\_\_ of each Lenders' Facility A Commitments.
- (b) The Borrower shall pay to the Lenders on the earlier of
  - (i) the first Drawdown Date; and
  - (ii) ten Business Days after Financial Close,
 a sum equivalent to \_\_\_\_\_ each Lenders' Facility B Commitments.

#### 10.2 Commitment Fee

- (a) The Borrower will pay to the Lenders *pro rata* to their Commitments under Facility A and Facility B a commitment fee in Sterling computed at the rate of \_\_\_\_\_ per

cent of the applicable Margin per annum on the undrawn, uncanceled amount of each Lender's Commitment.

- (b) The accrued commitment fee shall be payable from the date of this agreement semi-annually in arrears, on the last Business Day of the month and on the final day of the relevant Availability Period, and on the cancelled amount of the relevant Lender's Commitment at the time any cancellation is effective.
- (c) Commitment fees shall accrue from day to day and be calculated on the basis of a year of 365 days for the actual number of days elapsed.

#### **10.3 Agency Fee**

The Borrower shall pay to the Security Agent, for its own account, an agency fee in accordance with the terms of the relevant Fee Letter.

### **11. INCREASED COSTS**

#### **11.1 Increased costs**

- (a) Subject to clause 11.3 (Exceptions), the Borrower shall, within five (5) Business Days of a demand by the Lenders, pay the amount of any Increased Costs (as such term is defined in paragraph (b) below) incurred by the Lenders, or any of their Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any mandatory law or regulation or (ii) compliance with any mandatory law or regulation made after the date of this Agreement.

- (b) In this Agreement "Increased Costs" means:

- (i) a reduction in the rate of return from the Facilities or on the Lenders' overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lenders to the extent that it is attributable to the Lenders having entered into this Agreement or funding or performing its obligations under any Finance Document.

#### **11.2 Increased cost claims**

- (a) If the Lenders intend to make a claim pursuant to clause 11.1 (Increased costs), the Lenders shall promptly notify the Borrower.
- (b) The Lenders shall, as soon as practicable provide a certificate confirming the circumstances giving rise to and the amount of its Increased Costs.

#### **11.3 Exceptions**

Clause 11.1 (Increased costs) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) compensated for under clause 12.3 (Tax indemnity) (or would have been compensated for under clause 12.3 (Tax indemnity) but was not so compensated because any of the exclusions in clause 12.3(b) applied);

- (c) compensated for under any other clause or would have been but for an exception to that clause; or
- (d) attributable to the wilful failure by the Lenders or their Affiliates to comply with any law or regulation.

## 12. TAX GROSS UP AND INDEMNITIES

### 12.1 Definitions

In this Agreement:

**"Borrower DTTP Filing"** means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the relevant Borrower, which:

- (a) If an Original Lender is a Treaty Lender, contains the scheme reference number and jurisdiction of tax residence stated opposite that Lender's name at the end of this Agreement and is filed with HM Revenue & Customs within 30 days of the date of this Agreement; or
- (b) where it relates to a Treaty Lender that is a New Lender, contains the scheme reference number and jurisdiction of tax residence stated in respect of that Lender in the relevant Transfer Agreement or Assignment Agreement and is filed with HM Revenue & Customs within 30 days of that Transfer Date.

**"Protected Party"** means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

**"Qualifying Lender"** means:

- (c) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
  - (I) a Lender
    - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as regards any payments of interest made in respect of that advance or would be within such charge as regards a such payments apart from section 18A of the CTA; or
    - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made, and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance;
  - (II) a Lender which is:
    - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
    - (B) a partnership each member of which is:
      - (aa) a company so resident in the United Kingdom; or



(bb) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;

(C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(III) a Treaty Lender;

(d) a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document; or

(e) a local authority (as defined for the purposes of section 999 of the ITA);

**"Tax Confirmation"** means a confirmation by the Lender that the person beneficially entitled to interest payable to the Lender in respect of an advance under a Finance Document is either:

(a) a company resident in the United Kingdom for United Kingdom tax purposes;

(b) a partnership each member of which is:

(i) a company so resident in the United Kingdom; or

(ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;

(c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(d) a local authority (as defined for the purposes of section 999 of the ITA).

**"Tax Credit"** means a credit against, relief or remission for, or repayment of, any Tax.

**"Tax Deduction"** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**"Tax Payment"** means either the increase in a payment made by the Borrower to a Finance Party under clause 12.2 (Tax gross-up) or a payment under clause 12.3 (Tax indemnity).

**"Treaty Lender"** means a Lender which:

(a) is treated as a resident of a Treaty State for the purposes of the Treaty;

(b) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender's participation in any Loan is effectively connected; and

- (c) meets all other conditions in the Treaty for full exemption from Tax imposed by the United Kingdom on interest, except that for this purpose it shall be assumed that the following are satisfied:

- (i) any condition which relates (expressly or by implication) to there not being a special relationship between the Lenders and the Borrower or between both of them and another person, or to the amounts or terms of any Loan or the Finance Documents, or to any other matter that is outside of the control of that Lender; and
- (ii) completion of procedural formalities.

**"Treaty State"** means a jurisdiction having a double taxation agreement (a "Treaty") with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

**"UK Non-Bank Lender"** means:

- (a) an Original Lender which is a Qualifying Lender by virtue of paragraph (a)(ii) or (c) of the definition of Qualifying Lender; and
- (b) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Agreement which it executes on becoming a Party.

Unless a contrary indication appears, in this clause 12 (Tax gross-up and indemnities) a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

#### 12.2 Tax gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that the Borrower must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lenders accordingly. Similarly, the Lenders shall notify the Borrower on becoming so aware in respect of a payment payable to the Lenders.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
  - (i) the payment could have been made to the Lenders without a Tax Deduction if the Lenders had been a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became the Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or published concession of any relevant taxing authority; or
  - (ii) the Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) or (c) of the definition of Qualifying Lender; and

- (A) an officer of HM Revenue & Customs has given (and not revoked) a direction (a "Direction") under section 931 of the ITA which relates to the payment and the Lender has received from the Borrower making the payment or from the Borrower a certified copy of that Direction; and
- (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
- (iii) the Lender is a Qualifying Lender solely by virtue of paragraph (a)(ii) or (c) of the definition of Qualifying Lender and:
  - (A) the Lender has not given a Tax Confirmation to the Borrower; and
  - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Borrower, on the basis that the Tax Confirmation would have enabled the Borrower to have formed a reasonable belief that the payment was an "excepted payment" for the purpose of section 930 of the ITA; or
- (iv) the Lender is a Treaty Lender and the Borrower making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had the Lender complied with its obligations under paragraph (g) or (h) below; or
- (e) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (g)
  - (i) Subject to paragraph (ii) below, a Treaty Lender and the Borrower which makes a payment to which that Treaty Lender is entitled shall use reasonable endeavours to co-operate in completing promptly any procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax Deduction.
  - (ii)
    - (A) A Treaty Lender which becomes a Party on the day on which this Agreement is entered into that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence opposite its name at the end of this Agreement; and
    - (B) a New Lender that is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the Transfer Agreement or Assignment Agreement which it executes,

and, having done so, that Lender shall be under no obligation pursuant to paragraph (i) above.

(h) If the Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with paragraph (g)(ii) above and:

(i) the Borrower has not made a Borrower DTTP Filing in respect of the Lender; or

(ii) a Borrower has made a Borrower DTTP Filing in respect of the Lender but:

(A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or

(B) HM Revenue & Customs has not given the Borrower authority to make payments to the Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

and in each case, the Borrower has notified the Lender in writing, the Lender and the Borrower shall co-operate in completing any additional procedural formalities necessary for that Borrower to obtain authorisation to make that payment without a Tax Deduction.

(i) If the Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with paragraph (g)(ii) above, the Borrower may not make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of the Lender's Term Loan Commitment(s) or its participation in any Loan unless the Lender otherwise agrees.

(j) The Borrower shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the Lender.

(k) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Borrower by entering into this Agreement.

(l) A UK Non-Bank Lender shall promptly notify the Borrower if there is any change in the position from that set out in the Tax Confirmation.

### 12.3 Tax Indemnity

(a) The Borrower shall (within three Business Days of demand by the Lender) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party reasonably determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Finance Party:

(A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

If that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(II) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under clause 12.2 (Tax gross-up); or

(B) would have been compensated for by an increased payment under clause 12.2 (Tax gross-up) but was not so compensated solely because one of the exclusions in clause 12.2(d) applied.

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Lender of the event which will give, or has given, rise to the claim, following which the Lender shall notify the Borrower.

(d) A Protected Party shall, on receiving a payment from the Borrower under this clause 12.3, notify the Lender.

#### 12.4 Tax Credit

(a) If the Borrower makes a Tax Payment and the relevant Finance Party determines that:

(I) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(II) that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Borrower which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

#### 12.5 Lender Status Confirmation

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Agreement or Assignment Agreement which it executes on becoming a Party, without liability to the Borrower, which of the following categories it falls in:

(a) not a Qualifying Lender;

(b) a Qualifying Lender (other than a Treaty Lender); or

(c) a Treaty Lender,

such notice to be effective from the time it becomes a Party to this Agreement.

If such a New Lender fails to indicate its status in accordance with this clause 12.5 then such New Lender shall be treated for the purposes of this Agreement (including by the Borrower) as if it is not a Qualifying Lender until such time as it notifies the Borrower which category applies. For the avoidance of doubt, a Transfer Agreement or Assignment Agreement shall not be invalidated by any failure of a lender to comply with this clause 12.5.

#### 12.6 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document. This clause 12.6 shall not apply to any assignment, novation or transfer of all or any part of a Finance Party's rights or benefits under a Finance Document pursuant to clause 21 (Changes to the Lender).

#### 12.7 VAT

- (a) All amounts set out or expressed in a Finance Document to be payable by any Party to a Finance Party which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document, and such Finance Party is required to account to the relevant tax authority for the VAT, that Party shall pay to the Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to such Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "Supplier") to any other Finance Party (the "Recipient") under a Finance Document, and any Party other than the Recipient (the "Subject Party") is required by the terms of any Finance Document to pay an amount equal to the consideration for such supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
  - (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Subject Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Subject Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
  - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Subject Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expenses, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this clause 12.7 (VAT) to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).

- (e) In relation to any supply made by a Finance Party to any party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

### **13. MITIGATION BY THE LENDERS**

#### **13.1 Mitigation**

- (a) The Lenders shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to clause 11.1 (Increased Costs) or clause 12 (Tax Gross Up and Indemnities).
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

#### **13.2 Limitation of liability**

- (a) The Borrower shall indemnify the Lenders for all costs and expenses reasonably incurred by the Lenders as a result of steps taken by it under clause 13.1 (Mitigation).
- (b) A Lender is not obliged to take any steps under clause 13.1 (Mitigation) if, in the sole opinion of that Lender, to do so might be prejudicial to it.

### **14. REPRESENTATIONS AND WARRANTIES**

The Borrower makes the following representations and warranties set out in this clause 14 to each Finance Party on the date of this Agreement and acknowledges that each Finance Party has entered into the Finance Documents and the Lenders have agreed to provide the Facilities in full reliance upon the representations and warranties.

#### **14.1 Status**

- (a) It is a corporation, duly incorporated and validly existing with limited liability under the laws of England and Wales.
- (b) It has the power to own its assets and carry on its business as contemplated by the Transaction Documents to which it is a Party.

#### **14.2 Ownership of the Borrower**

- (a) As at the date of this Agreement, the Borrower's issued share capital is owned legally and beneficially by the Shareholders in the following percentages:
  - (i) Urbaser Limited: fifty per cent. (50%);
  - (ii) FCC Environment Services (UK) Limited: fifty per cent. (50%).
- (b) As at the date of this Agreement, it has no Subsidiaries other than BWL.

#### **14.3 Powers and authority**

It has the power to enter into and perform each of the Transaction Documents to which it is a party and the transactions contemplated thereby and has taken all necessary action to authorise the entry into and performance of each of the Transaction Documents to

which it is a party and the transactions contemplated thereby in accordance with the terms thereof.

**14.4 Binding obligations**

Subject to the Reservations, the Transaction Documents to which it is a party constitute its legal, valid and binding obligations enforceable in accordance with their respective terms, and the Security Interests created by the Security Documents have the ranking expressed to be created by the Security Documents and rank ahead of all Security Interests and rights of third parties except those preferred by law and the obligations under this Agreement (not secured by the Security Documents) rank *pari passu* with all present and future indebtedness.

**14.5 Non-conflict with other obligations**

The entry into and performance of the Transaction Documents to which it is a party and the transactions contemplated thereby do not conflict with:

- (a) any law or regulation or any official or judicial order applicable to it;
- (b) its constitutional documents; or
- (c) any agreement or document to which it is a party or which is binding upon it or any of its assets to an extent which results in, or is reasonably likely to result in, a Material Adverse Effect.

**14.6 No default**

- (a) No Default has occurred and is continuing.
- (b) No other event or circumstance is outstanding under any Senior Finance Document or Project Document which constitutes a default under such agreement or instrument which could reasonably be expected to have a Material Adverse Effect.

**14.7 Accounts**

The audited accounts of the Borrower most recently delivered to the Lenders under clause 17.2 (Financial and Project Information) have been prepared in accordance with Applicable Accounting Principles and present a true and fair view of the financial condition of the Borrower as at that date.

**14.8 Necessary Consents**

All Necessary Consents required in connection with the entry into and performance by it, and the validity and enforceability against it of the Project Documents and Senior Finance Documents to which it is a party and the transactions contemplated thereby have been obtained or effected by such time as is required for the Borrower to lawfully enter into, exercise its rights and comply with its obligations under the Project Documents and Senior Finance Documents to which it is a party and to make the same admissible in evidence in England.

**14.9 Trading**

It has not conducted trading activities or carried on any other business or any other activities either alone or in partnership or in a joint venture other than the business or activities that are directly connected with the Project or are authorised under the Project Documents.



#### 14.10 Litigation

Except to the extent that the Borrower has notified the Lenders (and the Lenders have raised no objection), no litigation, arbitration, or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a material adverse effect have (to the best of the Borrower's knowledge and belief) been started or threatened against it.

#### 14.11 Governing law and enforcement

- (a) The choice of English law as the governing law of the Senior Finance Documents and Project Documents will be recognised and enforced in its jurisdiction of incorporation; and
- (b) any judgment obtained in England in relation to the Senior Finance Documents and Project Documents will be recognised and enforced in England.

#### 14.12 Liabilities

- (a) It has duly filed or caused to be filed all tax returns and other documents required to be filed with HMRC or other tax authority (and such returns are accurate in all material respects) and has paid all Taxes due by it and no material claim (other than routine assessments) is being asserted against it by HMRC with respect to Taxes.
- (b) As at the date of this Agreement, it is not required to make any Tax Deduction under the Finance Documents provided that the Lenders are Qualifying Lenders that have provided a Tax Confirmation.
- (c) It has, at the date of this Agreement, no outstanding Financial Indebtedness except for any Permitted Financial Indebtedness, and it has not undertaken any trading or other activity other than as contemplated by the Transaction Documents and permitted under the Finance Documents, nor does it have any assets or actual or contingent liabilities except for assets and actual or contingent liabilities which may arise pursuant to or as contemplated by the Transaction Documents.
- (d) As at the date of this Agreement, except for registration of the Security Documents at the Companies Registry and the Land Registry (as applicable), and any registration fees payable in respect of a Security Document at the Companies Registry and the Land Registry, under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar Tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

#### 14.13 Information prior to the date of this Agreement

- (i) The information (including any Approved Budget) provided by or on behalf of the Borrower and submitted to the Lenders prior to the date of this Agreement in connection with the Project (the "Information"):
  - (A) was at the time it was received by the Lenders true and accurate in all material respects insofar as it consisted of statements of facts;
  - (B) to the extent expressed to be those of the Borrower, fairly represented (consistently with the assumptions therein stated) the views and expectations of the Borrower at that time formed in good faith after proper investigation and consideration insofar as it consisted of statements of opinion, financial projections and

forecasts, and to the extent not expressed to be those of the Borrower, were fair and reasonable; and

- (C) fairly represented the intentions of the Borrower at that time insofar as it consisted of expressions of intention,

and the Borrower is not aware (after careful consideration and reasonable enquiry) of any material facts or circumstances that have not been disclosed whether in the Information or otherwise in writing to the Lenders which could make any of such information, statements of fact, statements of opinion, financial projections, forecasts and/or intentions untrue, incomplete, inaccurate or misleading in any material respects. This clause 14.13 shall not be construed as requiring the Borrower to update Information which was previously submitted to the Lenders.

- (ii) Any representation made in this clause 14.13 which relates to Information provided on behalf of the Borrower (and produced by a person other than the Borrower) shall be read and construed as being given "to the best of the Borrower's knowledge and belief".

#### 14.14 Information after the date of this Agreement

- (i) The Information (including any Approved Budget) required to be produced by or on behalf of the Borrower under the Finance Documents and submitted to the Lenders after the date of this Agreement (the "Information"):

- (A) was at the time it was received by the Lenders true and accurate in all material respects insofar as it consisted of statements of facts;

- (B) to the extent expressed to be those of the Borrower, fairly represented (consistently with the assumptions therein stated) the views and expectations of the Borrower at that time formed in good faith after proper investigation and consideration insofar as it consisted of statements of opinion, financial projections and forecasts, and to the extent not expressed to be those of the Borrower, were fair and reasonable; and

- (C) fairly represented the intentions of the Borrower at that time insofar as it consisted of expressions of intention.

- (ii) Any representation made in this clause 14.14 which relates to Information provided on behalf of the Borrower (and produced by a person other than the Borrower) shall be read and construed as being given "to the best of the Borrower's knowledge and belief".

#### 14.15 No winding-up

As at the date of this Agreement, no corporate action or other steps have been taken nor legal proceedings started against it or (to the best of the Borrower's knowledge and belief having made all reasonable enquiries) a Material Project Party nor threatened against it or (to the best of the Borrower's knowledge and belief having made all reasonable enquiries) a Material Project Party for its winding up save for such steps or proceedings which are frivolous or vexatious and are being contested in good faith and on reasonable grounds or proposed for the purpose of any restructuring or amalgamation previously sanctioned in writing by the Lenders.

#### 14.16 Approved Financial Model

- (a) The Assumptions in the Base Case Financial Model were made in good faith and arrived at after due and careful consideration, are consistent with the Transaction Documents and fairly represent the Borrower's expectations in relation to the matters covered as at the date of this Agreement.
- (b) The Assumptions, where proposed by the Borrower, in each Updated Financial Model were made in good faith and arrived at after due and careful consideration, are consistent with the Transaction Documents and fairly represent its expectations in relation to the matters covered at the time they were made.
- (c) The most recent Approved Financial Model accurately incorporates all of the Assumptions, and it is not aware of any information or error or defect in the Approved Financial Model which, if disclosed, would make the most recent Approved Budget or the most recent Forecast inaccurate, untrue or misleading in any material respect.
- (d) The most recent Approved Budget specifies (at the date of delivery to the Lenders) all material costs and expenses paid or payable during the period to which it relates and is based on reasonable assumptions. It was prepared in good faith and after due and careful consideration and fairly represents the Borrower's view as to costs and expenses anticipated by it to be incurred during the period to which it relates and is consistent with the Transaction Documents.
- (e) The Lenders, the Security Agent and the Technical Adviser have full authority to use the Approved Financial Model for the purposes contemplated in this Agreement.

#### 14.17 Title

- (a) It has good title to its assets and no Security Interest exists in or over such assets other than Permitted Security Interests.
- (b) Except as provided in the Project Documents, it has no freehold or leasehold interest, legal or beneficial or otherwise, in any real property.

#### 14.18 Environmental matters

- (a) It has disclosed all material details to the Lenders of all inspections, investigations, studies, audits, tests, reviews and other analyses carried out by it or on its behalf in relation to any environmental matters or pursuant to any Environmental Law in respect of the Project and the Site or any adjoining property over which the Site enjoys any rights or amenities of which it is aware having made reasonable enquiry, and where this representation is made after the date of this Agreement, only to the extent the same have, or might be expected to have, a Material Adverse Effect.
- (b) As at the date of this Agreement, all necessary Environmental Authorisations for the carrying out of the Project in accordance with the Project Documents have been obtained and are in force or will be obtained prior to the time when required.
- (c) All records, reports, returns, registrations and information necessary for compliance with any Environmental Law or Environmental Authorisation required for the carrying out of the Project have been made or given or will be made or given prior to the time when required to the relevant agency in accordance with the requirements of the relevant Environmental Law or Environmental Authorisation.

- (d) As at the date of this Agreement, so far as it is aware (having made due and careful enquiry) there are no Environmental Claims against it or which affect the Project and no act or omission has occurred, and no event or circumstance has arisen, in each case which has resulted in or could reasonably be expected to result in, an Environmental Claim against it.

**14.19 Insurance**

As at the date of this Agreement, the Insurances that are required pursuant to the Insurance Programme to be in place from Financial Close have been placed and are (so far as it is aware after making reasonable enquiries) in full force and effect as required pursuant to the terms of this Agreement.

**14.20 Intellectual property**

It is the sole legal and beneficial owner of and/or holds all rights to use all Intellectual Property which are required in order for the Borrower to perform its obligations under the Project Documents.

**14.21 No Material Adverse Change**

- (a) As at the date of this Agreement, there has been no change in the Borrower's business or financial condition since the date of its last financial statements which has had or could have a Material Adverse Effect.
- (b) As at the date of this Agreement, so far as it is aware there has been no change in the financial condition or assets of any Material Project Party (other than the Borrower) since the date of the financial statements for such Material Project Party delivered pursuant to paragraph 1.6 of Part I (Initial conditions precedent) of schedule 3 (Conditions Precedent) which could have a Material Adverse Effect.

**14.22 Project Documents**

- (a) As at the date of this Agreement it is not, and in so far as it is aware no Material Project Party is, in breach of any Project Documents to which it is a party.
- (b) It has no liabilities (whether historic or on-going) under the Historic Transaction Documents and all of its obligations thereunder have been fully discharged.

**14.23 Pari passu ranking**

The Borrower's payment obligations under the Senior Finance Documents rank at least pari passu with the claims of all of its other unsecured and unsubordinated creditors (except for obligations mandatorily preferred by law applying to companies generally).

**14.24 Breach of laws**

- (a) the Borrower has not breached any law or regulation; and
- (b) the Borrower is in compliance with all environmental laws and except to the extent that the Borrower has notified Lenders (and Lenders have raised no objection) no environmental claim has (to the best of the Borrower's knowledge or belief) been commenced or is threatened against it,

which breach or claim has or is reasonably likely to have a Material Adverse Effect.

**14.25 Custody Agreement**

As at the date of this Agreement:

- (a) the Custody Agreement remains in full force and effect, has not been terminated; and no party has given notice of termination pursuant to the terms of the Custody Agreement; and
- (b) the fees payable by the Borrower pursuant to clause 11 (Fees) of the Custody Agreement have been paid and that no amounts remain outstanding as at the date of Financial Close.

#### 14.26 Repetition

- (a) The Repeating Representations are deemed to be made by the Borrower at Financial Close, the date of each Drawdown Notice, the date of each Drawdown and on the first day of each Interest Period.
- (b) When the representation in clause 14.6 (No default) is deemed to be repeated in accordance with paragraph (a), the reference to a Default will be construed as a reference to an Event of Default.
- (c) The Repeating Representations shall be made by reference to the facts and circumstances then existing at the date the repetition is made.

### 15. RATIO CALCULATIONS

#### 15.1 Ratio Testing Dates

- (a) All Ratio Calculations shall be made by the Borrower and notified to the Lenders within \_\_\_\_\_ Business Days after the applicable Ratio Testing Date by reference to the financial circumstances existing as at the relevant Ratio Testing Date, as evidenced by the Approved Financial Model, and the following provisions of this clause 15 (unless there is a referral to Expert determination, in which case such period may be extended to no more than \_\_\_\_\_ Business Days with the approval of the Lenders, such approval not to be unreasonably withheld),
- (b) The Borrower shall provide to the Lenders:
  - (i) its proposals for the Technical Assumptions, if different from those in the then current Approved Financial Model;
  - (ii) its proposals for the Economic Assumptions, if different from those proposed in the current Approved Financial Model; and
  - (iii) all other financial information reasonably requested by the Lenders,
 within \_\_\_\_\_ Business Days after the relevant Ratio Testing Date to enable the Lenders to consider the proposed changes to the Assumptions before the Ratio Calculations are made by the Borrower.

#### 15.2 Additional Calculations

In addition to the Ratio Calculations being made as at each Ratio Testing Date the Lenders may elect, by notice in writing to the Borrower, that there should be further calculations of the Loan Life Cover Ratio, the Historic Annual Debt Service Cover Ratio and/or the Projected Annual Debt Service Cover Ratio. The Lenders may make such election if they believe, acting reasonably, that a change in circumstances has had a Material Adverse Effect. Such election may be made at any time after the first Calculation Date.

### 15.3 Assumptions

The Lenders and the Borrower shall seek to agree the Assumptions within Business Days after the relevant Ratio Testing Date. The Borrower shall have due regard to the Technical Adviser's views (if any) on the Technical Assumptions. Thereupon:

- (a) within Business Days after the relevant Ratio Testing Date, the Borrower will deliver to the Lenders a revised financial model (the "Proposed Updated Financial Model") in electronic form. The Proposed Updated Financial Model shall clearly set out those Economic Assumptions and those Technical Assumptions which have been agreed by the Borrower and those which have not;
- (b) If the Lenders and the Borrower have been unable to agree a proposed change in the basis of indexation for the purposes of an Economic Assumption in paragraph (a) of the definition thereof, the basis of indexation shall continue to be by reference to GDP deflator;
- (c) If the Lenders and the Borrower have been unable to agree any other Economic Assumption or Technical Assumption, the Lenders shall, within Business Days of the relevant Ratio Testing Date acting reasonably:
  - (i) In the case of Economic Assumptions in paragraph (b) of the definition thereof, stipulate such Economic Assumptions derived from the average of the most recent figures published by such reputable institutions as the Lenders from time to time reasonably consider appropriate;
  - (ii) In the case of Economic Assumptions in paragraphs (c) and (d) of the definition thereof, stipulate such Economic Assumptions on the basis of such professional advice as is available to it and it reasonably considers appropriate; and
  - (iii) In the case of Technical Assumptions either (A) stipulate such Technical Assumptions on the basis of the advice of the Technical Adviser or (B) procure that the Technical Adviser stipulates such Technical Assumptions; and
- (d) the Lenders shall, within Business Days of the relevant Ratio Testing Date, notify the Borrower, and the Borrower shall, within Business Days of the relevant Ratio Testing Date, notify the Lenders, if they wish to discuss the Assumptions used in the Proposed Updated Financial Model and shall arrange for a consultation to take place in relation thereto between the Lenders and the Borrower during the period ending Business Days after the relevant Ratio Testing Date;
- (e) following such consultation, if the Lenders do not accept the Borrower's figures for the Technical Assumptions or any Economic Assumption, or if the Borrower does not accept the Lenders' figures for the Technical Assumptions or any Economic Assumption, either party shall refer the Borrower's figures (referred to in paragraph (a) above) and the Lenders' figures (referred to in paragraph (c) above) (unless any of such figures have been revised with the agreement of the Lenders and the Borrower during the consultation period referred to in this paragraph (d), in which case only the relevant assumptions in relation to which there remains disagreement between the Lenders and the Borrower, shall be so referred) relating to the relevant Assumptions to the Expert in accordance with clause 15.4 (Expert Determination).

#### 15.4 Expert Determination

The Lenders or, where applicable, the Borrower shall instruct the Expert within Business Days of the relevant Ratio Testing Date. The instructions shall state that the Expert shall give his decision on any reference made under clause 15.3(d) (Assumptions) by the date Business Days after the relevant Ratio Testing Date (unless there is a failure to agree an expert in accordance with Clause 15.4(a), in which case the nominated expert shall give his decision by the date Business Days after the Ratio Testing Date). The Expert shall:

- (a) be a person or persons having appropriate expertise with respect to, but no interest in the outcome of, the matter referred to him or them and shall be appointed by agreement between the Borrower and the Lenders. Failing any such agreement within Business Days of the relevant Ratio Testing Date, the Expert shall be the person or persons nominated by (In the case of any Technical Assumption) the President of the Institution of Mechanical Engineers or (In the case of any Economic Assumption) the President of the Institute and Faculty of Actuaries on the application of either the Lenders or the Borrower. The Party making such application shall request the President for the time being of the Institution of Mechanical Engineers or, as applicable, the President of the Institute and Faculty of Actuaries to nominate a person or persons with appropriate expertise and no interest in the outcome (as stated above). The costs of any reference to the Expert shall be borne by the Borrower;
- (b) be given terms of reference agreed between the Borrower and the Lenders properly stating the context in which the relevant referral is being made to him or them. The Borrower and the Lenders may each provide the Expert with whatever supporting evidence they think appropriate;
- (c) not be bound to choose either the figures proposed by the Borrower or those proposed by the Lenders but shall be free to make his or their own determination of the point referred to him or them. The Expert's determination shall (save in the case of manifest error) be final and binding on all the parties hereto and shall be used in the relevant Updated Financial Model prepared under clause 15.5 (Updated Financial Model) unless the figures finally produced do not lie between the figures proposed by the Borrower and the Lenders (in which case the figures proposed by the Borrower or the Lenders (as the case may be) which is closest to the Expert's determination shall be used); and
- (d) act as an expert in determining the matter referred to him or them and not as an arbiter.

#### 15.5 Updated Financial Model

- (a) If the Borrower and the Lenders agree the Assumptions in the Proposed Updated Financial Model delivered to the Lenders under clause 15.3(a) (Assumptions), such Proposed Updated Financial Model shall thereupon come into effect as the Updated Financial Model.
- (b) Subject to clause 15.6 (No Determination), If there has been a determination by an Expert under clause 15.4 (Expert Determination), the Borrower will, subject to clause 15.11 (Equity Cure), deliver to the Lenders a further version of the Proposed Updated Financial Model in electronic form revised in accordance with clauses 15.3 (Assumptions) and 15.4 (Expert Determination) within Business Days of the relevant Ratio Testing Date (or where clause 15.6 (No Determination) applies, within such additional period as is permitted by clause 15.6 (No Determination)), together with Ratio Calculations based on such Proposed Updated Financial Model, whereupon such Proposed Updated Financial Model will come into effect as the

Updated Financial Model. The figures stated in each Updated Financial Model shall, in the absence of manifest error, be final and binding on all the parties hereto.

- (c) On or prior to Completion (but no earlier than \_\_\_\_\_ business Days prior to such date), the Borrower shall deliver to the Lenders its proposed revised financial model containing such amendments as are necessary to update the then Approved Financial Model for use during the Operating Period (a "Proposed Revised Financial Model"). If the Proposed Revised Financial Model contains any changes to the Assumptions from the most recent Approved Financial Model, and the Lenders do not accept any such Assumptions, it shall be referred to an Expert in accordance with the process set out in clause 15.4 (Expert Determination). Promptly following determination by the Expert, the Proposed Revised Financial Model shall be audited by the Model Auditor. If the Model Auditor requires modifications when conducting the model audit, the Proposed Revised Financial Model shall be modified to take account of its requirements. The Borrower shall use all reasonable endeavours to procure that the audit of the Proposed Revised Financial Model is completed as soon as practicable following, and, in any event, within 30 days of the occurrence of, Completion. Until the Proposed Revised Financial Model is approved by the Model Auditor, it shall remain a Proposed Revised Financial Model. Once the Proposed Revised Financial Model has been approved by the Model Auditor, it shall thereupon come into effect as the Updated Financial Model.

#### **15.6 No Determination**

If any consultation on a Proposed Updated Financial Model has not been concluded or if any Expert's determination is not made in time for the delivery of the relevant Updated Financial Model in accordance with clause 15.5 (Updated Financial Model) (namely within \_\_\_\_\_ business Days of the relevant Ratio Testing Date), then until it is concluded or made, the Proposed Updated Financial Model delivered under clause 15.3(a) (Assumptions) as amended by the Lenders' Assumptions stipulated under paragraphs (I) to (III) (inclusive) of clause 15.3(a) shall apply provided that any Event of Default arising under clause 19.1 (Events of Default) on the basis of the Lenders' figures being used in the Proposed Updated Financial Model rather than the Borrower's figures shall be deemed not to have occurred, until such consultation or Expert's determination has been concluded and the Borrower has produced a further version of the Proposed Updated Financial Model (which has come into effect as the Updated Financial Model) under clause 15.5(b) (Updated Financial Model). The Borrower shall produce such further version of the Proposed Updated Financial Model within \_\_\_\_\_ business Days of the end of such consultation or the giving of such Expert's determination.

#### **15.7 Changing the Basis of any Updated Financial Model from GAAP to IFRS**

The Parties acknowledge that the Base Case Financial Model was prepared on the basis of UK GAAP. The Borrower will have the option on ninety (90) days' notice to the Lenders ending on a Ratio Testing Date to change the basis of any subsequent Updated Financial Model from UK GAAP to IFRS. The provisions of clauses 15.1 to 15.6 as to the production of Updated Financial Models will apply in such circumstances, taking into account the requested change from UK GAAP to IFRS.

#### **15.8 Ratio Compliance Certificate**

- (a) The Borrower shall supply a Ratio Compliance Certificate (signed by one director) to the Lenders following the final agreement or determination of the Ratio Calculations.
- (b) The Ratio Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with the Ratio Calculations.



**15.9 Debt to Equity Ratio**

- (a) The Borrower shall ensure that as at Completion, the Debt to Equity Ratio is no greater than 85:15.
- (b) Subject to clause 15.9(a) above, in the event that the Debt to Equity Ratio at Completion is less than 85:15, the Borrower shall be entitled to make a Distribution in accordance with the distribution conditions set out in clause 17.6 (Controls on dealings with the Shareholders).

REDACTED

#### 15.11 Equity Cure

- (a) The Borrower may in accordance with and to the extent set out in this clause 15.11 cure:
- (i) an Event of Default under clause 19.1(b)(iii) (Failure to Comply) in relation to a breach of Clause 15.9(a) (Debt to Equity Ratio);
  - (ii) an Event of Default under clause 19.1(u)(i)(A) (Loan Life Cover Ratio Default);
  - (iii) an Event of Default under clause 19.1(u)(i)(B) (Historic ADSCR Default);
  - (iv) an Event of Default under clause 19.1(u)(i)(C) (Projected ADSCR Default); or
  - (v) an Event of Default under clause 19.1(x) (Funding Shortfall);
- or prevent such a breach arising so that the Event of Default which arose (or would have arisen) by virtue of such breach, if cured in accordance with this clause 15.11 is deemed not to have arisen.
- (b) The Borrower must notify the Lenders if it intends to exercise its equity cure rights under this clause.
- (c) Subject to paragraph (e) below, an Event of Default relating to the Loan Life Cover Ratio or Projected ADSCR shall be deemed cured by the receipt by the Borrower, prior to, or no later than business days after the Ratio Testing Date of the net proceeds of Cure Equity Contributions, but only to the extent that:
- (i) in the case of a Loan Life Cover Ratio Event of Default, if the Loan Life Cover Ratio were recalculated as if the net proceeds of such Cure Equity Contributions were deemed to have been added to the Cash Flow Available for Debt Service for the Ratio Testing Date, the Loan Life Cover Ratio would have been complied with when so recalculated; and
  - (ii) in the case of an Event of Default, if the Projected ADSCR were recalculated as if the net proceeds of such Cure Equity Contributions were deemed to have been added to the Cash Flow Available for Debt Service for the Ratio Testing Period, the Projected ADSCR Event of Default would have been complied with when so recalculated.
- (d) Subject to paragraph (e) below, where the Borrower is of the view that on a Ratio Testing Date a Historic ADSCR Default will occur, the Borrower shall be entitled to procure that Cure Equity Contributions are paid into the Equity Contribution Account so that as at the relevant Ratio Testing Date the Historic ADSCR will be complied with when calculated.
- (e) The Borrower's entitlement to cure a Cover Ratio Event of Default under clause 19.1(u) (Cover Ratio Default) or Funding Shortfall Event of Default under clause 19.1(x) (Funding Shortfall) in accordance with this clause 15.11 is subject to the following restrictions:

[ REDACTED ]

[ **REDACTED** ]

- (f) In the event that the Borrower remedies any Event of Default in accordance with this clause 15.11, the Lenders shall not take any of the steps referred to in clause 19.2 (Default Remedies) in respect of such Event of Default but; for the avoidance of doubt, may take any of the steps referred to in clause 19.2 (Default Remedies) in respect of any other Event of Default outstanding.

**16. PROJECT ACCOUNTS**

**16.1 Account Bank**

The Project Accounts shall be held by Borrower with the Account Bank on the terms set out in this clause 16 and the Account Bank Agreement.

**16.2 Compliance with the Account Bank Agreement**

The Borrower shall at all times comply with their respective obligations under the Account Bank Agreement.

**16.3 Project Accounts**

- (a) Subject to the terms of this clause 16, the Account Bank Agreement and the relevant Mandate, from Financial Close until the Senior Finance Liabilities Discharge Date, the Borrower shall maintain with the Account Bank the following accounts, denominated in Sterling and held in its name:

- (i) Proceeds Account;
- (ii) Operating Account;
- (iii) Equity Contribution Account;
- (iv) Insurance Proceeds Account;
- (v) Compensation Account;
- (vi) Debt Service Reserve Account;
- (vii) Maintenance Reserve Account;
- (viii) Excess Cash Flow Account;
- (ix) Pre-funding Account;
- (x) Retention Fund Account;
- (xi) Joint Performance Liquidated Damages Account; and
- (xii) Distribution Account.

- (b) The Borrower may not open or maintain any bank, deposit, savings or other account, other than the Initial Project Accounts, with any person unless the Lenders have given their prior written consent; and if required by the Lenders such account(s) shall be secured in favour of the Security Agent on substantially the same terms as set out in the Borrower Debenture.

- (c) Each Project Account shall be a separate account at the Account Bank.
- (d) Neither the existence of the Project Accounts, nor the insufficiency of funds in any of them, nor any inability to apply any funds in any of them towards the relevant payment, shall affect the obligation of the Borrower to make all payments required to be made to the Finance Parties or any of them on the due date for such payments in accordance with the Finance Documents.
- (e) No sum may be credited to or withdrawn from any Project Account except as expressly permitted or required by this Agreement and the Account Bank Agreement, and in accordance with the Intercreditor Deed.
- (f) Notwithstanding any other provision of any of the Finance Documents, no withdrawal shall be made from any Project Account if it would thereby become overdrawn.
- (g) Neither the Lenders nor the Account Bank shall be obliged to make available to the Borrower any sum which it is expecting to receive for the account of the Borrower until it has been able to establish that it has received such sum.

#### 16.4 Proceeds Account

- (a) The Borrower shall procure the payment into the Proceeds Account, save to the extent expressly provided otherwise in this clause 16, of:
  - (i) all Project Revenues (other than amounts which, in accordance with this clause 16 are otherwise applied);
  - (ii) all moneys received by the Borrower under the Finance Documents;
  - (iii) all moneys received by it from the Equity Contribution Account;
  - (iv) all payments received in respect of consortium relief or other tax losses and allowances;
  - (v) all amounts received by it or to its order in respect of Insurance Proceeds in respect of any business interruption and delay in start-up insurance; and
  - (vi) any other amounts received by the Borrower for any reason whatsoever, other than amounts which are required pursuant to this clause 16 to be paid into any other Project Account.
- (b) The Borrower may only withdraw sums from the Proceeds Account for the following purposes and in the following order, subject to the provisions of this Agreement and the Intercreditor Deed:
  - (i) first, in and towards payments of Project Costs (save for Operating Costs);
  - (ii) second, in and towards transfers to the Operating Account in accordance with clause 16.5 (Operating Account);
  - (iii) third, in or towards payment of amounts payable under limbs (a) and (b) of the definition of Financing Costs then due;
  - (iv) fourth, in and towards payment of Financing Principal (other than prepayments) then due;
  - (v) fifth, in or towards transfers to the Debt Service Reserve Account in accordance with clause 16.9 (Debt Service Reserve Account);

- (vi) sixth, in or towards transfers to the Maintenance Reserve Account in accordance with clause 16.10 (Maintenance Reserve Account);
- (vii) seventh, in or towards voluntary prepayments in accordance with clause 9.4 (Voluntary prepayment); and
- (viii) eighth, in and towards transfers to the Distribution Account in accordance with clause 16.12 (Distribution Account).

#### **16.5 Operating Account.**

- (a) The Borrower may transfer from the Proceeds Account to the Operating Account, on the first Business Day of each Month, such amounts as are necessary, in accordance with the Base Case Financial Model and thereafter in each Approved Budget, to meet Operating Costs (other than in respect of Life Cycle Maintenance Costs) for that Month.
- (b) The Borrower may only withdraw sums from the Operating Account:
  - (i) to meet Operating Costs falling due at any time as such items are specified in the Base Case Financial Model and on and after publication of the first Approved Budget, in each Approved Budget (other than Life Cycle Maintenance Costs); or
  - (ii) to transfer amounts to the Proceeds Account in order to comply with its obligations under the Finance Documents.

#### **16.6 Equity Contribution Account**

- (a) The Borrower must ensure that all moneys received by it under the Equity Agreement and/or all moneys received by it in respect of the Subordinated Debt shall be paid into the Equity Contribution Account.
- (b) The Borrower may only withdraw sums from the Equity Contribution Account to:
  - (i) transfer amounts to the Proceeds Account in order to comply with its obligations under the Finance Documents; or
  - (ii) transfer amounts to the Insurance Proceeds Account to make good any shortfall in the amount required to repair or re-instate affected project assets.

#### **16.7 Insurance Proceeds Account**

- (a) Subject to paragraphs (b) and (c) below, the Borrower shall ensure that all Insurance Proceeds received by it or to its order are paid immediately into the Insurance Proceeds Account.
- (b) Where Insurance Proceeds are received or receivable pursuant to any form of third party liability insurance, such Insurance Proceeds:
  - (i) may be paid directly to the person whose claim constitutes the risk or liability insured against, to the extent so provided in schedule 6 (Insurance); and
  - (ii) shall, to the extent the Borrower has compensated the relevant third party for any injury, loss or damage suffered by such party prior to the Borrower's receipt of the relevant Insurance Proceeds, be paid to the Borrower and credited to the Proceeds Account.

- (c) Insurance Proceeds relating to delay in start-up, business Interruption Insurance or other similar insurances shall be paid into the Proceeds Account.
- (d) The Borrower may make withdrawals from the Insurance Proceeds Account in respect of:
  - (i) Insurance Proceeds arising under any form of third party liability Insurance, to meet the relevant liability, to the extent not paid directly to the relevant person as contemplated by paragraph (b)(i); and
  - (ii) Insurance Proceeds arising under any form of physical damage Insurance to the extent necessary to repair, reinstate or otherwise replace the assets in respect of which such Insurance Proceeds have been made available.

#### **16.8 Compensation Account**

- (a) The Borrower shall ensure that all amounts received by it with respect to any compensation paid to the Borrower in accordance with the terms of the Waste Management Service Contract are paid into the Compensation Account.
- (b) The Borrower shall apply the proceeds in the Compensation Account in accordance with clause 9.1 (Mandatory prepayment - Compensation).

#### **16.9 Debt Service Reserve Account**

- (a) At the earlier to occur of (i) the expiry of the Availability Period and (ii) Completion and thereafter on each subsequent Calculation Date, the Borrower shall in accordance with clause 16.4 (Proceeds Account), transfer from the Proceeds Account to the Debt Service Reserve Account the lesser of:
  - (i) the amount required to ensure that the balance standing to the credit of the Debt Service Reserve Account is not less than the DSRA Required Balance; and
  - (ii) the amount standing to the credit of the Proceeds Account having made all payments of a higher priority under clause 16.4(b) (Proceeds Account).
- (b) The Borrower may at any time withdraw sums from the Debt Service Reserve Account to:
  - (i) meet Financing Costs and Financing Principal falling due at such time to the extent it would not otherwise have sufficient funds available to pay them; and
  - (ii) transfer any amount in excess of the DSRA Required Balance to the Proceeds Account.

#### **16.10 Maintenance Reserve Account**

The Borrower undertakes with each of the Finance Parties that the Maintenance Reserve Account shall be operated in the following manner:

- (a) the Borrower shall transfer funds into the Maintenance Reserve Account from time to time from the following sources (the order of priority shall be at the discretion of the Borrower):
  - (i) from the balance at any time of the Proceeds Account in accordance with clause 16.4 (Proceeds Account); and

- (ii) from any drawdown of the Loans made for such purpose,

with the intent that the balance on the Maintenance Reserve Account shall on any Calculation Date falling after the occurrence of Completion (each such date, a "Maintenance Reserve Testing Date") shall not be less than:

the aggregate of:

- (A) one hundred per cent (100%) of the amount of all Life Cycle Maintenance Costs shown by the Approved Financial Model current at that time to be payable in the period up to and including the date falling one year after the relevant Maintenance Reserve Testing Date;
- (B) sixty-six per cent (66%) of the amount of all Life Cycle Maintenance Costs shown by the Approved Financial Model current at that time to be payable in the year following the period in (A) above; and
- (C) thirty three per cent (33%) of the amount of all Life Cycle Maintenance Costs shown by the Approved Financial Model current at that time to be payable in the year following the period in (B) above;

(the "Maintenance Cushion");

- (b) the Borrower undertakes:

- (i) to establish a balance of not less than the Maintenance Cushion by Completion; and
- (ii) to use all reasonable endeavours, subject to the provisions of this Agreement, on and from Completion to maintain the balance on the Maintenance Reserve Account at not less than the Maintenance Cushion from time to time and in the event that the Borrower does not have sufficient amounts available to it to maintain such balance at not less than the Maintenance Cushion the Borrower shall be required to transfer all amounts available to it into the Maintenance Reserve Account after the payments in clauses 16.4(b)(i) to 16.4(b)(v) (Proceeds Account) have been made.

- (c) withdrawals may be made from time to time by the Borrower from the Maintenance Reserve Account by way of transfer into the Proceeds Account provided that:

- (i) such withdrawal would not cause the credit balance of the Maintenance Reserve Account to be less than the Maintenance Cushion; or
- (ii) if such withdrawal would cause the credit balance of the Maintenance Reserve Account to be less than the Maintenance Cushion, the Borrower shall transfer such amounts into the Maintenance Reserve Account to ensure that the balance on the Maintenance Reserve Account is equal to or exceeds the Maintenance Cushion on the Calculation Date falling after the date on which the relevant withdrawal was made.

#### 16.11 Retention Fund Account

Any retention made in accordance with clause 50.1G (Waste to Energy Plant) of the Waste Management Service Contract as amended by the Deed of Variation will be paid into the Retention Fund Account, to be established at the time such retention is made.

#### 16.12 Distribution Account

- (a) The Borrower may pay into the Distribution Account any amounts permitted by clause 16.4 (Proceeds Account) within 20 Business Days of settling the Forecast and final approval of the Approved Financial Model in accordance with clause 15 (Ratio Calculations) which first permits that Distribution, and subject always to clause 17.5 (Controls on dealings with the Shareholders), but not otherwise.
- (b) The Borrower may withdraw amounts standing to the credit of the Distribution Account to make a Distribution at any time and shall be made in accordance with the terms of the relevant Mandate.

#### 16.13 Excess Cash Flow Account

- (a) The Borrower shall ensure that the Actual Construction Period Excess Cashflow Amount is credited to the Excess Cash Flow Account.
- (b) The Borrower may only withdraw sums from the Excess Cash Flow Account:
  - (i) to meet Project Costs at any time on or after the Take-Over Date, but prior to Completion; or
  - (ii) to transfer any amount standing to the credit of Excess Cash Flow Account on Completion to the Distribution Account, provided that no Event of Default is continuing.

#### 16.14 Pre-funding Account

- (a) The Borrower shall ensure that any Advances made in accordance with clause 5.5 (Pre-funding at the end of the Availability Period) are paid into the Pre-funding Account.
- (b) Subject to paragraph (c) below, prior to Completion, and provided that there are insufficient funds available in the Proceeds Account to cover such costs, the Borrower shall be permitted to (and in the case of paragraph (b)(ii) required to) withdraw monies from the Pre-funding Account to pay:
  - (i) Project Costs (as contemplated by clause 2 (Purpose));
  - (ii) any interest on the Facility A Loans and Facility B Loans which has accrued at the end of an Interest Period (including, without limitation whilst a Force Majeure Event or Relief Event is continuing) during the Construction Period, but which has not been capitalised and remains unpaid due to the expiry of the Availability Period as a result of the Planned Completion Date occurring prior to Completion.
- (c) The Borrower shall only be permitted to withdraw amounts standing to the credit of the Pre-funding Account pursuant to paragraph (b)(i) upon:
  - (i) it providing the Lenders with written notice ten (10) Business Days prior to such proposed withdrawal; and
  - (ii) the Lenders confirming that on the date of such withdrawal all the conditions to the making of an Advance pursuant to clause 4.3 (Further Conditions Precedent) that would be required to be satisfied if the withdrawal from the Pre-funding Account were treated as the making of an Advance under Facility A or B have been satisfied or waived.



- (d) By no later than ten (10) Business Days following Completion the Borrower shall apply any amount standing to the credit of the Pre-funding Account in and towards amounts outstanding under the Facilities.

**16.15 Joint Performance Liquidated Damages Account**

- (a) The Borrower shall use reasonable endeavours to enforce all its rights under the EPC Contract with respect to the payment of Performance Liquidated Damages and ensure that all Performance Liquidated Damages received by it are promptly paid into the Joint Performance Liquidated Damages Account.
- (b) The Borrower may only withdraw amounts standing to the credit of the Joint Performance Liquidated Damages Account for the following purposes ("JPLD Permitted Withdrawals"):
- (i) at any time to transfer to the Proceeds Account amounts equal to abatements of the Unitary Payment suffered by the Borrower for performance related adjustments through Performance Levels in respect of the Plant, as calculated in accordance with Schedule 4 (Payment Mechanism) of the Waste Management Service Contract ("Performance Abatements"), but only where such Performance Abatements arise as a consequence of a defect for which the Performance Liquidated Damages were paid under the EPC Contract;
  - (ii) at any time, to pay for repairs, renewals or refurbishment of the Waste to Energy Plant in respect of which the Performance Liquidated Damages have been made available under the EPC Contract, which are certified by the Technical Adviser as being in accordance with the then current Detailed Maintenance Plan;
  - (iii) on or after the occurrence of the Expiry Date under the Waste Management Service Contract, in order to pay to the Councils, their portion of amounts standing to the credit of the Joint Performance Liquidated Damages Account, as determined in accordance with clause 24A.5 of the Waste Management Service Contract (the "JPLD Balance Council Portion").
- (c) In the event that, for any reason, the Senior Finance Liabilities Discharge Date occurs prior to the occurrence of the Expiry Date under the Waste Management Service Contract, the Borrower shall continue to cooperate with the Councils to maintain the Joint Performance Liquidated Damages Account in existence until the occurrence of the Expiry Date under the Waste Management Service Contract. Prior to the Expiry Date, the Borrower shall continue to comply with sub-paragraph (a) and (b) (i) and (b)(ii), and on the occurrence of the Expiry Date the Borrower will ensure that the Councils are paid the JPLD Balance Council Portion in accordance with sub-paragraph (b)(iii). This clause 16.15(c) shall survive termination of this Agreement.

**16.16 Withdrawal procedures**

On the date of each withdrawal made by the Borrower from the Proceeds Account or the Operating Account, the Borrower shall be deemed to represent and warrant that:

- (a) no Event of Default has occurred and is continuing and no Default would occur as a result of the proposed withdrawal; and
- (b) In the case of a proposed withdrawal from the Proceeds Account or the Operating Account to meet Project Costs, such Project Costs have become due and payable or shall have become due and payable within 30 days of the date of the withdrawal.

**16.17 Account Bank**

- (a) The Borrower shall maintain the Project Accounts at all times during the continuance in force of this Agreement at a branch of the Account Bank approved by the Lenders, acting reasonably.
- (b) The Account Bank may be changed to another bank or financial institution in accordance with clause 6 (Replacement of Account Bank) of the Account Bank Agreement.
- (c) A change in the identity of the Account Bank shall only become effective upon the proposed new Account Bank agreeing with the Lenders and the Borrower in a manner satisfactory to the Borrower and the Lenders (whether by entering into a new Account Bank Agreement or otherwise), acting reasonably, to fulfil the role of the Account Bank under this Agreement and otherwise in accordance with clause 6 (Replacement of Account Bank) of the Account Bank Agreement.
- (d) In the event of a change of Account Bank, the amount (if any) standing to the credit of the Project Accounts maintained with the former Account Bank shall be transferred to the corresponding Project Accounts maintained with the new Account Bank forthwith upon the appointment taking effect in accordance with clause 6 (Replacement of Account Bank) of the Account Bank Agreement. The Borrower shall take any action which the Lenders may require to facilitate a change of Account Bank and any transfer of credit balances (including the execution of appropriate bank mandate forms on terms not materially more onerous than those applicable in respect of the former Account Bank).
- (e) The Project Accounts may not go into overdraft and shall be maintained in Sterling. Amounts standing to the credit of the Project Accounts shall bear interest at such rate(s) as may be agreed from time to time in writing between the Account Bank and the Borrower.
- (f) Monies standing to the credit of a Project Account may be invested from time to time in Authorised Investments in accordance with the Account Bank Agreement.
- (g) All interest on credit balances held in the Project Accounts shall be credited initially to the Project Account from which the interest was made and may be subsequently transferred to the Proceeds Account in accordance with the Account Bank Agreement.
- (h) Notwithstanding any provision of this Agreement or any Security Document to the contrary, no amounts may be withdrawn by or transferred to the Borrower whilst there is an Event of Default continuing unless the Security Agent otherwise consents to such withdrawal or transfer.
- (i) Promptly after the Senior Finance Liabilities Discharge Date, the Lenders will, at the request and cost of the Borrower, do all things (if any) necessary to close the Project Accounts and transfer any credit balance on the same to such other account(s) of the Borrower as may have been requested.

**17. FINANCIAL UNDERTAKINGS**

**17.1 The undertakings in this clause 17:**

- (a) shall remain in force from and after the date of this Agreement and so long as any amount payable under the Finance Documents (other than the Junior Finance Documents) is outstanding or any Commitment are in force; and

- (b) may be varied or waived by the Lenders (in each case at the request of the Borrower) in writing from time to time.

#### **17.2 Financial and Project Information**

The Borrower shall deliver, and shall procure the delivery of, the following information in sufficient copies for each of the Lenders:

- (a) as soon as practicable (and in any event within 180 days of the end of each of their respective financial years), the audited accounts of the Borrower and the consolidated accounts of each Material Project Party for that financial year;
- (b) as soon as practicable, and in any event within 90 days after the first six months of each of its Financial Years, unaudited interim accounts of the Borrower for that period (to the extent available);
- (c) such technical and other Project related information concerning the Borrower and its affairs (not otherwise referred to in clause 18.4 (Project Undertakings)) as the Lenders or the Technical Adviser may from time to time reasonably require;
- (d) promptly, full details of any Force Majeure Event or Relief Event occurring and will provide updates of the situation so long as the Force Majeure Event or Relief Event continues, to the Lenders on a monthly basis (or more frequently if the Lenders reasonably request);
- (e) an Approved Budget for the Project (i) detailing all anticipated Project Costs and anticipating expenditure on assets and (ii) detailing all anticipated Operating Costs to be delivered annually by 15 December in respect of the 12 month period commencing on the next Calculation Date;
- (f) promptly, such further information regarding the financial condition and operations of the Borrower as any Lender may reasonably request.

#### **17.3 Financial Reporting**

The Borrower will not:

- (a) make any change in its auditors other than to an internationally recognised firm of auditors approved in advance by the Lenders (such approval not to be unreasonably withheld), or change its Financial Year without the prior written consent of the Lenders; and
- (b) make any change to the Applicable Accounting Principles applied in the preparation of its financial statements (and any other relevant information relating to the Borrower provided to Finance Parties under the Finance Documents) unless:
  - (i) such change is required by law or by the Accounting Standards Board, International Accounting Standards Board or its equivalent body or an equivalent body; or
  - (ii) the Lenders have given their prior written consent,

and in each case the Borrower shall supply to the Lenders such information as it may reasonably request to make such comparisons as it deems necessary between those financial statements delivered before and after such change and to determine whether the most recently delivered Forecast accurately reflects the financial position of the Borrower.

#### **17.4 Insurance**

The Borrower undertakes (unless (a) where Insurance is not available in relation to a risk that is required to be insured against in accordance with the Insurance Programme and the provisions of clause 23 (Insurance) of the Waste Management Service Contract apply or (b) otherwise agreed by the Lenders) to comply with the Insurance Programme, and deal with all Insurance Proceeds as specified in clause 16.7 (Insurance Proceeds Account).

#### **17.5 Controls on payments to holders of Loan Notes**

The Borrower undertakes with the Lenders that it will not at any time pay or resolve to pay any principal, interest or other fee or charge in respect of or pursuant to the Borrower Loan Notes unless the conditions in clause 17.6 (Controls on dealing with the Shareholders) are satisfied immediately prior to such payment and except as permitted by the provisions of the Intercreditor Deed.

#### **17.6 Controls on dealings with the Shareholders**

- (a) The Borrower undertakes to each Lender that it will not at any time declare, make or pay, or resolve to declare, make or pay, any Distribution (whether in cash or in kind or by way of set-off) at any time during the period commencing with the most recent Calculation Date and ending on the next Calculation Date (other than a Distribution of an Actual Construction Period Excess Cashflow Amount in accordance with clause 16.13(b) (Excess Cash Flow Account), unless each of the following conditions is met:
- (i) the first scheduled Repayment Date in respect of Facility A has occurred and the relevant repayments have been made in full;
  - (ii) the Maintenance Reserve Account is fully funded to the level of the Maintenance Cushion and the balance on the Debt Service Reserve Account is no less than the DSRA Required Balance;
  - (iii) Completion has occurred;
  - (iv) the Updated Financial Model for the most recent Calculation Date has been finally approved in accordance with clause 15 (Ratio Calculations) and it shows that:
    - (A) at the most recent Calculation Date, the Loan Life Cover Ratio is equal to or exceeds \_\_\_\_\_ after taking into account the proposed Distribution as though it had been made on the last date in the Ratio Testing Period ending on that date);
    - (B) at the most recent Calculation Date the Historic Annual Debt Service Cover Ratio is equal to or exceeds \_\_\_\_\_
    - (C) at the most recent Calculation Date the Projected Annual Debt Service Cover Ratio is equal to or exceeds \_\_\_\_\_ and \_\_\_\_\_
  - (v) no Default has occurred and is continuing under the Senior Finance Documents or would arise as a result of the declaration or payment.
- (b) the Borrower will not at any time redeem, purchase, retire or repay (or resolve so to do) any of its share capital or issue any shares in the capital of the Borrower or issue any voting capital other than:
- (i) the issue of Equity by the Borrower pursuant to the MWML Shareholders' Agreement; and

- (II) the redemption or purchase of shares by the Borrower financed from cash balances otherwise available for Distributions under clause 17.6(a) above, provided all the conditions specified in clause 17.6(a) above are fulfilled in relation to the payment for the redemption or purchase;
- (c) the Borrower will ensure that:
  - (I) save as permitted pursuant to clause 17.6(b) above, the Equity as at the date of this Agreement shall not be reduced, increased or otherwise altered;
  - (II) save pursuant to Permitted Security Interests or as permitted by the MWML Shareholders' Agreement, the rights attaching to the Equity shall not be disposed of, encumbered or altered in any way; and
  - (III) its memorandum and articles of association shall not be amended in any material respect or replaced; and
- (d) it will ensure that it will not at any time, make or pay, or resolve to make or pay any directors fees (whether pursuant to the Shareholders' Agreements or otherwise) at any time during the period commencing with the most recent Calculation Date and ending on the next Calculation Date unless the aggregate amount of such directors fees shall not exceed an aggregate total amount of <sup>1</sup>(indexed) per annum.

#### 17.7 Construction Period Reporting

The Borrower shall until Completion:

- (a) deliver to each of the Lenders and the Technical Adviser copies of the reports and other documentation required to be produced under the Waste Management Service Contract at the same time as it is obliged to deliver them to the Councils or, promptly, after receipt by the Borrower of such reports delivered by the Councils or the EPC Contractor, as the case may be;
- (b) deliver to the Lenders and the Technical Adviser monthly reports in accordance with, and containing the information specified in schedule 9 (Reporting Requirements).

#### 17.8 Operating Period Reporting

The Borrower shall following Completion:

- (a) deliver to the Lenders and the Technical Adviser copies of all invoices in respect of the Unitary Payment submitted to the Councils (together with all supporting information provided to the Councils) pursuant to the Waste Management Service Contract at the same time as the Borrower delivers them to the Councils;
- (b) deliver to the Lenders and the Technical Adviser copies of the reports and other documentation required to be produced pursuant to the Waste Management Service Contract at the same time as the Borrower is obliged to deliver them to the Councils or promptly upon receipt by the Borrower of such reports from the Councils;
- (c) deliver to the Lenders and the Technical Adviser:
  - (I) during the period up to Completion, monthly reports in accordance with, and containing the information specified in Schedule 9 Part 1 (Reporting Requirements);

- (ii) during the period from Completion until the date falling on the second anniversary thereof, quarterly reports in accordance with, and containing the information specified in Schedule 9 Part 2 (Reporting Requirements) (with relevant quarterly reporting periods ending on each Quarter Date); and
- (iii) from the date falling on the second anniversary of Completion, unless the Lenders (acting reasonably) otherwise require, semi-annual reports in accordance with, and containing the information specified in Schedule 9 Part 2 (Reporting Requirements) (with relevant semi-annual reporting periods ending on 30th June and 31 December respectively),

provided that, at least one quarterly report or one semi-annual report as appropriate shall relate to the period ending on 31 March in each year and shall be delivered no later than 30 April in each year.

#### 17.9 Use of websites

- (a) Except as provided below, the Borrower may deliver any information under this Agreement to the Lenders by posting it on to an electronic website if:
  - (i) the Lenders agree;
  - (ii) the Borrower and the Lenders designate an electronic website for this purpose;
  - (iii) the Borrower notifies the Lenders of the address of and password for the website; and
  - (iv) the information posted is in a format agreed between the Borrower and the Lenders.
- (b) Where requested by the Lenders, the Borrower must supply to the Lenders in paper form a copy of any information posted on the website.
- (c) The Borrower must promptly upon becoming aware of its occurrence, notify the Lenders if:
  - (i) the website cannot be accessed due to a technical failure;
  - (ii) the website or any information on the website is infected by any electronic virus or similar software;
  - (iii) the password for the website is changed; or
  - (iv) any information to be supplied under this Agreement is posted on the website or amended after being posted.
- (d) If the circumstances in paragraphs (c)(i) or (c)(ii) above occur, the Borrower must supply any information required under this Agreement in paper form until the Lenders are satisfied that the circumstances giving rise to the notification are no longer continuing.

#### 17.10 "Know your customer" checks

- (a) If:

- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (ii) any change in the status of the Borrower after the date of this Agreement; or
- (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not the lender prior to such assignment or transfer,

obliges any Lender (or, in the case of paragraph (c) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Lenders supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lenders or any Lender (for itself or, in the case of the event described in paragraph (c) above, on behalf of any prospective new Lender) in order for the Lenders, such Lender or, in the case of the event described in paragraph (c) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) The Lenders shall promptly upon the request of the Borrower supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Borrower (for itself) in order for the Borrower to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

#### **17.11 Litigation**

The Borrower shall promptly provide details of any litigation, arbitration or administrative proceedings (including any environmental claim) which are current, threatened or pending against it upon becoming aware of such proceedings, which might, if adversely determined, have a Material Adverse Effect.

#### **17.12 Information and Notifications: miscellaneous**

- (a) The Borrower shall supply to the Lenders:
  - (i) promptly upon becoming aware of them, details of any change in any Legal Requirements which have come into force which would materially and adversely affect the Borrower's ability to perform its obligations under the Transaction Documents; and
  - (ii) upon request and within a reasonable time, such further information within its possession or control or available to it regarding the Project or the financial condition, business and operations of the Borrower as the Lenders may reasonably require for the purposes of monitoring the Borrower's compliance with the provisions of this Agreement.

#### **17.13 Necessary Consents**

The Borrower shall, promptly upon becoming aware of them, notify the Lenders of any circumstances which will lead to any Necessary Consent obtained or effected being amended, renewed or modified in any manner which would have a Material Adverse Effect.

**18. BUSINESS UNDERTAKINGS**

**18.1 Duration and Extent**

The undertakings in this clause 18:

- (a) shall remain in force from and after the date of this Agreement and so long as any amount payable under any Finance Documents (other than the Junior Finance Documents) is outstanding or any Commitment is in force; and
- (b) may be varied or waived by the Lenders (at the request of the Borrower) in writing from time to time.

**18.2 Notification of default**

The Borrower will:

- (a) notify the Lenders in writing of any Default forthwith upon becoming aware of the occurrence thereof and of the commencement or instigation of any litigation, tribunal, arbitration or administrative action or proceeding against it which would lead to the representation in clause 14.10 (Litigation) if made by reference to the facts subsisting from time to time being incorrect; and
- (b) promptly at the request of the Lenders from time to time, furnish the Lenders with a certificate signed by two senior officials (without personal liability) of the Borrower certifying that, to the best of their knowledge, information and belief having made due inquiry, no Default has occurred or is continuing (or, if a Default is continuing, specifying the Default and the steps, if any, being or proposed to be taken to remedy or mitigate its effects).

**18.3 Necessary Consents**

The Borrower will use reasonable endeavours to obtain or, where appropriate, shall procure that the relevant Material Project Party uses reasonable endeavours to obtain and maintain all Necessary Consents, by the time such consents are required so that the representations in clause 14.8 (Necessary Consents) remain true at all times and the Borrower shall comply with the terms of the same where failure to so obtain, maintain or comply would in the reasonable opinion of the Lenders have, or be reasonably likely to have, a Material Adverse Effect.

**18.4 Project Undertakings**

References in this clause 18.4 to the Borrower not exercising any discretion it may have under any Project Document without the prior consent of the Lenders or Technical Adviser shall be interpreted so that the Lenders or Technical Adviser (as the case may be) shall be deemed to have given their consent 15 Business Days after they actually received notice that their consent was requested; if (a) such notice expressly seeks a response within 15 Business Days and (b) such person has failed to respond with confirmation that consent is granted or refused (or that more time is needed for consideration of the issue) within that time. Any such extension of time shall be requested by the Lenders (acting reasonably), and following such request the period for giving consent referred to above shall be deemed to have been extended to accommodate such period.

**(a) Project Documents generally**

(i) The Borrower shall:

- (A) duly and punctually observe and perform all the conditions and obligations imposed on it by the Project Documents which are



material to the interests of the Lenders, punctually pay all moneys from time to time payable by it in connection therewith (and when required produce to the Lenders the receipts for such payments), exercise its rights thereunder at all times in a manner consistent with its obligations under the Finance Documents and generally do all things which may be necessary to enforce the due and diligent performance of the Project Documents by the other parties thereto and cause the moneys agreed to be paid to the Borrower thereunder to become payable and use its reasonable endeavours to procure the prompt payment of such moneys and procure that all other parties to the Project Documents do likewise, notify the Lenders of any default by itself or of any other party thereto, as the case may be, under any of the Project Documents and institute and maintain such proceedings as may be necessary or expedient to preserve or protect the interests of the Lenders in connection with the Project Documents;

- (B) forthwith inform the Lenders of any claims relating to any of the Project Documents received from any other party and of all other matters relevant or in any way material to such claims;
- (C) subject to the specific provisions of clauses 18.4(b) (EPC Contract), 18.4(c) (Operating Contract) and 18.4(f) (Waste Management Service Contract) below, not (save with the prior written consent of the Lenders or as otherwise may be required pursuant to any applicable Legal Requirement) materially to amend or vary a provision of (or exercise any existing options to amend or vary) the Waste Management Service Contract or amend or vary a material provision of (or exercise any existing options to amend or vary a material provision of) any Project Document other than the Waste Management Service Contract, or materially extend, release, determine, terminate or rescind any of the Project Documents or grant time for payment or indulgence or compound with, discharge, waive, release, set off or vary the liability of any other person under any Project Document or consent to any act or omission as would otherwise constitute a breach or concur in accepting or varying any material compromise, arrangement or settlement relating to any Project Document or do or suffer any act or thing or permit any set off in respect of or under any Project Document whereby the recovery of any moneys payable may be delayed or impeded, in the case of Project Documents other than the Waste Management Service Contract, to a material extent;
- (D) from time to time whenever so required by the Lenders give authorities (irrevocable without the consent in writing of the Lenders) for all other parties to the Project Documents to issue or send copies of all certificates or notices thereunder direct to the Lenders or to its order;
- (E) whenever so required produce to the Lenders such information relating to the Project Documents as the Lenders may from time to time reasonably require;
- (F) deposit with the Lenders (subject to return as reasonably required provided no Potential Event of Default or Event of Default is continuing) and permit the Lenders to hold and retain all the Project Documents and other documents relating thereto that it is entitled to hold including but not limited to all material variations, extensions or

replacements from time to time made to any of the Project Documents and pay to the Lenders or to their order forthwith on receipt all moneys from time to time received under or by virtue of or arising out of or in connection with the rights of the Borrower evidenced by the Project Documents provided always that unless and until the occurrence of an Event of Default such payments shall be made to the Proceeds Account or such other account of the Borrower as the Lenders may have approved for the purpose; and

- (G) notify the Lenders of any default by any party under any Project Document which is reasonably likely to result in a Material Adverse Effect.

**(b) EPC Contract**

**(i) The Borrower shall:**

- (A) without prejudice to the following provisions of this paragraph (b), use all reasonable endeavours to ensure that the Works are completed in accordance with the EPC Contract and all requisite building regulation approvals and other relevant statutory or other regulatory requirements and/or consents and approvals and use all reasonable endeavours to obtain all further requisite planning consents, building regulation approvals and other relevant statutory or other regulatory requirements, approvals and other matters to enable it to continue and complete the Works and subsequently to procure due performance of defects liability obligations of the EPC Contractor in accordance with the EPC Contract;
- (B) use all reasonable endeavours to co-operate with the Technical Adviser in order to enable the Technical Adviser to fulfil its role as set out in the Finance Documents (including the Compliance Monitoring Requirements the content and scope of which are acknowledged) and, in particular, provide the Technical Adviser with such details and information as he may reasonably require in relation to the EPC Contract including details and information (with the effect that, in the event of a breach by the Borrower of its obligations under this paragraph (ii), the Technical Adviser may require the Project Manager to provide the relevant details and information after the Lenders or Technical Adviser shall have given the Borrower two Business Days' notice of any such breach):
- (aa) of any inspection, examination and testing of the materials and workmanship to be carried out under the EPC Contract in such time as will allow the Technical Adviser to witness such inspection, examination and testing and/or to delegate such activity to an Independent Inspector approved by the Borrower (such consent not to be unreasonably withheld); and
- (bb) in relation to the Tests in such time to allow the Technical Adviser to review and comment on any procedures relating thereto, the method of calculating any results therefrom, to witness and report to the Lenders on the outcome of any such Tests and to consider whether the criteria and parameters have been met to allow the Technical Adviser to verify that such Tests have been passed under the EPC Contract;

- (C) in circumstances where an unremedied event of default on the part of the EPC Contractor under the EPC Contract is continuing, terminate the EPC Contract by serving a notice to the EPC Contractor under clause 43 (Termination for Contractor's Default) of the EPC Contract within 10 Business Days of receipt of a written instruction to that effect from the Lenders;
- (II) The Borrower shall not:
- (A) Abandon (as defined in the EPC Contract) the Project or suspend the Works in relation to the Project (if due to any cause other than an emergency requiring immediate evacuation) without the prior written consent of the Lenders;
  - (B) take any steps which would lead to the acceptance of the results of any of the Tests at levels which do not comply with those criteria and parameters stipulated in the EPC Contract, without the prior consent of the Lenders;
  - (C) draw or claim on the Advance Payment Bond, Performance Bond, Retention Bond and/or the EPC Contract Guarantee or withhold any amounts from future milestone payments in respect of the Advance Payment Bond, Performance Bond, Retention Bond and/or EPC Contract Guarantee;
  - (D) give any approval to the EPC Contractor in respect of the replacement of the Advance Payment Bond, Performance Bond, Retention Bond and/or EPC Contract Guarantee;
  - (E) purport to or otherwise terminate the employment of the EPC Contractor;
  - (F) assign, charge, novate or otherwise transfer its rights and/or obligations under the EPC Contract;
  - (G) approve any Major Subcontractor of the EPC Contractor that is not listed in the EPC Contract;
  - (H) instruct the Project Manager and/or EPC Contractor to carry out any variation to the Works in excess of
  - (I) instruct the EPC Contractor to rectify any physical damage that has occurred following an insured event under the EPC Contract giving rise to loss or damage with a value in excess of
  - (J) permit the Project Manager to issue instructions changing or dispensing with any tests under the EPC Contract;
  - (K) issue or authorise the issuance of a Take-Over Certificate, Acceptance Certificate, Final Certificate or other completion certificate under and as defined in the EPC Contract or otherwise accept the Works;
  - (L) not instruct the Project Manager to engage a replacement contractor to carry out any of the Works or any replacement or rectification works under the EPC Contract or otherwise agree the price of such works to be carried out by third parties with the EPC Contractor;

- (M) agree any adjustments or modifications to the Works or Plant that may be proposed by the EPC Contractor and which are of a value in excess of;
- (N) agree to any deferment of any rectification works to be performed under the EPC Contract;
- (O) Issue or withdraw a suspension order in respect of the Works; and/or
- (P) refer any dispute under the EPC Contract (including in respect of payment) to Adjudication or Arbitration (each as defined under the EPC Contract) under the EPC Contract,

In each case without the prior written consent of the Lenders (such consent not to be unreasonably withheld or delayed).

**(c) Operating Contract**

**(i) The Borrower shall promptly:**

- (A) notify the Lenders of receipt by the Borrower of any notice pursuant to clauses 9.1, 15.1, 26.9, 32.3, 32.4, 32.5, 37.1, 37.4, 40.4, 45.1, 45.16, 46.1 and paragraphs 6.1 and 7 of Schedule 2 of the Operating Contract;
- (B) provide to the Lenders all information received from the Operating Contractor pursuant to clauses 32.3, 37.2, 37.3, paragraph 7 of Section A of Schedule 1 and paragraph 40 of Section A of Schedule 1 of the Operating Contract;
- (C) notify the Lenders of any fines and penalties imposed on the Borrower or the Operating Contractor for non-compliance with or violation of any Legal Requirements, Environmental Legal Requirements, Planning Permissions, or Necessary Consents and any other costs, claims, damages, expenses and liabilities imposed on the Borrower or the Operating Contractor pursuant to clause 17 of the Operating Contract;
- (D) notify the Lenders if any bonus or liquidated damages become payable pursuant to clause 27 of the Operating Contract;
- (E) notify the Lenders if the Borrower intends to give notice pursuant to clauses 32.3, 32.4 and/or clause 32.5 of the Operating Contract;
- (F) provide the Lenders with a copy of the notice issued pursuant to paragraph 4 of Schedule 2 of the Operating Contract and promptly notify the Lenders if the Borrower intends to issue a Pay-Less Notice (as defined under the Operating Contract) pursuant to paragraph 6.1 of Schedule 2 of the Operating Contract;
- (G) notify the Lenders if the Borrower issues a notice pursuant to clauses 42 and 43 of the Operating Contract;

**(ii) The Borrower shall:**

- (A) In circumstances where an unremedied event of default on the part of the Operating Contractor under the Operating Contract is continuing beyond the time period required to remedy such breach under Clause 40.2(a) of the Operating Contract, terminate the Operating Contract

by serving a notice to the Operating Contractor under clause 40.2 of the Operating Contract within 10 Business Days of receipt of a written instruction to that effect from the Lenders;

- (B) Immediately upon becoming aware of a referral of any matter or Dispute to the Dispute Resolution Procedure provide details of the same to the Lenders;
- (C) comply with any direction of the Lenders, to terminate the Operating Contract or suspend performance of the Services in circumstances where, in the reasonable opinion of the Lenders, the Operating Contractor is in breach of the Operating Contract pursuant to clause 40.2 thereof or, in the reasonable opinion of the Lenders, has caused a material Contractor Default under and as defined in the Waste Management Service Contract;

(III) The Borrower shall not:

- (A) consent to the sub-contracting of any of the Services (as defined in the Operating Contract), nor approve any sub-contractors of the Operating Contractor, nor approve the terms of any sub-contract pursuant to clause 16 of the Operating Contract, in each case where the value of any such individual sub-contract exceeds £100,000 (or its equivalent in another currency or currencies);
- (B) approve any Proposed Operating Budget pursuant to clause 23 of the Operating Contract unless and until the Lenders has given its approval of the Approved Budget in accordance with the provisions of clause 18.19 of the Credit Agreement;
- (C) approve any expenditure which is not an Allowable Reimbursable Operating Cost pursuant to clause 24.2 of the Operating Contract nor agree any revision of the Agreed Operating Budget pursuant (as defined in the Operating Contract) to clause 24.3 of the Operating Contract;
- (D) agree the amount of the Operating Contractor Entitlement pursuant to clause 26.6 of the Operating Contract;
- (E) consent to any request of the Operating Contractor pursuant to: (i) clauses 28(a) and 28(d) of the Operating Contract; (ii) clause 28(b) of the Operating Contract where the higher of the market value and consideration payable for any individual Borrower's property exceeds (or its equivalent in another currency or currencies); and (iii) clause 28(c) of the Operating Contract where the payment or funds transferred in each instance exceed (or its equivalent in another currency or currencies);
- (F) consent to a change in the ownership or control of the Operating Contractor or any amalgamation, merger or consolidation pursuant to clause 40.2(c) of the Operating Contract;
- (G) refer any matter to the Dispute Resolution Procedure;
- (H) agree any waiver in favour of the Operating Contractor pursuant to clause 55 of the Operating Contract

In each case without the prior written consent of the Lenders (such consent not to be unreasonably withheld or delayed);

**(d) Operation and Maintenance Services Technical Assistance Agreement**

- (i) The Borrower shall promptly following written instruction from the Lenders, exercise any of its rights under the Operation and Maintenance Services Technical Assistance Agreement as the Lenders may reasonably require;

**(e) Clause 18.4(e) (Construction Management Agreement)**

- (i) The Borrower shall promptly:

- (A) notify the Lenders of any notices received from the Construction Manager under clause 6.10 of the Construction Management Agreement and of any action being taken in relation to such non-compliance;
- (B) notify the Lenders of any claims made by the Borrower under clause 16 of the Construction Management Agreement and pursue any such claims to the extent reasonably practicable;
- (C) notify the Lenders of any notice received under clause 19 of the Construction Management Agreement and any reports or information received pursuant to such clause;
- (D) notify the Lenders of any notices given under clause 26 or 27 of the Construction Management Agreement;
- (E) notify the Lenders of any purported assignment or transfer of or charge over the Construction Management Agreement;
- (F) notify the Lenders of any Pay Less Notice (as defined under the Construction Management Agreement) given under paragraph 5.1 of Section 3 of schedule 3 to the Construction Management Agreement.

- (ii) The Borrower shall:

- (A) require the Construction Manager to resume performance of its services when reasonably required by the Lenders and/or notify the Lenders of any requirement by the Borrower for the Construction Manager to resume performance of its services;
- (B) terminate the Construction Management Agreement pursuant to clause 23.2 of the Construction Management Agreement where reasonably required by the Lenders;

- (iii) The Borrower shall not:

- (A) make payment of any Reimbursable Costs where the provisions of clauses 13.2.1 or 13.2.2 of the Construction Management Agreement apply;
- (B) suspend performance of the Services (as defined under the Construction Management Agreement) under clause 22.1 of the Construction Management Agreement;
- (C) terminate the Construction Management Agreement;
- (D) assign, transfer or charge the benefit of the Construction Management Agreement to a third party;

- (E) permit the Construction Manager to sub-contract or sub-let any part of the services, where the value of any such individual sub-contract or any such individual sub-letting of any part of the services exceeds or its equivalent in another currency or currencies);
- (F) permit any modification, amendment or waiver under the Construction Management Agreement pursuant to clauses 34 or 35;
- (G) permit any other Reimbursable Cost Item under paragraph (y) of Section 1 of schedule 3 to the Construction Management Agreement; and
- (H) include any other item of cost, charge, expense, insurance, risk assumed or profit under paragraph (j) of Section 2 of Schedule 3 to the Construction Management Agreement;

in each case without the prior written consent of the Lenders (such consent not to be unreasonably withheld or delayed);

**(f) Waste Management Service Contract**

**(i) the Borrower shall:**

- (A) use all reasonable endeavours to co-operate fully with the Technical Adviser in order to enable the Technical Adviser to fulfil its role as set out in the Finance Documents and, in particular, make available for inspection by the Technical Adviser such copies of notices (received or sent by the Borrower), details, proposed and actual amendments and other information as the Technical Adviser may reasonably require in connection with all aspects of the Waste Management Service Contract (including without limitation, in connection with changes to the Necessary Consents, Council Changes, Change in Legal Requirement, disputes, determination of a dispute by an Expert, extensions of time, construction timetable, progress of the Works and notices relating to termination);
- (B) not agree to any extension of the Contract Period pursuant to clause 37 (Voluntary Extension of Contract Period) without the prior written consent of the Lenders (such consent not to be unreasonably withheld or delayed);
- (C) not materially vary any application for a Necessary Consent without the prior consent of the Lenders; and
- (D) not assign the benefit of its rights under the Waste Management Service Contract or consent to the assignment by the Council without the prior written consent of the Lenders;

**(g) Councils' Direct Agreement**

the Borrower shall not assign or transfer its rights under the Councils' Direct Agreement without the prior written consent of the Lenders;

**(h) Other Project Documents**

the Borrower shall comply, or procure the compliance, with all obligations, undertakings, prohibitions and restrictions on the part of the Borrower, or any of its successors in title, contained or referred to, in any Project Document not referred

to in clauses 18.4(b) (EPC Contract), 18.4(c) (Operating Contract) or 18.4(f) (Waste Management Service Contract) above.

**18.5 Negative pledge**

The Borrower will not create or permit to subsist any Security Interest or Quasi-Security on the whole or any part of its present or future assets except for Permitted Security Interests.

**18.6 Disguised Securities**

The Borrower will not:

- (a) sell, factor or otherwise dispose of any of its assets on terms whereby such asset is or may be leased to or re-acquired or acquired by the Borrower;
- (b) sell or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

In circumstances where the transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

**18.7 Loans**

The Borrower will not make any loan to any person or make any loan to its employees or grant any credit except (a) as permitted under the Transaction Documents or (b) for amounts outstanding from trade debtors for not more than 90 days unless active steps are being taken to recover the same.

**18.8 Financial Indebtedness**

The Borrower will not incur any Financial Indebtedness from any person except for Permitted Financial Indebtedness.

**18.9 No Guarantees**

The Borrower will not give any guarantee or other assurance whatsoever against financial loss that is granted or is outstanding in any manner, other than Permitted Financial Indebtedness.

**18.10 Disposals**

The Borrower will not dispose of the benefit of any of the Project Documents or the Project or any material part thereof, except for:

- (a) disposals in the ordinary course of business;
- (b) disposals on arms' length commercial terms of surplus items;
- (c) items which are replaced or otherwise disposed of in accordance with Good Industry Practice;
- (d) the application of cash in payment of Permitted Payments;



- (e) disposals permitted by, or contemplated under, the Project Documents and/or Senior Finance Documents; or
- (f) disposals approved by the Lenders.

#### 18.11 Maintenance of Business

##### The Borrower:

- (a) procure that no material change is made to the general nature of the business of the Borrower from that carried on at the date of this Agreement and will not carry on or threaten to carry on any activity other than for the purpose of or directly connected to the Project;
- (b) will do all such things as are necessary to maintain its corporate existence, ensure that it has the right and is duly qualified to conduct its business as it is conducted in all applicable jurisdictions, comply with all applicable laws, rules, regulations and orders;
- (c) will comply with all its obligations under the Finance Documents to which it is a party;
- (d) will maintain its respective property and assets in a good state of repair and proper working order;
- (e) will not enter into any contract, transaction or other arrangement other than:
  - (i) the Transaction Documents entered into on or prior to Financial Close; or
  - (ii) any Transaction Document entered into after Financial Close, provided that:
    - (A) In the case of the APC Disposal Contract, the Lenders are satisfied (acting reasonably, in consultation with the Technical Adviser) that there have been no material changes from the pro-forma heads of terms delivered under paragraph 2.3 of Part I (Initial conditions precedent) of schedule 3 at Financial Close and the Borrower has procured that the APC Processor has entered into a Direct Agreement and delivered such legal opinions as are reasonably required by the Lenders (in each case in a form satisfactory to the Lenders acting reasonably); and
    - (B) In the case of any Power Purchase Agreement, the Lenders are satisfied (acting reasonably, in consultation with the Technical Adviser) that there have been no material changes from the pro-forma heads of terms delivered under paragraph 2.3 of Part I (Initial conditions precedent) of schedule 3 at Financial Close, and the Borrower has procured that the PPA Offtaker has entered into a Direct Agreement and delivered such legal opinions as are reasonably required by the Lenders (in each case in a form satisfactory to the Lenders acting reasonably); and
  - (iii) In the ordinary course of business and on a bona fide arm's length basis for fair market value and for the purposes of the Project;
  - (iv) agreements the aggregate value of which do not exceed £150,000 (indexed per annum);
  - (v) otherwise such other documents with the prior written consent of the Lenders;

- (f) will maintain in full force and effect the Insurances stipulated in the Insurance Programme;
- (g) will maintain all Intellectual Property necessary in connection with the Project;
- (h) will not take any action or cease to take any action which is likely to lead to the Waste Management Service Contract being terminable on the basis that the Borrower has abandoned the Project, unless required to do so;
- (i) will defend any action, claim or other proceeding which would be likely to have a Material Adverse Effect or, where legal advice approved by the Lenders is to the effect that there is no effective defence, endeavour to settle such action, claim or other proceeding; and
- (j) will not carry out foreign exchange transactions or hedging activities.

#### 18.12 Ranking of Obligations

Subject to registration of the Borrower Debenture and BWL Debenture with the Registrar of Companies, the Borrower will ensure that the Borrower's payment obligations under the Finance Documents, to the extent that they are secured under the Borrower Debenture and BWL Debenture, rank and shall at all times rank ahead of all security and rights of third parties except those preferred by law.

#### 18.13 Access and Inspection

- (a) The Technical Adviser may (having given prior reasonable notice to the Borrower) attend:
  - (i) any progress meeting with the EPC Contractor under the EPC Contract; and
  - (ii) any progress meeting with the Operating Contractor under the Operating Contract;
- (b) The Technical Adviser may attend any inspection pursuant to clause 11.8 of the EPC Contract.
- (c) The Borrower must:
  - (i) give reasonable prior notice to the Technical Adviser of any meeting it is entitled to attend;
  - (ii) give the Technical Adviser 14 days' prior notice of any inspection pursuant to clause 11.8 of the EPC Contract;
  - (iii) ensure that the Technical Adviser (after they have given prior reasonable notice to the Borrower) is given access to inspect the Project, the assets and any records of the Project (including all drawings and specifications) during normal business hours and to take copies of any documents inspected; and
  - (iv) maintain up-to-date statutory books, books of account, bank statements and other records of the Borrower in accordance with good business practice and all applicable laws.
- (d) Any person obtaining access to the Facility (as defined in the EPC Contract) pursuant to this clause 18.13(d) shall comply with the provisions of clause 26 (Health, Safety and Environment) of the EPC Contract and clause 20 (Compliance with Site Safety Rules) of the Operating Contract.

- (e) The Technical Adviser, acting on behalf of the Lenders must place any issues of which it is aware which it desires to have specifically addressed on the agenda at any meeting it is entitled to attend in advance of that meeting to the extent reasonably practicable provided that each attendee may also participate in respect of any issues arising on an ad-hoc basis at any meeting it is entitled to attend.
- (f) The Borrower must promptly send the Technical Adviser a copy of the minutes (if any) of any meeting attended by the Technical Adviser.
- (g) The Borrower must, at the request of the Lenders and upon reasonable notice:
  - (i) attend any meeting scheduled with any Adviser at reasonable times during normal business hours; and
  - (ii) use all reasonable endeavours to ensure the attendance of representatives of other relevant parties (if appropriate) at those meetings.
- (h) No:
  - (i) approval of any drawing or specification;
  - (ii) passing of any work;
  - (iii) visit to the Project; or
  - (iv) attendance at any meeting,

by the Technical Adviser, its respective officers, employees or agents will excuse the Borrower from its obligations under the Finance Documents.

#### 18.14 **Pari passu ranking**

The Borrower must ensure that its payment obligations under the Finance Documents at all times rank at least *pari passu* with all its other present and future unsecured payment obligations, except for obligations mandatorily preferred by law applying to companies generally.

#### 18.15 **Mergers**

The Borrower shall not enter into any amalgamation, demerger, merger or corporate reconstruction.

#### 18.16 **Acquisitions**

Other than any Authorised Investments made in accordance with the Account Bank Agreement, the Borrower shall not make any acquisition or investment and shall not form, acquire or have any Subsidiary other than BWL.

#### 18.17 **Environmental Matters**

- (a) The Borrower must promptly upon becoming aware notify the Lenders of:
  - (i) any material Environmental Claim current, or to its knowledge, pending or threatened which would be reasonably likely to be adversely determined against the Borrower which affects the Borrower or the Project;
  - (ii) any circumstances reasonably likely to result in a material Environmental Claim; or

- (iii) any material non-compliance by it, or to its knowledge, any other person, with or any suspension, revocation or modification of any Environmental Authorisation, in each case, setting out the action it intends to take with respect to those matters.
- (b) The Borrower shall:
  - (i) comply in all material respects with all Environmental Laws to which it or the Project may be subject;
  - (ii) obtain all Environmental Authorisations required in accordance with Environmental Laws to enable the Project to be implemented in accordance with the Transaction Documents, and maintain them in full force and effect; and
  - (iii) comply in all material respects with the terms and conditions of those Environmental Authorisations.
- (c) If the Borrower becomes aware of any Contamination on the Site, it shall take all necessary action to comply with all Environmental Law requirements regarding the notification of public bodies concerning that Contamination and shall take all reasonable steps to clean up or otherwise deal with any such Contamination in a manner that complies with all requirements of Environmental Law.
- (d) The Borrower must indemnify each Finance Party against any loss or liability reasonably (or in the case of the Security Agent, properly) incurred by that Finance Party as a result of any actual breach of any Environmental Law by the Borrower or a Material Project Party which arises in connection with the Project, and which would not have arisen if a Finance Document had not been entered into, unless it is caused by that Finance Party's negligence or wilful misconduct.
- (e) Each Finance Party shall use all reasonable endeavours to minimise any loss or liability which is the subject of the indemnity referred to in paragraph (d) above and shall keep the Borrower informed of any circumstances which have led to a claim under such paragraph and consult the Borrower in relation to any action which it proposes to take in relation to the same.

#### **18.18 Administrative receivers**

The Borrower may not, and shall ensure that the Shareholders do not, take any action or step or fail to take any action or step which would result in the Lenders being unable to appoint an administrative receiver of the Borrower under a Security Document.

#### **18.19 Approved Budget**

- (a) The Borrower must not incur any capital expenditure other than in accordance with the Base Case Financial Model and thereafter in each Approved Budget.
- (b) After Completion, the Borrower may not incur any cost or expense:
  - (i) in connection with the Project that is not anticipated in the then current Approved Budget or payable to the EPC Contractor in accordance with the EPC Contract (and as approved by the Technical Adviser); or
  - (ii) on items set out in the Approved Budget, in excess of 110 per cent in aggregate of the amounts set out in the current Approved Budget.

#### **18.20 Further assurance**

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(a) The Borrower shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s) in each case for the benefit of the Secured Creditors):

(i) to perfect any encumbrances created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other encumbrance over all or any of the assets which are, or are intended to be, the subject of the Security Documents including, without limitation, Project Documents from time to time) or for the exercise of any rights, powers and remedies of the Security Agent for the benefit of the Secured Creditors or the Secured Creditors provided by or pursuant to the Finance Documents or by law;

(ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the security.

(b) Take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any encumbrances conferred or intended to be conferred on the Security Agent for the benefit of the Secured Creditors or the Secured Creditors by or pursuant to the Finance Documents.

(c) If requested by the Lenders (acting reasonably), the Borrower shall ensure that any agreement which is a replacement for an existing Project Document which is required to be the subject of a Direct Agreement at the date of this Agreement shall be the subject of a Direct Agreement which shall become effective no later than such replacement taking effect and shall be in form and substance satisfactory to the Lenders.

#### **18.21 Compliance with laws**

The Borrower will comply in all material respects with all Legal Requirements to which it is subject, if failure to comply would materially impair its ability to perform its obligations under the Senior Finance Documents and/or the Project Documents.

#### **18.22 Purpose of Advances**

Any Advances made available under this Agreement shall only be used for the purposes described in clause 2 (Purpose).

#### **18.23 Construction and operation**

The Borrower shall procure that the Project is designed, constructed, completed, equipped, operated and maintained in accordance with the Project Documents.

#### **18.24 Proceeds of claims**

The Borrower must apply the proceeds of claims for compensation under the Project Documents or otherwise out of the Project in accordance with the terms of the Senior Finance Documents.

#### **18.25 Project Documents to be entered into after Financial Close**

(a) Subject to the Lenders providing their prompt approval of such contracts where applicable in accordance with clause 18.11 (Maintenance of Business), the Borrower shall procure that the Grid Connection Agreement, the IBA Disposal Contract, the APC Disposal Contract and the Power Purchase Agreement are

entered into not later than thirty (30) days prior to the commencement of commissioning.

- (b) The Borrower shall provide a copy of each of the EPC Collateral Warranty to the Lenders within five (5) Business Days of receiving such EPC Collateral Warranty in accordance with clause 3.10(5) of the EPC Contract.

**18.26 Custody Agreement**

The Borrower shall use all reasonable endeavours to procure that an amended and restated Custody Agreement is entered into by all parties thereto within a period of one-hundred and twenty (120) days of Financial Close.

**18.27 Payments to the Construction Manager**

The Borrower shall not make any payments to the Construction Manager other than payments on arm's length terms and for full market value as contemplated by the Base Case Financial Model and thereafter in each Approved Budget.

**19. EVENTS OF DEFAULT AND REMEDIES**

**19.1 Events of Default**

Each of the events set out below is an Event of Default (whether or not caused by any reason whatsoever outside the control of the Borrower or of any other person):

**(a) Failure to Pay**

The Borrower does not pay:

- (i) on the due date any amount of principal or interest at the place at and in the currency which it is expressed to be payable (save where such non-payment is solely attributable to administrative or technical failure affecting the transfer of funds, or the occurrence of a Disruption Event, and, in each case, payment is received by the Lenders within three (3) Business Days of the due date); or
- (ii) any other amount payable by it hereunder or any other Finance Document (save where such non-payment is solely attributable to administrative or technical failure affecting the transfer of funds, or the occurrence of a Disruption Event, and, in each case, payment is received by the Lenders within five (5) Business Days of the due date).

**(b) Failure to Comply**

- (i) The Borrower fails to comply with any of its obligations including undertakings and covenants under clauses:
  - (A) 18.2(Notification of Default);
  - (B) 18.7 (Loans);
  - (C) 18.9 (Guarantees);
  - (D) 18.10(Disposals),
  - (E) 18.11 (Mergers); and
  - (F) 18.16 (Acquisitions),

If that failure to comply is, in the reasonable opinion of the Lenders, capable of remedy within 10 Business Days, it is not remedied to the satisfaction of the Lenders (acting reasonably) within 10 Business Days (or such longer period as agreed by the Lenders) after the earlier to occur of:

- (aa) the Borrower becoming aware of the failure to comply; and
- (bb) notice of the failure to comply being served on the Borrower by the Lenders;

(ii) The Borrower fails to comply with any of its obligations including undertakings and covenants under clause 17.5 (Controls on dealings with the Shareholders) if that failure to comply is, in the reasonable opinion of the Lenders, capable of remedy within 15 Business Days, it is not remedied to the satisfaction of the Lenders (acting reasonably) within 15 Business Days (or such longer period as agreed by the Lenders) after the earlier to occur of:

- (A) the Borrower becoming aware of the failure to comply; and
- (B) notice of the failure to comply being served on the Borrower by the Lenders;

(iii) The Borrower fails to comply with any of its obligations including undertakings and covenants under this Agreement or any Finance Document (other than those referred to in paragraph (a) (Failure to Pay) or (b)(i) and/or (b)(ii) above) in any such case if that default might, in the reasonable opinion of the Lenders, reasonably be expected to have a Material Adverse Effect or a material adverse effect on any rights or remedies of the Lenders under the Finance Documents and, in each case, if that default is, in the reasonable opinion of the Lenders, capable of remedy within 15 Business Days, it is not remedied to the satisfaction of the Lenders (acting reasonably) within 15 Business Days (or such longer period as agreed by the Lenders) after the earlier to occur of:

- (A) the Borrower becoming aware of such failure to comply; and
- (B) notice of that default being served on the Borrower by the Lenders.

(c) **Breach of Warranty**

Any material (in the opinion of the Lenders, acting reasonably) representation, warranty or statement made or repeated in, or in connection with, this Agreement or any other Finance Document or in any accounts, certificate, statement or opinion delivered by or on behalf of the Borrower hereunder (other than such of the representations, warranties and statements made in respect of Information under clause 14.13 (Information prior to the date of this Agreement) not relied upon by the Lenders as being material in their assessment of the credit evaluation of the Project) or in connection herewith is incorrect or misleading in any material respect (as determined by the Lenders acting reasonably) when made or deemed to be repeated and; if that incorrect or misleading representation or the event or circumstance giving rise to it is, in the reasonable opinion of the Lenders, capable of remedy within 15 Business Days, it is not remedied to the satisfaction of the Lenders (acting reasonably) within 15 Business Days from the earlier of the date on which:

- (A) the Borrower became aware of the breach of representation, warranty or incorrect statement; and

(B) a notice of that breach being served by the Lenders on the Borrower.

(d) **Cross Default**

- (I) subject to paragraph (III) below, the Financial Indebtedness of the Borrower, the EPC Contractor Guarantor, the WMSC Guarantors and the Equity Guarantor (Urbaser), (but in the case of the EPC Contractor Guarantor, the WMSC Guarantors and the Equity Guarantor (Urbaser) only for so long as any obligations under the EPC Contract, the Waste Management Service Contract or the Equity Agreement are outstanding), in excess of the Relevant Threshold Amount as set in (d)(III) below is not paid or discharged when due nor within any originally applicable grace period);
- (II) subject to paragraph (III) below, the Financial Indebtedness of the Borrower, the EPC Contractor Guarantor, the WMSC Guarantors and the Equity Guarantor (Urbaser), (but in the case of the EPC Contractor Guarantor, the WMSC Guarantors and the Equity Guarantor (Urbaser) only for so long as any obligations under the EPC Contract, the Waste Management Service Contract or the Equity Agreement are outstanding) in excess of the Relevant Threshold Amount as set in (d)(III) below has been declared prematurely due and payable as a result of an event of default relating to that party.
- (III) no Event of Default will occur under this paragraph (d) if the amount of Financial Indebtedness falling within paragraphs (I) and/or (II) above is less than the amount (Indexed) set out opposite the relevant Material Project Party's name in the following table (or such amount's equivalent in any other currency or currencies):

Material Project Party	Relevant Threshold Amount
Borrower	
EPC Contractor Guarantor	
WMSC Guarantors	
Equity Guarantor (Urbaser)	

(e) **Insolvency**

The Borrower is deemed unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986 or becomes unable generally to pay its debts as they fall due, or otherwise becomes or is declared insolvent or apparently insolvent, or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so.

(f) **Administration Orders**

An application (other than a frivolous or vexatious application) for an administration order in relation to the Borrower is presented to the court or any meeting of the Borrower is convened for the purpose of considering any resolution to present an application for such an order or the Borrower enters administration (whether by court order or by appointment by directors) or a notice is given by the directors or the Borrower of its/their intention to appoint an administrator.

(g) **Compositions with Creditors**



Any steps are taken with a view to proposing (under any enactment or otherwise) any kind of composition, scheme of arrangement, compromise or arrangement involving the Borrower and its creditors generally (or any class of them) including any trust deed for its creditors.

**(h) Receivers**

Any administrative or other receiver of the Borrower or any of its property is appointed or the directors of the Borrower request any person to appoint such a receiver.

**(i) Creditors Actions**

Any steps are taken to repossess any goods in the Borrower's possession under any hire purchase, conditional sale, retention of title or similar agreement or any steps are taken with a view to putting or effecting in force any kind of diligence, attachment, sequestration, distress, arrestment or execution against the Borrower or any of its property except in all cases where any such steps:

- (i) give rise to a claim or potential liability of less than £100,000 (Indexed) and the claim or liability is being contested in good faith; or
- (ii) are otherwise discharged within 30 days after being levied, enforced or sued out.

**(j) Winding Up**

Any meeting of the Borrower is convened for the purpose of considering any resolution for (or to petition for) its winding up, the Borrower passes such a resolution, or the Borrower or any other person presents any petition for the Borrower's winding up, or an order for the Borrower's winding up is made on the petition of any of its creditors (other than (i) any petition which is (A) frivolous or vexatious and which is being contested in good faith in appropriate proceedings or (B) dismissed or withdrawn or (ii) proposed for the purpose of any reconstruction or amalgamation previously sanctioned in writing by the Lenders).

**(k) Reconstruction**

Any steps are taken with a view to the dissolution of the Borrower (other than for the purpose of any reconstruction or amalgamation previously sanctioned in writing by the Lenders).

**(l) Similar Events**

Anything analogous to or having a substantially similar effect to any of the events specified in clauses 19.1(f) (Administration Orders) to 19.1(k) (Reconstruction) inclusive above shall occur under the laws of any applicable jurisdiction.

**(m) Cessation of Business and Repudiation**

The Borrower ceases, or threatens to cease, to carry on all or a substantial part of its business or repudiates a Transaction Document to which it is party, or evidences an intention to do so and, in the case of a Project Document, such repudiation has or could reasonably be expected to have, in the reasonable opinion of the Lenders, a Material Adverse Effect.

**(n) Necessary Consents**

Any Necessary Consent which is required in the context of the Project or any Transaction Document (as determined by the Lenders acting reasonably) is adversely modified, revoked or withheld or does not remain in full force and effect and is not reinstated in full force and effect to an extent or in a manner which in the reasonable opinion of the Lenders, may reasonably be expected to have a Material Adverse Effect and if that event or circumstance is, in the reasonable opinion of the Lenders, capable of remedy within 10 Business Days (or such longer period as agreed with the Lenders) after the earlier to occur of:

- (i) the Borrower becoming aware of such event or circumstance; and
- (ii) notice of that default being served on the Borrower by the Lenders.

**(o) Illegality**

Save where the Borrower is (as determined by the Lenders acting reasonably) fully protected from a relevant Change in Legal Requirement by the operation of the Waste Management Service Contract, (or where the relevant Change in Legal Requirement affects another Transaction Document, that other Transaction Document), at any time:

- (i) It is unlawful for the Borrower to perform any of its payment obligations under this Agreement or the Waste Management Service Contract or any of its material obligations under any Transaction Document (other than the Independent Tester Appointment Deed) to which it is a party (as determined by the Lenders acting reasonably); or
- (ii) any part of a Transaction Document is not binding and effective in accordance with its written terms (but excluding, for the avoidance of doubt, circumstances where an Interim Measures Notice has been issued in accordance with the terms of the Collateral Deed and clause 9.2 (Mandatory Prepayment- Declaration of Ineffectiveness) applies) or any party to a Transaction Document evidences an intention to repudiate such Transaction Document; or
- (iii) for any reason whatsoever, any Security Document is not binding or enforceable against the Borrower or does not confer or (other than as result of any due discharge) ceases to confer (as determined by the Lenders acting reasonably) the security thereby intended to be created (unless a substitute or replacement security acceptable to the Lenders is granted by the Borrower as soon as practicable).

**(p) Material Project Parties**

- (i) Subject to paragraph (ii) below any of the events described in clauses (e) (Insolvency) to (m) (Cessation of Business and Repudiation) inclusive or 19.1(o) (Illegality) shall occur in relation to any Material Project Party and/or (in relation to clauses 19.1 (m) and (o)) in connection with any Transaction Document to which such Material Project Party is a party.
- (ii) Paragraph (i) above shall apply only if such event is in the opinion of the Lenders (acting reasonably), likely to:
  - (A) result in a Material Adverse Effect; and
  - (B) materially prejudice the relevant Material Project Party's ability to perform its payment obligations (whether contingent or not) or its other material obligations under the Transaction Documents and:

- (aa) the Lenders are not satisfied that the Borrower is taking all reasonably necessary steps to replace the relevant Material Project Party, where it is able to exercise such rights under the relevant Transaction Document and/or enter into a replacement document with that Material Project Party; and
  - (bb) the relevant Material Project Party is not replaced by another person, in accordance with the relevant Project Documents, and having legal capacity and technical and financial resources satisfactory to the Lenders (acting reasonably) within 20 Business Days of the occurrence of the relevant event and/or the relevant party enters into a replacement document on substantially the same terms.
- (iii) Paragraph (ii)(B) shall not apply to Material Project Parties referred to in paragraphs (e) and (f) of such definition.
- (q) **Nationalisation, expropriation and abandonment**
  - (i) All or a substantial part of the assets of the Borrower or the Project are nationalised, expropriated, seized or compulsorily acquired.
  - (ii) The Borrower pursuant to clause 46.2.1 (Event of Contractor Default) of the Waste Management Service Contract, or any Material Project Party Abandons (as defined in the EPC Contract) all or any material part of the Project.
- (r) **Environmental Breach**

The Borrower or any Material Project Party commits, in respect of the Project, a breach of any Environmental Law or Environmental Authorisation which in any such case would, or would in the reasonable opinion of the Lenders be reasonably likely to, have a Material Adverse Effect and, if that default is, in the reasonable opinion of the Lenders, capable of remedy within 15 Business Days, it is not remedied in all material respects within 15 Business Days (or such longer period as agreed with the Lenders) of the Borrower or the Lenders becoming aware of the relevant default.
- (s) **Project Documents, Direct Agreements and Intercreditor Deed**
  - (i) The Borrower or any Material Project Party is in default of its obligations or in breach of any representation or warranty under any Project Document, Direct Agreement or the Intercreditor Deed to which it is party and, in the reasonable opinion of the Lenders, this has resulted in or would be likely to result in a Material Adverse Effect and, if that default is capable of remedy within 15 Business Days, it is not remedied within 15 Business Days (or such longer period as agreed with the Lenders) (or in the case of the Waste Management Service Contract only, 20 Business Days) after the earlier to occur of the Borrower or relevant Material Project Party becoming aware of the same and notice of that default being served on the Borrower by the Lenders, provided always that no Material Adverse Effect or grace period referred to in this clause shall apply to the EPC Contractor's failure to replace the Advance Payment Bond, Performance Bond or Retention Bond in accordance with the EPC Contract where the credit rating of the issuing bank or bond provider is or becomes lower than the Minimum Acceptable Rating or where the bond in question has been cancelled or where the issuing bank or bond provider fails to perform its obligations under the bond in question.

(II) Any:

- (A) Direct Agreement, the Intercreditor Deed or the Waste Management Service Contract is avoided, revoked, repudiated, surrendered or terminated or becomes capable of being terminated with the issue of a termination notice and any applicable grace period having expired, save where any such document becomes capable of being terminated as a result of an Event of Council Default which is thereafter remedied in accordance with the relevant provision and within the remedy periods permitted under the relevant document;
- (B) Project Document (other than the Waste Management Service Contract or a Non-Material Project Document) is avoided, revoked, repudiated, surrendered or terminated, (and to the extent any consent of the Lenders is required pursuant to clause 18.4(a)(I)(B) (Project Documents Generally), such consent is not obtained);
- (C) an event of default howsoever described occurs under any Project Document (other than the Waste Management Service Contract or a Non-Material Project Document) which is not thereafter remedied in accordance with the provisions of the relevant Project Document within the remedy periods permitted under that Project Document;
- (D) Material Project Party, the Borrower, or the Councils issues a notice of termination under any Project Document (other than a Non-Material Project Document) other than where the Borrower has obtained the consent of the Lenders to such termination pursuant to clause 18.4(a) (Project Documents Generally),

provided that:

- (aa) It shall not be an Event of Default in paragraphs (II) (A), or (B) above if such event occurs as a result of (I) the performance of the relevant agreement, (II) the expiry of its term, or (III) in the case of paragraph (A), a voluntary termination right existing at the date of this Agreement;
- (bb) It shall not be an Event of Default under paragraph (II)(C) above if such event occurs specifically in respect of the EPC Contractor and/or the Operating Contractor committing an event of default (howsoever described under the EPC Contract and/or the Operating Contract (as the case may be) and such event is deemed to be remediable in the opinion of the Lenders (acting reasonably) and:

(I) within eight (8) days of such event or circumstance (or, during the Operating Period, within twelve (12) days of such event or circumstance), the Borrower provides to the Lenders a proposal setting out the steps to be taken by the Borrower to remedy such event or circumstance (which steps may include, but shall not be limited to, the replacement of the EPC Contractor or the Operating Contractor (as the case may be) and all the Transaction Documents to which it is a party or the replacement of the relevant Project Document); and

(II) the proposal set out in paragraph (I) above is acceptable to the Lenders (following consultation with

the Borrower and upon the instructions of the Lenders) (and the steps to be taken by the Borrower to remedy the relevant event or circumstance shall not be approved until they are acceptable to the Lenders); and

(III) the relevant steps to be taken by the Borrower to remedy such event or circumstance set out in the proposal provided pursuant to paragraph (I) above have been taken within 10 Business Days of such event or circumstance (or, during the Operating Period, within 20 Business Days of such event or circumstance) or (where the Lenders has approved the proposal setting out the steps to be taken by the Borrower to remedy such event or circumstance and such proposal has specific time periods for taking specific steps) in accordance with such proposal and within any time periods set out in the proposal to the satisfaction of the Lenders.

(III) Any party (other than the Borrower):

(A) Is in breach of a Non-Material Project Document such that an event of default howsoever described occurs under such Non-Material Project Document; or

(B) gives any notice to terminate a Non-Material Project Document,

and the Borrower has failed to replace the Non-Material Project Document within 40 Business Days of termination with an agreement in form and substance, and with a party, satisfactory to the Lenders (acting reasonably);

(t) **Equity Contributions**

(I) Any amount of Equity required to be contributed pursuant to clause 4 (Standby Equity) of the Equity Agreement is not paid to the Borrower either (I) by FCC Environment Services (UK) Limited as Shareholder, or (II) Urbaser Limited as Shareholder or Urbaser S.A. as Equity Guarantor (Urbaser) by the Remedy Amount Backstop Date; or

(II) any Junior Creditor breaches any of its obligations applicable to it under

(u) **Cover Ratio Default**

(i) Subject to clause 19.1(u)(II) below:

(A) The Loan Life Cover Ratio is less than \_\_\_\_\_ on the most recent Calculation Date; or

(B) The Historic Annual Debt Service Cover Ratio is less than \_\_\_\_\_, on the most recent Calculation Date; or

(C) The Projected Annual Debt Service Cover Ratio is less than \_\_\_\_\_ on the most recent Calculation Date.

(II) An Event of Default will not arise in accordance with clause 19.1(u)(i) above where such Cover Ratio Event of Default is remedied in accordance with clause 15.11 (Equity Cure) to the satisfaction of the Lenders.

(v) **Change in ownership of the Borrower**

A change of ownership in the Borrower occurs during the period from Financial Close until the end of the Construction Period (the "Lock-In Period"), provided that it shall not be an Event of Default if at any Shareholder transfers or otherwise disposes of its legal, beneficial or equitable interest in its shareholding in the Borrower in whole or in part to its Affiliates during the Lock-In Period.

(w) **Insurances**

Any Insurance or any other Insurance required to be effected under a Project Document:

- (i) is not, or ceases to be, in full force and effect;
- (ii) is unavailable at the time it is required to be effected (unless the risk is Uninsurable);
- (iii) is repudiated, avoided or suspended (in each case to any extent); or
- (iv) any insurer is entitled to avoid, repudiate or suspend (in each case to any extent) or otherwise reduce its liability under the policy relating to any Insurance unless such policy is reinstated or replaced within ten Business Days of the Lenders notifying the Borrower.

(x) **Funding Shortfall**

- (i) Subject to clause 19.1(x)(ii) below, a Funding Shortfall has occurred.
- (ii) An Event of Default will not arise in accordance with clause 19.1(x)(i) above where such Funding Shortfall is remedied in accordance with clause 15.10 (Equity Cure) within 10 Business Days to the satisfaction of the Lenders.

(y) **No Litigation**

Any litigation, action, arbitration or administrative proceeding of or before any court or tribunal has been started against the Borrower or Material Project Party or its assets or revenues which, in any such case, would be reasonably likely to be adversely determined against the Borrower or Material Project Party and which, if so adversely determined, would, in the reasonable opinion of the Lenders, be reasonably likely to have a Material Adverse Effect.

(z) **Immunity**

Any Material Project Party or any of their respective assets is or becomes immune from any legal process in respect of their obligations under the Transaction Documents other than those assets that are not relevant to the Project or the performance of the Borrower under the Transaction Documents.

(aa) **Financial Longstop Date**

Completion is not achieved by the Financial Longstop Date.

**19.2 Default Remedies**

In the case of any such event as is mentioned in clause 19.1 (Events of Default), and at any time thereafter if any such event shall then be continuing the Lenders may, by written notice to the Borrower:

- (a) declare that the obligations of the Lenders hereunder and all the Commitments shall be cancelled forthwith whereupon the same shall be so cancelled forthwith; and/or
- (b) declare all the Loans, accrued interest and other amounts payable under any Finance Documents immediately due and payable whereupon the same shall become immediately due and payable; and/or
- (c) declare that all or some of the Loans and any other amounts payable under any Finance Documents shall be due and payable on demand of the Lenders, whereupon those amounts shall become payable on demand; and/or
- (d) instruct the Security Agent to take steps in accordance with the terms of the Intercreditor Deed, to enforce all or part of the Security Interest created under the Security Documents, or exercise any other right held by it under any of the Finance Documents; and/or
- (e) give notice to the Account Bank that no further withdrawals may be made from any Project Accounts; and/or
- (f) exercise any other rights expressed to arise under any Finance Document (including its right to accelerate outstanding Equity Commitments under the Equity Agreement and make a call under the Equity Guarantee (Urbaser)).

The taking of any such action shall be without prejudice to any other remedy available to any Finance Party under the general law.

#### **19.3 Co-operation**

If an Event of Default is outstanding the Borrower must, on the request of the Lenders:

- (a) supply to the Lenders a copy of any as built drawings then in its possession showing all alterations made since the commencement of operation of the Facility (as defined in the EPC Contract);
- (b) supply to the Lenders a copy of any operation and maintenance manuals and manufacturers' warranties or similar documents for the Project then in its possession; and
- (c) co-operate fully with the Lenders, any Adviser and any operator of the Facility (as defined in the EPC Contract) in order to achieve (if necessary) a smooth transfer of the operation of the Facility (as defined in the EPC Contract).

#### **19.4 No Independent action**

Other than the Security Agent, no Finance Party may except with the prior consent of the Lenders:

- (a) enforce or require the Lenders to enforce any Security Interest created or evidenced by any Security Document;
- (b) sue for or institute any creditor's process (including a Mareva injunction, garnishment, execution or levy, whether before or after judgment) in respect of any obligation (whether or not for the payment of money) owing to it in respect of any Finance Document;
- (c) take any step for the winding-up, administration of or dissolution of; or any insolvency proceeding, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to the Borrower; or

- (d) apply for any order for an Injunction or specific performance in respect of the Borrower in relation to any Finance Document.

#### 19.5 Lender Funding Failure

Where:

- (a) the Borrower is in breach of any of its obligations under this Agreement or a Finance Document; or
- (b) an Event of Default has occurred and is continuing,

In each case which arises as a direct result of a Financing Compensation Event (as defined under the Councils' Direct Agreement) (a "Funding Failure Event of Default"), the Lenders agree that:

- (I) the Lenders shall not be entitled to take any action in respect of such breach, misrepresentation or Event of Default, including under clause 19.2 (Default Remedies); and
- (II) any reference to a Default or an Event of Default under the Finance Documents shall be deemed to exclude any Funding Failure Event of Default,

In each case for so long as there is a Funding Failure Event of Default.

#### 20. THE LENDERS

##### 20.1 Rights of the Lenders

The Lenders may:

- (a) rely on any communication, certificate, legal opinion or other document believed by the Lenders to be genuine;
- (b) rely as to any matter of fact which might reasonably be expected to be within the knowledge of the Borrower on a statement by or on behalf of the Borrower;
- (c) rely on a certificate from any person:
  - (I) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (II) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (I) above, may assume the truth and accuracy of that certificate;

- (d) obtain and pay for such legal or other expert advice or services as may to it seem necessary;
- (e) rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Lenders or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying;
- (f) act in relation to the Finance Documents through its officers, employees and agents and the Lenders shall not:



- (i) be liable for any error of judgment made by any such person; or
- (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person;

unless such error or such loss was directly caused by a Lender's gross negligence or wilful misconduct.

- (g) retain for its own benefit and without liability to account any fee or other sum receivable by it for its own account; and
- (h) Without prejudice to the generality of this paragraph (h), neither the Lenders nor any of their respective subsidiaries nor associated companies shall have any duty to disclose or act on or take into account any document or information of which any of them has knowledge or notice or otherwise becomes aware in the course of doing anything permitted by this paragraph (h) and, in performing its duties, obligations and responsibilities as a Lender, the Lenders shall be entitled to ignore any such document or information which is not publicly available.

## 20.2 Expenses

### (a) Transaction Expenses

The Borrower shall, within three (3) Business Days of demand, pay the Finance Parties the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (or, in the case of the Security Agent, properly incurred, or in its case and after a Default, incurred by it) in connection with the negotiation, preparation, printing, execution and perfection of:

- (i) this Agreement and any other documents referred to in this Agreement and the Security Documents; and
- (ii) any other Finance Documents executed after the date of this Agreement.

### (b) Amendment Costs

If the Borrower requests an amendment, waiver or consent in relation to a Finance Document, the Borrower shall, within three (3) Business Days of demand, reimburse the Lenders for the amount of all costs and expenses (including legal fees) reasonably incurred (and the Security Agent for the amount of all costs and expenses (including legal fees) properly incurred (or after a Default, incurred)) by them or it in responding to, evaluating, negotiating or complying with that request or requirement.

### (c) Enforcement and Preservation Costs

The Borrower shall, within three (3) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and any proceedings instituted as a consequence of taking or holding the Security Interests or enforcing these rights.

### (d) Exceptional costs and additional remuneration to be incurred by the Security Agent

- (i) The Lenders may at any time instruct the Security Agent to incur exceptional costs or receive additional remuneration:

- (A) In circumstances following a Default; or
- (B) In relation to any action to be taken by the Security Agent pursuant to clause 18.20 (Further Assurance) of this Agreement or clause 19 (Preservation of Debt) of the Intercreditor Deed,

without the consent of the Borrower.

- (II) Other than in the circumstances listed in clause 20.2(d) above, the Borrower shall not be required to reimburse the Lenders for any exceptional costs incurred or additional remuneration received by the Security Agent where the Borrower has not given its consent to the incurrence of such costs or the receipt of such additional remuneration.

**(e) Monitoring expenses**

The Borrower shall promptly on demand pay to the Lenders the amount of all costs and expenses incurred by it in connection with the preparation by the Technical Adviser of:

- (i) any report in respect of the Construction Period in accordance with clause 1(a)(i) of Part 1 (Compliance Monitoring Requirements During the Construction Period) of Schedule 8 (Technical Adviser); and
- (ii) any report in respect of the Operating Period in accordance with clause 2(a)(i) of Part 2 (Compliance Monitoring Requirements During the Operating Report) of Schedule 8 (Technical Adviser),

in each case in a format approved by the Lenders on the matters within the scope of its services (which scope together with the fees associated with such scope have been previously approved by the Borrower (such approval not to be unreasonably withheld or delayed).

**(f) Calculation**

All fees under this Agreement which accrue and are payable in arrears shall accrue on a daily basis and will be calculated by reference to a 365-day-year and the actual number of days elapsed (or on any other basis required by market practice).

**21. CHANGES TO THE LENDER**

**21.1 Assignment and Transfer**

**(a) Benefit and Burden of this Agreement**

This Agreement shall be binding upon and inure to the benefit of each party to this Agreement and its successors and permitted transferees and assigns.

**(b) Borrower**

The Borrower may not assign, novate or transfer or otherwise dispose of all or part of its rights or obligations under this Agreement or the Security Documents without obtaining the prior written consent of the Lenders.

**(c) Lenders**

Any Lender may with prior notice to the Borrower at any time assign, novate or transfer to any successor all of its rights, benefits and obligations under this Agreement and the other Finance Documents if required to do so pursuant to a

Permitted Reorganisation (the "New Lender"), provided that it has at the same time assigned, novated or transferred to the same successor all of its rights, benefits and obligations under the Project Documents in its separate capacity as Council thereunder. The Lenders may not otherwise assign, novate or transfer their rights, benefits and obligations under this Agreement and the other Finance Documents.

## 21.2 Disclosure

Subject to clause 21.4 (Disclosure of Information), the Lenders may disclose to a potential assignee, transferee or participant and to any persons who may otherwise enter into contractual relations with the Lenders in connection with the Finance Documents, such confidential information about the Borrower as it shall consider appropriate and such other information as is supplied by or on behalf of the Borrower to the Lenders or the Security Agent in accordance with the Security Documents, subject to imposing an obligation on such potential assignee, transferee or participant to keep such information confidential.

### (a) Limitations

If:

- (i) a Lender assigns, novates, sub-participates or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (ii) as a result of circumstances existing at the date the assignment, transfer, novation, sub-participation or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under clause 11 (Increased Costs) or clause 12 (Tax gross-up and indemnities),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those clauses to the same extent as the Lender would have been if the assignment, transfer, novation, sub-participates, or change had not occurred. This paragraph (e) shall not apply in relation to clause 12.2 (Tax gross-up), to a Treaty Lender that has included a confirmation of its scheme reference number and its jurisdiction of tax residence in accordance with clause 12.2(g)(ii)(B) (Tax gross-up) if the Borrower has not made a Borrower DTTP Filing in respect of that Treaty Lender.

### (b) Procedure for Transfer

- (i) A transfer will only be effective if the New Lender enters into a Deed of Accession under the Intercreditor Deed, and subject thereto is effected in accordance with paragraph (ii) below when a duly completed Transfer Agreement has been executed by the transferring Lender (the "Existing Lender"), the New Lender and the Security Agent and a copy thereof has been delivered to the Borrower.
- (ii) On the Transfer Date:
  - (A) to the extent that in the Transfer Agreement the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents, the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the "Discharged Rights and Obligations");

(B) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;

(C) the Security Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves in respect of the Security Interests under the Security Documents as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

(D) the New Lender shall become a Party as the "Lender".

(c) **Procedure for Assignment**

(I) An assignment will only be effective if the New Lender enters into a Deed of Accession under the Intercreditor Deed and subject thereto may be effected in accordance with paragraph (II) below when a duly completed Assignment Agreement has been executed by the Existing Lender, the Security Agent and the New Lender and a copy thereof has been delivered to the Borrower.

(II) On the Transfer Date:

(A) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;

(B) the Existing Lender will be released by the Borrower and the other Finance Parties from the obligations owed by it and expressed to be the subject of the release in the Assignment Agreement (the "Relevant Obligations"); and

(C) the New Lender shall become a Party as the "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

(III) The Lender may utilise procedures other than those set out in this clause 21.1 (Assignment and Transfer) to assign its rights under the Finance Documents (but not without the consent of the Borrower or unless in accordance with paragraph (b) (Procedure for Transfer), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lender nor the assumption of equivalent obligations by a New Lender).

**21.3 Remedies, Waivers, Amendments and Consents**

(a) No failure on the part of any Finance Party to exercise, and no delay on its part in exercising, any right or remedy under any Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any other rights or remedies (whether provided by law or otherwise).

- (b) Any provision of the Finance Documents may be amended or supplemented only if the Borrower and the Lenders so agree in writing and any Default, Event of Default, provision or breach of any provision of the Finance Documents may be waived before or after it occurs only if the Lenders so agree in writing save that an amendment, supplement or waiver which relates to or will or may affect the rights or obligations of the Security Agent may not be effected without the consent of the Security Agent.
- (c) Unless the provisions of any Finance Document expressly provide otherwise, the Security Agent may, if authorised by the Lenders, amend the terms of, waive any of the requirements of, or grant consents under any of the Security Documents, any such amendment, waiver or consent being binding on all parties to this Agreement and the Security Agent shall be under no liability whatsoever.
- (d) The prior consent of the Lenders is required to authorise any amendment of any Security Document which would affect the nature or scope of the assets charged thereunder or the manner in which the proceeds of enforcement of any Security Documents are distributed or any amendment of this clause 21.3.
- (e) The Lenders shall respond to all written requests from the Borrower relating to a consent, amendment or waiver under a Transaction Document within 15 Business Days of receipt of such request. If the Lenders have not responded to the Borrower within such period it shall be deemed to have provided its consent in relation to the request for consent, amendment or waiver.

#### 21.4 Disclosure of Information

- (a) Each Finance Party must keep confidential any information supplied to it by or on behalf of the Borrower in connection with the Finance Documents. However, a Finance Party is entitled to disclose information:
  - (i) which is publicly available, other than as a result of a breach by that Finance Party of this clause;
  - (ii) in connection with any legal or arbitration or other dispute resolution proceedings;
  - (iii) if required to do so under any law or regulation (including disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004), provided that where the Lenders are required to disclose information under this clause 21.4(a)(iii), the Lenders shall give notice to the Borrower of such disclosure as soon as reasonably practicable;
  - (iv) for the purposes of the examination and certification of that Finance Party's accounts;
  - (v) for any inspection pursuant to section 15(1) of the Audit Commission Act 1998 or section 25 of the Local Audit and Accountability Act 2014 whichever shall be in force or any other similar statutory provision relating to the inspection of the accounts of a Finance Party provided that where the Lenders are required to disclose information under this clause 21.4(a)(v), the Lenders shall give notice to the Borrower of such disclosure as soon as reasonably practicable;
  - (vi) to a governmental, banking, taxation or other regulatory authority;
  - (vii) to its professional advisors and auditors;
  - (viii) to any bank, financial institution, investor or other entity;

(ix) to the extent allowed under paragraph (b) below, subject to the terms of paragraph (c) below in relation to the provision of a confidentiality agreement;

(x) to any companies or commercial registry (or similar) where disclosure is made for the purpose of protecting the Finance Parties' interests under the Finance Documents; or

(xi) with the agreement of the Borrower,

(any party to whom disclosure is made pursuant to clause 21.4 (a) (viii), (ix), (x) or (xi) being a "Relevant Party")

(b) A Finance Party may disclose to any person with whom it may enter, or has entered into, any kind of transfer, participation or other agreement in relation to this Agreement (a "Participant"):

(i) a copy of any Transaction Document; and

(ii) any information which that Finance Party has acquired under or in connection with any Transaction Document.

(c) However, before a Relevant Party or a Participant may receive any confidential information, it must agree with the relevant Finance Party to keep that information confidential on the terms of paragraph (a) above.

(d) This clause supersedes any previous confidentiality undertaking given by a Finance Party in connection with this Agreement prior to it becoming a Party.

#### **21.5 Facility Office**

A Lender may change its lending office hereunder from time to time to another office within the United Kingdom (or overseas, provided Qualifying Lender status is not adversely affected) by not less than five Business Days' prior notice to each other Lender and the Borrower.

#### **21.6 Finance Parties' information**

The Finance Parties shall provide to the Security Agent such information as the Security Agent may reasonably specify (through the Lenders) as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent. Each Finance Party, shall deal with the Security Agent exclusively through the Lenders and shall not deal directly with the Security Agent.

### **22. INDEMNITIES TO THE FINANCE PARTIES**

#### **22.1 Currency Indemnity**

(a) If any sum due from the Borrower under the Finance Documents (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

(i) making or filing a claim or proof against the Borrower;

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an Independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

## 22.2 Borrower's Indemnity

The Borrower shall indemnify the Finance Parties against all costs, claims, losses, expenses (including legal fees) and liabilities, incurred by that Finance Party as a result of:

- (a) the enforcement of, or the preservation of any rights under any Finance Document;
- (b) any Event of Default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
- (c) acting as Security Agent, Receiver or Delegate under the Finance Documents or which otherwise relate to any of the Security Interests or the performance of the terms of this Agreement (otherwise than as a result of its gross negligence or wilful misconduct);
- (d) in the case of the Lenders, any cost, loss or liability incurred by the Lenders (acting reasonably), or in the case of the Security Agent any cost, loss or liability incurred by the Security Agent (or properly incurred by the Security Agent prior to a Potential Event of Default), as a result of acting or relying on any notice, request or instruction from the Borrower which it reasonably believes to be genuine, correct and appropriately authorised;
- (e) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Finance Parties by the Finance Documents or by law;
- (f) funding, or making arrangements to fund, a Loan requested by the Borrower in a Drawdown Notice but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lenders);
- (g) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower or as required by this Agreement;
- (h) in the case of the Lenders only, any cost, loss or liability incurred by the Lenders (acting reasonably), or in the case of the Security Agent any cost, loss or liability incurred by the Security Agent (or properly incurred by the Security Agent prior to a Potential Event of Default), as a result of instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts to advise the Lenders in accordance with the Terms of Reference for the purposes of the Finance Documents; and
- (i) any cost, loss or liability incurred by the Councils (acting reasonably) in their capacity as Lenders under the Finance Documents (excluding for the avoidance of doubt any cost, loss, or liability incurred by the Councils in their capacity as procuring authorities under the Waste Management Service Contract), as a result of investigating any event which it reasonably believes is a Default.

### **22.3 Indemnities Separate**

Each Indemnity in each Finance Document shall:

- (a) constitute a separate and independent obligation from the other obligations in that or any other Finance Document;
- (b) give rise to a separate and independent cause of action;
- (c) apply irrespective of any indulgence granted by the Finance Parties;
- (d) continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any liability or any other judgment or order; and
- (e) apply whether or not any claim under it relates to any matter disclosed by the Borrower or otherwise known to the Finance Parties,

(but, in each case, without any double counting).

### **22.4 Priority of Indemnity**

The Security Agent may, in priority to any payment to the Finance Parties, indemnify itself out of the Security Interests in respect of, and pay and retain, all sums necessary to give effect to each Indemnity in each Finance Document from the Borrower and shall have a lien on the Security Interests and the proceeds of the enforcement of the Security Interests for all moneys payable to it under this paragraph 22.4.

### **22.5 Lenders' Indemnity**

If the Borrower fails to perform any of its obligations under this clause 22 or any other indemnity or other provision of the Finance Documents whereby it is obliged to make payment to the Security Agent, the Lenders shall indemnify the Security Agent within three (3) Business Days of demand against any cost, loss or liability incurred by the Security Agent as a result of such failure.

## **23. MISCELLANEOUS**

### **23.1 No set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **23.2 Currency of account**

- (a) Subject to paragraphs (b) to (e) below, Sterling is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.



- (e) Any amount expressed to be payable in a currency other than Sterling shall be paid in that other currency.

### **23.3 Change of Currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lenders (after consultation with the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lenders (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lenders (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London Interbank market and otherwise to reflect the change in currency.

### **23.4 Set-Off**

Subject to the terms of the Intercreditor Deed, a Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **23.5 Communications - Addresses**

Each communication under any Finance Document shall be made by fax or otherwise in writing, unless otherwise stated. Each communication or document to be delivered to any party under any Finance Document shall be sent to it at the fax number or address, and marked for the attention, if any, from time to time designated by it to the Lenders and/or the Security Agent for the purpose of the Finance Documents. The initial fax number, address and marking (if any) so designated by each party to this Agreement are set out under its name at the end of this Agreement.

### **23.6 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
- (i) if by way of fax, when received in legible form and when transmission has been completed; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 23.5 (Communications - Addresses), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to a Finance Party will be effective only when actually received by that Finance Party and then only if it is expressly marked for the attention of the department or officer identified in schedule 2 (Initial administrative details of the parties) (or any substitute department or officer as the Lenders or Security Agent shall specify for this purpose).
- (c) All notices from or to the Borrower shall be sent through the Lenders.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **23.7 Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means, to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than ten Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Lenders only if it is addressed in such a manner as the Lenders or the Security Agent shall specify for this purpose.
- (c) In the case of email communications to the Security Agent, any notice shall take effect only upon written confirmation of receipt from the Security Agent (and an automatically generated "received" or "read" receipt will not constitute written confirmation). For the avoidance of doubt, any such email must be clearly marked for the attention of the officer and representative of the Security Agent referred to in clause 23.6(b).
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a), (b) or (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **23.8 Survival**

The obligations of any party under or in respect of clauses 6.3 (Default Interest), 11 (Increased Costs), 13 (Mitigation by the Lenders), 21.2 (Disclosure), 21.3 (Remedies, Waivers, Amendments and Consents) and 22 (Indemnities to the Finance Parties) shall continue even after the Senior Finance Liabilities Discharge Date and in relation to the Security Agent, notwithstanding the retirement or termination of the appointment of the Security Agent or the termination of this Agreement.

**23.9 English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) In English; or
  - (ii) If not in English, and if so required by the Lenders, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document or a Security Document.

**23.10 Accounts**

In any dispute, litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

**23.11 Calculations, Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

**23.12 Partial Invalidity**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**23.13 Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**23.14 Contracts (Rights of Third Parties) Act 1999**

No Finance Document creates any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a Party.

**23.15 Governing Law**

This Agreement and any non-contractual obligations arising out of it or in connection with it are governed by and construed in accordance with English law.

**23.16 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute").

- 
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 23.16 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

**IN WITNESS WHEREOF** this Agreement has been executed on the date stated at the beginning of this Agreement.

**SCHEDULE 1**

**The Original Lenders**

**Original Lender**

Worcestershire County Council

The County of Herefordshire District  
Council

[ **REDACTED** ]

**SCHEDULE 2****Initial Administrative Details of the Parties**

<b>Party</b>	<b>Notice Details</b>
<b>Worcestershire County Council</b> as Original Lender	Address: County Hall Spetchley Road Worcester WR5 2NP  Attention: The Section 151 Officer  Telephone: 01905 763763  Fax: 01905 766073  Email:
<b>The County of Herefordshire</b> <b>District Council</b> as Original Lender	Address: Brockington 35 Haford Road, Hereford HR1 1SH  Attention: The Section 151 Officer  Telephone  Fax: 01432 260994  Email
<b>Mercia Waste Management</b> <b>Limited</b> as Borrower	Address: The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ  Attention  Telephone:  Fax: 01386 446757  Email:

**The Law Debenture Trust  
Corporation p.l.c. as Security  
Agent**

**Address:**

The Law Debenture Trust Corporation p.l.c  
Fifth Floor  
100 Wood Street  
London  
EC2V 7EX

**Attention: The Manager, Commercial Trusts (Ref:  
200840)**

**Fax: 020 7606 0643**

**Email:**

35059284

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### **SCHEDULE 3- CONDITIONS PRECEDENT**

#### **PART I - Initial Conditions Precedent**

##### **1. Corporate Documents**

- 1.1 A certified copy (or a copy attached to the formalities certificate of the relevant Material Project Party) of the constitutional documents of that Material Project Party.
- 1.2 A certified copy (or a copy attached to the formalities certificate of the relevant Material Project Party) of:
  - (a) a resolution of the board of directors of that Material Project Party (other than Urbaser S.A.), or in the case of FCC S.A., an executive committee of FCC S.A.:
    - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute, deliver and perform the Transaction Documents to which it is a party;
    - (ii) authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and
    - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Drawdown Notice) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party; and
  - (b) a power of attorney in respect of Urbaser S.A. authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Drawdown Notice) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above in relation to the Transaction Documents.
- 1.4 A certificate of each Material Project Party (signed by an authorised signatory) in the form set out in Part II (Formalities Certificate) of schedule 3.
- 1.5 Certified copies (or a copy attached to the formalities certificate of the relevant Material Project Party) of the powers of attorney (if any) under which a Material Project Party is to execute the Transaction Documents to which it is party.
- 1.6 The latest audited (consolidated where applicable) financial statements of each Material Project Party (other than the Borrower) together with confirmation from the directors (or, in the case of FCC S.A. or FCC Environment Services U.K Limited or Urbaser S.A., an authorised signatory) that there has been no change since the date of such financial statements which has had or could have a Material Adverse Effect.

##### **2. Project Documents and Related Documentation**

- 2.1 Original or certified copies of each Project Document (other than the Waste Management Service Contract, CMA Parallel Loan Agreement, Construction Management Technical Assistance Agreement, Operation and Maintenance Services Technical Assistance Agreement, Operating Contract Parallel Loan Agreement, Power Purchase Agreement, the Independent Tester Collateral Warranty, the Retention Bond, the Grid Connection Agreement, the APC Disposal Contract and the IBA Disposal Contract) and each Non-Material Project Document (other than the Custody Agreement and the Independent



Tester's Deed of Appointment) in a form and substance satisfactory to the Lenders duly executed by each of the relevant parties.

- 2.2 Original copies of the Advance Payment Bond and the Performance Bond;
- 2.3 Pro-forma heads of terms in relation to the APC Disposal Contract and Power Purchase Agreement which shall each be in a form and substance satisfactory to the Lenders.
- 2.4 Certified or original copies of each of the letters of acknowledgment referred to in paragraphs 2.1.2 to 2.1.7 of the Deed of Variation.
- 2.5 A certificate from the Borrower to the Lender confirming that all conditions precedent relating to the effectiveness of the Project Documents (save for any condition as to the occurrence of Financial Close) have been satisfied.

**3. Finance Documents**

Original copies of each of the Senior Finance Documents (other than the APC Direct Agreement, the PPA Direct Agreement, the IBA Direct Agreement and the Borrower Loan Note Instrument) duly executed by each of the relevant parties.

**4. Junior Finance Documents and Related Documentation**

Certified copies of each of the documents set out in the definition of Junior Finance Documents in a form and substance satisfactory to the Lenders, duly executed by each of the relevant parties.

**5. Security**

- 5.1 The notices of assignment required to be given pursuant to the Security Documents as set out below, duly signed on behalf of the Borrower and, in the case of (a) below only, acknowledgements thereof duly executed by the relevant counterparty:
  - (a) notices as agreed by the Lenders to the counterparties to certain Project Documents the subject of any Security Interest; and
  - (b) notices to Insurers.
- 5.2 All third party consents which the Lenders will require in relation to the creation of any Security contained in any Security Document.
- 5.3 A certified copy of the register of shareholders of the Borrower evidencing that the Shareholders have been registered as holders of all the issued share capital of the Borrower.
- 5.4 A certified copy of the register of shareholders of SWSL evidencing that the Shareholders have been registered as holders of all the issued share capital of SWSL.
- 5.5 Share certificates in respect of:
  - (a) all the shares of the Borrower; and
  - (b) all of the shares of SWSL,in each case issued at par and fully paid.
- 5.6 Signed, undated stock transfer forms, with the name of the transferee left blank.

**6. Legal Opinions**

**6.1** The Lenders and the Security Agent have each received the following legal opinions in a form and substance satisfactory to it:

- (a) legal opinion of Clifford Chance LLP on the capacity of the Borrower under English law to enter into certain Transaction Documents to which it is a party and the enforceability of its obligations under certain Project Documents and Junior Finance Documents governed by English law to which it is a party;
- (b) legal opinion of Ashurst LLP on the enforceability of the Finance Documents; and
- (c) legal opinion of Clifford Chance LLP on:
  - (i) the capacity of SWSL, BWL, FCC Environment Services (UK) Limited, Urbaser Limited under English law to enter into certain Transaction Documents to which they are a party; and
  - (ii) the enforceability of obligations of SWSL, BWL, FCC Environment Services (UK) Limited, Urbaser Limited, FCC S.A. and Urbaser S.A. under certain Project Documents governed by English law to which they are respectively a party;
- (d) legal opinion of Clifford Chance LLP on the capacity of FCC S.A. and Urbaser S.A. under Spanish law to enter into certain Transaction Documents to which they are a party;
- (e) legal opinion of Baur Hürimann on the capacity of the EPC Contractor under Swiss law to enter into certain Transaction Documents to which it is a party and the enforceability of its obligations under the Transactions Documents to which it is a party;
- (f) legal opinion of Wragge Lawrence Graham and Co on the enforceability of obligations of the relevant parties to the EPC Contract and EPC Contract Guarantee governed by English law to which they are a party; and
- (g) legal opinion of Ban Law Office on the capacity of the EPC Guarantor under Japanese law to enter into certain Transaction Documents to which it is a party.

**7. Insurances**

- 7.1** Evidence that the insurances required to be taken out in accordance with schedule 6 (Insurance) have been taken out and are in full force and effect in the form of a letter of confirmation and undertaking from the relevant brokers substantially in the form set out in Part F to schedule 6 (Insurance);
- 7.2** Evidence that the interests of the Finance Parties in those insurances have been or will be duly noted on the relevant policies and acknowledged by the relevant insurers in the form of endorsements substantially in the form set out in Part E to schedule 6 (Insurance) and, if the copy policies are available at Financial Close and the Lenders so require, copies of the relevant policies;
- 7.3** Copies of signed cover notes in respect of insurances in at least the amounts, with excesses not exceeding the maximum and covering at least the risks, as specified in schedule 6 (Insurance).

**8. Reports and Engagement Letters**

- 8.1** Originals of each of the following reports in a form approved by the Lenders:

- (a) a report on technical matters by the Technical Adviser;
  - (b) a report on Insurances by the Insurance Advisor;
  - (c) a report on legal matters relating to the Project by Ashurst LLP; and
  - (d) a report from the Model Auditor that it has completed its audit of the Base Case Financial Model and Assumptions.
- 8.2 Original or certified copy engagement letters from each of the report providers listed in 8.1(a) to (d) above.
9. **Tax**
- Confirmation that the Borrower is registered with HM Revenue & Customs for VAT.
10. **Construction programme**
- A certified copy of the Construction Programme in form and substance satisfactory to the Lenders.
11. **Base Case Financial Model and Assumptions**
- 11.1 The Base Case Financial Model.
- 11.2 The Base Case Financial Model shows that, on each Calculation Date:
- (a) the Loan Life Cover Ratio is equal to or more than \_\_\_\_\_
  - (b) the Historic Annual Debt Service Cover Ratio and the average Annual Debt Service Cover Ratio are equal to or more than \_\_\_\_\_ and \_\_\_\_\_
  - (c) the Projected Annual Debt Service Cover Ratio is equal to or more than \_\_\_\_\_ and \_\_\_\_\_
- 11.3 The Base Case Financial Model Shows that as at Financial Close, the Debt to Equity Ratio on or prior to the Planned Completion Date will not exceed \_\_\_\_\_
- 11.4 A copy of the letter of assurance regarding the Base Case Financial Model.
12. **Planning Permissions**
- 12.1 Copies of each planning permission required to carry out the Works.
- 12.2 All documentation relating to any planning permissions required to carry out the Works (e.g. section 106 Town and Planning Act agreement, environmental licences, section 278 Highways Act 1980 agreement) together with evidence that all planning conditions have been met or are reasonably likely to be achieved.
13. **Property**
- 13.1 A certificates of title prepared by Eversheds LLP in the form approved by the Lenders in relation to the Hartlebury Lease and the grant of a sub-underlease to the Borrower.
- 13.2 A report prepared by Clifford Chance LLP in the form approved by the Lenders in relation to the sub-lease.
- 13.3 A certificate of title prepared by Harrison Clark Rickerby's in the form approved by the Lenders in relation to the laydown area.

- 13.4 Confirmation that the Borrower has provided a copy of the construction phase plan in accordance with its obligation under clause 4.2 (Undertenant's Covenants) of the Licence for Alterations.
- 13.5 Notice and Declaration under the Hartlebury Lease excluding s. 24-28 of the Landlord and Tenant Act 1954.
14. **British Sugar**
- Evidence that legal title to the British Sugar Site has been transferred by the Borrower to Worcestershire County Council on or prior to Financial Close.
15. **Connection Agreements**
- 15.1 Evidence that the first two instalments of the grid connection charge totalling £949,333 and payable to the Grid Connection Counterparty has been paid on or prior to Financial Close or will be paid from the proceeds of first Drawdown.
- 15.2 Evidence that all amounts due and payable under the Water Main Connection Agreement by the Borrower to Severn Trent Water Limited prior to Financial Close have been paid prior to Financial Close.
16. **Accounts**
- Certified copies of all relevant mandates and similar documents to be entered into with the Account Bank as set out or required by the Account Bank Agreement, and confirmation from the Account Bank that the Project Accounts have been opened with the Account Bank.
17. **Fees**
- Evidence that the fees, costs and expenses then due from the Borrower pursuant to clause 10 (Fees) and clause 20.2(a) (Transaction Expenses) have been paid or will be paid by the earlier of (a) the first Drawdown Date and (b) ten Business Days after the date of this Agreement.
18. **Councils conditions precedent**
- 18.1 Certified copies of certificates issued by the Councils pursuant to section 3 of the Local Government (Contracts) Act 1997 in respect of:
- (a) the Deed of Variation; and
  - (b) the Councils' Direct Agreement.
- 18.2 Evidence that the Councils have issued a voluntary ex-ante transparency notice in relation to the Project at least ten (10) days prior to the date of Financial Close.
19. **Other Documents and Evidence**
- 19.1 A copy of any other Necessary Consent or other document, opinion or assurance which the Lenders consider to be necessary (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any document or for the validity and enforceability of any document.
- 19.2 Evidence required by the Finance Parties for the purpose of any applicable regulations for the prevention of money laundering and financial crime and its "know your customer" regulations.

**PART II - Form of Formalities Certificate**

[●] Limited

(the "Company")

To: Worcestershire County Council and the County of Herefordshire District Council as Lead Arrangers and Original Lenders and The Law Debenture Trust Corporation p.l.c. as Security Agent

Senior term loan facilities agreement dated on or about the date of this certificate between Mercia Waste Management Limited, the Security Agent and the Lenders (the "Senior Term Loan Facilities Agreement")

Capitalised terms not otherwise defined herein shall have the meanings ascribed to them in the Senior Term Loan Facilities Agreement.

I, being a director of the Company, am duly authorised by the Company to deliver this Certificate and make the following certifications.

**1. Constitutional Documents and Financial Statements**

Attached hereto marked "A" are true, complete and up-to-date copies of:

- (a) the certificate of incorporation of the Company;
- (b) all certificates of incorporation on change of name of the Company (if any); and
- (c) the [memorandum and] articles of association of the Company.

**2. Board Resolutions**

Attached hereto marked "B" is a true copy of the minutes of a meeting of the board of directors of the Company duly convened and held (during which a quorum was present throughout) recording resolutions passed at such meeting (which resolutions are in full force and effect and have not been rescinded or varied) and which approve the Transaction Documents to which it is a party and all transactions contemplated thereby.

**3. Authorised Signatories**

[The signatures set out in the Annex to this certificate]/[The following signatures] are the specimen signatures of the persons authorised by resolution of the board of directors of the Company to execute the Transaction Documents to which it is a party and all other documents and notices required in connection therewith [./[:]

Name	Position	Signature

**4. No Breach of Borrowing Limit [Borrower certificate only]**

The borrowing by the Company of all sums capable of being drawn down under the Senior Term Loan Facilities Agreement and the granting of the Security Interest will not cause any borrowing, security or similar limit contained in its [memorandum or] articles of association or in any trust deed or any other agreement or instrument to which the Company is a party to be exceeded.

5. **No Material Adverse Change**

No event or matter has occurred which might result in a material adverse change in the financial condition, business, assets, revenues or prospects of the Company since the date of its [Incorporation/latest audited accounts].

6. **Shareholders' Consent**

Shareholder consent to the execution and delivery of the documents referred to in paragraph 2 above is not necessary, or if required, has been obtained and copies of such consent are attached hereto marked "C".

7. **Financial Statements [Non-SPV entities only]**

Attached to this certificate marked "[C/D]" are the most recently published [consolidated] audited financial statements of the Company.

8. **Register of Members [Borrower only]**

Attached hereto marked "[●]" is an extract of the Company's register of members evidencing that the Shareholders are registered as holders of the entire issued share capital of the Company.

9. **Consents [Borrower only]**

All notices and consents required for the creation of security under the Security Documents have been obtained and are in full force and effect.

10. **Disputes [Borrower only]**

We confirm that at the time of signing this certificate there is no outstanding material dispute under the Project Documents between the Councils and the Company.

11. **Litigation [Borrower only]**

No litigation, action or administrative proceedings has been started against the Borrower which has or is reasonably likely to have a Material Adverse Effect.

12. **Solvency**

We confirm that, at the time of signing this certificate and immediately following the entry by the Company into each of the Transaction Documents to which it is a party, the Company is not and will not be insolvent and is and will be able to pay its debts as they fall due within the meaning given to that term in Section 123(1) of the Insolvency Act 1986.

13. **Conditions Satisfied [Borrower only]**

All conditions to the effectiveness of the Finance Documents and the Project Documents have been satisfied.

**THIS CERTIFICATE** is given by a director on behalf of the Company.

Signed:  
Director

Date: [●]

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**SCHEDULE 4 - FORM OF NOTICES**

**Part I - Technical Adviser's Certificate**

To: [Lenders]

Attention: [●]

Date: [●]

[Date of inspection of Works by Technical Adviser for the purpose of this certificate: [●]]<sup>1</sup>

Interim Certificate No.: [●]

**Senior term loan facilities agreement dated [●] (the "Senior Term Loan Facilities Agreement")**

This Technical Adviser's Certificate is delivered to you in your capacity as a Lender pursuant to the Senior Term Loan Facilities Agreement. Terms defined in the Senior Term Loan Facilities Agreement have the same meaning in this certificate. Terms defined in the EPC Contract shall have the same meaning in this certificate.

**Certification of interim payment according to the EPC Contract**

In accordance with the terms of the EPC Contract there has been forwarded to us a copy of an application for payment (the "Application") delivered to the Borrower by the EPC Contractor pursuant to the EPC Contract.

We confirm that according to the EPC Contract the payment set out in the Application is due (and for the avoidance of doubt, no part of such payment is entitled to be withheld in accordance with the EPC Contract):

Accordingly, I/we hereby certify that the total amount for payment to the EPC Contractor to be included in the Drawdown Notice issued by the Borrower and dated [●] is:

- (a) The cumulative value of the activities completed by the EPC Contractor in accordance with the EPC Contract and the amount payable therefore under the EPC Contract is:

[●]

- (b) The amount of any other payments due in terms of the EPC Contract is:

[●]

**Total [●]**

**Less**

The cumulative amount stated as due in the Technical Adviser's Certificates previously issued up to and including this Certificate number [●]

[●]

- (c) Sums due from the EPC Contractor to the Borrower as deductions to be made under or pursuant to the EPC Contract are:

<sup>1</sup> This wording to be deleted from certificates provided for payments pre commencement of the Works.

[●].

Balance due for this Technical Adviser's Certificate (excluding VAT):

(d) [●]

The cumulative amount paid to the EPC Contractor prior to this Technical Adviser's Certificate together with the amount proposed to be drawn down to be paid to the EPC Contractor does not exceed the applicable cumulative amount set out in the EPC Contract.

I/We confirm that as at the date of this certificate, and based on the amount of undrawn and available debt (as confirmed to us by the Lenders, and assuming any such information provided to us by the Lenders is true and correct), and the Works remaining to be completed prior to Completion, we have no reason to believe that the statement made by the Borrower in clause 5 of the Drawdown Notice is not correct.

Signed by and on behalf of

Technical Adviser



**Part II - Drawdown Notice**

From: [Borrower]

To: [Lenders]

Date: [●]

Dear Sirs

[Borrower] - £[●] senior term loan facilities agreement dated [●] (the "Senior Term Loan Facilities Agreement")

1. Pursuant to clause 5.1 (Delivery of Drawdown Notice) of the Senior Term Loan Facilities Agreement we hereby give you notice of the following proposed Advance under Facility [●]:  
[date of proposed Advance]  
[purpose of proposed Advance]  
[amount of proposed Advance in words and figures]  
[duration of [first] Interest Period]
2. We enclose the certificate(s) specified in clause 5.1(b) (Delivery of Drawdown Notice) of the Senior Term Loan Facilities Agreement.
3. We confirm that [on the date of the Senior Term Loan Facilities Agreement, all representations set out in clause 14 (Representations and Warranties)]<sup>2</sup> [each of the Repeating Representations]<sup>3</sup> are true and accurate on the date of this Drawdown Notice as if made on such date and no Default as defined in the Senior Term Loan Facilities Agreement has occurred and is continuing or would result from the proposed Advance.
4. We confirm that there is no Funding Shortfall, as demonstrated by the calculation attached.
5. We confirm that each item of expenditure falling due and payable in the period since the immediately preceding Drawdown Notice sent by us which was to be financed out of the Loans drawn at that time or earlier has been fully settled or, if not, is taken into account in this current drawdown.
6. Words and expressions defined in the Senior Term Loan Facilities Agreement shall have the same meanings when used herein.

.....  
for and on behalf of  
[●]

<sup>2</sup> Include only in any Drawdown Notice as at the date of this Agreement.

<sup>3</sup> Include in each Drawdown Notice other than any Drawdown Notice delivered as at the date of this Agreement.

**Part III - Ratio Compliance Certificate**

To: [Lenders]

Attention: [●]

From: [Borrower]

£[●] Senior term loan facilities agreement dated [●] between, among others, [●] and the Lenders (the "Senior Term Loan Facilities Agreement")

We refer to the Senior Term Loan Facilities Agreement. Terms defined in the Senior Term Loan Facilities Agreement have the same meaning in this notice.

Pursuant to clause 0 (Ratio Compliance Certificate) of the Senior Term Loan Facilities Agreement we confirm that:

(a)

- (I) the Historic Annual Debt Service Cover Ratio on [●] was [●]:[●] ;
- (II) the Projected Annual Debt Service Cover Ratio on [●] was [●]:[●]; and
- (III) the Loan Life Cover Ratio on [●] was [●]:[●]; and

(b) so far as the Borrower is aware:

- (i) no Default has occurred other than any previously notified to the Lenders or waived in accordance with clause 21.3 (Remedies, Waivers, Amendments and Consents) of the Senior Term Loan Facilities Agreement [or as set out below]\*;
- (II) [the following Defaults have occurred:]; and
- (III) [the following steps have been taken or are proposed to be taken to remedy or mitigate the above mentioned Defaults]\*.

Date: .....  
[●]

By: .....  
Director

\* Delete as appropriate

SCHEDULE 5

Facility A repayment schedule

REDACTED

## **SCHEDULE 6- INSURANCE**

References in this schedule 6 to paragraphs and parts shall be construed as references to the paragraphs and parts of this schedule 6, or as otherwise defined within the Waste Management Service Contract, unless the context otherwise requires.

### **Part A Insurance Undertakings**

#### **1. REQUIRED INSURANCES**

##### **1.1 Scope and Duration**

Save for Products Liability Insurances as provided in paragraph 6 of Part B of this schedule 6, Parts B and C of this schedule 6 specify the insurances which have been or are to be effected by the Borrower for the benefit of the Borrower and, among others, the Finance Parties. The Borrower shall procure that:

- (a) the insurances specified in part B are effected (or procured in the case of paragraph 6 of this part) and maintained in full force and effect subject to paragraph 5.2 (No Breach) for the periods specified therein in respect of each insurance and each insured; and
- (b) the insurances specified in part C are effected and maintained in full force and effect subject to paragraph 5.2 (No Breach) from the Completion until the end of the Senior Finance Liabilities Discharge Date,

subject, in each case, to the terms of this part A and any amendment to the terms of part B and part C as the Borrower and the Lenders (having consulted with the Insurance Adviser) may agree.

##### **1.2 Undertakings**

The Borrower shall procure that the insurances referred to in paragraph 1.1:

- (a) are taken out against the risks and liabilities, for not less than the amounts and including only such deductibles, as are specified in parts B and C;
- (b) cover the Project Assets (or, as appropriate, the relevant assets, loss or liability) on a full replacement basis;
- (c) are increased from time to time to such amounts and with such deductions as would be effected from time to time by a reasonable and prudent person which does not self-insure (except in respect of deductibles required by insurers generally) carrying out the Project (financed on a limited recourse basis) taking into account the financial position of the Borrower and the interests of the Finance Parties.

The Borrower shall, following receipt of a notice from the Lenders (having consulted with the Insurance Adviser), under and in accordance with paragraphs 1.2(a), 1.2(b) and 1.2(c), insure, with effect from the date of such notice (or as soon as reasonably practicable in the light of the date of receipt of the notice and prevailing market conditions), against the risks and liabilities, in the amounts and with the deductibles specified in such notice.

## **2. ADDITIONAL INSURANCES**

### **2.1 Insurances Required by Law or the Project Documents**

Without prejudice to the other provisions of this Part A, the Borrower shall, until the end of the Senior Finance Liabilities Discharge Date:

- (a) effect and maintain in full force those insurances which the Borrower is required to have by any applicable law; and
- (b) effect and maintain those insurances which it is required to have by the terms of any Project Document or any other contract in respect of the Project to which it is a party.

### **2.2 Insurances Selected by The Borrower**

The Borrower may effect such other insurances in addition to or supplementing the insurances specified in part B and C as it may think fit, provided that:

- (a) such insurance does not affect rights to recover under the insurances specified in parts B or C and, in particular (but without limitation), contains a primary insurance clause in a form satisfactory to the Lenders (having consulted with the Lenders' Insurance Adviser);
- (b) the Borrower shall have given to the Lenders not less than 30 days' notice of its intention to effect such insurance together with reasonable details in respect thereof and the Lenders (having consulted the Insurance Adviser) shall have given its written consent which shall not be unreasonably withheld or delayed;
- (c) the Borrower shall have executed and delivered such documents and notices as the Security Agent (acting on the instructions of the Lenders) may require in order to provide to the Finance Parties an effective Security Interest in such insurance; and
- (d) forthwith after effecting any such insurance as permitted under this paragraph 2.2, the Borrower shall provide a copy to each of the Lenders, the Security Agent and the Insurance Adviser of the policy of such insurance.

### **2.3 Insurances Required by the Lenders**

- (c) The Lenders (having consulted the Insurance Adviser) may from time to time, by not less than 60 Business Days' notice to the Borrower, require the Borrower to effect and maintain insurances in respect of any risks in addition to or in place of those specified in parts B and part C as would from time to time be insured by a reasonable and prudent person which does not self-insure (except in respect of deductibles required by insurers generally) carrying out the Project (financed on a limited recourse basis) in such amounts and with such deductibles as the Lenders may reasonably require, taking into account the interests of the Finance Parties.
- (d) The Borrower shall, following receipt of notice from the Facility Agent under paragraph 2.2(a), insure, with effect from the date of such notice (or as soon as reasonably practicable in the light of the date of receipt of the notice and of prevailing market conditions), against the risks and liabilities, in the amounts and with the deductibles specified in such notice.

### **3. PROVISIONS COMMON TO ALL INSURANCES**

#### **3.1 Policies**

The Borrower shall ensure that each insurance policy taken out pursuant to this schedule 6 save for those insurance required by law:

- (a) be placed and maintained through the Insurance Broker and with such insurers or underwriters whose credit rating provided by Standard and Poor's, or any other rating agency acceptable to the Borrower and the Lenders is A- (or its equivalent) or above as may be approved (such approval not to be unreasonably withheld) in writing from time to time by the Lenders (after consultation with the Insurance Adviser);
- (b) be in such form and substance, consistent with the obligations of the Borrower under this schedule 6, as may be approved from time to time by the Lenders (having consulted with the Lenders' Insurance Adviser);
- (c) (except in the case of the insurance referred to in paragraph 6 (Products Liability Insurance) of Part B) is the subject of a notice of assignment duly given in the form set out in part 1 of schedule 2 (Form of Notice to Insurers) to the Borrower Debenture;
- (d) (except in the case of the insurance referred to in paragraph 6 (Products Liability Insurance) of Part B) is primary with no right of contribution from any other insurance available to any of the insured parties;
- (e) (except in the case of insurance referred to in paragraph 6 (Products Liability Insurance) of part B) contains endorsements substantially in the form set out in part E, except to the extent that the Lenders otherwise permit;
- (f) (except in the case of the insurance referred to in paragraph 6 (Products Liability Insurance) of Part B) does not include any provision for self-insurance or any self-insured retention, except to the extent of the deductibles specified in parts B or C or as the Lenders otherwise permit; and
- (g) does not insure any person other than those referred to in Parts B and C and such other persons as the Lenders shall have approved.

#### **3.2 Premiums**

The Borrower shall punctually pay, or procure that they are paid, all premiums due and payable under each insurance policy taken out pursuant to this schedule 6 and shall, upon the request of the Lenders, promptly produce to the Lenders evidence of such payment. Upon the renewal or time extension of any such policy the Borrower shall produce to the Lenders and the Insurance Adviser, at least seven days before its expiry date, satisfactory evidence of such renewal or time extension.

#### **3.3 Brokers' Letter**

The Borrower shall procure that each Insurance Broker through whom any insurance policy taken out pursuant to this schedule 6 (other than the insurances referred to in paragraph 6 (Products Liability Insurance) of part B) is placed deliver to the Lenders a letter substantially in the form set out in part E as soon as practicable after its appointment as broker in relation to insurances effected pursuant to Part B and Part C. The Lenders (having consulted with the Insurance Adviser) may at any time an insurance is effected or renewed agree to amendments to the endorsements substantially as set out in Part E for the insurance period in question provided that such agreement shall not release the

Borrower from its obligation to continue to seek to obtain such endorsements either during the currency of such Insurance period or on any subsequent renewal date.

#### **3.4 Non-Avoidance of Coverage**

The Borrower shall not at any time do (or omit to do) or permit any third party to do (or omit to do) anything unreasonable whereby any Insurance taken out under this schedule 6 may be rendered void or voidable or suspended, impaired or defeated in whole or in part.

#### **3.5 Notification of Claims**

The Borrower shall as soon as practicable upon becoming aware of the same notify the Lenders of any occurrence which could reasonably be expected to entitle the Borrower or any Key Sub-Contractor to submit a claim:

- (a) relating to its interest under the Insurances specified in paragraph 1 (Contractors' All Risks Insurance) of part B and paragraph 1 (Property Damage Insurance) of part C in excess of \_\_\_\_\_
- (b) relating to its interest under the Insurance specified in paragraph 2 (Delay in Start-Up) or paragraph 5 (Marine Cargo Delay in Start-Up) of Part B in excess of \_\_\_\_\_
- (c) relating to its interest under any other Insurances specified in part B or part C under which it is an Insured party for an amount in excess of \_\_\_\_\_ and
- (d) relating to its interest under any other Insurances taken out under this schedule 6 under which it is an Insured party for an amount in excess of \_\_\_\_\_

#### **3.6 Other Information**

The Borrower shall give to the Lenders:

- (a) within 30 days of a written request from the Lenders, such information as the Lenders may reasonably require including in relation to the Insurances taken out pursuant to this schedule 6 including placing slips, cover notes, original or copy policies and endorsements; and
- (b) within 30 days of the renewal of any Insurance taken out pursuant to this schedule 6, a copy of the relevant renewal notice or confirmation.

#### **3.7 Disclosure**

The Borrower shall (and shall ensure that the EPC Contractor and Operating Contractor shall) disclose promptly to the Insurers all facts, circumstances or occurrences material to the risks insured against under any Insurance effected pursuant to this schedule 6. Prior to taking out such Insurances, the Borrower shall consult with the Insurance Adviser as to the disclosure which the Borrower intends to make in relation to such Insurances.

#### **3.8 Alteration of Coverage**

The Borrower shall procure that, subject to paragraph 6 (Procedure for Agreeing and Determining Insurances) below, no reductions in limits or coverage (including those made in extensions) or increases in deductibles, exclusions or exceptions shall be made to any Insurance effected pursuant to this schedule 6 (other than the Insurances referred to in paragraph 6 (Products Liability Insurance) of part B) without the consent of the Lenders (having consulted with the Insurance Adviser), such consent not to be unreasonably withheld or delayed.

### **3.9 Entitlement to Make Claims**

Notwithstanding the assignment by the Borrower of its rights, title and interest to all the insurances taken out pursuant to this schedule 6 to the Security Agent in accordance with the terms of the Borrower Debenture, the Borrower shall (or shall procure that the EPC Contractor and Operating Contractor shall) submit and process claims relating to the respective interests of the Borrower under the insurances until the Borrower receives a notice from the Security Agent pursuant to clause 19.2 (Default Remedies) after which the Security Agent shall submit and process all the claims of the Borrower and of the EPC Contractor and Operating Contractor under such insurances.

## **4. REPRESENTATIONS**

The Borrower represents and warrants as follows (and acknowledges that the Finance Parties have entered into the Finance Documents and agreed to provide the Facilities in full reliance on such representations and warranties):

- (a) there are no insurances at the date of this agreement in effect under which it is insured or has any rights except for those required to be effected by the Borrower pursuant to this schedule 6; and
- (b) It has disclosed to the Insurers all facts, circumstances or occurrences material to the risks insured against under the insurances in effect at Financial Close.

## **5. FAILURE TO COMPLY**

### **5.1 Lenders' Remedies**

If at any time any insurance required to be taken out pursuant to this schedule 6 is not or ceases to be in full force and effect for any reason other than those that set out in paragraph 5.2 then, without prejudice to any other rights of the Finance Parties, the Lenders shall be entitled on behalf of each Lender and the other Finance Parties to procure such insurance at the expense of the Borrower and, without prejudice to any other obligations of the Borrower under the Finance Documents, require the Borrower to take (including requiring the Borrower to use all reasonable endeavours to procure that the EPC Contractor or the Operating Contractor take) all such reasonable steps to minimise hazard (having consulted with the Insurance Adviser) as the Lenders may consider expedient or necessary:-

### **5.2 No Breach**

- (a) The Borrower shall not be in breach of its obligations to take out any insurances required to be taken out pursuant to this schedule 6, if:
  - (i) the Lenders waive any such requirement;
  - (ii) the Councils provide any insurance, whether by way of self-insurance or indemnities) pursuant to the Waste Management Service Contract which, in the reasonable opinion of the Insurance Adviser, covers the insurance risks specified in this schedule 6;
  - (iii) the Borrower gives prior notice, and provides evidence reasonably satisfactory to the Lenders that risks to be covered by such insurance are Uninsurable.
- (b) The Borrower shall notify the Lenders at intervals of not less than 6 months whether any of the insurances referred to in paragraph 5.2(a)(iii) are at that time no longer Uninsurable and shall, if so required by the Lenders, effect such



Insurances as soon as practicable following notification to that effect by the Lenders and in any event within ten Business Days thereafter.

**6. PROCEDURE FOR AGREEING AND DETERMINING INSURANCES**

**6.1 Proposals by the Borrower as to Amounts and Scope of Insurances**

The Borrower shall, not later 40 Business Days prior to each date (a "Review Date") on which any Insurance required to be taken out pursuant to this schedule 6 is in accordance with the terms of this schedule 6 to be taken out or renewed, deliver to the Lenders a notice with respect to such Insurance (the "Relevant Insurance") stating the Borrower's proposals as to:

- (a) the Insurance cover to be effected or the changes (if any) to be made since the date of this agreement or the previous Review Date (if later) with respect to the Relevant Insurance and the risks or liabilities to be insured pursuant to this schedule 6;
- (b) the replacement value of all assets required to be insured pursuant to the Relevant Insurance on a replacement value basis in such detail as the Lenders may reasonably require;
- (c) the insured amounts in respect of all other risks required to be insured pursuant to the Relevant Insurance; and
- (d) the amounts of the deductibles applicable to the Relevant Insurance;

In each case, for the period of 12 months (or such other period as may be agreed between the Borrower and the Lenders) following the Review Date (each such period an "Insurance Period") together with reasonable detail as to how any amounts and values referred to above have been calculated and any information relating thereto reasonably required by the Lenders (having consulted the Insurance Adviser):

**6.2 Review by Insurance Adviser**

Upon receipt of any proposal under paragraph 6.1 (Proposals by the Borrower as to Amounts and Scope of Insurances), the Lenders shall instruct the Insurance Adviser to consider reasonably the proposal and to advise the Lenders within 20 Business Days (or such other period as the Lenders may agree) of any comments it may have thereon.

**6.3 Agreement of Proposals**

- (a) Within five Business Days of receiving advice from the Insurance Adviser in accordance with paragraph 6.2, the Lenders (after consultation with the Insurance Adviser) shall inform the Borrower whether or not the relevant proposal is agreed in whole or in part but shall not act unreasonably in not agreeing any proposal.
- (b) If any proposal is not so agreed in whole, the Lenders (after consulting the Insurance Adviser) shall, together with such notice, deliver to the Borrower counter proposals with regard to any part of the Borrower's proposal not so agreed and any other matter referred to in paragraph 6.1 above which in the reasonable opinion of the Lenders (after consulting the Lenders' Insurance Adviser) should have been contained in the Borrower's proposal.
- (c) Within five Business Days of receiving such notice, the Borrower shall inform the Lenders whether such counter proposals are agreed in whole or in part.
- (d) If any proposal or counter proposal is not so agreed in whole, the Insurance Adviser (acting on behalf of the Lenders) and a firm of insurance brokers appointed by the

Borrower shall negotiate in good faith for a further period of five Business Days after the date on which the Lenders are informed that the counter proposals are not agreed, both acting reasonably, with a view to resolving the matter in a manner reasonably acceptable to the Lenders (after consulting the Insurance Adviser) and the Borrower.

#### **6.4 Determination**

- (a) If the Insurance Adviser, the Lenders and such Insurance brokers are unable so to resolve the matter in a reasonable manner within the said further period of five Business Days, the Borrower shall, not later than the fifth Business Days prior to the Review Date, provide or procure that there is provided to the Lenders and the Insurance Adviser such documentary or other evidence as shall demonstrate to the reasonable satisfaction of the Lenders (acting on the reasonable instructions of the Lenders' Insurance Adviser) that it is unreasonable, impossible, impracticable or inadvisable for the Borrower to effect Insurances in accordance with the counter proposals of the Lenders given under paragraph 6.3(b) above, whereupon the Borrower shall with effect from the next following Review Date and throughout the Insurance Period immediately following that date effect the Insurances proposed by the Borrower in respect thereof in accordance with paragraph 6.1 incorporating any amendments which the Borrower and the Lenders have agreed pursuant to paragraphs 6.1 and 6.3 above.
- (b) If the Borrower does not so provide evidence to Lenders in accordance with paragraph 6.4(a) or 6.5 (as the case may be), the Borrower shall with effect from the next following Review Date and throughout the Insurance Period immediately following that date effect the Insurances the subject of such counter proposals (in accordance with this paragraph 6.4(b) or the initial proposal (in accordance with paragraph 6.5 (as applicable)).

#### **6.5 Renewal Terms**

Notwithstanding that the Borrower shall, when providing the proposals in accordance with paragraph 6.1, take into due consideration the availability of the Insurances required to be effected on the Review Date, the parties acknowledge that detailed renewal terms are unlikely to be issued more than 20 Business Days prior to the Review Date for the Relevant Insurance. In the event that, following issue of those terms, it is impossible for the Borrower to effect Insurances in accordance with the proposals agreed with the Lenders or otherwise determined pursuant to the other provisions of this paragraph 6, the Borrower shall, not later than the 15th Business Days prior to the Review Date, provide or procure that there is provided to the Lenders and the Insurance Adviser a revised proposal accompanied by such documentary or other evidence as shall demonstrate to the reasonable satisfaction of the Lenders (having consulted with the Insurance Adviser) that it is impossible for the Borrower to effect Insurances in accordance with the initial proposals, whereupon, if approved by the Lenders, the Borrower shall with effect from the next following Review Date and throughout the Insurance Period immediately following that date effect the Insurances proposed by the Borrower in the revised proposal.

#### **6.6 Failure to notify the Lenders**

If the Borrower fails to deliver any notice referred to in paragraph 6.1 by the Review Date, but subject to Lenders complying with its obligations under paragraph 6, the Lenders (after consulting the Insurance Adviser) may specify any change, whether of amount or otherwise, required under paragraph 6.1, such change to be included in a notice thereunder with regard to the relevant Insurance Period delivered to the Borrower, and paragraph 7 below shall apply, *mutatis mutandis*, to the matters specified in such notice as if they had been determined by the Lenders under paragraph 6.4.

**7. BORROWER TO EFFECT APPROPRIATE INSURANCES:**

7.1 Promptly following any agreement or determination under paragraphs 6.3 (Agreement of Proposals) or 6.4 (Determination), or any notice given under paragraphs 2.3 (Insurances required by the Lenders) or 6.5 (Renewal Terms), the Borrower shall insure against the risks, in the amounts, and with the deductibles so agreed or determined or notified, with effect from the next Review Date (or, in the case of any notice under paragraph 2.3 (Insurances required by the Lenders), promptly following such notice) and throughout the Insurance Period immediately following that date.

7.2 The Borrower shall promptly confirm to the Facility Agency that the Relevant Insurance has been effected and shall, within 30 Business Days of the Review Date, provide the Lenders and the Insurance Adviser with evidence of the same.

**8. FIRES PREVENTION (METROPOLIS) ACT 1774:**

The Borrower shall not seek to make any request or exercise any right which it may now or at any time prior to Expiry Date have to make any request under the Fires Prevention (Metropolis) Act 1774.

**9. INDEMNITY**

The Borrower shall, within 14 days of demand, pay to or reimburse the Lenders or the Insurance Adviser for:

- (a) any amounts expended by the Lenders or the Insurance Adviser in procuring any insurance (or providing any advice in connection therewith), or taking any steps in accordance with paragraph 5.1 (Lenders' Remedies); and
- (b) the amount of any premiums, broker's fees, insurance premium tax or similar tax paid by the Lenders or the Insurance Adviser in default of payment by the Borrower.

### **Part B Required Policies**

#### **Policies to be taken out by the Borrower and maintained during the Construction Period**

Common to each Insurance specified in this Part B (unless stated otherwise):

##### **Insureds:-**

- (a) the Councils
- (b) the Borrower;
- (c) the EPC Contractor;
- (d) Operating Contractor, where phased handover or commissioning and testing are likely to occur;
- (e) subcontractors of any tier of the Borrower or of the EPC Contractor or the Operating Contractor;
- (f) the Lenders;
- (g) consultants and suppliers - for their site activities only

each for their respective rights and interests in the Project

#### **1. Contractors' 'All Risks' Insurance ("CAR")**

##### **1.1 Insured Property**

The permanent and temporary works, materials, goods, plant and equipment for incorporation in the Waste to Energy Plant ("WtEP") Works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the EPC Contractor or the EPC Contractor's sub-contractors) and all other property used or for use in connection with WtEP Works associated with the Project.

##### **1.2 Coverage**

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

##### **1.3 Sum Insured**

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the WtEP EPC Contract, plus provision to include Principal Extensions as appropriate.

##### **1.4 Maximum Deductible**

- (a) each and every loss in respect of claims for defective design, materials, workmanship and during testing, commissioning and the maintenance period;
- (b) each and every claim for earth movement, flood, storm, windstorm, subsidence and collapse
- (c) each and every other claim

##### **1.5 Territorial Limits**

European Union including offsite storage, during inland transit and transit by Ro-Ro ferry.

#### 1.6 Period of Insurance

From the date of commencement of any WtEP Works including any enabling works and throughout the WtEP Works period until the conclusion of all WtEP Works and thereafter for 24 months in respect of defects liability.

#### 1.7 Principal Extensions

- (a) Terrorism
- (b) Munitions of war clause
- (c) Additional costs of completion clause - 10% of sum Insured subject to a limit of
- (d) Professional fees clause - limit
- (e) Débris removal clause of sum Insured subject to maximum of
- (f) 72 hour clause
- (g) European Union local authorities clause - limit
- (h) Free issue materials clause
- (i) 15% escalation clause
- (j) Automatic reinstatement of sum insured clause
- (k) Loss minimisation - limit £5,000,000
- (l) Extended maintenance
- (m) Plans and documents - limit £1,000,000
- (n) Marine 50 / 50 clause
- (o) Payments on account
- (p) Computer data reinstatement
- (q) Testing and commissioning
- (r) Fire Joint Code of Practice
- (s) Temporary repairs
- (t) Offsite storage and repair
- (u) Repair / reinstatement basis of claims settlement with cash option for non-reinstatement
- (v) Automatic extension of the period of Insurance, except for testing and commissioning that is subject to a 30 day automatic extension at pro-rata terms
- (w) Existing property
- (x) Interest of The Law Debenture Trust Corporation p.l.c. Included as mortgagee

**1.8 Principal Exclusions**

- (a) War and related perils (UK market agreed wording).
- (b) Nuclear/radioactive risks (UK market agreed wording).
- (c) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- (d) Wear, tear and gradual deterioration.
- (e) Consequential financial losses
- (f) Cyber risks.
- (g) Inventory losses, fraud and employee dishonesty.
- (h) Design exclusion LEG03/06.
- (i) Piling clause.

**2. Delay in Start Up Insurance ("DSU")**

**2.1 Insureds:**

- (a) the Borrower; and
- (b) the Lenders

each for their respective rights and interests in the Project.

**2.2 Indemnity**

- (a) In respect of:
  - (i) loss of anticipated gross revenue of the Borrower during the Indemnity Period, including an allowance for in respect of additional landfill costs arising from a delay in completion of the Works in relation to the Project as a result of loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with Item 1. of Part B of this Schedule 6, including physical loss or damage which would have been covered but for the application of any deductible;
  - (ii) the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of gross revenue of the Borrower which without such expenditure would have taken place, during the Indemnity Period.

**2.3 Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

**2.4 Maximum Excess**

45 days in the aggregate

**2.5 Minimum Indemnity Period**

Thirty six (36) months

## **2.6 Period of Insurance**

As per the Contractors' "All Risks" Insurance specified in paragraph 1 of Part B of this Schedule 6, excluding the defects liability period.

## **2.7 Principal Extensions**

- (a) Denial of access - limit £1,000,000
- (b) Utilities - limit £1,000,000 for fire, lightning, aircraft and explosion
- (c) Terrorism
- (d) Automatic reinstatement of sum insured
- (e) Professional fees
- (f) Repayment of delay damages - In circumstances where Borrower receives payment of liquidated damages from the EPC Contractor in accordance with the terms of the EPC Contract such damages shall not be taken into account when any settlement is made under this policy and Insurers shall waive all rights of recourse to liquidated and ascertained damages payable by the Contractor.
- (g) Waiver of Subrogation in favour of the EPC Contractor.
- (h) Payments on account
- (i) Specified suppliers extension - limit £5,000,000 and perils of fire, aircraft, lightning and explosion
- (j) Customers and Off-takers extension - limit £5,000,000 and perils of fire, aircraft, lightning and explosion
- (k) Construction equipment
- (l) Interest of The Law Debenture Trust Corporation p.l.c. included as mortgagee

## **2.8 Principal Exclusions**

- (a) As per the Contractors' 'All Risks' Insurance specified in paragraph 1 of Part B of this Schedule 6 other than for consequential financial losses
- (b) Delayed response by a public body or state authority

## **3. Construction Third Party Liability Insurance**

### **3.1 Interest.**

To indemnify the Insured in respect of all sums that they may become legally liable to pay as damages and/or claimants' costs and expenses in respect of accidental:

- (a) death, or bodily injury, illness, death, disease contracted by any person;
- (b) loss or damage to property;
- (c) interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the Period of Insurance and arising out of or in connection with the WtEP Works.

**3.2 Limit of Indemnity**

Not less than in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

**3.3 Maximum Deductible**

For each and every occurrence of property damage (personal injury claims will be paid in full).

**3.4 Territorial Limits**

Europe (and elsewhere in the world in respect of non-manual visits)

**3.5 Jurisdiction**

Worldwide excluding U.S.A and Canada

**3.6 Period of Insurance**

As per the Contractors 'All Risks' Insurance specified in paragraph 1 of Part B of this Schedule 6, including the defects liability period.

**3.7 Principal Extensions**

- (a) Munitions of war.
- (b) Cross liability clause
- (c) Contingent motor liability
- (d) Legal defence costs
- (e) Contractual liability
- (f) Liability arising from CDM Regulations
- (g) Health & Safety at Work Act(s)
- (h) Costs in addition to limit
- (i) Data Protection Act
- (j) Insured to include directors, officers and employees of the insured parties
- (k) Consumer Protection Act 1987
- (l) Infringement of privacy, false imprisonment, eviction and wrongful arrest
- (m) Defence, Appeal and Prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007
- (n) Terrorism liability not to be excluded
- (o) Interest of The Law Debenture Trust Corporation p.l.c. included as mortgagee



### 3.8 Principal Exclusions

- (a) War and related perils (UK market agreed wording)
- (b) Nuclear/radioactive risks (UK market agreed wording)
- (c) Liability for death, illness, disease or bodily injury sustained by employees of the Insured.
- (d) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- (e) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insureds.
- (f) Liability in respect of loss or damage to property in the care, custody and control of the Insured but this exclusion is not to apply to any property belonging to the Councils which is in the care, custody and control of another Insured.
- (g) Events more properly covered under a professional indemnity policy.
- (h) Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- (i) Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- (j) Losses indemnified under the CAR, DSU, Marine Cargo and Marine Delay in Start Up Insurances specified in this Part B of Schedule 6
- (k) Cyber risks
- (l) Liability arising from toxic mould and asbestos

### 4. Marine Cargo Insurance

#### 4.1 Insured Property

All property and interest of every description for all transits by sea or air of all goods as listed in Appendix A of Schedule 20F of the EPC Contract intended for the WtEP Works where such items are carried for the account and interest of the Insured from risk attachment at factory premises to the Site, including offsite storage.

#### 4.2 Coverage

"All Risks" of physical loss or damage to the Insured Property unless otherwise excluded.

#### 4.3 Limit of Indemnity

Not less than the full replacement value plus 10% for any one sending/any one voyage.

#### 4.4 Maximum Deductible

Not to exceed \_\_\_\_\_ each occurrence

#### 4.5 Territorial Limits

Worldwide

#### 4.6 Period of Insurance

On an 'Open' cover basis, from the commencement of the relevant transits until the delivery to the Site plus any deferred unpacking period.

**4.7 Principal Extensions**

- (a) Terrorism
- (b) Institute Cargo Clauses (A)
- (c) Institute War Clauses (Cargo)
- (d) Institute Strikes Clauses (Cargo)
- (e) Overland transit to the extent it is not covered under the Contractors' 'All Risks' Insurance specified in paragraph 1 of part B of this Schedule 6.
- (f) Institute Classification Clauses
- (g) Institute War Cancellation Clauses, other non-cancellable
- (h) Accumulation Clause, 200%
- (i) Interest of The Law Debenture Trust Corporation p.l.c. Included as mortgagee

**4.8 Principal Exclusions**

- (a) As per Institute Cargo Clauses (A)
- (b) Ordinary leakage ordinary loss in weight or volume or ordinary wear and tear of the subject matter insured
- (c) Inherent vice or nature of the subject matter insured
- (d) Insolvency or financial default of the owners managers charterer's or operators of the vessel or aircraft, unless not material to the claim.
- (e) Un-seaworthiness of the vessel or craft, etc but only where the Insured is aware of the un-seaworthiness
- (f) Insufficiency or unsuitability of packing
- (g) Delay
- (h) Vessel not ISM Code certified/SOLAS Convention
- (i) War and Radioactivity on Land

**5. Marine Cargo Delay In Start Up Insurance**

**5.1 Insureds**

- (a) the Borrower; and
- (b) the Lenders

each for their respective rights and interests in the Project

**5.2 Indemnity**

- (a) In respect of:

- (i) loss of anticipated gross revenue of the Borrower during the Indemnity Period, including an allowance in respect of additional landfill costs arising from a delay in completion of the WtEP Works in relation to the Project as a result of loss or damage covered under the Marine Cargo Insurance effected in accordance with Item 4 of Part B of this Schedule 6, including physical loss or damage which would have been covered but for the application of any deductible;
- (ii) the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of gross revenue of the Borrower which without such expenditure would have taken place, during the Minimum Indemnity Period.

**5.3 Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

**5.4 Maximum Excess**

in the aggregate

**5.5 Minimum Indemnity Period**

**5.6 Period of Insurance**

On an 'Open' cover basis, from the commencement of the relevant transits until the delivery to the Site plus any deferred unpacking period.

**5.7 Principal Extensions**

- (a) As per Marine Cargo Insurance specified at paragraph 4 of Part B of this Schedule 6.
- (b) Payments on account.
- (c) Repayment of delay damages - In circumstances where Borrower receives payment of liquidated damages from the EPC Contractor in accordance with the terms of the EPC Construction Contract such damages shall not be taken into account when any settlement is made under this policy and Insurers shall waive all rights of recourse to liquidated and ascertained damages payable by the EPC Contractor
- (d) Waiver of subrogation in favour of the EPC Contractor
- (e) Interest of The Law Debenture Trust Corporation p.l.c. Included as mortgagee

**5.8 Principal Exclusions**

As per Marine Cargo Insurance specified at paragraph 4 of part B of this Schedule 6.

**6. Products Liability Insurance**

**6.1 Insureds**

EPC Contractor

**6.2 Interest**

Indemnity for legal liability arising as a result of property damage or bodily injury claims arising out of the supply of products in connection with the Project.

**6.3 Limit of Indemnity**

Not less than each and every loss and in the annual aggregate.

**6.4 Insurance Period**

From the date of the Agreement until 12 years after the WtEP Works Completion date.

## **Part C Required Policies**

### **Policies to be taken out by the Borrower and maintained during the Operating Period**

Common to all policies in part C (unless stated otherwise):

#### **Insureds:**

- (a) The Councils
- (b) The Borrower
- (c) Operating Contractor.
- (d) The Lenders

Each for their respective rights and interests in the project.

#### **1. Property Damage Insurance**

##### **1.1 Insured Property**

The assets which are the property of the Borrower and relate to the new Waste to Energy Plant ("Project Assets").

##### **1.2 Coverage**

"All risks" of physical loss or damage to the Insured Property from any cause not excluded.

##### **1.3 Sum Insured**

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Principal Extensions as appropriate.

##### **1.4 Maximum Deductible**

each and every claim.

##### **1.5 Territorial Limits**

United Kingdom plus elsewhere whilst in inland transit.

##### **1.6 Period of Insurance**

From the date the risk attaches or as otherwise specified for the duration of this Agreement and renewable on an annual basis unless agreed otherwise by the Parties (other than the Security Agent).

##### **1.7 Principal Extensions**

- (a) Capital additions clause.
- (b) 72 hour clause.
- (c) European Union local authorities clause.
- (d) Professional fees.
- (e) Debris removal.

- (f) Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded.
- (g) Day 1 reinstatement with cash option for non-reinstatement
- (h) Automatic reinstatement of the Sum Insured
- (i) Terrorism
- (j) Temporary repairs
- (k) Loss minimisation
- (l) Plans and documents
- (m) Payments on account
- (n) Interest of The Law Debenture Trust Corporation p.l.c. included as mortgagee

#### 1.8 Principal Exclusions

- (a) War and related perils (UK market agreed wording).
- (b) Nuclear/radioactive risks (UK market agreed wording).
- (c) Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- (d) Wear, tear and gradual deterioration.
- (e) Consequential financial losses.
- (f) Cyber risks.
- (g) Refractory linings from first application of heat
- (h) Waste fuel quality clause
- (i) Losses recovered under the CAR policy.

#### 2. Business Interruption Insurance

##### 2.1 Insureds

- (a) the Borrower; and
- (b) the Lenders.

each for their respective rights and interests in the Project.

##### 2.2 Indemnity

- (a) In respect of:
  - (i) loss of anticipated gross revenue of the Borrower during the Indemnity Period including an allowance for additional landfill costs arising from interruption or interference with the provision of the Services in connection with the Project Assets as a result of loss or damage covered under the Property Damage Insurance effected under Item 1 of Part C of this Schedule 6 or Item 2 of paragraph C of Schedule 9 of the Waste Management Service

Contract or which would have been covered but for the application of any deductible.

- (ii) the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of revenue of the Borrower as detailed in (i) above which without such expenditure would have taken place, during the Indemnity Period.

**2.3 Sum Insured**

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

**2.4 Maximum Excess**

each and every claim, and 60 days for each and every breakdown loss.

**2.5 Minimum Indemnity Period**

Thirty six (36) months.

**2.6 Period of Insurance**

As per the Property Damage Insurance

**2.7 Cover Features & Extensions**

- (a) Denial of access.
- (b) Utilities.
- (c) Accountants Clause.
- (d) Payments of account
- (e) Customers and offtakers extension
- (f) Specified suppliers.
- (g) Notifiable diseases

**2.8 Principal Exclusions**

- (a) Exclusions under the Property Damage Insurance, other than for consequential financial losses.
- (b) Delayed response by a public body or state authority.

**3. Third Party Public and Products Liability Insurance**

**3.1 Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

- (a) death, or bodily injury, illness, death, disease contracted by any person;
- (b) loss or damage to property;

- (c) Interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the Period of Insurance and arising out of or in connection with the provision of the Services in relation to the Project Assets.

**3.2 Limit of Indemnity**

in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability in relation to the Services in relation to the Project Assets.

**3.3 Maximum Deductible**

for each and every occurrence of property damage. (Personal injury claims will be paid in full).

**3.4 Territorial Limits**

United Kingdom and elsewhere in the world in respect of non-manual visits.

**3.5 Jurisdiction**

Worldwide subject to North American conditions.

**3.6 Period of Insurance**

As per the Property Damage Insurance

**3.7 Cover Features & Extensions**

- (a) Cross liability clause.
- (b) Contractual liability.
- (c) Costs in addition to limit.
- (d) Contingent motor liability.
- (e) Legal defence costs.
- (f) Health and Safety at Work Act
- (g) Data Protection Act
- (h) Consumer Protection Act
- (i) Defence, appeal and prosecution costs relating to Corporate Manslaughter and Corporate Homicide Act 2007
- (j) Defective Premises
- (k) Terrorism liability not to be excluded
- (l) Insured to include directors, officers and employees of the insured parties
- (m) Infringement of privacy, false imprisonment, eviction and wrongful arrest
- (n) Legionella



- (o) Interest of The Law Debenture Trust Corporation p.l.c. included as mortgagee

### 3.8 Principal Exclusions

- (a) Liability for death, illness, disease or bodily injury sustained by employees of the Insured.
- (b) Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- (c) Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- (d) Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third-party property.
- (e) Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- (f) Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- (g) Liability arising from asbestos.
- (h) Liability arising from toxic mould.
- (i) Losses under the property damage policy or business interruption policy.
- (j) War.
- (k) Nuclear/radioactive risks.
- (l) Cyber risks and data recognition.

#### **Part D Environmental Impairment Liability Insurances**

1. Policies to be taken out by the Borrower and maintained during the Agreement period  
Common to all policies in Part D (unless stated otherwise):

1.1 **Insureds:**

- (a) the Councils;
- (b) the Borrower;
- (c) EPC Contractor during the Construction Period;
- (d) Operating Contractor;
- (e) Construction sub-contractors during the Construction Period; and
- (f) the Lenders

each for their respective rights and interests in the Project.

#### **Environmental Impairment Liability Insurances**

1.2 **Interest**

To indemnify the Insured Parties in respect of all sums that they may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (e.g. Local Authority, Environment Agency or a judicial authority) or a third party and resulting in a claim or claims first made against the Insured Parties and reported to the Insurer during the policy period. A pollution incident relates to either new or aggravation of pre-existing pollution conditions caused by the Insured in connection with the carrying out of the WtEP Works and the provision of the Services in connection with the Project Assets.

1.3 **Limit of Indemnity**

Not less than any one occurrence and in the aggregate during the policy period.

1.4 **Maximum Deductible**

or each and every loss.

1.5 **Territorial Limits**

The WtEP Project site and off site migration of contamination from such site.

1.6 **Jurisdiction**

English law and jurisdiction.

1.7 **Period of Insurance**

From the commencement of the WtEP Works and throughout the period of this Agreement.

**1.8 Cover Features and Extensions**

- (a) Regulatory claims or third party claims for on-site clean-up of new conditions arising from the act or omission of the Insured. Regulatory or third party claims for off-site clean-up of new conditions arising from the act or omission of the Insured.
- (b) Third party claims for on-site and off-site property damage from new conditions arising from the act or omission of the Insured.
- (c) Legal costs.
- (d) Liability arising from any works.
- (e) Biodiversity/natural resource damage
- (f) Interest of The Law Debenture Trust Corporation p.l.c. included as mortgagee

**1.9 Principal Exclusions**

- (a) War and related perils (UK market agreed wording).
- (b) Nuclear/radioactive risks (UK market agreed wording).
- (c) Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).
- (d) Intentional, wilful or deliberate non-compliance with any EU Authority decision or any UK or EU regulation.
- (e) Criminal fines and penalties.
- (f) Terrorism.
- (g) Known Conditions.

## **Part E Endorsements**

### **Insurance Policy Endorsement/Provisions**

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Facilities Agreement (as defined below).

Notwithstanding any other provision of this Policy, the following endorsement shall apply:

#### **Section I: Definitions**

##### **1. Definitions**

In this endorsement:

**"Borrower"** means Mercia Waste Management Limited;

**"Facilities Agreement"** means the senior term loan facilities agreement dated on or around the date hereof between, amongst others, the Borrower and the Finance Parties;

**"Finance Parties"** has the meaning given to it in the Facilities Agreement and includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing;

**"Insurance Proceeds Account"** means the account in the name of the Borrower with HSBC Bank plc with account number \_\_\_\_\_ and sort code \_\_\_\_\_

**"Insured"** means those parties so described in the Policy Schedule;

**"Insurers"** means the Insurer or Insurers underwriting this insurance policy;

**"Proceeds Account"** means the account in the name of the Borrower with HSBC Bank plc with account number \_\_\_\_\_ and sort code \_\_\_\_\_

**"Project"** has the meaning given to it in the Facilities Agreement;

**"Security Agent"** means The Law Debenture Trust Corporation p.l.c. in its capacity as security trustee for the Senior Creditors and includes its successors in that capacity; and

**"Senior Creditors"** has the meaning given to it in the Intercreditor Deed.

#### **Section II: Policy**

##### **2. Separate Policy**

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured party of the terms of this Policy and of any duties imposed upon it relating thereto, and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

##### **3. Interest of the Finance Parties**

The Insurers acknowledge that all Finance Parties (other than the Security Agent) and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-Insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-Insured parties.

**4. Liability for premium**

Neither the Security Agent nor the Finance Parties shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve the Borrower from its obligations to pay any premium under this Policy.

**5. Disclosure**

**5.1** The Finance Parties shall have no duty of disclosure to Insurers in relation to the Policy.

**5.2** The Insurers acknowledge to the Finance Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring the Borrower in respect of the risks hereby insured on the assumption that such information is not materially misleading, (ii) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties (other than the Security Agent) or their directors, officers, employees or, and (iii) in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Insurers in this paragraph 6.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including the Borrower) other than the Finance Parties and the In the absence of such acknowledgements.

**5.3** Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.

**Section III: Rights to avoid / cancel or change Policy terms**

**6. Non-vitiation**

**6.1** The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.

**6.2** The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together "the Relevant Matter"), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

**7. Cancellation**

**7.1** The Insurers agree that they shall not seek to cancel or suspend the construction phases of this Insurance except: (i) for non-payment of premium; or (ii) where an Insured party consistently fails to comply with Insurers' requirements relating to survey or loss control action points; or (iii) where an Insured party is in breach of an applicable Joint Code of Practice (or equivalent).

**7.2** The Insurers shall promptly notify the Security Agent in writing in the event of any:

- (a) suspension, cancellation, termination; or
- (b) In the case of cover under material damage, business interruption, third party public or products liability sections of this Policy covering the operational phase of the Project, non-renewal of this Policy by the Insurers or by the Insured. The cover provided by this Policy shall continue in force and unaltered for at least 30 days after written notice of such suspension, cancellation, termination or (in the case of cover under material damage, business interruption or third party public or products liability sections of this Policy) non-renewal is given to the Security Agent. Nothing in this clause shall give the Insurers any right to suspend, cancel or terminate this Policy which the Insurers do not otherwise have under this Policy.

7.3 The Insurers shall promptly notify the Security Agent in writing of any default in the payment of premium and shall give the Lenders at least 30 days' notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.

**8. Changes in cover**

The Insurers shall give the Security Agent at least 30 days' notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

**9. Amendments to Endorsement**

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between Borrower, the Insurers and the Security Agent, such amendment to be endorsed on the Policy.

**Section IV: Claims**

**10. Notice of Claims**

Notice of claim by the Finance Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

**11. Claim Payments/Loss Payee**

Payments made in accordance with this paragraph 12 shall, to the extent of the payment, discharge the Insurers' liability to pay the Borrower or any other Insured.

**11.1 In respect of the insurance under this Policy of material damage risks only:**

11.1.1 all claim payments in respect of a single event (or a series of related events) shall be paid into the Insurance Proceeds Account; and

11.1.2 any return premiums shall be paid to the Proceeds Account or such other account as the Security Agent directs in writing

**11.2 In respect of the insurance under this Policy of public liability risks only:**

11.2.1 all claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the Insurance Proceeds Account or such account as the Security Agent directs in writing.

11.2.2 any return premiums shall be paid to the Proceeds Account or such other account as the Security Agent directs in writing.

11.3 In respect of the Insurance under this Policy of loss of revenue risks only:

11.3.1 all claim payments shall be paid to the Proceeds Account or such other account as the Security Agent directs in writing.

11.3.2 any return premiums shall be paid to the Proceeds Account or such other account as the Security Agent directs in writing.

**12. Set-off**

Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by the Borrower under or in relation to the Policy.

**Waiver of subrogation**

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate Schedules arising out of any Occurrence in respect of which any claim is admitted and is Insured hereunder for the benefit of such Insured except against any:

12.1.1 consultant or equivalent professional party to the extent that their professional errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or

12.1.2 supplier or manufacturer to the extent that their errors, omissions or activities not covered by this Policy have caused or contributed to a loss covered under this Policy; or

12.1.3 such Insured to the extent that they are entitled to recover in respect of a loss under cover falling within paragraph 15(a) to (e) below (or would be so insured if cover in the terms set out in this Policy had not been taken out); or

12.1.4 in relation to losses paid under material damage or business interruption sections of the Policy, any Insured who is not covered under those Sections.

**13. Primary Insurance**

The Insurers agree that this Insurance provides the primary cover for risks Insured under this Policy. In the event that any risk under this Policy is also insured under any other policy of Insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of Insurance did not exist except in respect of:

13.1.1 excess layers of third party cover effected specifically for the Project;

13.1.2 any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;

13.1.3 any claim under this Policy to which a Marine 50/50 Clause applies;

13.1.4 any claim made under a Contingent Motor Liability extension to this Policy; or

13.1.5 any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:

- (a) any other policy specifically effected for the construction or operational phase(s) of the Project; or
- (b) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project;

or a related business interruption insurance policy.

#### **Section V: Miscellaneous**

#### **14. Notice of Security Interest**

The Insurers acknowledge that by an assignment contained in a debenture dated on or around the date hereof (the "Assignment"), the Borrower assigned by way of security to the Security Agent (as trustee for the Finance Parties) all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in Borrower's interest in this insurance.

#### **15. Notice**

- 15.1** All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:

**15.1.1** If by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and

**15.1.2** If by post, within two business days of release from the relevant Insurer's office.

- 15.2** The address and fax number of the Security Agent for all notices under or in connection with the Policy are those notified from time to time by the for this purpose to the insurance broker at the relevant time. The initial address and fax number of the is as follows:

The Security Agent:

Address: The Law Debenture Trust Corporation p.l.c.  
Fifth Floor  
100 Wood Street  
London  
EC2V 7EX

Fax No: 020 7606 0643

Attention: The Manager, Commercial Trusts (Ref: 200840)

#### **16. Governing Law & Jurisdiction**

The Policy and any non-contractual obligations arising out of or in connection with it shall be governed by and shall be construed in accordance with English law.

This endorsement overrides any conflicting provision in this Policy



**Part F - Broker's Letter of Undertaking to the Lenders**

**Broker's Letter of Undertaking**

To: [ ] (the Lenders)

Dear Sirs

**Senior Term Loan Facilities Agreement relating to the Herefordshire and Worcestershire Energy from Waste Project in Hartlebury**

1. We refer to the facilities agreement (the "Facilities Agreement") dated [ ] letter between the Borrower, The Country of Herefordshire District Council and Worcestershire County Council as Lenders and The Law Debenture Trust Corporation p.l.c. as Security Agent.
2. Terms defined in the Facilities Agreement shall have the same meaning in this letter.
3. We act as insurance broker to the Borrower with respect to the Insurances specified in Schedule 6 to the Facilities Agreement (the "Insurances") and, as such, we have provided the Borrower with our professional assistance with regard to the identification of the Insurances to be entered into it by the Borrower in relation to the Project (as defined in the Facilities Agreement) and the determination of the content and execution of the related insurance contracts.
4. We confirm that, as at today's date, the Insurances specified in Schedule 6 to the Facilities Agreement are in effect in accordance with the requirements of the Facilities Agreement in respect of the risks set out in the attached cover notes and that all premiums due at the date hereof in respect of such Insurances have been paid in full.
5. We also confirm that the Insurers have been sent the notices of assignment in the form set out in the Borrower Charge and have been asked to provide acknowledgements of those notices within two working days of receipt by them of those notices of assignment. We shall confirm in writing to the Security Agent and the Borrower when all acknowledgements of such notices have been obtained.
6. Pursuant to instructions received from the Borrower and in accordance with paragraph 3 (*Brokers' Letter*) of Part A of Schedule 6 (*Insurance*) of the Facilities Agreement, we hereby undertake during the period for which we are appointed as insurance broker to the Borrower:
  - (a) In the case of any insurance policy, so far as is reasonably practicable before, but in any event at the time it is issued or renewed, to notify you if it materially differs in substance from the requirements of Schedule 6 or that it does not contain terms or endorsements substantially in the form attached hereto as Part F of Schedule 6 (except as may otherwise be agreed by the Security Agent in consultation with the Lenders' Insurance Adviser) together with a copy of the notice(s) of assignment to the insurer signed by an authorised signatory of the Borrower and acknowledged by the Insurers;
  - (b) If so directed by the Lenders, to pay to the Insurance Proceeds Account without any set-off or deduction of any kind for any reason any and all proceeds from the Insurances received by us from the Insurers;
  - (c) to advise the Lenders and the Security Agent;

- (i) at least 30 days (or such lesser period, if any, as may be specified from time to time in the case of war risks and kindred perils) before (1) cancellation of any of the Insurances is to take effect and (2) any alteration to, termination or expiry of any of the Insurances is to take effect;
  - (ii) of any default in the payment of any premium for any of the Insurances promptly on the occurrence of a default;
  - (iii) at least 30 days prior to the expiry of the Insurances if we have not received renewal instructions from the Borrower and/or any jointly Insured parties or the agents of any such party;
  - (iv) at least 30 days prior to the expiry of these Insurances of all reasonable information regarding their renewal arrangements, including premiums and Insurers and terms and conditions of renewal cover;
  - (v) of any act or omission or of any event of which those of our employees directly involved in the placement or administration of the Insurances become aware and which might reasonably be expected to invalidate or render void, avoidable or unenforceable in whole or in part any of the Insurances promptly on becoming aware of it; and
  - (vi) promptly upon receipt of notice of any material changes notified to us which are proposed to be made in the terms of the Insurances and which, if effected, would result in any reduction in limits or coverage (including those resulting from extensions) or in any increase in deductibles, exclusions or exceptions;
- (d) to disclose to you and the Insurers any fact, change of circumstance or occurrence notified to those of our employees directly involved with the placement or administration of the Insurances or any fact, change of circumstance or occurrence which such employees become aware, which in our reasonable assessment may be material to the risks insured against under the Insurances or which would result in any material reduction in limits or alteration in coverage, or increase in deductibles, exclusions or exceptions promptly when we become aware of such fact, change of circumstances or occurrence and if so requested by you to disclose the same to affected Insurers;
  - (e) to treat as confidential all information marked as or otherwise stated to be confidential and supplied to us by any person for the purposes of disclosure to the Insurers under the Insurances and not to disclose, without the written consent of that person, such information to any third party other than the Borrower or the Insurers under the Insurances in satisfaction of our undertaking in paragraph (d) above;
  - (f) to notify the Lenders and the Security Agent 30 days or such lesser period as shall be practicable prior to our ceasing to act as insurance broker to the Borrower or, if impracticable, promptly following our ceasing so to act;
  - (g) to make available to you or your agent on reasonable request our placing and claims files, and provide you (at your expense) with copies of any documents from those files; and
  - (h) to hold the insurance slips and the insurance policies, to the extent held by us, to the order of the Security Agent.
7. The above undertakings are given:
- (a) subject to our lien, if any, on the insurance policies for premiums due under the policies and subject to any Insurers' right of cancellation (if any) following default in

excess of 60 days in payment of such premiums, but we undertake to advise you as soon as practicable if any such premiums are not paid to us by the due date and to give you a reasonable opportunity of paying such amounts of such premiums outstanding before notification of cancellation on behalf of the insurers; and

(b) subject to our continuing appointment for the time being as insurance brokers to the Borrower.

8. Our aggregate liability to any persons, companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Insurance for this Project, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £5,000,000, even if we are negligent. We do not limit liability for fraud, wilful misconduct, or death or personal injury caused by our negligence.

This letter shall be governed by and construed in accordance with English law.

Yours faithfully

For and on behalf of

Marsh Ltd

Annexure A - List of Insurances

Annexure B - Policy Endorsements

**SCHEDULE 7 - DRAWDOWN SCHEDULES**

**Part I - Facility A**

**REDACTED**

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Part II - Facility B

[ REDACTED ]

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## **ANNEX 6**

### **OUTLINE DETAILED MAINTENANCE PLAN**

#### **OUTLINE of DETAILED MAINTENANCE PLAN**

##### **Introduction**

This part describes the outline maintenance plan Mercia will follow to ensure the availability and performance of the plant during its operational life. This outline maintenance plan will be updated with the draft O&M Manuals within 30 days prior to Takeover certificate is issued.

##### **(a) Equipment Maintenance**

All maintenance work on the Facility will be planned, undertaken and recorded by means of the use of a computerized maintenance management system (CMMS). [THE CMMS will be used for maintaining spares inventory, issuing maintenance work orders and scheduling maintenance works. All the maintenance procedures and regime will be in accordance with the O&M Manuals issued for the operation and maintenance of the Facility.

The works ordered includes all the relevant information required for a maintenance programmed covering:

- Maintenance priority
- Work order tracking
- Spare inventory and supplies
- Maintenance equipment required
- External services required
- Safety requirements
- Equipment shutdown procedure
- Hot-working requirements
- Recording and Reporting
- Asset failures
- Predictive maintenance analysis

##### **Maintenance categories**

The maintenance of the Plant can be summarized under four general categories which are listed below. Greater description of what activities will be carried out under these categories will be introduced based on the O&M Manuals.

### **Preventive Maintenance (PM):**

This includes all the activities to be carried out in order to reduce the possibility of serious breakdowns of equipment or systems and to ensure the safe operation of the facility. Typically PM includes greasing and lubrication programmes for the equipment, checking all safety and firefighting equipment, rotation/inspection of back-up equipment. The preventive Maintenance will be based on the recommendations from the manufacturers which will be stated in the O&M Manuals and internal know-how from both parent companies after years' experience operating EfW facilities.

### **Routine Maintenance (RM):**

Routine maintenance includes replacement of lighting equipment, repair/adjustment of instruments, replacement of pump packings and valves, transmission chain adjustment and road, land and building repairs all resulting from the normal operation of the Plant.

Some examples of non-programmed maintenance which could halt the furnace are:

- Non-programmed maintenance of the feeder system
- Breakage of the ash removal system
- Loss of fans
- Grate blockage

The above-mentioned situations may give rise to specific equipment shutdown but not shutdown of the plant. Given equipment redundancy and the installation of 100% spare key mechanical equipment on the incineration line, the Plant would only undergo a total shutdown in the event of both duty and spare plant items failure. Furthermore, it must be borne in mind that, sometimes, the maintenance programme may be combined with an unscheduled shutdown, thus minimising the overall non-availability time of the unit.

### **Scheduled Overall Maintenance (SOM):**

All major maintenance work which does not require immediate attention will be scheduled for the annual shutdown of the Facility. This work typically takes place during the yearly shutdown and includes: furnace cleaning, detailed inspection of the Plant, pump replacement, additions to the installation and any other important work which cannot be carried out whilst the Facility is operational.

During SOM outage works might include:

- Boiler tube thickness checks
- Replacement of items with a limited working life.
- Periodic equipment overhauls
- Calibration and resetting of process critical items
- Testing of pressure systems in accordance with the written scheme of examination.

## **Emergency Maintenance (EM):**

Emergency maintenance may include anything from breakages of a steam pipe which require Plant shutdown to a breakdown in the air-conditioning system. The Plant Manager and Operations Managers, will take those decisions that they deem necessary concerning the steps to be taken to rectify the maintenance problems in emergencies. The Plant staff will solve the problems in these circumstances and may, if necessary, call in outside specialists or subcontractors.

Some examples of unplanned or emergency maintenance which could halt the Facility operation include:

- Blockage of the feeder system
- Blockage of the ash removal system
- Boiler tube leak
- Failure of two bag filter elements simultaneously.
- I.D. Fan rotor / motor failure

Some situations may give rise to specific equipment shutdown of the Facility. Given equipment redundancy and the installation of spare mechanical equipment, the Facility would only undergo a total shutdown if an event which causes a safety risk to the Facility or personnel, or adversely affects the Facility performance.

Furthermore, it must be borne in mind that, sometimes, the maintenance programme may be combined with an unscheduled shutdown, thus minimizing the overall non-availability time of the Facility.

## **Inspection Plan**

In order to maximise continuous availability of the Plant, it is essential that, after start-up, a rigorous preventive maintenance schedule is carried out. In addition, a continuous inspection regime will be carried out on a regular basis to the following parts of the Facility.

- Waste Reception
  - Weighing
  - Unloading
  - Storage in the pit
- Waste Feeding
  - Transport to the feeder
  - Feeding hoppers
- Waste Input Rates



- Waste Drying
- Combustion
- Final Incineration and Cooling of bottom ash
- Ash Extraction
- Air Circuits
- Boilers
- Purification of Flumes
- Thermal Circuit
- Auxiliary Installations
- Electrical Installations
- Energy Production

A list of the exact activities and the likely frequency of inspection for each working area is given below.

a. Waste Reception

Weighing:

Inspections will be carried out every shift.

Activities:

- Visual inspection of the platform, assessment of cleanliness
- Verification of zero calibration on the weighbridge
- Verification of the ticketing process

Unloading:

Inspections will be carried out every shift.

Activities:

- Visual inspection of the operation area
- Verification of the traffic control system
- Checking the indicating lights

Storage in pit:

Continuous inspection (when the plant waste feed crane is not operated in automatic mode).

Activities:

- Inspection of the received waste (from the crane operators chair)
- Waste mixing
- b. Waste Feeding

Transport to the feeding hopper:

Continuous inspection (when the plant waste feed crane is not operated in automatic mode).

Activities:

- Checking the overhead crane travelling operation
- Checking the running of the overhead crane
- Checking the elevation operations
- Checking the opening and closing operations of the grab
- Visual inspection of the motor reduction unit oil levels
- Visual inspection of the grab oil levels

Feeding hoppers:

Inspection will be carried out every shift.

Activities:

- Visual inspection of the cleanliness of the loading area
- Verification of the correct operation of the waste level indicators in the feeding ducts
- c. Waste Input Rates:

Waste input is monitored by the DCS and plant Operators continuously, and local checks will be undertaken each shift.

Activities:

- Visual inspection of the driving operation of grate
- Verification of the clean condition of the hoppers under the grilles
- Review of Grille movement

- To check the driving operation of the electro valves
- To check the operation of the speed regulators
- To check the driving operation of the limits switch

d. Waste Drying:

Waste Drying is monitored by the DCS and plant Operators continuously, and local checks will be undertaken each shift.

Activities:

- Visual inspection of the driving operation of grate
- Verification of the clean condition of the hoppers under the grilles
- Review of Grille movement
- To check the driving operation of the electro valves
- To check the operation of the speed regulators
- To check the driving operation of the limits switch

e. Combustion:

Combustion is monitored by the DCS and plant Operators continuously, and local checks will be undertaken each shift

Activities:

- Visual inspection of the interior of the furnace through the CCTV cameras installed inside the furnace
- Visual inspection of the incineration quality by means of flame analysis
- Visual inspection of the running grilles
- Visual inspection of the driving operation of grilles
- Verification of the clean condition of the hoppers under the grilles
- Review of grate movement
- To check the driving operation of the electro valves
- To check the operation of the speed regulators
- To check the driving operation of the limits switch

f. Final Incineration and Cooling of bottom ash:

To monitored by the DCS and plant Operators continuously, and local checks will be undertaken each shift.

Activities

- Visual checking of the interior of the furnace through the CCTV cameras installed inside the furnace
- Inspection of the degree of incineration attained
- Modification of the combustion parameters if necessary
- Verification of the clean condition of the hoppers under the grilles
- Review of Grille movement
- To check the driving operation of the electro valves
- To check the operation of the speed regulators
- To check the driving operation of the limits switch

g. Ashes Extraction:

To monitored by the DCS and plant Operators continuously, and local checks will be undertaken each shift.

Activities:

- To verify the operation of the wormwheel
- To check condition of the ash hoppers under the boiler
- To check the operation of the rotation valves
- To check the driving operation of the pneumatic extraction circuit
- To verify the oil levels of the motor reduction units

h. Air Circuits:

Inspections will be carried out every shift.

Activities:

- To check the clean condition of the aspiration grilles located in the waste reception bay
- To check the correct driving operation in manual and automatic mode of the aspiration gate of the main air ventilator

- To check the correct driving operation in the manual and automatic mode of the regulation gates of the main air located under each one of the grilles
- To verify the conditions of expansion joints of the main air ducts
- To check through touch the heat of the ventilation ball bearings of the main air ventilator
- To check the tension of the transmission belts
- Auditive checking of the noises and vibrations in the main air ventilator
- To verify the inlet and outlet temperatures of the air in the preheater
- To check the correct operation of the air preheater
- To check the driving operation in manual and automatic mode of the gate of the secondary air aspiration
- To check the temperature of the secondary air ducts
- To verify the condition of the expansion gaskets in the secondary air circuit
- To check the condition of the couplings in the duct-furnace inlet of the secondary air
- To check the tension of the transmission belts of the secondary air ventilator
- To check through touch the heating degree of the ball bearings of the secondary air ventilator
- Auditive checking of the noises and vibrations in the secondary air ventilator

i. Gases Circuits:

Inspections will be carried out every shift.

Activities:

- Opening of the visit gates and search for any ashes deposited
- Elimination of the ashes deposited if necessary
- Expansion joints
- Cleaning of the analysers
- Verification of the analysers correct operation
- Verification of zero with basic product in the analysers (in normal air conditions)
- Cleaning of opacimeters

- Revision of the continuous paper and verification of the non-existence of high pollutant emission points
- Change of continuous paper if necessary
- To verify the correct operation of the chimney beacon lights
- To check the correct operation of the corresponding alarms of dust emission in gases, both of the analysers as well as the opacimeter

j. Boiler:

Inspections will be carried out each shift, and wherever possible continuously monitored through the DCS.

Activities:

- To check the similar visual levels "in situ"
- To check the correct remote signaling levels
- To check the correct electrical signaling levels
- To check the manometer gauging "in situ"
- To check the correct gauging of the electrical manometers
- To check the driving operation of the automatic feeding valve
- To verify the correct operation of the security valves (by hand)
- To visually check the non-existence of external leaks
- Auditive checking of the non-existence of internal leaks
- To check the correct operation and percentage of continuous purging of the surface networks
- To check the correct operation of the automatic purging
- To carry out the corresponding purging, following the manufacturer's instructions
- Visual inspection through the visiting gates, if there is any, of the efficiency of the hammer breaker

k. Fumes Purification:

Inspection will be carried out every shift, and monitored continuously wherever possible through the DCS.

#### Activities:

- Revision of the oil level of the transformers
- revision of the compressed air system pressure
- Verification of the low voltage
- Verification of the high voltage
- Checking of the electric energy consumption of the different fields
- Checking of the correct operation of the hammers
- To verify the correct clean condition of the electrodes (electro filter) or cartridges (cartridge filters)
- To check the fixation of the cartridges (cartridge filter)
- To check the fumes analysis before and after the filter and to verify if we are working within the correct field of action
- To check through touch, the heating degree of the forced draught ventilator bearing
- Auditive checking of the noises and vibrations of the forced draught ventilator
- To check the tension of the transmission belts of the forced draught ventilator

#### 1. Thermal Circuit:

Inspections will be carried out each shift, and monitored continuously wherever possible through the DCS.

#### Activities:

- To check the main collector pressure
- To check the auxiliary collector pressure
- To check the vapour temperature in the main collector
- To check vapour temperature in the auxiliary collector
- Visual verification of the non-existence of leaks in flanges and valves along all the circuit
- Verification of the correct condition of the valves of the circuit, verifying that all those that should be opened/closed are really opened/closed
- To check the correct operation of the air condenser
- To check the operation of the vacuum ejectors

- To check the dosing of the additives, both water as well as to vapour, if it is necessary to carry out this last dose
- To check the operating parameters of the fume removal hood
- To take and analyse the feeding water samples in feeding tank before the additives being fed
- To take and analyse water samples from the inside of the boiler
- To determine and correct the necessary additives dose
- To take and analyse samples of vapour before the turbine
- To take samples and analyse the condensed water at the exit of the condenser
- To check the levels of the emergency water tank
- To verify the correct operation of the water treatment equipments
- To carry out the regeneration of the treatment columns when it is necessary due to the depletion

m. Auxiliary Installations:

Inspection will be carried out every shift, and monitored continuously wherever possible through the DCS.

Activities:

- Visual verification of the correct operation of the air condenser ventilators
- To verify visually the operation of the water transfer pumps, the same as in the previous ones, tightening up the glands if it is necessary
- To check the operation of the air compressors for regulation, purging the storage tank, verifying the oil level, etc.
- To verify the operation of the feeding water pumps
- Auditive checking of the noises and vibrations of all and each one of the pumps and compressors which constitute the auxiliary equipments

n. Electrical Installation:

Inspection will be carried out every shift

Activities:

- Taking the temperature of the electric boards, determining the existence of temperature increases by the "joule" effect and to prevent possible failures



- Amperage taking of the electric motors with the purpose of verifying if the excess of loading exists thereof

o. Energy Production:

Inspections will be carried out each shift, and monitored continuously wherever possible through the DCS.

Activities:

- Data registration of the vapour inlet and outlet, oil pressures and temperature, ball bearings temperature, number of turbine revolutions per minute
- Data registration of the alternator (coils temperature, active and reactive produced energy, pHi, cosine, etc.)
- Registration of refrigerating water temperatures, inlet and outlet
- Visual verification of the oil level in the tank

p. Process Control

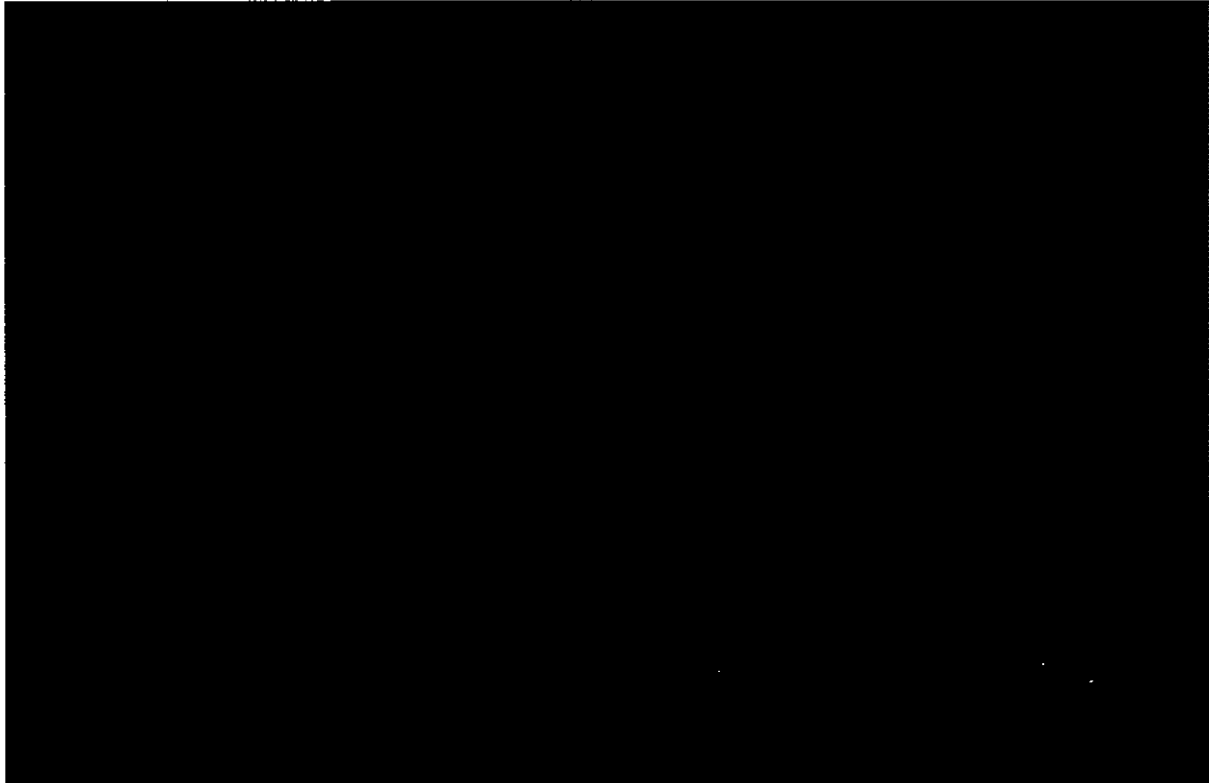
Process control will be carried out utilising a distributed control system (DCS) which collates information on the performance of the plant at different points, analyses said information and prompts the necessary action to be taken with reference to a particular element or a group of installations.

This ensures the plant operates continually under design conditions.

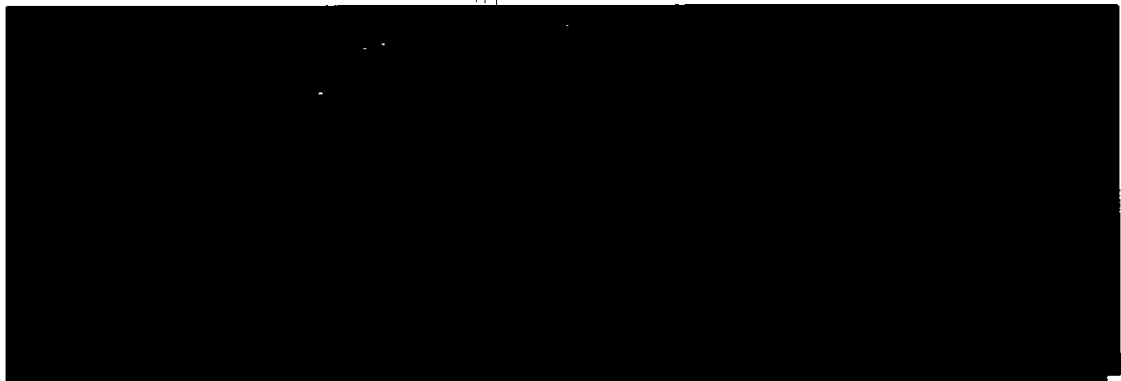
Half yearly and yearly inspections are always requiring partial or total shutdown of the Plant. A complete and in-depth inspection of the equipment is carried out on these occasions. These inspections allow the Plant Management to evaluate the real and potential deterioration risk as well as possible breakage of Plant equipment which would otherwise go unnoticed.

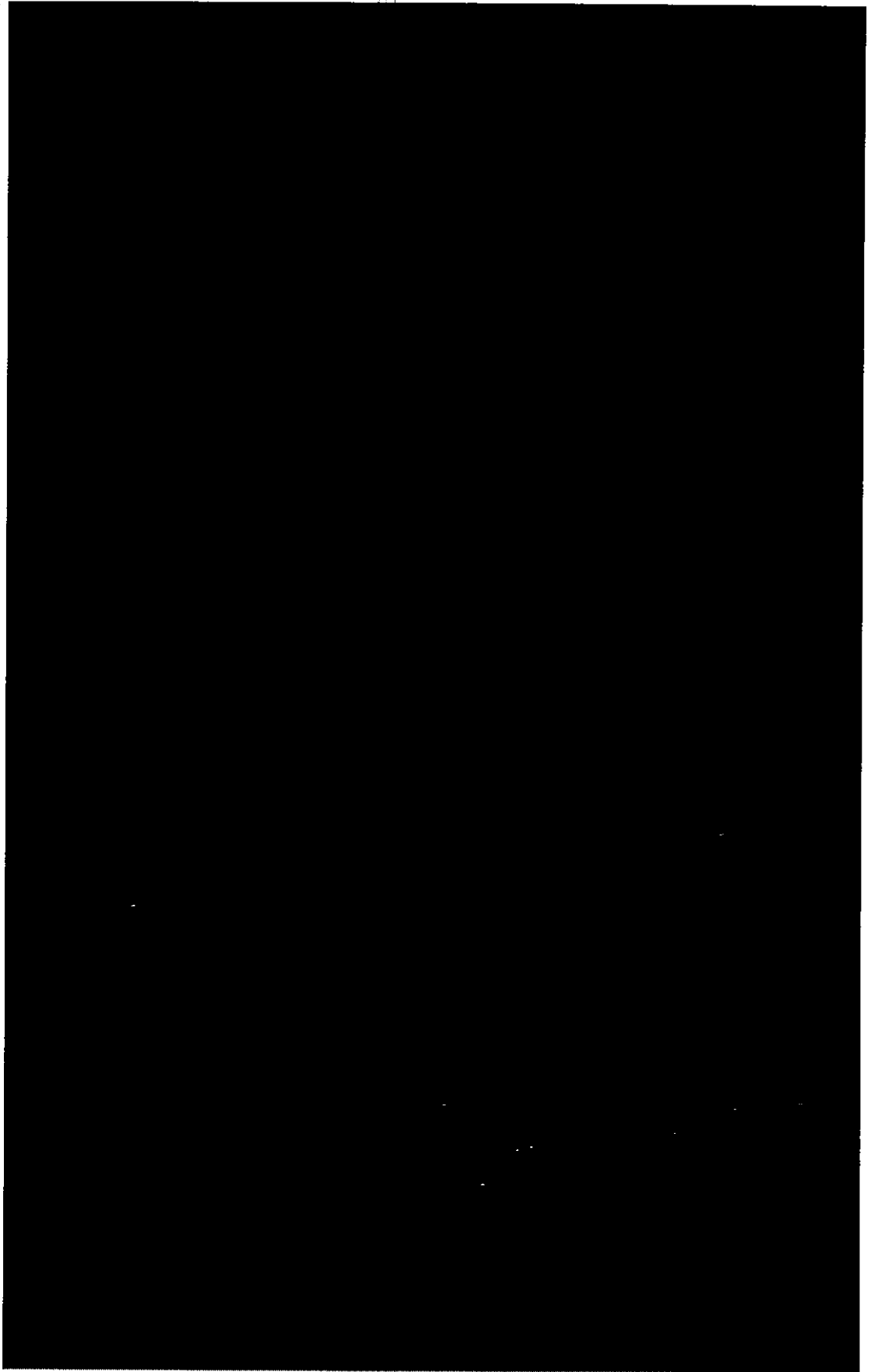
### **Outline preventive maintenance plan**

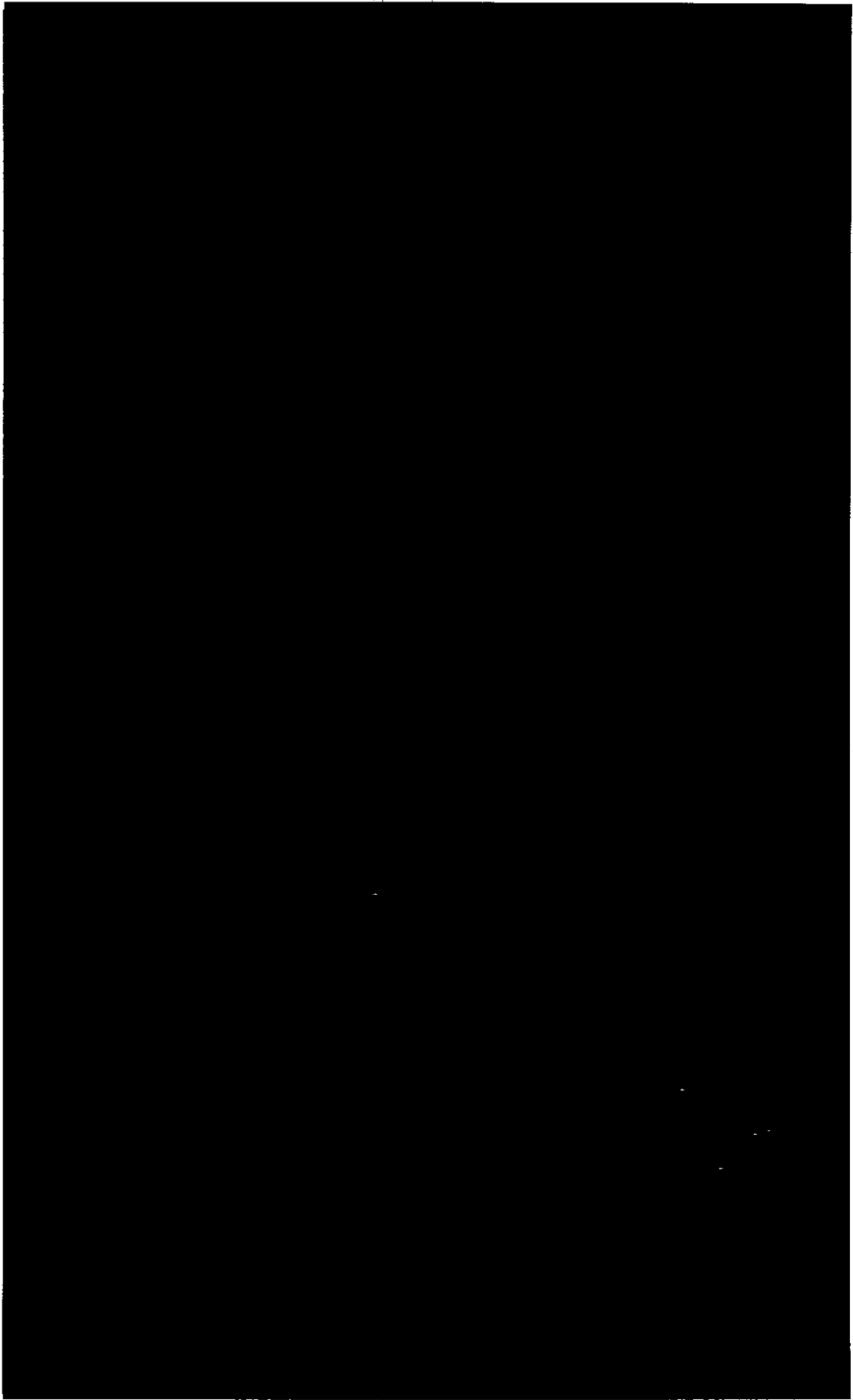
Below is an outline preventive maintenance plan for the waste handling, furnace/boiler, flue gas treatment, turbine generator and auxiliary equipment. The Detailed Maintenance Plan and maintenance program will be confirmed as soon as the O&M Manuals are issued by the supplier no later than 30 days before Takeover. The frequencies applied to the agreed O&M cost model rev. 28 for the Facility are in accordance with the following table. The Detailed Maintenance Plan will be developed having regard to the anticipated 25 operational life of the Waste to Energy Plant and not be constrained or limited by considerations arising from the term remaining within the existing Waste Management Services Contract.

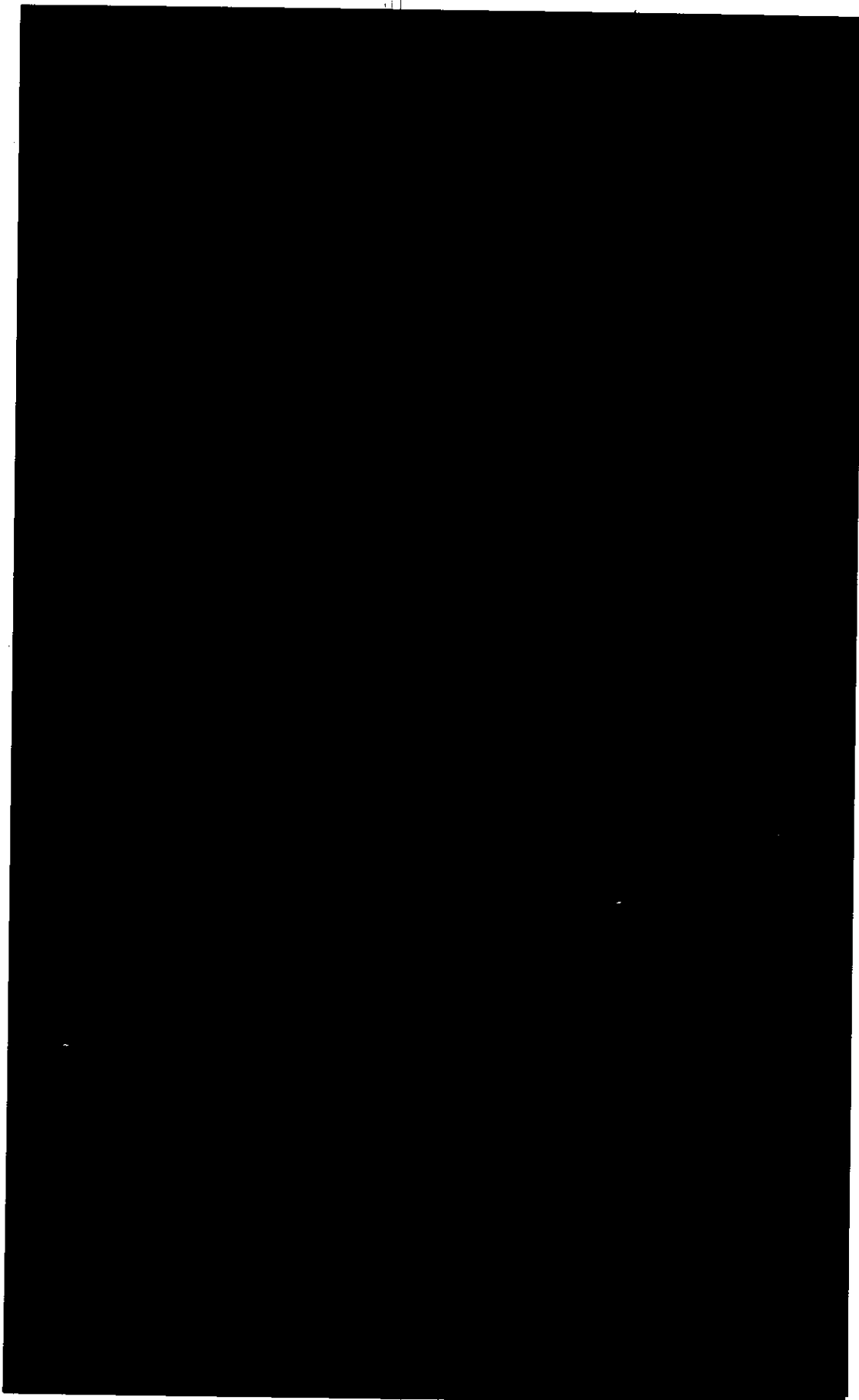


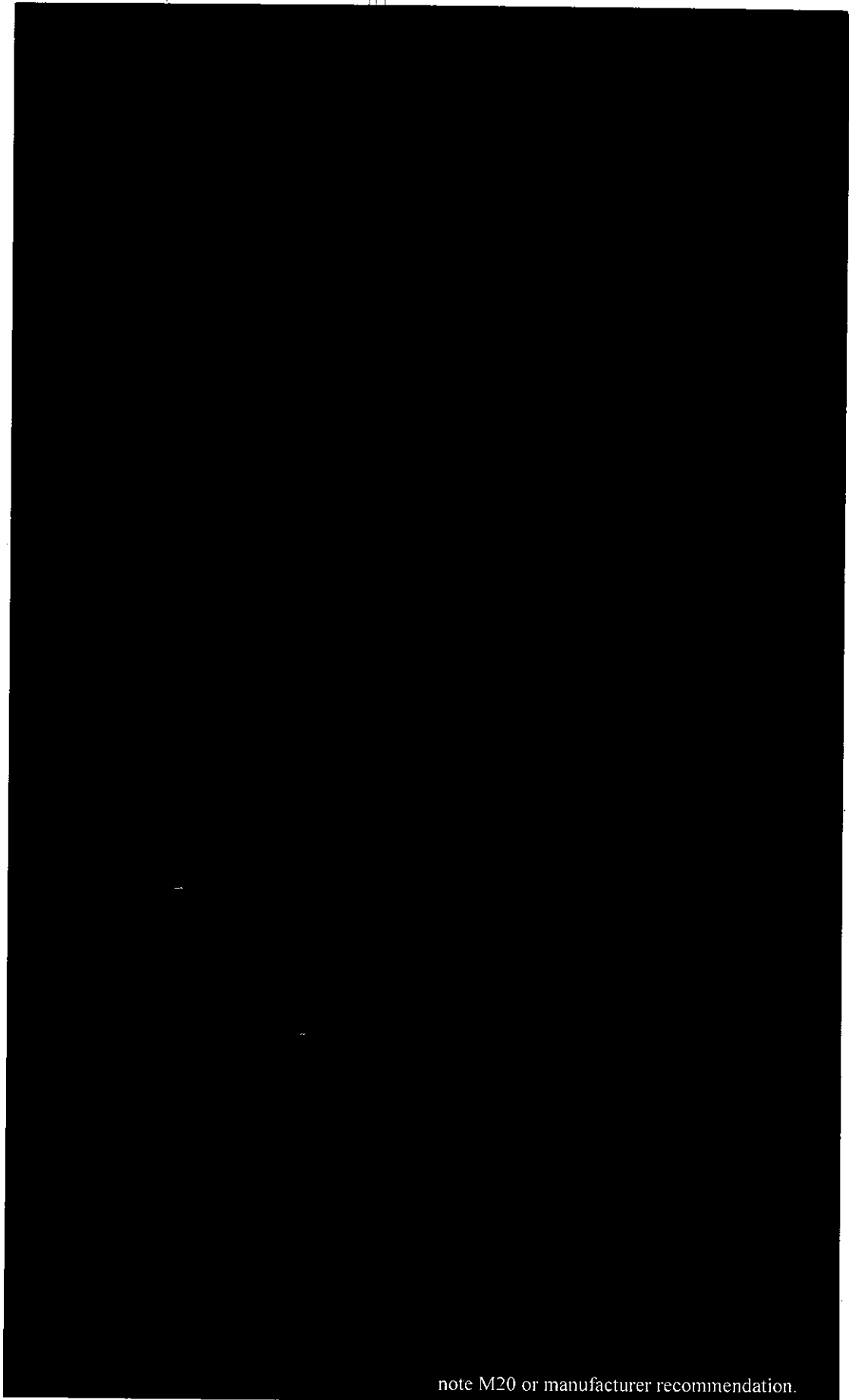
The Detailed Maintenance Plan, which will be based on the O&M Manuals issued by the EPC Contractor for the Facility, will also be updated during the operational life of the Facility as necessary due to any update and improvements on the equipment and further knowledge and experience gained during the operational life on the Facility. In addition, Mercia will hand back the detailed maintenance plan to the Authority prior to handback.



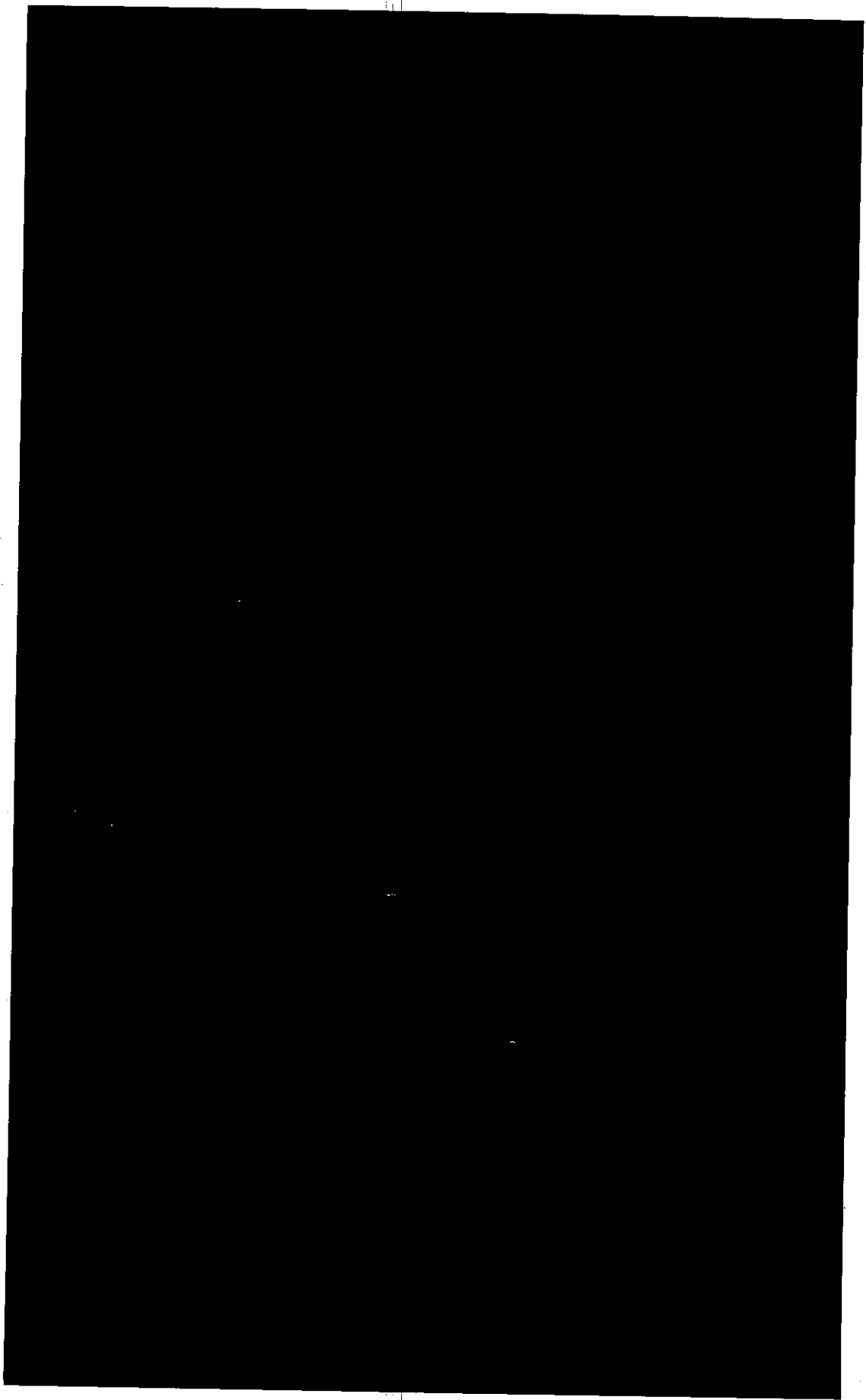









note M20 or manufacturer recommendation.





The maintenance programmed will accommodate the timely inspection and replacement as necessary of the wear parts identified in O&M Manuals

**(b) Maintenance of Facility Infrastructure**

As part of their duties the Operations and Maintenance Team will be responsible for the general maintenance of the facility as per O&M Manuals issued from the EPC Contractor prior to commissioning of the facility.. They will carry out inspections of different aspects of the Facility according to the frequencies stated on the Facility Inspection Sheet and note their findings. Any maintenance undertaken shall be recorded in the Facility diary.

**Perimeter Fencing and Gates**

The Operations and Maintenance Assistants will check, on a daily basis, the condition of the perimeter fence and gates and will note and report any damage observed. Appropriate remedial action will take place within 24 hours.

**Signs and Notices**

All signs and notices shall be checked regularly to ensure that all are clean, free of graffiti and legible to the Facility users. Appropriate remedial action will take place within 24 hours.

**Hardstanding and Roads**

All areas of hardstanding and roads shall be inspected on a daily basis and the attendant will, if necessary, remove any litter and detritus. Any structural deficiencies will be repaired within three working days.

**Drains, Gullies and Interceptors**

The Operations and Maintenance Team will on monthly basis, ensure that all such items are functioning correctly. This will include clearing all gully grates of materials that may affect their performance and, if necessary, the cleaning and unblocking of drains and interceptors within 24 hours of occurrence.

**Office and Other Buildings**

The Operations and Maintenance Team will be responsible for the general upkeep, structural integrity, daily tidiness and cleanliness of all buildings, offices, boiler and turbine halls, workshop areas, canteens and toilets and washing facilities. Deficiencies that may affect the Health and Safety of operatives and visitors will be made good within 24 hours. Decoration of internal and external surfaces will occur on a 5 year cycle.



## Utilities

The Operations and Maintenance Team will be responsible for ensuring the general maintenance of all utilities is carried out through a reporting process to the Plant Manager. All utilities will be inspected on an annual basis. Appropriate remedial action will be instructed immediately and completed within 24 hours.

## Fire Fighting/First Aid Equipment

The Operations and Maintenance Team will be responsible for the operation of all fire fighting equipment, maintenance of equipment will be undertaken by authorised agencies.

Fire Water Pumps will be checked weekly and any faulty parts will be replaced as necessary.

Smoke Detectors and Alarms, Fire extinguishers and any other firefighting equipment will be checked annually and replaced as necessary. If any firefighting equipment is found faulty between annual shutdowns, it would be replaced immediately.

The attendant must ensure that adequate first-aid equipment is always available and any stocks used will be replaced immediately, in accordance with the Contractors Health and Safety Policy and Procedures.

## Winter Maintenance

During periods of excessively cold weather, snow and ice procedures will be adhered to which will ensure the safety of all Facility users.

Each Facility will have appropriate salt boxes and it will be the responsibility of the Operations and Maintenance Team during very cold weather to salt all ramps and areas vehicular access.

During periods of heavy snow fall the Operations and Maintenance Team will again ensure that all areas used by vehicles are kept clear.

## Vandalism

The Facility will be checked by an attendant on a daily basis for any signs of vandalism. Any such vandalism will be noted on the Facility Inspection Sheet.

The action taken will depend on the level and frequency of vandalism. These actions might include:

- the immediate removal of graffiti
- periodic security controls
- passive infra red flood lighting
- installation of dummy cameras/alarms
- installation of a camera and video system

- full time security

#### General

Additional Facility specific maintenance issues may be identified, agreed and included in the Waste Management Service Plan during the Contract Period.