

**ANNEX 8
EXIT PLAN**

(inserted overleaf)

MERCIA WASTE MANAG EMENT

**WASTE MANAG EM ENT
SERVICE CONTRACT**

With

WORCESTERSHI RE COUNTY COUNCIL

AND

HEREFORDSHIRE COUNCIL

EXIT PLAN

(In accordance with Clause 52 of the Service Contract)

Revision Sheet

This sheet is to be used to record all amendments, revisions and additions made to this Exit Plan. All such changes must be agreed by both the Contractor and the Lead Authority.

[illegible]

Introduction

In accordance with Clause 52 of the Waste Management Service Contract, an Exit Plan should be prepared, kept and updated by the Contractor.

Upon termination or expiration of the Contract Period whether:

- (i) by the Contractor's Default
- (ii) by the Council's Default, or
- (iii) without Default

and for the purposes of facilitating the transfer of services to any successor operator the provisions and obligations contained within this Exit Plan shall be implemented.

Between 12 and 36 months prior to the end of the Contract Period the parties shall meet to discuss the arrangements for the Exit Plan's implementation.

In addition, in the 24 months prior to the end of the Contract Period, to the extent that the services will be provided by a party other than the Contractor after the expiry of the Contract Period, the Contractor shall give all reasonable co-operation to such other party and to the Council in this regard and shall provide such other party with reasonable access to the Waste Management Units and with all information (other than that which is reasonably regarded by the Contractor as commercially sensitive) as such other party may reasonable require.

The following document details the information to be supplied by the Contractor either on or prior to the termination or expiration of the Contract Period and reasons for such termination or expiration.

PART 1

REASONS FOR TERMINATION OR EXPIRATION OF THE CONTRACT PERIOD

1. *Termination through Contractor's Default*

The reasons leading to such termination are detailed in Clause 46 of the Service Contract

2. *Termination through Council's Default*

The reasons leading to such termination are detailed in Clause 47 of the Service Contract

3. *Termination without Default*

The reasons leading to such termination are detailed in Clause 48 of the Service Contract

PART 2

INFORMATION TO BE SUPPLIED IN THE EXIT PLAN

The following details the information that is required by Clause 52.1 of the Service Contract and the relevant Appendix to this document where it may be found.

1.	KEY PERSONNEL DETAILS	-	APPENDIX I
2.	LIST OF PREMISES	-	APPENDIX II
3.	CONTRACTS, PERMITS, LICENCES & NECESSARY CONSENTS	-	APPENDIX III
4.	INFORMATION SYSTEMS	-	APPENDIX IV
5.	LIST OF OTHER ASSETS	-	APPENDIX V
6.	INSURANCE DETAILS	-	APPENDIX VI
7.	INDUSTRIAL RELATIONS	-	APPENDIX VII
8.	MANUALS AND POLICIES	-	APPENDIX VIII
9.	OTHER DETAILS	-	APPENDIX IX
10.	COPIES OF DRAWINGS, DOCUMENTS ETC.	-	APPENDIX X
11.	LAST DAY SURVEY (See also Part 3)	-	APPENDIX XI

For convenience, the relevant part of Clause 52.1 is copied at each Appendix.

PART 3

CONDITION OF WASTE MANAGEMENT UNITS ON TERMINATION

In order to comply with Clause 50 of the Service Contract, a full survey of all Waste Management Units will be carried out by the Contractor in the period prior to termination.

The period will be agreed between the parties, and the surveys will have regard to:

- (i) the level of maintenance that should have been carried out in accordance with the Service Delivery Plan (Clause 50.1.1)
- (ii) the age of the plant and equipment (Clause 50.1.2)
- (iii) the life expectancy of the plant and equipment (Clause 50.1.3)

The survey and any subsequent reports will consider each Waste Management Unit as consisting of three distinct elements i.e.

- (i) EXTERNAL - Consisting of gateways; boundary fencing; roads; hardstanding; gullies; and drains.
- (ii) BUILDINGS - Consisting of gatehouses; office blocks; buildings containing waste handling equipment; utilities (lighting, heating, water etc), and storage and mess facilities.
- (iii) EQUIPMENT - Consisting of all static plant and equipment; and any dedicated mobile equipment located at each Waste Management Unit.

PART 4

FURTHER OBLIGATIONS UPON TERMINATION

Clause 52 of the Service Contract places further requirements on the Contractor (Clause 52.2 to 52.6) and these are summarised below.

1. The Contractor shall provide the Lead Authority with reasonable access to the employees of the Contractor subject to such conditions that the Contractor may reasonable impose in connection with such access.
2. The Contractor shall use reasonable endeavours to ensure that the Lead Authority or any successor operator may enter into or enjoy the benefits of contracts equivalent to the contracts to which the Contractor may be a party in relation to the performance of the Services.
3. The Contractor shall use reasonable endeavours, in relation to any contract relating to the Project to which it may be a part, to novate its interest thereunder as the Lead Authority may direct.
4. The Contractor shall, only to the extent so permitted by any Legal Requirement or any applicable regulatory body, assign and/or transfer any Necessary Consents to the Lead Authority or as the Lead Authority may direct.
5. The Contractor shall co-operate with the Lead Authority and any successor operator with a view to completing the acquisition of any Waste Management Units.
6. The Contractor shall take such steps and execute such documents as may reasonably be required to pass such title as the Contractor then has to each of the Waste Management Units.

APPENDIX I

52.1.1 a list of key personnel showing names, addresses, telephone numbers, roles and responsibilities together with full particulars of each employee (including the date on which continuity of employment began for each such employee) and terms and conditions of each such person;

1. Key Personnel

Name	Job Title	Location	Tel. No.	Start Date
[REDACTED]	[REDACTED]	The Marina	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	The Marina	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	The Marina	[REDACTED]	N/A
[REDACTED]	[REDACTED]	EnviroSort	[REDACTED]	N/A
[REDACTED]	[REDACTED]	EnviroSort	[REDACTED]	
[REDACTED]	[REDACTED]	Hill & Moor Landfill	[REDACTED]	
[REDACTED]	[REDACTED]	Hill & Moor Landfill	[REDACTED]	
[REDACTED]	[REDACTED]	Rotherwas	[REDACTED]	
[REDACTED]	[REDACTED]	EnviroSort	[REDACTED]	
Vacant	EnviroSort Manager	EnviroSort	[REDACTED]	
Vacant	EnviRecover Personnel	EnviRecover		

2. Employees

Full particulars of the Contractors employees are held in the appropriate personnel records of the Company. The required details for all employees will be supplied in the period preceding termination.

APPENDIX II

52.1.2 a list of all premises owned, leased or operated by the Contractor together with up to date copies of all agreements pertinent to the use and occupation thereof showing the status, address and telephone number of the responsible manager and use of each such premises together with an up to date plan thereof showing all material buildings or other structures located thereon and the routes of all roads, services, access and utility supplies, together with any material third party rights of way or easements;

MISCELLANEOUS	ADDRESS	STATUS
Head Office	The Marina Kings Road Evesham WR11 3XZ	5
Ex British Sugar Land	Stourport Road Kidderminster	1

TRANSFER STATIONS	ADDRESS	STATUS
Redditch Transfer Station	Crossgate Road Park Farm Industrial Estate Redditch B98 7SN	5
Bromsgrove Transfer Station	Aston Field Trading Estate Aston Road Bromsgrove B60 3EX	5
Rotherwas Transfer Station	Chapel Road Rotherwas Industrial Estate Hereford HR2 6LD	5
Leominster Transfer Station	Bridge Street Leominster HR6 8EA	2

BULK BAYS	ADDRESS	STATUS
Redditch Bulk Bays	Crossgate Road Park Farm Industrial Estate Redditch B98 7SN	5
Kidderminster Bulk Bays	Road Number 3 Hoobrook Industrial Estate Kidderminster DY10 1HY	5
Rotherwas Bulk Bays	Chapel Road Rotherwas Industrial Estate Hereford HR2 6LD	5

ENERGY FROM WASTE FACILITY	ADDRESS	STATUS
EnviRecover	Plot H600	2

ENERGY FROM WASTE FACILITY	ADDRESS	STATUS
	Oak Drive Hartlebury Trading Estate DY10 4JB	

MATERIALS RECLAMATION FACILITY	ADDRESS	STATUS
EnviroSort	Woodbury Lane Norton Worcester WR5 2PU	5

COMPOSTING PLANT	ADDRESS	STATUS
Hill & Moor Composting Facility	Hill & Moor Landfill Site Piddle Brook Lane Wyre Piddle Persore WR10 2LW	1

LANDFILL SITE	ADDRESS	STATUS
Hill & Moor Landfill Site	Hill & Moor Landfill Site Piddle Brook Lane Wyre Piddle Persore WR10 2LW	1

HOUSEHOLD RECYCLING CENTRES	ADDRESS	STATUS
Redditch	Crossgate Road Park Farm Industrial Estate Redditch B98 7SN	5
Stourport (Bonemill)	Minster Road Stourport DY13 8AS	2
Malvern (Newlands)	Worcester Road Malvern Link WR13 5AX	2
Persore (Hill & Moor)	Hill & Moor Landfill Site Piddle Brook Lane Wyre Piddle Persore WR10 2LW	1
Droitwich (Hanbury)	Hanbury Road Hanbury Wharf Droitwich WR9 7DX	2
Worcester East (Bilford Road)	Belford Road Worcester WR3 8PU	2

HOUSEHOLD RECYCLING CENTRES	ADDRESS	STATUS
Worcester West (Hallow Road)	Hallow Road Off Horsford Road Worcester WR2 6BZ	2
Bromsgrove (Quantry Lane)	Quantry Lane Romsley DY9 9UU	3
Tenbury Wells	Palmers Meadow Car Park Tenbury Wells WR15 8BB	4
Upton on Severn	Hanley Road Car Park Upton upon Severn WR8 OHU	2
Kidderminster (Hoobrook)	Hoobrook Industrial Estate Kidderminster DY10 1HY	3
Rotherwas	Chapel Road Rotherwas Industrial Estate Hereford HR2 6LD	5
Leominster	Bridge Street Leominster HR6 8EA	2
Ledbury	Little Marcie Road Ledbury HR8 2DR	5
Ross-on-Wye	Station Approach Ross-on-Wye HR9 7AQ	5
Bromyard	Linton Industrial Estate Bromayrd HR7 4QT	2

WORKSHOP	ADDRESS	STATUS
Maintenance Unit	Unit 6 Persore Trading Estate Station Road Persore	2

Notes

A. Status Notation is as follows

1. Freehold, transferred in accordance with Property Transfer Agreement
2. Leased, transferred in accordance with Property Transfer Agreement
3. Leased, (5 year lease only), transferred in accordance with Property Transfer Agreement
4. Managed, transferred in accordance with Property Transfer Agreement
5. Leased

B. Existing Waste Management Units

The Service Delivery Plan for each facility contains the following details required in accordance with Clause 52.1.2

- responsible manager
- use of premises
- location map

Drawings for each facility can be found in the relevant Working Plan folder.

C. Future Waste Management Units

Appropriate details and revisions will be supplied for insertion in this Exit Plan as and when they become available.

D. Offices

The Company's offices at The Marina, Evesham are occupied on short-term lease. Details of future offices will be supplied at the appropriate time. .

Copies of all leases are held on a shared drive maintained by the Lead Authority

APPENDIX III

52.1.3 a list of all contracts, permits, licences, Necessary Consents or other such documents which are material to the project together with copies thereof;

Current contracts

WEEE Producer Compliance Scheme - Electrolink

WEEE Approved Authorised Treatment Facilities:

Aquaforce	-	Cooling Appliances (fridges & freezers)
EMR	-	Large Domestic Appliances
Eastside 2000 Ltd (Wye Valley)	-	Large Domestic Appliances
Sims	-	Small Domestic Appliances
Mann Electronic Recycling Ltd	-	Televisions & Computer Monitors
Electrical Waste Recycling	-	Gas Discharge Lamps

Copies of all contracts are held on a shared drive maintained by the lead Authority

List of Planning Consents and Environmental Permits

Copies of these are forwarded at time of issue and are also held on a shared drive maintained by the Lead Authority

TRANSFER STATIONS	ENVIRONMENTAL PERMIT	PLANNING PERMISSION
Redditch	SP3798CV	407471 (99/348)
Bromsgrove	VP3099CG	407568 (8/2003/1226)
Rotherwas	XP3095FM	CE/2000/0099/N
Leominster	FP3895FS	NC/1999/2306/F

ENERGY FROM WASTE	ENVIRONMENTAL PERMIT	PLANNING PERMISSION
EnviRecover	XP3935TX	APP/E1855/V/112153273

BULK BAYS	ENVIRONMENTAL PERMIT	PLANNING PERMISSION
Redditch	TP3198CU	407562 (R2003/306)
Kidderminster	WP3999CS	407559 (WF553/03)
Rotherwas	XP3095FM	CE/2000/0099/N

MATERIAL RECLAMATION FACILITY	ENVIRONMENTAL PERMIT	PLANNING PERMISSION
EnviroSort	DP3696SF	407669 (C/06/01539/CM)

COMPOSTING PLANT	ENVIRONMENTAL PERMIT	PLANNING PERMISSION
Hill & Moor	SP3598CC	12/000046/CM (C/12/01792/CM)

LANDFILL	ENVIRONMENTAL PERMIT	PLANNING PERMISSION
Hill & Moor	ZP3933LD	407390(W. 96/0549)

HOUSEHOLD RECYCLING CENTRES	ENVIRONMENTAL PERMIT	PLANNING PERMISSION
Redditch	SP3798CV	407471 (99/348)
Stourport (Bonemill)	LP3299CB	407470 (WF/0779/99)
Malvern (Newlands)	MP3298CP	407514 (MH/01/00297)
Pershore	SP3598CC	407390(W.96/0549)
Droitwich (Hanbury)	NP3999CW	407469 (W/99/1410)
Worcester East (Bilford Road)	NP3799CZ	602424 (94/0264)
Worcester West (Hallow Road)	BP3199CZ	28/10/1992
Bromsgrove (Quantry Lane)	BP3599CY	14/12/1992
Tenbury Wells	AP3899SC	03/09/1984
Upton upon Severn	PP3598CT	602226 (MH92/1353)
Kidderminster (Hoobrook)	LP3199CQ	15/05/1991
Rotherwas	XP3095FM	CE/2000/0099/N

HOUSEHOLD RECYCLING CENTRES	ENVIRONMENTAL PERMIT	PLANNING PERMISSION
Leominster	FP3895FS	NC/1999/2306/F
Ledbury	SP3698CN	NE/1999/2305/F
Ross-on-Wye	XP3695FV	SE/2000/0814/N
Bromyard	XP3995FJ	NC/1999/3181/N

APPENDIX IV

52.1.4 a list of system used (computer and otherwise) in connection with the Project together with a description of the systems and (other than in respect of confidential information) master passwords where applicable together with full particulars and copies of all licences, escrow accounts, deposit and subject codes and related matters;

The Company uses a range of 'standard' office software such as the Microsoft Office suite (Word, Excel, PowerPoint etc) for which appropriate licences are held and local passwords used. These operate from a secure central electronic management information system administered from servers at the Company's head office. All generated data is held centrally in the electronic MIS and is backed up every evening.

Specialist computer programmes are listed below: -

LANDFILL MANAGER	- landfill modelling
SAGE	- accounting and financial
NETWORK SOFTWARE	- standard network system
COBHAM WEIGHSOFT	- weighbridge data capture and processing
AUTO CAD	- drawing system
GEO SITE OFFICE	- survey equipment

Passwords for the above are commercially confidential and will be supplied upon termination.

In addition, a shared drive maintained by the Lead Authority allows information associated with the WMSC to be uploaded and accessed by both parties.

APPENDIX V

52.1.5 a list of other assets owned, leased or otherwise operated by the Contractor in connection with the Project together with documents of title and copies of servicing contracts and all material details of similar matters;

Details of the assets used by the Contractor in connection with the Project are contained in the Company's records, and in particular in the Fixed Asset Register. On Wednesday, 21/05/2014 the current Fixed Asset Register will be uploaded onto the shared drive maintained by the Lead Authority and thereafter updated as and when the Exit Plan is updated.

Servicing is carried out in-house with the exception of the following which are subject to repair and maintenance agreements with the suppliers:

Finning Repair & Maintenance Agreements	- CAT 735- Hill & Moor
	- CAT 735- Hill & Moor CAT 930H
	- EnviroSort
Komatsu Repair & Maintenance Agreement	- PC-240 - Hill & Moor
JCB Repair & Maintenance Agreement	- JCB 350 - EnviroSort
	- JCB 35D - EnviroSort
Tyre Contract	- Airora Tansells

Copies of the above are held on a shared drive maintained by the Lead Authority

APPENDIX VI

52.1.6 full copies of insurance policies taken out in respect of the provision of the Services and any premises utilised in the provision of the Service together with full details of all claims made thereunder during the previous 3 years;

The Company holds current insurances in accordance with Schedule 9 of the Contract.

Copies of the following policies are held on a shared drive maintained by the Lead Authority.

Computer Policy
Contractors Combined Liability Insurance
Contractors Plant Policy
Employers Liability
Engineering Inspection Schedule
Management Liability Schedule
PA Travel Schedule
Property and Business Interruption Insurance
Public and Product Liability

To avoid unnecessary frequent updating of this section, insurance details will be provided from time to time of claims where the Company's liability is greater than [REDACTED] per claim.

APPENDIX VII

52.1.7 on going particulars of all strikes or other industrial action taken by any of the employees of the Contractor during the previous 12 months;

Industrial Relations

The Contractor can confirm that there has been no such incidence of industrial action to report to date.

APPENDIX VIII

52.1.8 copies of all manuals and policies adopted the Contractor in connection with the Project (including policies in respect of health and safety and equal opportunities;

Health and Safety Policy

Equal Opportunities Policy (refer to New Employee Handbook)

Company Training Policy (refer to Appendix C of the Contract Service Delivery Plan)

Customer Care Policy (refer to New Employee Handbook)

Environmental Management System (ISO 14001) Certificate

Quality Management System (ISO 9001) Certificate

Copies of the above are held on a shared drive maintained by the Lead Authority

APPENDIX IX

52.1.9 other details as may be required from time to time by the Service Delivery Plan;

No other details are required by the Service Delivery Plan to date.

APPENDIX X

52.1.10 2 copies of all drawings, plans, manuals, operating manuals, health and safety plans, schedules of snagging items or defects, health and safety files, duly completed certificates (as would normally be issued by professionals (in accordance with Good Industry Practice) given the nature of the Works or Additional Works in question) and other documents (including in electronic form where appropriate) relating to the Works and Additional Works and shall update such documents from time to time as necessary and shall supply the Superintendent Officer with two copies of any revised documents or amended parts thereof; and

All of these documents etc are provided during the course of the works programme and service delivery to the Superintendent Officer

APPENDIX XI

52.1.11 a survey as at the last Day of the Contract period on the same basis as that carried out under Clause 29.6 (Detailed Maintenance Plan);

DATED _____ 2014

WORCESTERSHIRE COUNTY COUNCIL

AND

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

AND

MERCIA WASTE MANAGEMENT LIMITED

VARIATION AGREEMENT TO THE WASTE
MANAGEMENT SERVICE CONTRACT

**ANNEX 9
PAYMENT MECHANISM**

**(SCHEDULE 4 (PAYMENT MECHANISM) TO THE WASTE MANAGEMENT
SERVICE CONTRACT)**

A. TERMINOLOGY

1. The following terminology has been applied throughout this Schedule 4 and Schedule 5 (*Definition and Calculation of Recycling and Recovery-Rates*):

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

[illegible]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

B. [REDACTED]

2. **Calculation of [REDACTED]**

The Contractor shall be paid a [REDACTED] for the provision of the Services in accordance with the terms of Clause 38 (*Payment*). The [REDACTED] will be determined in accordance with the following formula:

[REDACTED]

3. **Payment of [REDACTED]**

The Contractor shall be entitled to receive the [REDACTED] in accordance with the provisions set out below and in accordance with the provisions of Clauses 38 (*Payment*), 39 (*Performance Monitoring*) and 40 (*Invoicing and Payment*).

4. **Forecast First and Final Contract Year**

To determine the Baseline Price prior to any reconciliation in:

- (a) the First Contract Year, an annual Contract Waste tonnage of [REDACTED] shall be used; and

- (b) the Final Contract Year the Contract Waste tonnage delivered during the preceding 12 Months shall be used.

In determining the Baseline Price in the reconciliation at the end of the First Contract Year and the Final Contract Year, the actual Contract Waste tonnage shall be adjusted to a seasonally adjusted annual equivalent.

5. **Minimum Guaranteed Baseline Payment**

Where in any Contract Year other than the First Contract Year and the Final Contract Year tonnage of Contract Waste actually delivered to the Contractor is less than [REDACTED] tonnes, the Councils shall be liable to pay to the Contractor a minimum guaranteed amount (the "**Minimum Guaranteed Baseline Payment**") being the Baseline Payment calculated on an assumed Contract Waste tonnage other than Bring Tonnage actually delivered to the Contractor [REDACTED] tonnes at the assumed Baseline Price for tonnage band [REDACTED] tonnes, as stated in Schedule 6 (*Annual Contract Price Review*). With respect to the First Contract Year and the Final Contract Year (each a "**Part Year**"), the calculation of the Minimum Guaranteed Payment will be determined in accordance with the assumed Baseline Price for [REDACTED] tonnes and pro-rated to the number of Days in that Part Year and adjusted according to the variation in tonnage delivered in such Part Year when compared with the remainder of the Contract Year in question.

The Recycling Rate, Composting Rate and Recovery Rate achieved will be calculated by applying the relevant provisions of Schedule 4 (*Payment Mechanism*) to the forecast and/or actual tonnages of Contract Waste and not the figure of [REDACTED] tonnes referred to above which tonnage shall only be used to calculate the Minimum Guaranteed Baseline Payment.

In the event of material changes in the disposal regime for LPG Gas Cylinders or material increases in the number or weight of such cylinders current at the date of this Contract handled at the Waste Management Units year on year, the parties will agree a fair and reasonable payment in respect of the Contractor's marginal handling costs which cost the parties shall agree and implement as a Council Change.

C. **BASELINE PAYMENT**

6. **Calculation of Baseline Payment**

The Baseline Payment shall [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

7. **Forecasting of Baseline Price**

The Baseline Price per tonne varies among the defined tonnage bands depending on the tonnage of Contract Waste (other than Bring Tonnage) in each Contract Year. The Baseline Price per tonne which is applicable in each Contract Year will be provisionally determined using a forecast of Contract Waste (other than Bring Tonnage), to be made by the Contractor at the end of Month 10 of the preceding Contract Year, giving due regard to the actual levels of Contract Waste (other than Bring Tonnage) in recent Contract Years, and to be agreed by the Superintendent Officer at least one Month prior to the commencement of the relevant Contract Year. Where such agreement cannot be reached prior to the commencement of the relevant Contract Year the Baseline Price per tonne on which the Baseline Payment in each Month will be based on the actual tonnage of Contract Waste (other than Bring Tonnage) in the previous Contract Year.

8. **Baseline Payment Reconciliation**

On the last Business Day of Month 6 and Month 12 of each Contract Year "**First Reconciliation Date**" and "**Second Reconciliation Date**" respectively, the Contractor and the Superintendent Officer will together, by use of the Defined Audit Trail, establish:

(a) in the case of each First Reconciliation Date:

[REDACTED]

[REDACTED]

[REDACTED]

(b) in the case of each Second Reconciliation Date:

[REDACTED]

- #### D. WASTE TO ENERGY SUPPLEMENT

9. Monthly Payments of Waste to Energy Supplement

9.1 Subject to Paragraph 9.2 below the Waste to Energy Supplement for each Month during each Contract Year will be calculated as follows:

E. RECYCLING SUPPLEMENT AND COMPOSTING SUPPLEMENT

10. Recycling Supplement and Composting Supplement

11. Payment of Recycling Supplement and Composting Supplement

[REDACTED]

12. **Recycling and Compost Reconciliation**

(a) ***Reconciliation Statement Calculations***

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) ***First Reconciliation Payments***

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) ***Second Reconciliation Payments***

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (e) In respect of the first Reconciliation Date in the Contract Period, no Second Reconciliation Payments will be payable. At the end of the Contract Period, Second Reconciliation Payments will be made calculated pursuant to Paragraph 12(d) above for the period following the last Reconciliation Date prior to the Termination Date until the Termination Date.

- (f) Both the First Reconciliation Payments and the Second Reconciliation Payments calculated on any Reconciliation Date [REDACTED] payable for the Month in which such Reconciliation Date fell.

F. HOUSEHOLD WASTE SITE PAYMENT

13. Calculation of Household Waste Site Payment

The Household Waste Site Payment [REDACTED] shall be payable in 12 equal monthly instalments provided that where the first and/or final Month of the Contract Period shall be a part Month the instalment payable for such part Month shall be adjusted accordingly on a pro-rata basis.

G. [REDACTED]

The parties acknowledge and agree that the [REDACTED] shall be dispallied unless otherwise agreed in writing between the parties.

14. Calculation of the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

H. LANDFILL TAX PAYMENT

15. Calculation of Landfill Tax Payment

[REDACTED]

[REDACTED]

16. **Payment of Landfill Tax**

Throughout the Contract Period the Contractor shall be responsible for and shall pay all Landfill Tax at the prevailing rate, subject to the provisions of this Section H.

17. **Proportion of Landfill Tax**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

18. **Reimbursement of Landfill Tax**

[REDACTED]

[REDACTED]

19. **Landfill Tax Monthly Payments**

[REDACTED]

[REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED]

20. **Landfill Tax
Reconciliation**

[REDACTED]

(a) ***Reconciliation Statement Calculations***

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) ***First Landfill Tax Reconciliation Payments***

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(d) *Second Landfill Tax Reconciliation Payments*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I. UNAVAILABILITY DEDUCTIONS

21. Application of Unavailability Deductions

Unavailability Deductions shall only apply to Delivery Points and Household Waste Sites.

22. **Grace Period**

There shall be no Unavailability Deductions in respect of the first [REDACTED] of the Contract Period. During such [REDACTED] there shall be a joint inspection by the Superintendent Officer and the Contractor of the Waste Management Units in existence at the Effective Date, to assess the prevailing conditions of each such Waste Management Unit and to agree the consequent effect on the manner in which each shall be operated by the Contractor until such time as its refurbishment has been completed in accordance with the Service Delivery Plan, or it has been replaced by a new Waste Management Unit.

[REDACTED]

24. **Non-Application of Unavailability Deductions**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. **Procedure for Making Unavailability Deductions**

[REDACTED]

26. **Definition of "Unavailable"**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. **Unavailability Deductions**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

J. **PERFORMANCE FACTOR**

29. **General Grace Period**

[Redacted]

30. Specific Grace Period

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Table 3: Performance Regime Categories

[Redacted]		[Redacted]		[Redacted]	

Table 4: Performance Criteria

[Redacted]		[Redacted]		[Redacted]	
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[illegible]

[illegible]

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

[REDACTED]

[REDACTED]

K. RECTIFICATION PROCEDURES

33. Service of a Default Notice

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. **Procedure Following Default Notice**

Following the issue of a Default Notice, the Contractor shall within ■ Business Days of the receipt of the Default Notice, submit to the Lead Authority a Contractor Rectification Plan, in sufficient detail as to demonstrate to the Lead Authority the specific measurable and timed actions and such period of time as is the minimum reasonably practicable ("**Remedy Period**") by which the default and cause of the default will be rectified and all reasonable steps reasonably anticipated to avoid any repetition of the default shall have been taken.

- (a) On receipt of the Contractor Rectification Plan, the Lead Authority shall review such plan, and within ■ Business Days of the receipt of the Contractor Rectification Plan, provide the Contractor with written notification of the Lead Authority's acceptance or rejection of the Contractor Rectification Plan as an appropriate manner in which to remedy the default. Provided that such acceptance will not prejudice the Councils' rights under Paragraph 34(c) below.
- (b) Where the Lead Authority rejects the Contractor Rectification Plan the matter may be referred at the instance of either party to the Dispute Resolution Procedure for the purpose of determining an appropriate Contractor Rectification Plan.
- (c) Where the Lead Authority accepts the Contractor Rectification Plan or where the Contractor Rectification Plan is determined by the Dispute Resolution Procedure, the Contractor shall complete the Contractor Rectification Plan within the Remedy Period specified therein.

- (d) If:
- (i) at any time during the Remedy Period the Contractor and the Councils agree that the Contractor will not be able to complete the Contractor Rectification Plan within the Remedy Period; or
 - (ii) at any time it shall be determined pursuant to the Dispute Resolution Procedure that the Contractor will not be able to complete the Contractor Rectification Plan within the Remedy Period; or
 - (iii) at the end of the Remedy Period the Contractor shall have failed to complete the Contractor Rectification Plan

the Councils acting together may terminate the Contract Period in accordance with Clause 46.2.6 (*Event of Contractor Default*).

For the purpose of this Paragraph 34 a default shall have been remedied if:

- (a) the matter or matters giving rise to and the effects of the default have been duly corrected; and
- (b) all steps have been taken to prevent a recurrence of the default

in each case in accordance with the Contractor Rectification Plan.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] approve such calculation in which case the relevant [REDACTED]
[REDACTED], (if any) shall be paid by the Contractor to the Lead
Authority within 5 Business Days; or

- (ii) reject such calculation in which case the calculation of the [REDACTED]
[REDACTED] shall be referred by the Superintendent Officer to the
Dispute Resolution Procedure. Any payment due from the Contractor in
respect of [REDACTED] shall be paid to the Lead
Authority, within 5 Business Days of its determination thereunder.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

ANNEX 10
[WITHHELD IN FULL]

**(SCHEDULE 13 (COMPENSATION ON TERMINATION) TO THE WASTE
MANAGEMENT SERVICE CONTRACT)**

1.1 Payment upon Termination

1.1.2 The parties hereby agree that:

- (a) Formula B(a) in the following table shall apply if this Contract is terminated pursuant to Clause 46 (*Event of Contractor Default*) at any time prior to Completion of the Waste to Energy Plant and the reason for the termination is a breach of the Contractor's obligations relating to the construction of the Waste to Energy Plant, but otherwise;
- (b) Formula (B)(b) in the following table shall apply if this Contract is terminated pursuant to Clause 46 (*Event of Contractor Default*) at any time whether prior to or after Completion of the Waste to Energy Plant.

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

[REDACTED]

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[REDACTED]

"O&M Agreement" means an agreement dated on or about the date of this agreement in respect of operation and maintenance services for the Project between the

[REDACTED]

[REDACTED]

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

5. **PROCEDURE**

- 5.1 The Contractor and the Lead Authority shall promptly, and in any event within 28 days of the Calculation Date, meet to agree upon the Transfer Amount payable pursuant to Paragraph 1.1 (*Payment Upon Termination*) of Schedule 13 (*Compensation on Termination*).
- 5.2 If the Contractor and the Lead Authority cannot agree on the Transfer Amount (or any element thereof) within 28 days of the Calculation Date, the Transfer Amount (or any element thereof) shall be determined by an Adjudicator based on the principles and assumptions set out in Paragraphs 1 (*Rights and Obligations of Parties Upon Termination*) and where relevant, 2 (*Calculation of NPV*), 3 (*Third Party Obligations*) and 4 (*Deduction*) of Schedule 13 (*Compensation on Termination*).

- 5.3 Each party shall give each other or the Adjudicator reasonable access to its premises and books, records and other documents for the purposes of determining the Transfer Amount and each of the parties shall promptly on request to supply to each other or the Adjudicator all such documents and information as they may require for such purpose.
- 5.4 The Adjudicator may retain such valuers and accountants that it deems reasonably necessary to determine the Transfer Amount and all calculations of the Transfer Amount and any elements thereof shall be prepared in accordance with the accounting principles, practices and standards generally accepted in the United Kingdom as in effect at the Calculation Date.
- 5.5 The costs of the Adjudicator and any such valuer or accountant shall be borne and paid equally by both parties. Provided that:
- 5.5.1 the Contractor shall pay all such amounts where this Contract is terminated by the Lead Authority as a result of a Contractor Event of Default:
 - 5.5.2 the Council shall pay all such amounts if this Contract is terminated by the Contractor as a result of a Council Event of Default or Voluntary Termination; and
 - 5.5.3 such amounts shall be shared equally by the Councils and the Contractor if this Contract is terminated due to an Event of No-Fault Termination.
- 5.6 The Transfer Amount shall be denominated, and paid in, sterling.

- 5.9 The balance shown in the Post-Completion Statement shall be paid by the party who is agreed by the parties, or determined by the Adjudicator, to owe such amount to the relevant party within 30 days of the Adjudicator's determination of the amount owing.

[REDACTED]

[REDACTED]

[REDACTED]

6.2 **Documentation**

The Contractor shall use its reasonable endeavours to deliver or make available to the Councils all such conveyances, transfers, releases, assignments and novations together with the relevant documents of title and any other books, records and other documents as the Lead Authority may reasonably require to vest in the Councils the full benefit of the Transfer Assets.

6.3 **Exit Plan**

Without prejudice to this Schedule 13 (*Compensation on Termination*), the parties shall comply with the Exit Plan upon termination of the Contract Period.

[REDACTED]

[REDACTED]

[REDACTED]

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ANNEX 12
COUNCILS' DIRECT AGREEMENT

(inserted overleaf)



Councils' Direct Agreement

Worcestershire County Council

The County of Herefordshire District Council

(as Councils)

Worcestershire County Council

The County of Herefordshire District Council

(as Lenders)

The Law Debenture Trust Corporation p.l.c.

(as Security Agent)

and

Mercia Waste Management Limited

(as Contractor)

relating to the Herefordshire and Worcestershire waste
project

May 2014

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THIS DEED is made on May 2014

BETWEEN:

- (1) **WORCESTERSHIRE COUNTY COUNCIL and THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** in their capacity as procuring authorities (the "**Councils**");
- (2) **WORCESTERSHIRE COUNTY COUNCIL and THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** in their capacity as lenders (the "**Lenders**");
- (3) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.** in its capacity as security trustee for the Secured Creditors (the "**Security Agent**"); and
- (4) **MERCIA WASTE MANAGEMENT LIMITED** a company incorporated in England and Wales with registered number 03525188 and registered office at The Marina, Kings Road, Evesham, Worcestershire, United Kingdom, WR11 3XZ (the "**Contractor**").

RECITALS:

- (A) The Councils and the Contractor have entered into the Deed of Variation to amend the terms of the Waste Management Service Contract, to give effect to the development of a the Waste to Energy Plant by the Contractor on a site different from that originally contemplated by the Waste Management Service Contract.
- (B) The Contractor, the Security Agent and the Lenders have entered into the Senior Term Loan Facilities Agreement to provide finance for the development of the Waste to Energy Plant.
- (C) The entry into this Deed is a condition precedent to Financial Close.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this Deed:

"Affiliate" means, in relation to any person, another person that controls, is controlled by or is under common control with such person;

"Direct Agreements in favour of the Councils" means the direct agreements between the Councils, the Contractor and each of the EPC Contractor, the O&M Contractor and the Construction Manager entered into on or about the date of this Deed;

"Expiry Date" shall (save where expressly stated otherwise) have the meaning given to that term in the Waste Management Service Contract;

"Financing Compensation Event" means a failure (including by reason of the invalidity of the Senior Term Loan Facilities Agreement) by the Councils to make available an amount which the Funders are (or but for such invalidity would be) obliged to advance to the Contractor under the Senior Term Loan Facilities Agreement; and

"Project Documents" shall have the meaning given to that term in the Waste Management Service Contract; and

"Senior Term Loan Facilities Agreement" means the loan agreement entered into or about the date of this Deed between the Contractor (as borrower), the Lenders (as lead arrangers and original lenders) and the Security Agent.

1.2 Other References

In this Deed, unless a contrary intention appears:

- (a) terms defined in the Senior Term Loan Facilities Agreement, Deed of Variation or Waste Management Service Contract have the same meaning in this Deed;
- (b) a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors and permitted assignees or transferees;
- (c) references to clauses and schedules are references to, respectively, clauses of and schedules to this Deed;
- (d) a reference to (or to any specified provision of) any agreement or document (including the Finance Documents) is to be construed as a reference to that agreement or document (or that provision) as it may be amended from time to time, but excluding for this purpose any amendment which is contrary to any provision of any Finance Document);
- (e) a reference to a statute, statutory instrument or accounting standard or any provision thereof is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision thereof, as it may be amended or re-enacted from time to time;
- (f) any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- (g) the benefits and protections afforded to the Security Agent under the Intercreditor Deed shall be incorporated by reference into this Deed and any reference in those provisions to the **"Lead Arrangers"** or the **"Original Lenders"** shall mean the Councils for the purposes of this Deed and any reference in those provisions to the **"Borrower"** shall mean the Contractor for the purposes of this Deed;
- (h) a time of day is a reference to London time;
- (i) the index to and the headings in this Deed are inserted for convenience only and are to be ignored in construing this Deed; and
- (j) words importing the plural shall include the singular and vice versa.

1.3 The Security Agent

Each Party (other than the Security Agent) acknowledges and agrees that, when it is acting under or pursuant to this Deed 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. [NOT USED]

[REDACTED]

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4. PRIORITY OF STEP-IN RIGHTS

4.1 Notwithstanding any provisions to the contrary in any of the Direct Agreements in favour of the Councils, the Councils agree that they will not exercise or seek to exercise any of their step-in rights or other rights under or in respect of any Direct Agreement in favour of the Councils prior to termination of the Waste Management Service Contract until the earlier of:

- (a) the Senior Finance Liabilities Discharge Date; and

- (b) the date on which the Security Agent (acting on the instructions of the Lenders) has given its written consent to such exercise following a request from the Councils or otherwise.

5. ASSIGNMENT

5.1 Assignments and Transfers

No party to this Deed may assign or transfer any part of its rights or obligations under this Deed, save that:

- (a) the Security Agent may assign or transfer its rights under this Deed to a successor Security Agent in accordance with the terms of the Finance Documents;
- (b) any Lender may assign or transfer its rights under this Deed in accordance with the terms of the Finance Documents; and
- (c) each Council may assign or transfer its rights and obligations to any permitted assignee or transferee in accordance with the terms of the Waste Management Service Contract.

5.2 New Direct Agreements

If clause 5.1(a) applies then the Councils shall enter into a direct agreement with the new Security Agent and the other parties hereto on substantially the same terms as this Deed. If clause 5.1(c) applies, the Councils shall procure that the assignee or transferee shall enter into a direct agreement with the other parties hereto on substantially the same terms as this Deed.

6. TERM

This Deed shall commence on the date hereof and shall continue in force and effect until the earliest to occur of:

- (a)
 - (i) the Senior Finance Liabilities Discharge Date;
 - (ii) the Expiry Date; and
- (b) the date on which a novation of the Waste Management Service Contract by the Councils takes effect in accordance with clause 5.1(c).

7. ENTIRE AGREEMENT

This Deed and the Project Documents constitute the entire agreement between the parties hereto in connection with the subject matter of this Deed. No party has relied upon any representation save for any representation expressly set out in this Deed or the Project Documents.

8. MISCELLANEOUS

8.1 Counterparts

This Deed may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

8.2 Conflict

For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Deed and the Project Documents, the provisions of this Deed shall prevail.

8.3 Notices

Any notice, demand or other communication given or made under or in connection with the matters contemplated by this Deed shall be in writing and shall be delivered by hand or by courier or sent by fax or by email or prepaid first class post:

- (a) In the case of the Councils to:

Worcestershire County Council

Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Fax: 01905 766073

Email: jhobbs@worcestershire.gov.uk

Attention: The Superintendent Officer

The County of Herefordshire District Council

Address: Brockington,
35 Haford Road Hereford
HR1 1SH

Fax: 01432 260994

Email: jrushgrove@herefordshire.gov.uk

Attention: The Superintendent Officer

- (b) In the case of the Lenders to:

Worcestershire County Council

Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Fax: 01905 766073

Email: [REDACTED]

Attention: The Section 151 Officer

The County of Herefordshire District Council

Address: Brockington,
35 Haford Road Hereford
HR1 1SH

Fax: 01432 260500

Email: [REDACTED]

Attention: The Section 151 Officer

- (c) In the case of the Contractor to:

Mercia Waste Management Limited

Address:

The Marina,
Kings Road,
Evesham,
Worcestershire
WR113XZ

Fax: 01386 446757

Email: ContractorsRepresentative@severnwaste.co.uk

Attention: [REDACTED]

and shall be deemed to have been duly given or made as follows:

- (a) if delivered by hand or by courier, upon delivery at the address of the relevant party;
- (b) if sent by first class post, two Business Days after the date of posting; and

- (c) if sent by fax, when despatched; and
- (d) if sent by electronic mail when actually received by the intended recipient in readable form;

provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next Business Day.

8.4 Change of notice details

A party may notify the other party to this Deed of a change to its name, relevant addressee, address (including e-mail address) or fax number for the purposes of clause 8.3 provided that such notification shall only be effective:

- (a) on the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Business Days after the date on which notice is given, the date falling five Business Days after notice of any such change has been given.

8.5 Obligations Binding

The obligations of the parties who have executed this Deed shall not be affected by the fact that not all of the parties hereto have validly executed this Deed and such obligations shall be binding inter se.

8.6 Remedies and Waivers

- (a) No failure or delay on the part of any party in exercising any right, power or privilege under this Deed shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of any other right, power or privilege.
- (b) The rights and remedies provided in this Deed are cumulative and not exclusive of any rights and remedies provided by law.
- (c) A waiver given or other consent granted by any party under this Deed shall be *effective* only if given in writing and then only in the instance and for the purposes for which it is given.

8.7 Partial Invalidity

If, at any time, any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

9. **THE LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

The parties hereby consent to the issue by the Councils of a certificate under section 3 of the Local Government (Contracts) Act 1997 which relates to this Deed.

10. **THIRD PARTY RIGHTS**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and nor rights or benefits expressly or impliedly conferred by it shall be enforceable under that Act against the parties to it by any other person.

11. **GOVERNING LAW**

This Deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of in any way relating to this Deed or its formation) shall be governed by and construed in accordance with English law.

IN WITNESS whereof this Deed has been executed and delivered on the date first above written.

SIGNATORIES

COUNCILS

The COMMON SEAL of
WORCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

Authorised Officer

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)
)
)

The COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of

Authorised Officer

)
)
)
)
)

LENDERS

The COMMON SEAL of
WORCESTERSHIRE COUNTY COUNCIL
was hereunto affixed
in the presence of

Authorised Officer

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The COMMON SEAL of
THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
was hereunto affixed in the presence of

Authorised Officer

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)
)
)

SECURITY AGENT

Executed as a Deed by [REDACTED]
[REDACTED] for and on behalf of **THE LAW
DEBENTURE TRUST CORPORATION
P.L.C.** under a power of attorney
dated.... 2014 in the presence
of:

Witness's Signature

Name of witness

Address of witness

Occupation of witness

CONTRACTOR

EXECUTED as a DEED
for and on behalf of
**MERCIA WASTE
MANAGEMENT LIMITED**

Signature of director

Print Name:

Signature of director

Print Name:

ANNEX 13 GUARANTEE

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

ANNEX 14
EPC COUNCILS' DIRECT AGREEMENT

(inserted overleaf)

DATED

2014

- (1) HITACHI Zosen INOVA AG**
- (2) THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL**
- (3) WORCESTERSHIRE COUNTY COUNCIL**
- (4) MERCIA WASTE MANAGEMENT LIMITED**

AUTHORITY DIRECT AGREEMENT.

**relating to the Energy from Waste Plant at Plot H600, Oka Drive, Hartlebury Trading Estate,
Worcestershire DY10 4JB**

THIS DEED is made on

2014

BETWEEN:

- (1) **HITACHI ZOSEN INOVA AG** of Hardturmstrasse 127, 8005 Zurich (the "Contractor");
- (2) **THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Brockington, 35 Hafod Road, Hereford HR1 1SH ("HDC", which expression includes its permitted successors in title and assigns);
- (3) **WORCESTERSHIRE COUNTY COUNCIL** of County Hall, Spetchley Road, Worcester WR5 2NP ("WCC", which expression includes its permitted successors in title and assigns); and
- (4) **MERCIA WASTE MANAGEMENT LIMITED** (Company No. 03525188) whose registered office is at The Marina, Kings Road, Evesham, Worcestershire WR11 3XZ (the "Purchaser").

BACKGROUND

- (A) By a contract dated 22 December 1998 as varied by a variation agreement dated on or around the date of this Deed (the "Project Contract") WCC and HDC (together the "Authority") the Authority has appointed the Purchaser to carry out, in relation to the sites, the provision of residual waste treatment to the Authority at each and every site/facility as contemplated by the Project Contract including the carrying out of the design, construction, commissioning and testing of the Works and the provision of the Services (as defined in the Project Contract).
- (B) The Contractor has been appointed by the Purchaser under a contract dated on or around the date of this Deed (the "EPC Contract") to carry out the design, construction, commissioning and testing of the Works for a plant at Plot H600, Oka Drive, Hartlebury Trading Estate, Worcestershire DY10 4JB ("the Site").
- (C) The Contractor is obliged under the EPC Contract to give a warranty in this form in favour of the Authority.

1. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authority to the Contractor, receipt of which the Contractor acknowledges, the parties agree as follows:

2. DEFINITIONS AND INTERPRETATIONS

In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:

"Competitor" means any of the companies listed in the attached schedule 1 (Competitors);

"Lender(s)" means any organisation providing funding to the Purchaser in connection with the carrying out of the Works;

- 2.1 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the EPC Contract.

3. CONTRACTOR'S WARRANTY AND LIABILITY

- 3.1 The Contractor warrants to the Authority that it has carried out and will continue to carry out its duties under the EPC Contract in accordance with the EPC Contract and that it has exercised and will continue to exercise, in carrying out the design of the Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional contractor providing those services in relation to a project of a similar size and scope to the Works. In particular and without limiting the generality of the foregoing the Contractor covenants with the Authority that it has carried out and will carry out and complete the Works in accordance with the EPC Contract and duly observe and perform all its duties and obligations thereunder.
- 3.2 The Contractor shall be entitled in any action or proceedings by the Authority to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Purchaser under the EPC Contract, and shall have no liability under this Deed that is of greater or of longer duration than it would have had if the Authority had been a party to the EPC Contract as joint employer. Upon the expiration of twelve (12) years from the date of Take Over of the Works in accordance with the EPC Contract, the liability of the Contractor under this Deed shall cease and determine, save in relation to any claims made by the Authority against the Contractor and notified by the Authority to the Contractor in writing prior thereto.
- 3.3 The Contractor shall have no liability to the Authority under this Deed in respect of any delay in the Take-Over of the Works howsoever caused save to the extent that the liability arises under the EPC Contract and the Authority shall have exercised its right to step in under clause 10. Any claim in relation to a delay in Take Over of the Works but not otherwise will be extinguished to the extent that the Purchaser has had deducted liquidated damages under clause 15 of the EPC Contract.

4. DOCUMENTATION

- 4.1 The Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authority with effect from the date of this Deed or in the case of Documentation not yet in existence with effect from the creation thereof, a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Contractor's obligations under the EPC Contract or the termination of the EPC Contract or the determination of the Contractor's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Documentation for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Authority will not hold the Contractor liable for any use it may make of the Documentation for any purpose other than that for which they were originally provided by it unless the Contractor authorises such use and confirms the Documentation is suitable for it, provided that the Contractor shall not be liable for any modifications to the Documentation or the Works by the Authority or any representative of the Authority.
- 4.2 The Contractor warrants to the Authority that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Documentation (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and

that in any event their use in connection with the Works will not infringe the rights of any third party.

5. INSURANCE

The Contractor shall upon request provide to the Authority reasonable evidence that it is maintaining the insurances it is required to take out and maintain under the EPC Contract.

6. NOTICES

Any notice to be given by any party will be sufficiently served if sent by hand or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery provided that if any notice sent by hand is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of 6 Business Days after the time of posting if the end of that period falls before 4.45 pm on a Business Day and otherwise on the next Business Day.

7. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Contractor on two occasions only and the Authority will notify the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. AUTHORITY'S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

9. INSPECTION OF DOCUMENTATION

The Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documentation or attendance at site meetings or other enquiry or inspection which the Authority may make or procure to be made for its benefit or on its behalf.

10. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY

10.1 The Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the EPC Contract or its engagement under it or discontinue the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) days' prior written notice specifying the Contractor's ground for terminating or treating as terminated or repudiated the EPC Contract or its engagement under it or discontinuing its performance thereof and stating the amount (if any) of monies outstanding under the EPC Contract and the amounts it anticipates

will become due for payment in the period between the issue of the notice by the Contractor and the expiry of the thirty (30) days notice period. Within such period of notice:

- 10.1.1 the Authority may give written notice to the Contractor that the Authority will thenceforth become the Purchaser under the EPC Contract to the exclusion of the Purchaser and thereupon the Contractor will admit that the Authority is the Purchaser under the EPC Contract and the EPC Contract will be and remain in full force and effect notwithstanding any of the said grounds;
 - 10.1.2 if the Authority has given such notice as aforesaid or under **clause 10.3**, the Authority shall accept liability for the Purchaser's obligations under the EPC Contract and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Contractor's specified grounds and which is capable of remedy by the Authority provided that the maximum amount payable by the Authority pursuant to this **clause 10.1.2** in respect of monies outstanding under the EPC Contract at the date of the Contractor's notice shall be the amount notified to the Authority by the Contractor pursuant to **clause 10.1**; and
 - 10.1.3 if the Authority has given such notice as aforesaid or under **clause 10.3**, the Authority will from the service of such notice become responsible for all sums properly payable to the Contractor under the EPC Contract accruing due after the service of such notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the EPC Contract.
- 10.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Contractor, the Authority will not be under any obligation to the Contractor nor will the Contractor have any claim or cause of action against the Authority unless and until the Authority has given written notice to the Contractor pursuant to **clause 10.1.1** or **clause 10.3**.
- 10.3 The Contractor further covenants with the Authority that if the EPC Contract is terminated (other than as a result of an event of Default of the Authority standing in the shoes of the Purchaser (as defined in the EPC Contract)) the Contractor, if requested by the Authority by notice in writing and subject to **clause 10.1.2** and **clause 10.1.3**, will accept the instructions of the Authority to the exclusion of the Purchaser in respect of its duties under the EPC Contract upon the terms and conditions of the EPC Contract and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Purchaser under the EPC Contract. If the Authority exercises its rights pursuant to this **clause 10.3**, any purported termination of the EPC Contract pursuant to clause 43A thereof shall be of no effect.
- 10.4 Where the Contractor has given rights in relation to the EPC Contract similar to those contained in this **clause 10** to any other person including the Lenders then if both the Authority and the Lenders serve notice under **clause 10.1** or **clause 10.3** or its equivalent the notice served by the Authority shall not prevail over any notice served by the Lenders but shall prevail over any notice served by any other person. If the Authority serves notice under **clause 10.1** or **10.3** and the Lenders subsequently serve an equivalent notice, then such Lenders' notice shall without prejudice to the EPC Contractor's rights against the Authority for the period that its notice was valid, take priority over and supersede the Authority's notice.

- 10.5 The Purchaser acknowledges that the Contractor will be entitled to rely on a notice given to the Contractor by the Authority under **clause 10.3** as conclusive evidence that the Project Contract has been terminated by the Authority.
- 10.6 The Authority may by notice in writing to the Contractor appoint another person (but not a Competitor of the Contractor) to exercise its rights under this **clause 10** subject to the Authority remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.7 Upon request by the Authority following notice given by the Authority under this **clause 10** the Contractor agrees to co-operate with the Authority in determining the duties performed or to be performed by the Purchaser and to provide a copy of the EPC Contract and any variations thereto and details of all monies paid and due under the EPC Contract.

11. SUB-CONTRACTORS

Following a written request from the Authority the Contractor will execute (unless it has already done so) and/ or procure that such of its sub-contractors as are listed in the EPC Contract as Major Subcontractor's shall execute a deed of collateral warranty in the relevant form specified in the EPC Contract in favour of any person in whose favour the EPC Contract obliges the Contractor to give or procure the giving of such a warranty.

12. APPLICABLE LAW AND JURISDICTION

The law applicable to this Deed and any non-contractual obligations arising out of or in connection with it shall be English Law and the English Courts shall have non-exclusive jurisdiction with regard to all matters arising in connection with or under this Deed (including (without limitation) in relation to any non-contractual obligations).

13. THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

SCHEDULE 1
Competitors

1. LAB
2. Gotaverken Miljo
3. DrySotec
4. Alstom
5. Caldyn
6. Luhr Filter
7. FLSmidth Airtech
8. Area Impianti
9. CN1M
10. Martin
11. VINCI
12. Keppel Seghers Fisia Babcock Babcock Wilcox Volund Energos
13. Standardkessel Baumgarte
14. Xervon ThyssenKrupp/Remondis
15. KAB-Takuma
16. Visser Smit Hanab
17. Doosan
18. Volker Fitzpatrick Rafako
19. Termomeccanica JFE

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

SIGNED AS A DEED by)
HITACHI ZOSEN INOVA AG)
a company incorporated in Switzerland)
and acting by)
and)
being persons who in accordance with)
the laws of that territory are acting)
under the authority of that company)

TH E COM MON SEAL OF)
TH E COUNTY OF)
HEREFORDSHIRE DISTRICT)
COUNCIL)
was hereunto affixed BY ORDER)
in the presence of)
Authorised Officer)

Authorised Officer

TH E COM MON SEAL OF)
WORCESTERSHIRE COUNTY)
COUNCIL)
was hereunto affixed in the)
presence of Authorised Officer)

Authorised Officer

EXECUTED as a **DEED**)
for and on behalf of)
MERCIA WASTE MANAGEMENT)
LIMITED)

By:
For **FCC ENVIRONMENT SERVICES (U.K.) LIMITED** as Authorised Signatory/Director

By:
For **URBASER LIMITED** as Director

ANNEX 15
WASTE LAW LIST

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

ANNEX 16
FINANCIAL MODEL

(inserted overleaf)

ANY ENQUIRIES
REGARDING THE
FINANCIAL MODEL
TO BE DIRECTED
TO



AT
CREDIT AGRICOLE

[The financial model itself has been withheld.]

APPENDIX 1

(ANNEX 2 (PROTOCOL FOR OPERATION OF THE BASE FINANCIAL MODEL) OF THE WASTE MANAGEMENT SERVICE CONTRACT))

Protocol for Operation of the Base Financial Model

1. Application

1.1 The following provisions describe the arrangements agreed by the Parties in relation to:

- (a) the custody of the Base Financial Model; and
- (b) revisions, additions and deletions to inputs to the Base Financial Model (in each case an "Amendment") and, after completion of each Amendment, the Base Financial Model shall have been Amended when an adjustment to the Unitary Payment is required by a term of the Contract. All references to specific line numbers contained in these provisions are correct for the Base Financial Model as at financial close. While references to the specific line titles will remain consistent, the line numbers specified may change following subsequent Amendments in accordance with the Protocol.

1.2 In these provisions:

- (a) *inputs to the Base Financial Model* refers to the forecast costs, prices and other items and assumptions which are used in the Financial Model;
- (b) *methodology for operation of the Base Financial Model* refers to how the inputs to the Base Financial Model relate to each other and to the outputs; and

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

2. Custody Arrangements

2.1 The Contractor shall no later than 14 Days after the date hereof lodge 2 copies of the Base Financial Model with the National Computing Centre Limited, Manchester to be held in custody upon the terms set out in the Model Custodian Agreement. The Parties shall agree a substitute for the custodian in the event that such person ceases to act as custodian.

2.2 The Contractor shall in addition, lodge with the National Computing Centre Limited, Manchester, 2 copies of the Base Financial Model as Amended no later than 14 Days after such Amendments have been effected and agreed with the Councils, to be held in custody upon the terms set out in the Model Custodian Agreement.

2.3 The cost of the custody arrangements will be met by the Contractor.

3. Amendments

3.1 The inputs to the Base Financial Model shall be amended only in the circumstances specified below and in accordance with these provisions.

3.2 The circumstances in which the inputs to and/or methodology for operations of the Base Financial Model may be Amended, are pursuant to the following provisions of the Service Contract but only to the extent explicitly provided for in the following provisions:

- (a) Schedule 2 (*Variations*);
- (b) [Not Used];
- (c) Schedule 4 (*Payment Mechanism*);
- (d) Schedule 12 (*Change in Composition and Calorific Value of Contract Waste*);
- (e) Clause 45 (*Changes in Law*);
- (f) Clause 52A (*Compensation Events*);
- (g) Clause 52B (*Supervening Events*);
- (h) Clause 53 (*Force Majeure/Relief Events*);
- (i) Clause 54 (*Mandatory Contract Period Extension*);
- (j) [Not Used].

4. Methodology

4.1 If the inputs to the Base Financial Model change in any of the circumstances described in paragraph 3.2, the Councils and the Contractor shall agree the Amendments which are required to reflect the circumstances in question. The Contractor shall propose to the Councils which inputs to the Base Financial Model should be Amended and the nature of the Amendments and shall fully disclose all financial and other information (including the prospective impact on the outputs) required by the Councils to verify such proposals. If the Councils and the Contractor are unable to agree the Amendments required within [REDACTED] of the later of the Contractor making its proposals to the Councils and the Contractor delivering all other information reasonably requested by the Councils under this paragraph 4.1 any party may refer the matter to the Dispute Resolution Procedure for determination.

[REDACTED]

The Amendments will be made to the inputs of the Base Financial Model in accordance with the following provisions:

[illegible]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. [Example of the Calculation for a Variation]

Appendix 1 of this Annex provides an illustrative example of the Amendments required to the Base Financial Model pursuant to a possible Variation.]

Appendix 1

Example of Calculation for a Variation

If Variations occur during the Construction period.

[•]

If Variations occur during the Operation period.

[An example is set up below of Amendments that would need to be made to the Base Financial Model in the event of a Variation caused by a Change in Law which requires additional Operating Costs for the Hill & Moor Landfill site Rotherwas Transfer Station.

Assumptions:

Timing of Variation: 4th quarter of 2015.

Facilities to which applied: Hill & Moor Landfill Site

Rotherwas Transfer Station



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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