

Dated *2nd September* 2024

**(1) FENLAND DISTRICT COUNCIL and EAST CAMBRIDGESHIRE DISTRICT
COUNCIL**

(2) BIFFA WASTE SERVICES LIMITED

Service Agreement for the Lot 2 Transportation/Receipt,
Sorting and Onward Sale/Re-Processing for Commingled Dry
Recyclable Materials

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This agreement is made on 2nd September

2024

Between

- (1) **FENLAND DISTRICT COUNCIL** of County Road, March, Cambridgeshire PE15 8NQ and **EAST CAMBRIDGESHIRE DISTRICT COUNCIL** of The Grange, Nutholt Lane, Ely, Cambridgeshire CB7 4EE (**Councils**).
- (2) **BIFFA WASTE SERVICES LIMITED** incorporated and registered in England and Wales with company number 946107 whose registered office is at Coronation Road, Cressex, High Wycombe, Buckinghamshire, HP12 3TZ (**Contractor**).

Each a **Party** and together the **Parties**.

Introduction

- A The Councils published a contract notice 24019 on 15 May 2024 on the UK e-notification service seeking expressions of interest from potential providers for dry mixed recycling services.
- B In furtherance of the Councils' statutory powers for waste recycling under section 55 of the Environmental Protection Act 1990, the Councils have, through a competitive process, selected the Contractor to provide the Services and the Contractor is willing and able to provide the Services in accordance with this agreement.

Agreed terms

1 Interpretation

- 1.1 The provisions of Schedule 1 (Definitions) shall apply and have effect in relation to the words and expressions used in this agreement and the interpretation and construction of this agreement.

1.2 Interpretation

In this agreement except where the context otherwise requires:

- 1.2.1 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.2.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.2.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.2.6 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended,

extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.

1.2.7 A reference to **writing** or **written** includes e-mail.

1.2.8 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.2.9 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.

1.2.10 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.

1.2.11 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.12 In the event of an assignment or transfer of this agreement by a Party (in accordance with the terms of this agreement) any references to the relevant Party shall be read as references to their permitted successor.

1.2.13 References to Councils and Authorities shall be used interchangeably.

1.2.14 **Schedules**

The Schedules to this agreement form part of this agreement and shall have effect as if set out in full in the body of this agreement and any references to this agreement includes the schedules.

1.2.15 **Approval**

Neither the giving of any approval, consent, examination, acknowledgment, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Councils, nor the failure of the same, shall unless expressly stated in this agreement, relieve the Contractor of any of its obligations under this agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgment or knowledge.

1.2.16 **Responsibility for Related Parties**

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

1.2.17 **Statutory Capacity**

Save as otherwise expressly provided in this agreement, the obligations of the Councils under this agreement are obligations of the Councils in its capacities as a contracting counter-party Waste Collection Authority and nothing in this agreement shall operate as an obligation upon, or in any other way fetter or constrain, the Councils in any other capacity, nor shall the exercise by the Councils of its duties and powers in any other capacity lead to any liability under this agreement (howsoever arising) on the part of the Councils to the Contractor.

2 **Precedence of Documentation**

2.1 In the event of any inconsistency between:

- 2.1.1 the main body of this agreement (including for this purpose Schedule 1 (Definitions) and the schedules (other than Schedule 1), the main body of the agreement shall take precedence;
- 2.1.2 Schedule 3 (Payment Mechanism) and any other schedules (excluding Schedule 1), Schedule 3 shall take precedence;
- 2.1.3 Schedule 2 (Specification) and any of the other schedules (excluding Schedules 1 and 3), Schedule 2 shall take precedence; and
- 2.1.4 the remaining schedules (excluding Schedule 1, Schedule 2 and Schedule 3), all the remaining schedules shall have equal precedence.

Commencement and Duration

3 **Term**

- 3.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.
- 3.2 No later than 30 days after the Commencement Date, the Contractor shall deliver to the Councils the Parent Company Guarantee.

4 **Extending the Initial Term**

- 4.1 The Councils may extend this agreement beyond the Initial Term by up to one period of twenty-four (24) Months (the “**Extension Period**”). If the Councils wish to extend this agreement, they shall give the Contractor at least six (6) Months’ written notice of such intention before the expiry of the Initial Term.
- 4.2 If the Councils give such notice, then the Term shall be extended by twenty four (24) Months.
- 4.3 If the Councils do not wish to extend this agreement beyond the Initial Term, this agreement shall expire on the expiry of the Initial Term and the provisions of clause 46 shall apply.
- 4.4 Should the Initial Term be extended, then the Contractor shall provide a replacement Parent Company Guarantee (or provide other security on terms

acceptable to and no less favourable to the Councils) prior to the commencement of the Extension Period.

5 Due Diligence, Contractor's Warranty and Undertaking

5.1 The Contractor acknowledges and confirms that:

5.1.1 the Councils have delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this agreement;

5.1.2 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Councils pursuant to clause 5.1.1;

5.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Councils before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement including without limitation current and projected tonnages (including seasonality), trends and composition of Contract Materials; and

5.1.4 it has entered into this agreement in reliance on its own due diligence.

5.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Councils in respect of any information which is provided to the Contractor by the Councils and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

5.3 The Contractor:

5.3.1 warrants and represents that all information and statements made by the Contractor as a part of the procurement process, including without limitation the Services Delivery Plan or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Councils prior to execution of this agreement; and

5.3.2 shall promptly notify the Councils in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Councils during such due diligence which adversely affects its ability to perform the Services or meet any KPIs.

5.4 The Contractor shall not be entitled to recover any additional costs from the Councils which arises from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Councils by the Contractor in accordance with clause 5.3.2, save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Councils and the Contractor could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor shall be entitled to recover

such reasonable additional costs from the Councils or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

5.5 Nothing in this clause 5 shall limit or exclude the liability of the Councils for fraud or fraudulent misrepresentation.

5.6 The Contractor undertakes to the Councils that throughout the Term:

5.6.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware of the same be threatened or pending or within twenty (20) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor), give the Councils notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, the Contractor's ability to perform its obligations under this agreement and shall, for so long as such proceedings subsist, keep the Councils reasonably informed of the same;

5.6.2 it shall not without the prior written consent of the Councils (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this agreement;

5.6.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom; and

5.6.4 it will not undertake the performance of its obligations under this agreement for the provision of the Services otherwise than through itself or a Sub-Contractor.

5.7 **Prohibited Act**

The Contractor warrants and represents that in entering into this agreement it has not committed any Prohibited Act.

5.8 **Status of Warranties**

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this agreement are cumulative and none shall be given a limited construction by reference to any other.

5.9 **Contractor Warranty**

The Contractor warrants and represents to the Councils that as at the date of this agreement:

- 5.9.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and carry on its business as it is now being conducted;
- 5.9.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this agreement and the Relevant Agreements to which it is a party;
- 5.9.3 all actions necessary on the part of the Contractor to authorise the execution of and the performance of its obligation under this agreement and the Relevant Agreements to which it is a party has been taken or, in the case of any Relevant Agreements to which it is a party executed after the date of this agreement, will be taken before such execution;
- 5.9.4 the obligation expressed to be assumed by the Contractor under this agreement and the Relevant Agreements to which it is a party, or in the case of any Relevant Agreements to which it is a party executed after the date of this agreement will be legal, valid, binding and enforceable to the extent permitted by law and this agreement and each Relevant Agreement to which it is a party or will be in the proper form for enforcement in England;
- 5.9.5 the execution, delivery and performance by it of this agreement and the Relevant Agreements to which it is a party does not contravene any provision of:
- (a) any existing Law either in force, or enacted but not yet in force and binding on the Contractor;
 - (b) the memorandum and articles of association of the Contractor;
 - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues,
- 5.9.6 as far as the Contractor is reasonably aware, all information and data provided by the Contractor is true and accurate in all respects;
- 5.9.7 no claim is presently being assessed and no litigation, arbitration, administrative or mediation proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this agreement or any Relevant Agreements to which it is a party;
- 5.9.8 it is not subject to any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this agreement or the Relevant Agreements to which it is a party;

- 5.9.9 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer or in relation to any of its assets or revenues; and
- 5.9.10 this agreement and each Relevant Agreement to which it is a party or, when executed, will be in full force and effect and constitutes or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties thereto; and
- 5.9.11 copies of the Relevant Agreements to which it is a party which the Contractor has delivered, or, when executed will deliver to the Councils, or, as the case may be, will be true and copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Relevant Agreements to which it is a party which would materially affect the interpretation or application of the Relevant Agreements to which it is a party,

and the Councils rely upon such warranties and representations.

6 Third Party Agreements

- 6.1 At the date of this agreement, the Contractor has entered into, or intends to enter into the Third Party Agreements listed in Part A and Part B (as applicable) of Schedule 16 (Third Party Agreements). The Contractor confirms that each such Third Party Agreement complies with the provisions of clause 6.2 of this agreement.
- 6.2 At any time after the date of this agreement, if and whenever the Contractor shall enter into any Sub-Contract or Third Party Agreement or where there is any amendment to such a contract, the Contractor shall ensure that any such contract is in writing and:
 - 6.2.1 is on reasonable arm's length terms including in respect of payment of income to the Contractor;
 - 6.2.2 contains no breakage costs which could in any circumstances be passed to the Councils; and
 - 6.2.3 is consistent with the Councils' open book and audit rights.
- 6.3 The Contractor shall:
 - 6.3.1 afford the Councils a reasonable opportunity to conduct due diligence on any Sub-Contractor or third party before the Contractor enters into the same to enable the Councils to assess its terms for compliance with the provisions of clause 6.2 and to raise any comments;
 - 6.3.2 take into account any comments made by the Councils and shall use all reasonable endeavours to amend the Sub-Contract or Third Party Agreement before such a contract is concluded; and

6.3.3 provide free of charge copies of any Sub-Contract or Third Party Agreement and any related documents to the Councils' Representative.

6.4 Amendments to Sub-Contracts

No entry into, amendment, waiver or exercise of any right relating to a Sub-Contract and/or this agreement shall have the effect of increasing the Councils' liabilities on early termination of this agreement unless the Contractor has obtained the prior written consent of the Councils to such increased liability for the purposes of this clause 6.4.

6.5 Sub-contracting

The provisions of this clause 6 are without prejudice to clause 47.

The Services

7 Supply of Services

7.1 The Contractor shall provide the Services to the Councils at the Site from the Services Commencement Date and throughout the Term:

7.1.1 in accordance with:

- (a) this agreement;
- (b) the Specification (Schedule 2);
- (c) the Services Delivery Plan (Schedule 4);
- (d) Good Industry Practice;
- (e) all applicable Law;
- (f) the Councils' Policies (Schedule 10) provided to the Contractor at the date of this agreement or otherwise made available to the Contractor from time to time; and
- (g) the Consents,

7.1.2 using such time, resources, trained personnel and skill as may be necessary for the due and proper performance of the Services;

7.1.3 in a manner that is consistent with all current relevant health and safety precautions required to comply with Good Industry Practice and Law for the protection of the Contractor, its personnel, any Sub-Contractors and their personnel, any Councils' Related Parties and any other persons invited onto or visiting the Site;

7.1.4 using its reasonable endeavours to minimise inconvenience and disruption:

- (a) the Councils and the Councils' employees; and
- (b) any lawful visitor to the Site.

7.2 Performance of the Services

- 7.2.1 The Contractor shall ensure that the Services meet or exceed the Performance Standards.
 - 7.2.2 The Contractor shall monitor its performance of the Services and report the findings of its monitoring to the Councils in accordance with clauses 17 and 18 and Schedule 6 (Reporting and Performance Monitoring (Processing)).
- 7.3 Each of the obligations set out in clauses 7.1.1 to 7.2.2 (inclusive) is an independent obligation. In particular:
 - 7.3.1 the fact that the Contractor has provided the Services in accordance with the Services Delivery Plan shall not be a defence to an allegation that the Contractor has failed to comply with the Specification; and
 - 7.3.2 the fact that the Contractor has provided the Services in accordance with the Specification shall not be a defence to an allegation that the Contractor has failed to provide the Services in accordance with the Services Delivery Plan.
- 7.4 The Contractor shall not be relieved from any obligation to provide the Services in the event of any industrial dispute relating to the Contractor and/or the Contractor's Relevant Persons. The Contractor shall notify the Councils in writing as soon as it is aware of any actual or potential industrial dispute or failure in the Contractor's supply chain.
- 7.5 The Contractor shall have regard to the Councils' Best Value Duty in relation to the Services under the 1999 Act.

8 Mobilisation

- 8.1 During the period from the Commencement Date to the Services Commencement Date, the Councils and the Contractor shall do all such things as may be reasonably required in order to be ready to fully provide the Services on the Services Commencement Date and thereafter for the Term. This shall include without limitation:
 - 8.1.1 organising and attending meetings as reasonably required at the offices of the Councils, the Contractor or their advisors to discuss any mobilisation activities that may be required;
 - 8.1.2 ensuring all actions required for a successful mobilisation of the Services are taken, including without limitation ensuring the Contractor's information and communications technology ("ICT") systems and any interfaces required with the Councils' ICT systems are fully operational; and
 - 8.1.3 attending such meetings as is reasonably required with the Councils' Related Parties and/or members of the public at such locations and at such times as the Councils may reasonably require.
- 8.2 From the Commencement Date, the Contractor shall take such actions as are required to deliver the Mobilisation Plan.

- 8.3 In order to ensure an orderly and effective transfer from the Existing Provider, the Contractor and the Councils shall use all reasonable endeavours to co-operate with each other and the Existing Provider in relation to the transfer of the relevant responsibilities to the Contractor.

9 Consents

- 9.1 The Contractor shall:

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

9.1.2 comply with the conditions attached to any Consents and procure that no Consent is breached by any Contractor Related Parties and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Services;

9.1.3 supply copies of the Consents to the Councils; and

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

- 9.2 The Contractor shall, within 48 hours of becoming aware of the same, notify the Councils' Representative of any actions, claims or proceedings which may be threatened or pending and which may, in the Contractor's reasonable belief, lead to any Consents being revoked or not renewed relating to the Services.

- 9.3 The Contractor shall not without the prior written consent of the Councils (consent not to be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before or after the date of this agreement) or of any condition attached to it. Subject to the compliance by the Contractor with its obligations under this clause 9, references in this agreement to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived. Where there is a change, relaxation or waiver of any Consent or of any condition attached to it, the Contractor shall provide a copy of any such Consent to the Councils immediately following the relevant change, relaxation or waiver (as applicable).

- 9.4 The Contractor shall:

9.4.1 within thirty (30) Business Days of the Services Commencement Date and thereafter on each anniversary of the Services Commencement Date provide to the Council's Representative a comprehensive list of all Consents which are required in respect of the Site which have been or will be applied for and/or all the Consents obtained ("**Consents List**"). The Consents List shall identify in respect of the Site, the:

- (a) date on which each such Consent application was made;
- (b) date on which each such Consent is expected or was obtained;

- (c) date for any renewal for each such Consent; and
- (d) any accompanying documents.

9.5 Off-site Waste

Where the Contractor arranges for Waste which, pursuant to clause 12.4 is in its ownership, to be delivered to a site and/or facility not forming part of the Site, the Contractor shall be responsible for ensuring that any such site and/or facility is compliant with the Consents which the Contractor is required to ensure compliance with in respect of the Site, the subject of this agreement. On written request from the Councils, the Contractor shall supply evidence of compliance by the relevant sites and/or facilities to the Councils.

10 Site

10.1 Rights of Access

Upon reasonable notice, the Contractor shall permit the Councils' Representative to visit any premises, including without limitation the Site (for the avoidance of doubt, such visits shall not exceed two visits per Month), where or from where the Services are being performed, and to meet with the Contractor's Relevant Persons engaged in the provision of the Services. The Contractor shall comply with all reasonable requests by the Councils during or as a result of each such inspection, to enable the Councils to verify and/or procure that the Contractor is in full compliance with its obligations under this agreement.

11 Annual Services Improvements Plan and Services Delivery Plan

11.1 Annual Services Improvement Plan

- 11.1.1 The Contractor shall implement a philosophy of continuous improvement in the methodology used for and outcomes achieved from the provision of the Services.
- 11.1.2 The Contractor shall continually review the provisions of the Services in the context of the philosophy, including taking account of operational experience and best practice within the industry. Where changes can be made to the provision of the Services to achieve improvements to take account of such operational experience and best practice these shall be proposed in accordance with clause 11.1.3 below.
- 11.1.3 No later than the end of the first Month in each Contract Year, the Contractor shall submit to the Councils an Annual Services Improvement Plan which reviews the methodology used for and outcomes achieved from the provision of Services and summarises proposed amendments to the Services Delivery Plan which give effect to the provisions of clauses 11.1.1 and 11.1.2 above.

11.2 Immediate Review of Services Delivery Plan

- 11.2.1 As soon as reasonably practicable following the Commencement Date, the Contractor and the Councils shall in respect of the Services

Delivery Plan (including any schedules, appendices, and/or annexes) agree changes to the Services Delivery Plan in order to:

- (a) correct any errors or omissions reflected in the current Services Delivery Plan (including any schedules, appendices, and/or annexes);
- (b) ensure the Services Delivery Plan (including any schedules, appendices, and/or annexes) is fully contractualised, reflect the appropriate use of defined terms and are consistent with the agreement as a whole and the offer made by the Contractor in its final tender; and
- (c) ensure the information contained in the Services Delivery Plan is consistent with that required in Schedule 2,

or otherwise confirm those Services Delivery Plan that the Contractor does not believe requires updating in order to comply with clauses 11.2.1(a) and 11.2.1(b).

11.2.2 No amendments to the Services Delivery Plan (including any schedules, appendices, and/or annexes) resulting from the procedures set out in this clause 11.2 shall constitute a Change.

11.3 Annual Review of Services Delivery Plan

11.3.1 As a minimum, no later than the end of the second Month in each Contract Year, the Contractor (having reviewed the Services Delivery Plan based on the contents of the Annual Services Improvement Plan and any associated comments received by the Councils no later than fifteen (15) Business Days following its submission) shall in respect of each component of the Services Delivery Plan either:

- (a) submit proposed amendments to the Councils for review and approval, to apply from the start of the following Contract Year; or
- (b) confirm that no proposed change is required in order to comply with the Contractor's obligations under clause 11.1.3 above.

11.3.2 Subject to clause 11.3.3 or where the Councils otherwise consider (acting reasonably) that the changes required constitute a Change, no amendment to the Services Delivery Plan resulting from the procedures at clauses 11.1 and 11.3 shall constitute a Change.

11.3.3 Subject to clause 11.3.2, where the Councils consider (acting reasonably) that the changes required constitute a Change, the Councils shall inform the Contractor and the Change Control Procedure shall apply.

11.4 Changes to the Services Delivery Plan

11.4.1 The Contractor shall be permitted to propose changes or amendments to the Services Delivery Plan at any time provided that:

- (a) any change or amendment shall be treated and assessed as a Contractor Change and accordingly be subject to the Councils' approval in accordance with the Change Control Procedure; or
- (b) in respect of matters not set out in clause 11.4.1(a), such change or amendment is to be submitted to the Councils in writing for review and approval.

12 Contract Materials

12.1 Exclusivity

Subject to any existing contractual arrangements which the Councils has at the date of this agreement with any other contractor, the Councils shall grant the Contractor an exclusive right for the reception, treatment and disposal of Contract Materials for the Term and in accordance with the provisions of this agreement.

12.2 Obligation to Accept

The Contractor shall Accept in accordance with the Specification all Contract Materials that is delivered to the Site.

12.3 No Guarantee

12.3.1 The quantity or composition of Contract Materials (or any individual waste stream or fraction that comprises Contract Materials) may vary from time to time during the Term, and the Councils give no warranty and make no representation concerning the quantity or composition of such waste at any time during the Term. Subject to the Schedule 3 (DMR Processing Payment Mechanism), the Contractor shall provide the Services throughout the Term in accordance with this agreement notwithstanding any changes in the quantity or composition of Contract Materials (or any individual waste stream or fraction that comprises Contract Materials).

12.3.2 In delivering the Services, subject to the provisions of Schedule 3 (DMR Processing Payment Mechanism), the Contractor shall make provision for potential changes to the quantity and composition of Contract Materials over the Term as a result of seasonality over the course of any Contract Year.

12.3.3 Without prejudice to clause 12.3.2, the Councils may undertake Waste composition analyses from time to time at their own cost. The Contractor shall co-operate with the Councils in undertaking these analyses (including provision of an area of a suitable size and characteristics at the Site at which analyses are being undertaken). Any Contract Materials composition analyses undertaken by the Councils may be made available to the Contractor but shall not be warranted by the Councils.

12.4 Ownership of Contract Materials

As between the Contractor and the Councils, all Contract Materials received by or in the possession of or delivered to or Accepted by the Contractor or any of its Sub-Contractors shall thereupon become and be deemed to be acquired by and in the ownership of and at the risk of the Contractor who shall take full responsibility for it and shall Handle and dispose of such Contract Materials in accordance with the terms of this agreement.

13 Maintenance

13.1 Subject to and in accordance with the provisions of this clause 13, the Contractor shall ensure on a continuing basis that at all times that its maintenance and operating procedures at the Site are sufficient to ensure that:

13.1.1 the Site is available as required by this agreement; and

13.1.2 the Services Delivery Plan for the Site are met.

13.2 Programmed Maintenance

Twenty (20) Business Days prior to the commencement of each Contract Year, the Contractor shall submit an Annual Programmed Maintenance Schedule for the Site in respect of the following Contract Year to the Councils' Representative for review and approval. The Parties agree and acknowledge that the Annual Programmed Maintenance Schedule for the Site in respect of the first Contract Year is contained in the Services Delivery Plan.

14 Health and Safety

14.1 The Contractor shall perform its obligations under this agreement (including in relation to the Services) in accordance with:

14.1.1 all applicable Law regarding health and safety; and

14.1.2 the Specification (Schedule 2).

14.2 Without in any way limiting the other provisions of this agreement, the Contractor shall in delivering the Services:

14.2.1 provide the Services in such a way as to minimise, so far as is reasonably practicable, any health and safety risks to the Contractor's Relevant Persons and any other persons;

14.2.2 accept full responsibility for the day-to-day operational aspects of health and safety while performing the Services;

14.2.3 inform the Councils immediately of any breaches of health and safety Law;

14.2.4 inform the Councils immediately in writing of any health and safety issues relating to the Councils' health and safety responsibilities in relation to this agreement; and

14.2.5 inform the Councils in writing of all RIDDOR reportable incidents as soon as possible (including outside normal office hours).

- 14.3 The Contractor shall throughout the Term conduct regular monitoring of the health and safety arrangements in place in relation to the provision of the Services.
- 14.4 Without prejudice to the any other right or remedy the Councils may have, the Councils shall be entitled to audit and monitor the Contractor's health and safety arrangements relating to the Services. The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Councils including providing them with all information and documentation which the Councils reasonably require in connection with this clause 14, including in relation to any actual or prospective investigation by the Health and Safety Executive or other relevant agency.
- 14.5 The Contractor shall ensure that suitable financial provision for health and safety is made in order to ensure that the Contractor can comply with any changes to working practices which may be required as a result of changes in Law or best practices relating to the Services.
- 14.6 Without in anyway limiting the foregoing, the Contractor shall ensure it provides the Services in accordance with the latest guidance and codes of practice issued by the Health and Safety Executive, the Environment Agency and any other regulatory body and that the Contractor's assessments and safe working practices reflect these at all times.

15 **Emergencies**

- 15.1 In the event that a Services Emergency arises, save where the Services Emergency arises due to the act or omission of the Councils or a Force Majeure Event, the Contractor shall be required to perform its obligations in accordance with this agreement and shall not be entitled to any costs or other relief from the Councils.
- 15.2 The Contractor shall nominate one or more Relevant Persons (a "**Liaison Officer**") who can be contacted 24 hours a day on any day of the year throughout the Term in the event of a Services Emergency.
- 15.3 The Contractor shall operate and maintain a chain of command including out of hours duty rotas and emergency contact details in the event of a Services Emergency.

16 **Best Value**

- 16.1 The Contractor acknowledges that:
- 16.1.1 the Councils is subject to the Best Value Duty;
 - 16.1.2 the provisions of this clause 16 (Best Value) are intended to assist the Councils in discharging their Best Value Duty in relation to the Services; and
 - 16.1.3 the provisions of this clause 16.1 shall apply in respect of the obligations of the Contractor and the Councils concerning the Best Value Duty and the 1999 Act generally (as amended or replaced).

- 16.2 The Contractor shall, throughout the Term, but only to the extent of its obligations in this agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
- 16.3 The Contractor shall undertake or refrain from undertaking such actions as the Councils shall reasonably request to enable the Councils to comply with Part 1 of the 1999 Act (as amended or replaced), including from the Services Commencement Date:
- 16.3.1 complying with requests for information, data or other assistance made by the Councils in pursuance of its Best Value Duty including to:
- (a) facilitate any inspection or audit undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the Councils' compliance with their Best Value Duty pursuant to sections 10 and 11 of the 1999 Act (as amended or replaced);
 - (b) facilitate the Councils preparing any statement, in response to a Council auditor's report;
 - (c) assist the Councils in relation to any action taken by the Secretary of State under section 15 of the 1999 Act (as amended or replaced);
 - (d) assist the Councils to comply with any government departmental direction;
 - (e) complying with all requests by the Councils to procure the attendance of specific officers or employees of the Contractor at any meetings of a Council at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than twice in any one (1) Contract Year); and
 - (f) permitting any Best Value Inspector or other Relevant Authority empowered to inspect each Council's compliance with Part 1 of the 1999 Act, in connection with the exercise of his statutory powers and duties, at all reasonable times and upon reasonable notice, access to:
 - (i) the Site;
 - (ii) any document or data relating to the Services which is in the possession or control of the Contractor or the Contractor is able, using reasonable endeavours, to obtain from any Sub-Contractor; and

17 Reporting and Provision of Information

17.1 Provision of Information to the Councils

- 17.1.1 The Contractor shall, on the reasonable prior request of the Councils, provide information relating to the Services and/or this agreement to enable the Councils to meet their objectives (including the quantification of income share).

17.2 Reporting

- 17.2.1 The Contractor shall prepare and submit throughout the Term the Monthly Report, the Annual Report, the Annual Report and the Annual Services Improvement Plan in accordance with Schedule 2 (Specification) and Schedule 6 (Reporting and Performance Monitoring (Processing)).

17.3 Maintenance of Records

- 17.3.1 The Contractor shall at all times be required to maintain either:

- (a) hard copies; or
- (b) electronic copies (stored securely),

of the records and information required the records and information to fulfil the obligations set out in Schedule 2 (Specification) and Schedule 6 (Reporting and Performance Monitoring (Processing)).

- 17.3.2 The Contractor shall provide such access and facilities (both electronic and physical) as the Councils may reasonably require for their representatives and/or advisers to visit any place where the records and information are held and examine the records maintained under clause 17.4.1. The Contractor shall make all such records required under this clause 17.4.2 available for inspection within two (2) Business Days.

17.4 Provision and Availability of Information

- 17.4.1 Where the Contractor is required to provide records or information requested by the Councils in accordance with this agreement, such information shall be provided within five (5) Business Days (unless otherwise specified), or such other period as may be agreed in writing by the Parties acting reasonably, provided always that the Contractor shall always be required to provide the relevant information within ten (10) Business Days.

- 17.4.2 Where the Councils request access to the Contractor's records in accordance with this agreement, the Contractor shall make all such records available for inspection within two (2) Business Days.

17.5 Auditor

The Contractor shall permit and all primary evidence and secondary evidence records including, contracts, invoices, remittances, receipts and other such financial records referred to in this clause 17.5 and Schedule 6 (Reporting and Performance Monitoring (Processing)) to be examined and copied from time to time by the Councils' Representative and other representatives of the Councils, any auditor each Council appoints from time to time, the National Audit Office

(and any successor or replacement organisation) and the Ministry of Housing, Communities and Local Government (and any successor or replacement organisation).

17.6 Retention of Records

The Contractor shall ensure that all Information held on behalf of the Councils is retained for disclosure for at least seven (7) years from the date it is acquired and shall permit the Councils to inspect such Information as requested from time to time.

17.7 Confidentiality

All information referred to in this clause 17 is subject to the obligations set out in clause 50.

17.8 Accounts

17.8.1 The Contractor shall:

- (a) use reasonable endeavours to assist the Councils in their preparation of any report required by their auditors, the National Audit Office, the Department of Levelling-up, Housing and Communities, the Department for Environment, Food and Rural Affairs, Her Majesty's Treasury and any other governmental body from time to time; and
- (b) provide to the Councils any other information relating to this agreement that the Councils may reasonably require within twenty (20) Business Days of any Council's request for such information, or such other period as may be agreed between the Parties in writing, acting reasonably.

18 Performance Monitoring and Contract Management

18.1 Contractor Monitoring

18.1.1 The Contractor shall:

- (a) monitor its performance in the delivery of the Services in accordance with the terms of this agreement, including without limitation, Schedule 2 (Specification), Schedule 4 (Services Delivery Plan), the Performance Framework and Schedule 3 (DMR Processing Payment Mechanism);
- (b) comply with Schedule 6 (Reporting and Performance Monitoring (Processing)); and
- (c) comply with Schedule 5 (Contract Management).

18.2 Councils Monitoring

18.2.1 The Councils may elect, at its own cost, to undertake its own performance monitoring at any stage and for any purpose, including in order to ensure that the Services are being provided in accordance with this agreement, provided that such performance monitoring does

not affect the Contractor's ability to provide the Services. The Contractor shall (and shall procure the Sub-Contractor shall) provide all reasonable assistance to the Councils in undertaking such an exercise. The Councils shall be entitled to notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have due regard to the Councils' comments in relation to the future provision of the Services.

18.2.2 Without prejudice to the Councils' rights under clause 18.2.1 and to any other express rights under this agreement, where the Contractor has been found to:

- (a) be fraudulent in the submission of any of the Monthly Reports, the Annual Report, the Annual Report and/or any claims for payment under clause 20.6 (Contract Price, Invoicing and Payment); or
- (b) be liable for a Performance Standards Failure,

the Councils may by notice to the Contractor increase the level of its monitoring of the Contractor under this agreement in respect of the relevant Service or Services the subject of such fraudulent or erroneous reporting until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Councils that it will perform (and is capable of performing) its obligations under this agreement.

18.2.3 For the purposes of clause 18.2.2, the Councils acknowledge that where the Contractor has failed to demonstrate to the reasonable satisfaction of the Councils that it will perform and is capable of performing its obligations as required by clause 18.2.2 and the remainder of this agreement but:

- (a) the Contractor has removed the person or persons responsible for the fraudulent reporting; or
- (b) in the following three (3) Months following the Councils' notice (if it has not already been established) the increased level of monitoring of the Contractor under this agreement in respect of the relevant Service or Services indicates that there have been no further erroneous reports of any kind,

this shall be regarded as sufficient demonstration that the Contractor will perform and is capable of performing its obligations.

18.2.4 If the Councils issue a notice under clauses 18.2.2 and/or 18.2.3, the Contractor shall bear its own costs.

18.2.5 Where clauses 18.2.2 and/or 18.2.3 apply to the actions of the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them), where such actions amount to a Prohibited Act, this clause 23 shall not limit the Authority's rights pursuant to clause 40.

18.3 Representatives

- 18.3.1 The Councils' Representative shall be appointed by the Councils and notified to the Contractor in writing. The Councils' Representative shall exercise the functions and powers of the Councils in relation to this agreement which are identified in this agreement as functions or powers to be carried out by the Councils' Representative. The Councils may appoint an additional or replacement Councils' Representative at any time by written notice to the Contractor.
- 18.3.2 The Councils' Representative may from time to time be assisted in the exercise of his functions under this agreement by a Contract Manager appointed by him and may delegate any of the powers he is entitled to exercise to such Contract Manager. The Councils shall promptly notify the Contractor in writing of the appointment of, or any changes to, the Contract Manager and/or their delegated powers.
- 18.3.3 Save where notified in writing by the Councils before such act or instruction, the Contractor and the Contractor's Representative shall not be entitled to treat any act or instruction by the Councils' Representative or any other officer, employee or other person engaged by the Councils which is not authorised by this agreement as being authorised by the Councils and shall be required to determine by notice to the Councils whether an express authority has in fact been given.
- 18.3.4 The Contractor's Representative shall be the Commercial Manager of the Contractor or such other person appointed pursuant to this clause 18.3. The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this agreement.
- 18.3.5 The Contractor may by notice to the Councils change the Contractor's Representative.

19 **Deductions**

If the Contractor fails to meet the performance levels specified in Schedule 6 (Reporting and Performance Monitoring (Processing)) at any time during the Term, the Contractor shall incur Performance Deductions in accordance with Schedule 3 (DMR Processing Payment Mechanism) the terms of this agreement.

20 **Councils' Right to Step-In**

20.1 If the Councils reasonably believe that it needs to take action in connection with the Services:

20.1.1 because a serious risk exists to the health or safety of persons or property or to the environment that the Contractor is unable or is expressly unwilling to remedy;

20.1.2 to discharge a statutory duty;

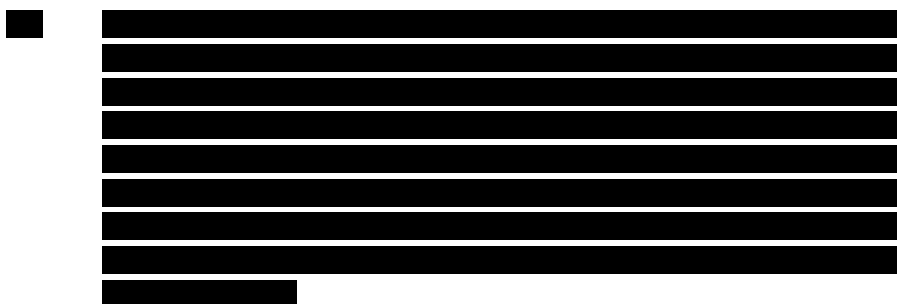
20.1.3 to deal with an emergency that has arisen,

then the Councils shall be entitled to take action in accordance with clauses 20.2 to 20.5.

- 20.2 If the Councils wish to exercise their right of step-in, the Councils' Representative shall provide to the Contractor notice in writing specifying:
- 20.2.1 the action the Councils wish to take;
 - 20.2.2 the reason for such action;
 - 20.2.3 the date the Councils wish to commence such action (except when dealing with an emergency);
 - 20.2.4 the time period which the Councils believe will be necessary for such action; and
 - 20.2.5 to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period such action is being taken.
- 20.3 Following service of notice in accordance with clause 20.2, the Councils shall take such action as notified together with any additional action as they reasonably believe is necessary (the "**Required Action**") and the Contractor shall provide to the Councils all such assistance as reasonably requested by the Councils in taking the Required Action. The Councils shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
- 20.4 If the Contractor is not in breach of its obligations under this agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:
- 20.4.1 the Contractor shall be relieved from its obligations to provide such part of the Services; and
 - 20.4.2 provided that the Contractor provides the Councils with reasonable assistance (such assistance to be at the expense of the Councils to the extent that incremental costs are incurred) that part of the Contract Price due from the Councils to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.
- 20.5 If the Required Action is taken as a result of a breach of the obligations of the Contractor under this agreement, then for so long as and to the extent the Required Action is taken, and this prevents the Contractor from providing any part of the Services:
- 20.5.1 the Contractor shall be relieved of its obligations to provide such part of the Services; and
 - 20.5.2 that part of the Contract Price due from the Councils to the Contractor shall equal the amount the Contractor would receive if it were satisfying all of its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to the sum of the Councils' reasonable costs of operation in taking the

20.6 For the avoidance of doubt, the step-in rights in this clause 20 are in limited to the Services only and this clause does not confer a right of step-in on the Councils for the Site.

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21.3 Referral to Dispute Resolution Procedure

21.3.1 Without prejudice to either Party's right to refer any dispute to adjudication at law, if the Councils and the Contractor do not agree on the amount of any Monthly Payment on or before the fourteenth (14) Business Day after submission of the Councils' Monthly Reply either Party may refer such dispute for determination in accordance with clause 31 (Dispute Resolution).

21.3.2 Following resolution of the dispute under clause 31 (Dispute Resolution), the amount agreed or adjudged to be due shall be treated as not in dispute and shall, together with interest thereon at four per cent (4%) above the base rate of the Bank of England calculated on a daily basis from the day after the date on which the Monthly Payment was due but for the dispute until the date of payment of the disputed amount, be paid by the Councils within five (5) Business Days of receipt by the Councils of a valid invoice in respect thereof.

21.4 Payment of Undisputed Amounts (Monthly Payment)

21.4.1 Notwithstanding of any such dispute referred to in clause 21.3 (Referral to Dispute Resolution Procedure), the Councils shall pay the undisputed amount of the Monthly Payment on or before the date which is fifteen (15) Business Days after the Monthly Report was submitted pursuant to clause 21.2.1 or 21.2.2(b) (the "**Due Payment Date**") and the final date for payment shall be seven (7) Business Days thereafter.

21.5 Electronic Invoices

21.5.1 The Councils shall accept and process for payment an electronic invoice submitted by the Contractor, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.

21.6 Prompt Payment in Sub-Contracts

21.6.1 Where the Contractor enters into any Sub-Contract, the Contractor shall include in each such Sub-Contract the following:

- (a) to consider invoices from each Sub-Contractor within 7 days;

- (b) to pay each Sub-Contractor any sums due under an invoice no later than a period of 30 days from the date on which the Contractor has determined that the invoice is valid and undisputed;
- (c) where the Contractor has failed to comply with the obligation set out at 21.6.1(a), and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purpose of clause 21.6.1(b) 7 days after the date on which it is received by the Contractor;
- (d) an obligation requiring the counterparty to each Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 21.6.1(a) to (c) of this agreement.

21.7 Retention of Records

- 21.7.1 The Contractor shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Councils and income which may be owed to the Councils pursuant to this agreement. Such records shall be retained for inspection by the Councils for 7 years from the end of the Contract Year to which the records relate.

21.8 Set Off

- 21.8.1 The Councils may at any time, set off any liability of the Contractor to the Councils against any liability of the Councils to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Councils of its rights under this clause shall not limit or affect any other rights or remedies available to them under this agreement or otherwise.
- 21.8.2 All amounts due under this agreement from the Contractor to the Councils shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).
- 21.8.3 If the payment or deduction of any amount referred to in this clause 21.8 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with clause 31 (Dispute Resolution).

22 Late Payment and Interest

- 22.1 Save where otherwise specifically provided in this agreement, where any payment or sum of money due from the Contractor to the Councils or from the Councils to the Contractor under any provision of this agreement is not paid on or before the due date, it shall bear interest thereon at 4% a year above the Bank of England's base rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the Parties that the interest rate specified in this clause 22 and the provisions of this agreement relating to the payment of compensation on termination of this agreement

following the occurrence of a Councils' Default provide the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

23 Utilities and NNDR

23.1 The Contractor shall be responsible for paying utility and NNDR costs and charges incurred in providing the Services.

24 Tax

24.1 VAT on payments

24.1.1 All amounts due under this agreement are exclusive of VAT.

24.1.2 If any supply made or referred to in this agreement is or become chargeable to VAT, then the person receiving the supply ("**Recipient**") shall in addition pay the person making the supply ("**Supplier**") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

24.1.3 Where under this agreement any amount calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.

24.1.4 The Contractor shall provide the Councils with any information reasonably requested by the Councils in relation to the amount of VAT chargeable in accordance with this agreement and payable by the Councils to the Contractor.

24.1.5 The Contractor shall indemnify the Councils against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Councils at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made under this agreement.

25 TUPE and Pensions

The parties agree that the provisions of Schedule 9 (TUPE) shall apply to any Relevant Transfer of staff under this agreement.

26 Employment Matters

26.1 Skills and Competencies of Relevant Persons

The Contractor shall procure that a sufficient number of Relevant Persons are, at all times, engaged in providing the Services and that such Relevant Persons:

26.1.1 are suitably qualified, skilled and competent;

26.1.2 are adequately trained and capable of providing the applicable Services in respect of which they are engaged;

26.1.3 receive continual training and supervision as is necessary to ensure the proper performance of the Services; and

26.1.4 are otherwise appropriate to hold the position to which they are appointed and, in the reasonable opinion of the Contractor, do not represent an operational or reputational risk to the Contractor and/or the Councils or the provision of the Services.

26.2 Training Records

From the Services Commencement Date, the Contractor shall keep evidence of all relevant training and instructions of all Relevant Persons together with relevant certificates, qualifications (and update the same).

26.3 Personnel Policies and Procedures

The Contractor shall (and shall procure that all Sub-Contractors shall) maintain personnel policies and procedures covering all relevant matters including, but not limited to, discipline, grievance, equal opportunities, attendance and absence management, holidays and health and safety. The Contractor shall procure that the terms and implementation of such policies and procedures comply with Law and Good Industry Practice, are published in written form and that copies of them (including any revisions and amendments to them) are provided to the Councils upon request.

26.4 Contractor's Responsibility

Save as expressly provided in this agreement, the Contractor shall be entirely responsible for the employment and conditions of service of Relevant Persons and shall procure that each Sub-Contractor is likewise responsible for its personnel. The Contractor shall carry out such checks as may be required in order to comply with section 15 of the Immigration, Asylum and Nationality Act 2006 (as amended or replaced from time to time).

26.5 Non-discrimination

The Contractor shall not, and shall procure that all Sub-Contractors shall not unlawfully discriminate against any Relevant Persons on the grounds of, without limitation:

26.5.1 Age;

26.5.2 Disability;

26.5.3 Ethnic or national origin;

26.5.4 Race;

26.5.5 Religion or belief;

26.5.6 Pregnancy or maternity;

26.5.7 Gender reassignment;

26.5.8 Sex;

- 26.5.9 Sexual orientation;
- 26.5.10 Marriage or civil partnership;
- 26.5.11 Trade union membership or activity; or
- 26.5.12 Responsibility for dependants, where a Relevant Person has sole or substantial responsibility for familiar or non-familiar dependants,

and in particular, but without limitation, the Contractor and each Sub-Contractor shall not discriminate on the grounds of nationality in the selection of sub-contractors. If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Contractor or any Sub-Contractor then the Contractor shall take all necessary steps to prevent recurrence of such unlawful discrimination and shall deliver to the Councils full details of the steps taken to prevent such recurrence.

26.6 Human Rights

- 26.6.1 Without limiting the general obligations set out in this agreement, the Contractor shall (and shall procure that the Contractor's Relevant Persons shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (a) the Councils' equal opportunities policies as appended; and
 - (b) any other requirements and instructions which the Councils reasonably impose in connection with any equality obligations imposed on the Councils at any time under applicable equality Law.
- 26.6.2 The Contractor shall at all times comply with the provisions of the Human Rights Act 1998 (or any Law which may replace the same) in the performance of this agreement. The Contractor shall also undertake, or refrain from undertaking, such acts as the Councils request so as to enable the Councils to comply with their obligations under the Human Rights Act 1998 (or any Law which may replace the same).

27 Change Control

Any requirement for a Change shall be subject to the Change Control Procedure.

28 Change in Law

- 28.1 Any Change in Law other than a Qualifying Change in Law, shall be a Contractor risk and the Contractor shall be responsible for all consequences of such Change in Law, including any associated cost arising from compliance. Where a Change in Law necessitates a change to the Services or any other provision of this agreement, the Contractor shall as soon as reasonably practicable following becoming aware of such Change in Law serve a Contractor Change Notice on the Councils detailing such necessary changes to the Services and/or this agreement. Where the Contractor fails to serve a Contractor Change Notice as required by this clause, the Councils may serve a Councils' Change Notice detailing such necessary changes to the Services

and/or this agreement and any such Councils' Change Notice shall be deemed to be a Contractor Change Notice for the purpose of this agreement.

28.2 **Qualifying Change in Law**

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- 28.2.1 any necessary changes to the Services;
- 28.2.2 where any changes are required to the terms of this agreement to deal with the Qualifying Change in Law;
- 28.2.3 whether relief from compliance with obligations is required, including the obligations of the Contractor to meet Schedule 2 (Specification) and Schedule 4 (Services Delivery Plan) during the implementation of any relevant Qualifying Change in Law;
- 28.2.4 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect; and
- 28.2.5 any changes to the Contract Price,

in each case giving in full detail the procedure for implementing the change ("**Change Request**"). Responsibility for the costs of implementation (and any resulting variation to the Contract Price) shall be dealt with in accordance with clauses 28.3 to 28.5.

28.3 **Parties to Discuss**

As soon practicable after receipt of any notice from either Party under clause 28.2, the Parties shall apply the Change Control Procedure in order to discuss and agree the issues referred to in clause 28.2 and ways in which the Contractor can mitigate the effect of the Qualifying Change in Law, including:

- 28.3.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs; and
- 28.3.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost-effective manner;
- 28.3.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses delivering similar services, including similar businesses in which the shareholders or their Affiliates carry on business; and
- 28.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain Assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under clauses 28.3.4 and 28.2.5.

28.4 **Payment of Compensation**

- 28.4.1 Any compensation payable by the Councils under this clause 28 shall be payable by means of a lump sum, instalments or in accordance with Schedule 3 (DMR Processing Payment Mechanism), such method of payment to be determined by the Councils (acting reasonably).
- 28.4.2 Any adjustment to the Monthly Payment as a result of a Qualifying Change in Law shall be made through the Change Control Procedure.
- 28.4.3 The Contractor shall have a duty to contribute to the cost and mitigate the cost of the Change in Law to the fullest extent possible including ensuring and evidencing through contracts of other third party customers that there is no double recovery among customers.
- 28.4.4 Any compensation shall be proportionate with respect to the relative tonnage input of the Councils into the Site and the remaining life of the contract relative to the anticipated life of the Asset subject to the change.

29 **Insurance**

- 29.1 The Contractor shall at its own cost effect and maintain with reputable insurance companies, insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:
 - 29.1.1 public liability insurance with a limit of indemnity of at least £10,000,000 (ten million) in relation to any one claim or series of claims;
 - 29.1.2 employer's liability insurance with a limit of at least £10,000,000 (ten million) per claim; and
 - 29.1.3 professional indemnity insurance with a limit of indemnity of not less than £10,000,000 (ten million) in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover,

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 29.2 The Contractor shall give the Councils, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 29.3 If, for whatever reason, the Contractor fails to give effect to and maintain the Required Insurances, the Councils may make alternative arrangements to

protect its interests and may recover the costs of such arrangements from the Contractor.

29.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the agreement.

29.5 The Contractor shall hold and maintain the Required Insurances for a minimum of six years following expiry or earlier termination of the agreement.

30 Unavailability of Insurance Terms

30.1 If, upon renewal of any insurance including the Required Insurances which the Contractor is required to maintain or to procure the maintenance of pursuant to this agreement, any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing or at a cost which contractors in the UK are (at such time) generally prepared to pay (other than, in each case, by reason of one or more acts or omissions of the Contractor and/or any Contractor Related Parties), then clause 30.2 shall apply.

30.2 If the circumstances in clause 30.1 apply, the Contractor shall self-insure the relevant risk by agreeing to indemnify the Councils on demand from and against all liabilities arising that would have been insured against had the relevant risk been insured by the Contractor in accordance with clause 29 in respect of that particular Insurance Term and the Contractor shall not be considered to be in breach of its obligations regarding the maintenance of insurance pursuant to this agreement as a result of a failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in clause 30.1 continue to apply to such Insurance Term.

30.3 The Contractor shall notify the Councils as soon as reasonably practicable and in any event within five (5) Business Days of becoming aware that clause 29.1 is likely to apply (or on expiry of the relevant insurance in place) do apply in respect of the Insurance Term (irrespective of reason for the same). The Contractor shall provide the Councils with such information as the Councils reasonably request regarding the unavailability of the Insurance Term and the Councils and the Contractor shall meet to discuss the means by which such unavailability should be managed as soon as reasonably practicable.

30.4 In the event that clause 29.1 applies in respect of an Insurance Term (irrespective of the reason for the same), the Contractor shall approach the insurance market at least every six (6) Months to establish whether clause 30.1 remains applicable to the Insurance Term. As soon as the Contractor is aware that clause 30.1 has ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as reasonably practicable) incorporating such Insurance Term in accordance with this agreement.

31 Dispute Resolution

The provisions of the Dispute Resolution Procedure as set out in Schedule 12 shall apply in respect of any dispute between the Parties.

32 Indemnities

32.1 The Contractor, shall subject to clause 32.3, be responsible for, and shall release and indemnify the Councils and any Councils' Related Parties, on demand and from and against all liability for:

32.1.1 death or personal injury;

32.1.2 loss of or damage to property (including the Contractor's Equipment); and

32.1.3 third party actions, claims and/or demands brought against the Councils or any Councils' Related Parties,

which may arise out of, or in consequence of the operation and/or maintenance of the Assets or the performance or non-performance by the Contractor of its obligations under this agreement or the presence on the Site or on property which is in the ownership or control of the Councils and adjacent to any of the sites of the Contractor, a sub-contractor of the Contractor (of any tier), their employees or agents.

32.2 **Breach of Statutory Duty**

Subject to clause 32.3, the Contractor shall be responsible for, and shall release and indemnify the Councils and any Councils' Related Parties on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in clause 32.1.3) brought against the Councils or any Councils' Related Parties for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under this agreement to the extent there are no other remedies available to the Councils under this agreement which would compensate the Councils and/or the Councils' Related Parties in respect of the total amount of the liability incurred as a result of the relevant action, claim and/or demand.

32.3 **Contractor Not Responsible**

The Contractor shall not be responsible or be obliged to indemnify the Councils for:

32.3.1 any of the matters referred to clauses 32.1.1 to 32.1.3 (inclusive) that arises as a direct result of the Contractor acting on the instruction of the Council;

32.3.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Councils or any Councils' Related Parties or by the breach of the Councils of its obligations under this agreement; or

32.3.3 any Losses arising from risks against which the Contractor is required to insure under any policy referred in clause 29, but only to the extent that such claims exceed the maximum amount of cover specified for that insurance policy in clause 29 (provided that the indemnity shall always extend to liability for any amounts that the Contractor is obliged to insure and to any excess or deductible under any policy of insurance).

32.4 **Notification of Claims**

Where either Party ("**Indemnified Party**") wishes to make a claim (other than in relation to a claim by a third party in which case clause 33 shall apply) under this agreement against the other ("**Indemnifying Party**"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

32.5 **Mitigation**

The Councils and the Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this agreement (whether in relation to an indemnity or otherwise).

32.6 **Status of Indemnity**

Any indemnity by either Party under any provision of this agreement shall be without limitation to any indemnity by that Party under any other provisions of this agreement.

32.7 **Indirect Losses**

Save where stated to the contrary, the indemnities under this agreement shall not apply and (without prejudice to the Councils' rights under Schedule 3 (DMR Processing Payment Mechanism) there shall be no right to claim damages for breach of this agreement, in tort or any other basis whatsoever, to the extent that any loss claimed by either Party is for Indirect Losses.

32.8 **No Double Recovery**

Notwithstanding any other provision of this agreement, neither Party shall be entitled to recover compensation under this agreement or any other agreement that relates to this agreement in respect of any loss that it has incurred (or any failure of the other Party) to the extent that it has already been compensated in respect of that loss or failure pursuant to this agreement, or Sub-Contractor or otherwise.

32.9 **Insured Claims**

Without prejudice to clause 29, the Contractor shall not be entitled to any payment which would have been due under this agreement to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained in accordance with this agreement (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Contractor (or any Contractor Related Parties), including but not limited to non-disclosure or under-insurance) or any other policy of insurance which the Contractor has taken out and maintained.

33 **Conduct of Claims**

33.1 This clause 33 shall apply to the conduct, by a Party from whom an indemnity is sought under this agreement, of claims by a third person against a Party having (or claiming to have) the benefit of the indemnity. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the Party giving the indemnity is referred to as the "**Indemnifier**", accordingly:

- 33.1.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this agreement or in relation to involvement in any investigation or proceedings by any auditor, inspector or ombudsman, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable together with such further information and documentation he or she may require and in any event within twenty (20) Business Days of receipt of the same;
- 33.1.2 subject to clause 33.1.3, on the giving of a notice by the Beneficiary pursuant to clause 33.1.1, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out the claim, the Indemnifier shall (subject to providing the Beneficiary with a sufficient indemnity to its reasonable satisfaction against costs, charges and expenses, actions, demands, proceedings, claims whatsoever that it may incur by reason of such notice) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purpose of considering and resisting such a claim;
- 33.1.3 with respect of any claim conducted by the Indemnifier pursuant to clause 33.1.2:
- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
 - (c) the Indemnifier shall not pay or settle such claims without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- 33.1.4 the Beneficiary shall (without prejudice to its duty to mitigate) be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this agreement if:
- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with clause 33.1.2;
 - (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Business Days of the notice from the Beneficiary under clause 33.1.1 or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (c) the Indemnifier fails to comply in any material respect with the provisions of clause 33.1.3 within twenty (20) Business Days of the notice from the Beneficiary.

- 33.1.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which clause 33.1.2 applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this clause 33.1.5, then the Indemnifier shall be released from any liability under its indemnity under clause 32.1 or its other indemnities included within this agreement (in each case to the extent relevant and for the purposes of the claim only) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to clause 33.1.2 in respect of such claim;
- 33.1.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated and with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by agreement from being recovered from the Indemnifier),
- 33.1.7 any person taking any of the steps contemplated by this clause 33 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this agreement.

Termination, Compensation on Termination and Limit of Liability

34 Termination

This agreement shall only terminate in accordance with the express provisions set out in this agreement.

35 Termination for Councils' Default

- 35.1 If a Councils' Default has occurred and the Contractor wishes to terminate this agreement, the Contractor must serve a Termination Notice on the Councils within thirty (30) Business Days of becoming aware of the Councils' Default.
- 35.2 The Termination Notice must specify the type of Councils' Default which has occurred entitling the Contractor to terminate the agreement.
- 35.3 The agreement will terminate on the day falling ninety (90) Business Days after the date the Councils receives the Termination Notice, unless the Councils rectifies the Councils' Default within ninety (90) Business Days of receipt of the Termination Notice.

36 Compensation on Termination for Councils' Default

- 36.1 On termination of this agreement pursuant to clause 35 or clause 42, the Councils shall compensate the Contractor in respect of and the following:
 - 36.1.1 if this agreement is terminated within the Initial Term, loss of net operating profit arising from the termination for the lesser of
 - (a) 3 years; or
 - (b) the remainder of the Initial Term,
 - 36.1.2 if this agreement is terminated within the Extension Period, the loss of net operating profit arising from the termination for the lesser of:
 - (a) 2 years; or
 - (b) the remainder of the Extension Period,
- 36.2 The Councils shall, at its option pay the Councils' Termination Sum either:
 - 36.2.1 as a lump sum within thirty (30) Business Days of receipt of the Contractor's valid invoice for such sum, or within thirty (30) Business Days of termination (whichever is the later); or
 - 36.2.2 in equal Monthly instalments over a period of no more than twelve (12) Months from the Termination Date, with the first instalment being payable no more than thirty (30) Business Days from the Councils' receipt of the Contractor's valid invoice for the relevant instalment, or within thirty (30) Business Days of termination (whichever is the later) and with subsequent instalments being payable no later than the final day of each Month, provided that the Contractor has provided a valid invoice in respect of the relevant instalment no less than five (5) Business Days prior to the end of the relevant Month.
- 36.3 If the Councils dispute the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to this clause 36, the provisions of the Dispute Resolution Procedure will apply.

37 Termination for Contractor Default

- 37.1 If a Contractor Default has occurred and the Councils wish to terminate the agreement, it must serve a Termination Notice on the Contractor.
- 37.2 The Termination Notice must specify:
- 37.2.1 the type and nature of Contractor Default that has occurred, giving reasonable details; and
 - 37.2.2 in the case of any Contractor Default referred to in limbs (a), (l), (m) and/or (o) ("**Rectifiable Contractor Defaults**"), the information specified in clause 37.4 below.
- 37.3 In the case of a Contractor Default that is not a Rectifiable Contractor Default, this agreement will terminate on the day falling thirty (30) Business Days after the date the Contractor is served with the Termination Notice. For Rectifiable Contractor Defaults, the provisions of clause 37.4 will apply.
- 37.4 **Rectification**
- 37.4.1 Where the Councils serves a termination notice in respect of a Rectifiable Contractor Default, in addition to the information within clause 37.2 the Termination Notice must specify that this agreement will terminate on the day determined in accordance with clause 37.4.3 unless:
- (a) in the case of any Contractor Default falling under limb (a) of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within fifteen (15) Business Days after the date the Contractor receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or
 - (b) in the case of any Contractor Default falling within limbs (l), (m) or (o) of the definition of Contractor Default the Contractor rectifies the Contractor Default within fifteen (15) Business Days after the date the Contractor receives the Termination Notice.
- 37.4.2 If the Contractor either rectifies the Rectifiable Contractor Default within the time period specified in the Termination Notice, or implements the accepted rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and the agreement will continue.
- 37.4.3 If:
- (a) in the case of a Contractor Default within limb (a) of the definition of that term no acceptable rectification programme has been put forward pursuant to clause 37.4.1(a), the Contractor fails to implement any rectification programme in accordance with its terms or the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice (as applicable); or

- (b) in the case of a Contractor Default within limbs (l), (m) or (o) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice,

the Councils may give notice stating that the agreement will terminate on the date failing thirty (30) Business Days after the date of receipt of such notice.

38 Compensation on Termination for Contractor Default

38.1 On termination of this agreement pursuant to clause 37 or clause 40, the Contractor shall compensate the Councils in respect of the sum of all Direct Losses arising from termination, including, without limitation:

38.1.1 the Councils' costs in carrying out a replacement procurement in respect of this agreement and any increased costs that a Replacement Contractor may charge;

38.1.2 the Councils' internal costs;

38.1.3 the loss of any Forecast Income Share; and

38.1.4 any increased or additional costs incurred by the Councils in providing the Services themselves or through alternative contractors,

("Contractor Termination Sum").

38.2 The Contractor shall pay the Contractor Termination Sum to the Councils within twenty (20) Business Days of its receipt of the Councils' invoice for such sum provided that the Councils shall be entitled to serve multiple part payment invoices in respect of the Contractor Termination Sum (acknowledging that the Contractor Termination Sum may not be fully determined for a significant period of time).

38.3 If the Contractor disputes the Councils' entitlement to any part of the amount claimed by the Councils pursuant to this clause 38, the provisions of the Dispute Resolution Procedure will apply.

39 Termination on Force Majeure

39.1 Notification for Force Majeure

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

39.2 Consultation

As soon as practicable following such notification, the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this agreement.

39.3 Unable to Agree

If no such terms are agreed on or before the date falling forty (40) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this agreement for a period of more than sixty (60) Business Days, then, subject to clause 39.5, either Party may terminate this agreement by giving twenty (20) Business Days written notice to the other Party.

39.4 Consequences of Termination

39.4.1 If this agreement is terminated under 39.3 or clause 39.5, the Councils shall pay to the Contractor any amounts which are due and payable to the Contractor as at the Termination Date pursuant to this agreement (other than pursuant to this clause 39) but which remain unpaid at that date (being the “**Force Majeure Termination Sum**”). In each case such payment shall be made within thirty (30) Business Days of receipt by the Councils of the Contractor’s valid invoice for such sum, or within thirty (30) Business Days of termination (whichever is the later).

39.4.2 Save as expressly provided in clause 39.4.1, no compensation for termination shall be payable by either Party on termination of this agreement under 39.3 or clause 39.5.

39.5 Notice to Continue

If the Contractor gives notice to the Councils under clause 39.3 that it wishes to terminate this agreement, then the Councils have the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this agreement to continue. If the Councils give the Contractor such notice, then:

39.5.1 the Councils shall pay to the Contractor, the Monthly Payment in accordance with paragraph 1 of Schedule 3 (DMR Processing Payment Mechanism) from the day after the date on which this agreement would have terminated under clause 39.3 as if the Services were being fully provided; and

39.5.2 this agreement will not terminate until expiry of written notice of at least twenty (20) Business Days from the Councils to the Contractor that it wishes this agreement to terminate.

39.6 Mitigation

The Parties shall at all times following the occurrence of a Force Majeure Event use reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

39.7 Cessation of Force Majeure Event

The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this agreement. Following such

notification this agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

40 Termination on Corrupt Gifts and Fraud

40.1 Corrupt Gifts and Fraud

The Contractor warrants that in entering into this agreement it has not committed any Prohibited Act.

40.2 Termination for Corrupt Gifts and Fraud

40.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Councils shall be entitled to act in accordance with the provisions of this clause 40.2.

40.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Councils may terminate this agreement with immediate effect by giving notice to the Contractor.

40.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Councils may give notice to the Contractor of termination and this agreement will terminate, unless within twenty (20) Business Days of receipt of such notice, the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.

40.2.4 If the Prohibited Act is committed by a Sub-Contractor by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Councils may give notice to the Contractor of termination and this agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor terminates the relevant Sub-Contract and procures the performance of such part of the Services by another person.

40.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Councils may give notice to the Contractor of termination and this agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.

40.2.6 If the Prohibited Act is committed by any other persons not specified in clauses 40.2.2 to 40.2.5, then the Councils may give notice to the Contractor of termination and this agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Services by another person.

40.2.7 Any notice of termination under this clause 40 shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Councils believe has committed the Prohibited Act; and
- (c) the date on which this agreement will terminate, in accordance with the applicable provisions of this clause.

41 Compensation on Termination for Corrupt Gifts and Fraud

On termination of this agreement pursuant to clause 40, the Contractor shall compensate the Councils in accordance with the provisions of clause 38.

42 Voluntary Termination by the Councils

42.1 The Councils may terminate this agreement at any time before the end of the Term by complying with their obligations under clause 42.2.

42.2 If the Councils wish to terminate this agreement under this clause 42, they must give a notice to the Contractor stating:

42.2.1 that the Councils is terminating this agreement under this clause 42; and

42.2.2 the date on which this agreement will terminate (such date to be no less than thirty (30) Business Days after the date of the Contractor's receipt of the notice).

42.3 The agreement will terminate on the date specified within the Councils' notice referred to in clause 42.2.

43 Compensation on Voluntary Termination by the Councils

On termination of this agreement pursuant to clause 42, the Councils shall compensate the Contractor in accordance with the provisions of clause 36.

44 Exclusivity of Remedy

44.1 Subject to:

44.1.1 any other express right of the Councils pursuant to this agreement and

44.1.2 without prejudice to the generality of clause 44.1.1, clause 44.2 and 44.2,

the sole remedy of the Councils in respect of a Performance Standards Failure shall be the operation of the Performance Framework and the Schedule 3 (DMR Processing Payment Mechanism).

44.2 Any payment of compensation on termination shall be in full satisfaction of any claim which can be made against the Councils or the Contractor (as applicable) by the other Party in relation to termination of this agreement. The compensation payable under clauses 36, 38, 41 and 43 (shall be the sole

remedy of the relevant Party against the other Party in respect of termination of this agreement.

- 44.3 Nothing in this clause 44 shall prevent the Councils or restrict the Councils from seeking injunctive relief or a decree of specific performance or other discretionary remedies of the court.

45 Continuing Obligations

Save as otherwise expressly provided in this agreement or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this agreement:

- 45.1 termination of this agreement shall be without prejudice to any accrued rights or obligations under this agreement as at the Termination Date; and
- 45.2 termination of this agreement shall not affect the continuing rights and obligations of the Contractor and the Councils under, clauses 10 (Site), 17 (Reporting and Provision of Information), 20.6 (Contract Price, Invoicing and Payment), 22 (Late Payment and Interest), 25 (TUPE and Pensions), 26 (Employment Matters), 29 (Insurance), 31 (Dispute Resolution), 32 (Indemnities), 34 - 43 (Termination, Compensation and Limit of Liability), 46 (Consequences of Termination or Expiry), 50 (Confidentiality), 52 (Audit), 53 (Freedom of Information), 54 (Data Processing), 55 (Intellectual Property), 64 (Notices) or under any other provision of this agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

46 Consequences of Termination or Expiry

46.1 Transfer of Documents to the Councils

No later than thirty (30) Business Days prior to the expiry of the Term (or, if earlier the Termination Date) the Contractor shall hand over to the Councils all documents (or complete and accurate copies thereof), records, books, data and/or information in the possession, custody or power of the Contractor relating to the carrying out of the Services other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Services after the expiry of the Term or the Termination Date (as the case may be). Documents, records, books, data and/or information kept or stored on a computer shall be surrendered, released and/or handed over to the Councils by whatever means and in whatever format the Councils may reasonably require.

46.2 Provision of Information

The Contractor shall (subject to any condition imposed on the Contractor or any Sub-Contractor by Law):

- 46.2.1 following the service of a Termination Notice;
- 46.2.2 following termination of this agreement when a Termination Notice is not served;
- 46.2.3 at any time during the Term upon request from the Councils; and

- 46.2.4 no later than six (6) Months and no earlier than twelve (12) Months before expiry of the Term,

supply to the Councils within twenty (20) Business Days of the relevant date or request all information reasonably required by the Councils to carry out the Services (including information on the identity, terms and conditions of employment of all employees of the Contractor or any sub-contractor (including the Sub-Contractors) employed in the provision of the Services and information relation to the Assets and the Site and the Contractor warrants that, to the best of its knowledge and belief, such information is accurate in all material respects.

46.3 Duty to Co-operate

During the final six (6) months of the Term (where this expires by effluxion of time) or during the period from service of any Termination Notice until the Termination Date of this agreement, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any part of the Services) to the Councils or to a Replacement Contractor of such services as are the same as or similar to the Services, and for the purposes of this clause 46.3 the meaning of the term “co-operate” shall include:

- 46.3.1 liaising with the Councils and/or the Replacement Contractor, and providing reasonable assistance concerning the Services and their transfer to the Councils or the Replacement Contractor; and
- 46.3.2 (without prejudice to the obligations of the Contractor pursuant to clause 13) providing to the Councils and/or to any Replacement Contractor all and any information concerning the Services which is reasonably required for the efficient transfer of responsibility for performance of this agreement but, for the avoidance of doubt, information which is commercially sensitive to the Contractor or a Sub-Contractor shall not be provided (and for the purposes of this clause 46.3, commercially sensitive shall mean information which would if disclosed to a competitor of the Contractor or a Sub-Contractor give that competitor a competitive advantage over the Contractor or a Sub-Contractor and thereby prejudice the business of the Contractor or a Sub-Contractor but shall, to avoid doubt, not include any information referred to in Schedule 9 (TUPE).

46.4 Transfer of Responsibility

- 46.4.1 The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a Replacement Contractor or to the Councils, as the case may be, and the Contractor shall take no action at any time during the Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.
- 46.4.2 The Councils shall be entitled to withhold the final Monthly Payment to the Contractor under this agreement until such time as the Contractor has complied with the provisions of clauses 46.3 to 46.4 (in the Councils’ reasonable opinion).

46.5 Termination without Prejudice to Rights and Remedies

Termination or expiry of this agreement shall be without prejudice to any rights and remedies of the Contractor and the Councils which accrued prior to such termination or expiry and nothing in this agreement prejudices the right of either Party to recover any amount outstanding at such termination or expiry.

47 Assignment and Sub-contracting

47.1 Restrictions on Transfer of this Agreement by the Councils

The rights and obligations of the Councils under this agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to any Law or otherwise) to any person other than to any public body or public bodies jointly acquiring the whole of the agreement and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Councils under this agreement.

47.2 Restrictions on the Contractor

The Contractor shall not assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this agreement in whole or in part except with the prior written consent of the Councils (not to be unreasonably withheld or delayed).

47.3 Contractor's Obligations

The Contractor shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.

47.4 Liability

The sub-contracting by the Contractor of any of the Services shall not relieve the Contractor of any liability under this agreement for any breach of the obligations arising under this agreement, or for the actions of negligence and/or defaults by any Contractor Related Parties. The Contractor shall not be released from any of its obligations under this agreement as a result of the termination of the appointment of a Sub-Contractor for any reason.

47.5 Prohibition

The Contractor shall procure that no Sub-Contractor will sub-contract to any person any of its duties, obligations or responsibilities where such person:

- 47.5.1 does not have the competence, technical ability or sufficient financial standing to satisfactorily carry out the Services proposed to be sub-let or sub-contracted to it;
- 47.5.2 will not fully and properly perform all of the duties, obligations or responsibilities of the Contractor to be sub-contracted to it;
- 47.5.3 is not being engaged in accordance with Good Industry Practice; and/or
- 47.5.4 does not have the legal capacity, power or authority to become a party to the relevant Sub-Contract; and or

47.5.5 will not fully comply with the open book requirements placed on them by this agreement.

47.6 Sub-Contractors

Nothing in this agreement shall prohibit or prevent any Sub-Contractor employed by the Contractor or any Sub-Contractor from being employed by the Councils at any establishments of the Councils.

48 Change of Ownership

48.1 The Contractor represents and warrants to the Councils that at the date of the agreement the legal and beneficial ownership of the Contractor is as set out in Schedule 15 (Contractor Ownership Data) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor.

48.2 The Contractor shall obtain the Councils' prior written consent (which may be given subject to conditions) to a Change of Ownership during the Lock In Period.

48.3 No Change of Ownership may occur unless the transferee's financial standing is equal to or better than the Contractor's at the time of transfer except with the consent of the Councils.

48.4 Subject to clauses 48.2 and 48.3, the Contractor shall inform the Councils as soon as reasonably practicable (and in any event, within twenty (20) Business Days of any Change of Ownership occurring.

48.5 The Contractor's obligations under clauses 48.1 and 48.4 shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiries.

48.6 The Contractor shall obtain the Councils' prior written consent (which may be given subject to conditions) to any Restricted Share Transfer of the Contractor.

49 Compliance with Law

49.1 The Contractor shall perform its obligations under this agreement, Sub-Contracts and any other agreement related to this agreement in accordance with applicable Law, Guidance, the Councils' Policies subject to any consequential effect or otherwise referred to in clause 28. The Contractor shall co-operate with the Councils to ensure that the Contractor's acts or omissions do not compromise the Councils' ability to comply with the Councils' Policies.

49.2 Duty to Comply with Law

Without prejudice to the generality of clause 28 and clause 49.1, the Contractor shall:

49.2.1 give all notices;

49.2.2 obtain and maintain in full force and effect; and

49.2.3 pay all fees required to be paid or given;

by any Law and/or Guidance and/or in relation to all Consents relevant to the provision of the Services and as required for the proper performance of the Contractor's duties and obligations under this agreement, the Sub-Contracts, and any other agreement related to this agreement.

- 49.3 The Contractor shall have a duty to inform the Councils if any person for whom the Councils are responsible or any third party associated with this agreement or the Services may in the reasonable opinion of or to the knowledge of the Contractor be in breach of the duty of care under section 34 of the EPA.

50 **Confidentiality**

- 50.1 The Parties agree that the provisions of this agreement shall, subject to clause 50.2 not be treated as Confidential Information and may be disclosed without restriction.
- 50.2 Clause 50.1 shall not apply to provisions of this agreement designated as Commercially Sensitive information which shall, subject to clause 50.4 be kept confidential for the periods specified in Schedule 13 (Commercially Sensitive Information).
- 50.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this agreement, Sub-Contracts or any other agreement and shall use reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- 50.4 Clauses 50.1 and 50.3 shall not apply to:
- 50.4.1 any disclosure of information that is reasonable required by any person engaged in the performance of their obligations under this agreement for the performance of those obligations;
 - 50.4.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause;
 - 50.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its sub-contractors;
 - 50.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental regulatory authority concerned;
 - 50.4.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

- 50.4.6 any provision of information to the Parties' own professional advisers (including, but not limited to, lawyers, accountants, auditors and consultants) or insurance advisers;
- 50.4.7 any disclosure by the Councils of information relating to the Site including, but not limited to, the design, construction, operation and maintenance of the Site and the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new contractor, its advisers and lenders, should the Councils decide to retender the Services;
- 50.4.8 any registration or recording of the Consents and property registration required;
- 50.4.9 any disclosure of information by the Councils to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Councils for any purpose related to or ancillary to this agreement; or
- 50.4.10 any disclosure for the purpose of:
 - (a) the examination and certification of the Councils' or the Contractor's accounts;
 - (b) any examination pursuant to the 1999 Act and/or the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Councils has used their resources;
 - (c) complying with a proper request from either Party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (d) (without prejudice to the generality of clause 50.4.4) compliance with the FOIA and/or EIRs (each as amended or replaced) provided that neither clause 50.4.4 nor this clause 50.4.10(d) shall permit disclosure of Confidential Information otherwise prohibited by 50.3 where the information is exempt from disclosure under FOIA/EIRs as determined by the Councils at their sole discretion; or
- 50.4.11 any disclosure by the Councils to the Waste Disposal Authority.

50.5 Where disclosure is permitted under clause 50.4, other than clauses 50.4.2, 50.4.4, 50.4.5, 50.4.8, 50.4.10, the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this agreement.

51 Limitation on Liability

- 51.1 Nothing in this agreement shall exclude or limit either party's liability in respect of:
 - 51.1.1 death or personal injury;
 - 51.1.2 fraud or fraudulent misrepresentation; or

- 51.1.3 wilful default.
- 51.2 Nothing in this agreement shall exclude or limit the Contractor's liability in respect of:
 - 51.2.1 payments made by the Contractor to the extent corresponding payments are (or would, but for the Contractor's breach of clause 29), received by the Contractor pursuant to any insurance policies; or
 - 51.2.2 the Contractor's pensions liabilities under this agreement.
- 51.3 Subject to clause 51.1 and 51.2, each party's total liability in connection with this agreement shall not exceed £5,000,000 (five million pounds sterling).

52 Audit

- 52.1 During the Term and for a period of 7 years after the expiry of the Term or the Termination Date, the Councils (acting by themselves or through the Councils' Representative) may conduct an audit of the Contractor, including for the following purposes:
 - 52.1.1 to verify the accuracy of the Contract Price and/or Monthly Payments and the income from materials and any claimed costs which offset that income (and proposed or actual variations to them in accordance with this agreement) and/or all the costs and related income derived from the sale of materials of the Contractor (including Sub-Contractors) of the Services at the level of detail agreed in Schedule 3 (DMR Processing Payment Mechanism);
 - 52.1.2 to review the integrity, confidentiality and security of any data relating to the Councils;
 - 52.1.3 to review the Contractor's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 54 (Data Processing) and clause 53 (Freedom of Information) and any other Law applicable to the Services;
 - 52.1.4 to review any primary evidence including invoices, receipts or other such records created during the provision of the Services;
 - 52.1.5 to review any ledger, financial files or books of account kept by the Contractor in connection with the provision of the Services;
 - 52.1.6 for the purpose of the Local Government Finance Act 1982 (and any other Law relating to the inspection, examination and auditing of each Council's accounts);
 - 52.1.7 to carry out the audit and certification of each Council's accounts;
 - 52.1.8 to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Councils have used its resources;

- 52.1.9 to verify the accuracy and completeness of reporting as set out in Schedule 6 (Reporting and Performance Monitoring (Processing)) delivered or required by this agreement.
- 52.2 Except where an audit is imposed on the Councils by a regulatory body or where the Councils have reasonable grounds for believing that the Contractor has not complied with its obligations under this agreement, the Councils may not conduct an audit under this clause 52 more than twice in any calendar year.
- 52.3 The Councils shall use their reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 52.4 Subject to the Councils' obligations of confidentiality, the Contractor shall on demand provide the Councils and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - 52.4.1 all information requested by the above persons within the permitted scope of the audit;
 - 52.4.2 reasonable access to the Site and any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 52.4.3 access to the Relevant Persons; and
 - 52.4.4 any necessary explanation required of a transactional, organisational, contractual or operational nature to lend further clarity or context to the information subject to the audit.
- 52.5 The Councils shall endeavour to (but are not obliged to) provide at least 15 Business Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 52.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Contractor in which case the Contractor shall reimburse the Councils for all the Councils' reasonable costs incurred in the course of the audit.
- 52.7 If an audit identifies that:
 - 52.7.1 the Contractor has failed to perform its obligations under this agreement in any material manner, the Parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Councils about the Contract Price and/or Monthly Payments, or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - 52.7.2 the Councils have overpaid any Monthly Payments, the Contractor shall pay to the Councils the amount overpaid within 20 days. The

Councils may deduct the relevant amount from the Monthly Payments if the Contractor fails to make this payment; and

- 52.7.3 the Councils have underpaid any Monthly Payments, the Councils shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Councils if this was due to a default by the Contractor in relation to invoicing within 20 days.

Information

53 Freedom of information

- 53.1 The Contractor acknowledges that the Councils are subject to the requirements of the FOIA and the EIRs. The Contractor shall:
 - 53.1.1 provide all necessary assistance and cooperation as reasonably requested by the Councils to enable the Councils to comply with their obligations under the FOIA and EIRs;
 - 53.1.2 transfer to the Councils all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Business Days of receipt;
 - 53.1.3 provide the Councils with a copy of all Information belonging to the Councils requested in the Request For Information which is in its possession or control in the form that the Councils requires within 5 Business Days (or such other period as the Councils may reasonably specify) of the any Council's request for such Information; and
 - 53.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Councils.
- 53.2 The Contractor acknowledges that the Councils may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Councils shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Councils shall be responsible for determining in their absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 53.3 Notwithstanding any other term of this agreement, the Contractor consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 53.4 The Councils shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform their decision regarding any redactions but shall have the final decisions in their absolute discretion. The Contractor shall assist and co-operate with the Councils to enable the Councils to publish this agreement.

54 Data Processing

- 54.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 54 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 54.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Councils are the Controller and the Contractor is the Processor. Schedule 14 (Data Processing) sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 54.3 Without prejudice to the generality of clause 54.1:
 - 54.3.1 the Councils will ensure that they have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this agreement;
 - 54.3.2 the Contractor will ensure that it has all necessary appropriate consents and notices in place to enable lawful processing and transfer of the Personal Data to the Councils for the duration and purposes of this agreement;
- 54.4 Without prejudice to the generality of clause 54.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:
 - 54.4.1 process that Personal Data only on the documented written instructions of the Councils which are set out in Schedule 14 (Data Processing), unless the Contractor is required by Domestic Law to otherwise process that Personal Data. Where the Contractor is relying on Domestic Law as the basis for processing Personal Data, the Contractor shall promptly notify the Councils of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Contractor from so notifying the Councils;
 - 54.4.2 ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Councils, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 54.4.3 not transfer any Personal Data outside of the UK unless the prior written consent of the Councils has been obtained and the following conditions are fulfilled:
- (a) the Councils or the Contractor have provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective remedies;
 - (c) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Contractor complies with the reasonable instructions notified to it in advance by the Councils with respect to the processing of the Personal Data;
- 54.4.4 notify the Councils immediately if it receives:
- (a) a request from a Data Subject to have access to that person's Personal Data;
 - (b) a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- 54.4.5 assist the Councils in responding to any request from a Data Subject and in ensuring compliance with the Councils' obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 54.4.6 assist the Councils with any data protection impact assessments carried out at any time during the Term;
- 54.4.7 notify the Councils without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- 54.4.8 at the written direction of the Councils, delete or return Personal Data and copies thereof to the Councils on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data; and
- 54.4.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 54 and allow for audits by the Councils or the Councils designated auditor pursuant to clause 52 and immediately inform the Councils if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation.

- 54.5 The Contractor shall indemnify the Councils against any losses, damages, claims, damages, liabilities cost or expenses (including reasonable legal costs) incurred by the Councils arising from, or in connection with, any breach of this clause 54 by the Contractor and/or by act or omission of any Sub-Contractor.
- 54.6 Where the Contractor intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
- 54.6.1 notify the Councils in writing of the intended processing by the Sub-Contractor;
 - 54.6.2 obtain prior written consent from the Councils to the processing; and
 - 54.6.3 enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 54.
- 54.7 Either Party may, at any time on not less than 30 Working Days' written notice to the other Party, revise this clause 54 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 54.8 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

55 Intellectual Property

- 55.1 In the absence of prior written agreement by the Councils to the contrary, all Intellectual Property Rights created by the Contractor or the Contractor's Relevant Persons:
- 55.1.1 in the course of performing the Services; or
 - 55.1.2 exclusively for the purpose of performing the Services,
- shall vest in the Councils on creation.
- 55.2 The Contractor shall indemnify the Councils against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Councils' acts or omissions.

56 Prevention of Bribery

- 56.1 The Contractor represents and warrants that neither it, nor any of the Contractor's Relevant Persons:
- 56.1.1 has committed a Prohibited Act;
 - 56.1.2 to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

- 56.1.3 has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 56.2 The Contractor shall promptly notify the Councils if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 56.1 at the relevant time.
- 56.3 The Contractor shall (and shall procure that its Relevant Persons shall) during the Term:
 - 56.3.1 not commit a Prohibited Act; and/or
 - 56.3.2 not do or omit to do anything that would cause the Councils or any of the Councils' employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
 - 56.3.3 have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 56.3.4 notify the Councils (in writing) if it becomes aware of any breach of clause 56.3.1 or clause 56.3.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this agreement.
- 56.4 The Contractor shall maintain appropriate and up to date records showing all payments made by the Contractor in connection with this agreement and the steps taken to comply with its obligations under clause 56.3.
- 56.5 The Contractor shall allow the Councils and their third-party representatives to audit any of the Contractor's records and any other relevant documentation in accordance with clause 52.

57 **Public Relations and Publicity**

- 57.1 The Contractor shall not by itself, its employees or agents and shall procure that its Sub-Contractors shall not:
 - 57.1.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning this agreement without the prior written approval of the Councils;
 - 57.1.2 use the Councils' name or logo in any promotion or marketing or announcement of orders;

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Councils, which shall not be unreasonably withheld or delayed.

- 57.2 The Contractor shall, on the prior request of the Councils, communicate with representatives of the press, television, radio or other communications media on specified matters related to this agreement.
- 57.3 The Contractor shall, on the reasonable prior request of the Councils, provide information to enable the Councils to communicate with representatives of the press, television, radio or other communications media on any matters concerning this agreement.
- 57.4 Except for CCTV and ANPR as authorised by the Councils, no facilities to photograph or film in or upon any property used in relation to this agreement shall be given or permitted by the Contractor unless the Councils has given its prior written approval.

General Provisions

58 Non-solicitation

In order to protect each other's legitimate business interest, neither Party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other Party who have been engaged or employed in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other Party.

59 Waiver

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

60 Rights and Remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

61 Severability

61.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

61.2 If any provision or part-provision of this agreement is deemed deleted under clause 61.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

62 Partnership or Agency

62.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the

agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

- 62.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

63 Third Party Rights

- 63.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

- 63.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

64 Notices

- 64.1 Any notice given to a Party under or in connection with this agreement shall be in writing marked for the attention of the Party's Representative and shall be:

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

- 64.2 Any notice shall be deemed to have been received:

64.2.1 if delivered by hand, at the time the notice is left at the proper address;
or

64.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

- 64.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 64.4 A notice given under this agreement is not valid if sent by email. Day to day communications required for the proper management of this agreement and the proper provision of the Services may be sent by email.

65 Entire Agreement

- 65.1 This agreement and the documents referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 65.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

66 **Counterparts**

This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has provided to the others at least one executed counterpart.

67 **Governing Law**

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

68 **Jurisdiction**

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

This agreement is executed as a deed and delivered on the date stated at the beginning of it.

THE COMMON SEAL of)
FENLAND DISTRICT COUNCIL)
was hereunto affixed)
in the presence of:)



13343.

Authorised Signatory

THE COMMON SEAL of)

EAST CAMBRIDGESHIRE DISTRICT COUNCIL)

was hereunto affixed)

in the presence of:)



[Handwritten signature]

Authorised Signatory

Director Legal

Executed as a deed by the
CONTRACTOR acting by a director and a
company secretary

Signed by:
Paul James
CC3C9B2C30894AD...
.....
Director Paul James

DocuSigned by:
Sarah Parsons
765E461444DC443...
.....
Company Secretary Sarah Parsons

Schedule 1 Definitions

1 Definitions and Interpretation

1.1 The following definitions and rules of interpretation in this clause apply in this agreement.

1999 Act	the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007) and as amended or replaced from time to time;
Accident Report	means the accident report required by paragraph 1.1 of Schedule 6;
Accept	accept the delivery of Contract Materials delivered at any Reception Point by the Councils and “ Accepted ” shall be construed accordingly;
Action Plan	means the action plan as described in paragraph 5 of Schedule 6;
Administrative Area	the area for which the relevant Council is the Waste Collection Authority;
Affiliate	in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and “holding company” and “subsidiary” shall have the meaning given to them in section 1159 of the Companies Act, save that for the purpose of determining whether one entity is an Affiliate of another any transfer of shares by way of security to or to a nominee of the transferor shall be disregarded;
Annual Report	the report to be submitted on an annual basis by the Contractor to the Councils in accordance with clause 17.2, and including the relevant information set out within paragraph 1.2 Schedule 6 (Reporting and Performance Monitoring (Processing));
Annual Programmed Maintenance Schedule	in respect of the Site, the Contractor’s annual programme for the maintenance of the Assets to satisfy the Services which for the purposes of this agreement shall be deemed to form part of the Services Delivery Plan and in accordance with clause 13.2;
Annual Services Improvement Plan	the plan to be submitted by the Contractor for each Contract Year detailing proposed improvements to the delivery of the Services in accordance with clause 11.1, and including the relevant information set out in Schedule 6 (Reporting and Performance Monitoring (Processing));

Assets	the Contractor's Equipment;
Authorities	Cambridge City Council, East Cambridgeshire District Council, Fenland District Council, Huntingdonshire District Council, Peterborough City Council and South Cambridgeshire District Council;
Available	capable of Accepting Contract Materials which is properly delivered by the Councils in accordance with the provisions of this agreement;
Beneficiary	has the meaning given to it in clause 33.1;
Best Value Duty	the duty imposed on the Councils by section 3(1) of the 1999 Act in relation to the Services;
Best Value Inspector	an officer, agent or employee of a Relevant Authority empowered to inspect each Council's compliance with the Best Value Duty in accordance with section 10 of the 1999 Act;
Bribery Act	the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Bulking Facility	means a facility that bulks, stores and loads Contract Materials.
Bulking Facility Contractor(s)	means the contractors appointed by the Authorities (excluding Peterborough City Council) to carry out bulking of Contract Materials at Bulking Facilities;
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
Change	any change to this agreement including to any of the Services;
Change Control Note	the written record of a Change agreed or to be agreed by the Parties pursuant to the Change Control Procedure;
Change Control Procedure	the procedure for changing this agreement, as set out in Schedule 8 (Change Control Procedure);
Change in Law	the coming into effect after the date of this agreement of any: (a) Law, other than any Law which on the date of this agreement has been published: (i) in a draft Bill as part of a Government Departmental Consultation Paper;

- (ii) in a Bill; or
- (iii) in a draft statutory instrument;
- (b) Guidance; or
- (c) Any applicable judgment of a relevant court of law which changes a binding precedent;

Change of Ownership

means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a);

Commencement Date

the date of this agreement;

Commercially Sensitive Information

the information listed in Schedule 13 comprising the information of a commercially sensitive nature relating to the Contractor, its intellectual property rights or its business or which the Contractor has indicated to the Councils that, if disclosed by the Councils, would cause the Contractor significant commercial disadvantage or material financial loss;

Completion Notice

as described in Schedule 6;

Confidential Information

means all confidential information (however recorded or preserved) disclosed by a Party or its representatives to the other Party and that Party's representatives in connection with this agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, contractors or plans of the disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party;
- (b) any information developed by the parties in the course of carrying out this agreement;

	(c) Personal Data;
	(d) any Commercially Sensitive Information;
Consents	all permissions, consents, approvals, certificates, permits, licences and authorisations of a Relevant Authority necessary from time to time for the performance of the Services under this agreement including, but not limited to: (a) all Environmental Permits; (b) all Planning Permissions; and (c) all Planning Obligations;
Consents List	has the meaning given to is in clause 9.4.1;
Contamination	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);
Contingency Plan	the contingency plan relating to the Contractor's plans to deal with any interruption to the Services including unavailability of the Site or any facilities used in the provision of the Services;
Contract	means this agreement;
Contract Management Meeting(s)	has the meaning given to it in paragraph 2.1 Schedule 5 (Contract Management);
Contract Manager	any person appointed as such by the Councils' Representative in accordance with clause 18.3.2 who, for the avoidance of doubt, need not be an officer of the Councils;
Contract Materials	all Waste received by the Contractor from the Councils;
Contract Material Load	as described in paragraph 10.8 of the Specification;
Contract Month	as described in the Payment Mechanism;
Contract Price	the Monthly Payments which become due and payable by the Councils to the Contractor in respect of the Services in each Contract Year calculated in accordance with Schedule 3 (DMR Processing Payment Mechanism) and the provisions of this agreement;

Contract Targets	Means the Contract targets set out in Paragraph 4 of Schedule 2 (Specification);
Contract Year	any period of twelve Months commencing on 1 April provided that: (a) the first Contract Year shall be the period commencing on the Services Commencement Date and ending on the following 31 March; and (b) the last Contract Year shall be the period commencing on 1 April prior to the date on which this agreement expires or earlier terminates and ending on the date of such expiry or earlier termination;
Contractor Change Notice	a written notice submitted by the Contractor requesting a Change and setting out the information required through a Change Control Note;
Contractor Default	means one or more of the following events: (a) a breach by the Contractor of any of its obligations under this agreement which materially and adversely affects the performance of the Services; (b) the Contractor or the Guarantor suspends, or threatens to suspend, payments of its debts, or is unable to, or admits inability to, pay its debts as they fall due, or fails to satisfy any judgment debt in whole or in part, or is, or could be, deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (c) any corporate action, legal proceedings or other procedure or step is taken in relation to the appointment of an administrator of the Contractor or the Guarantor (including, without limitation, any meeting of the Contractor's or the Guarantor's directors or members which resolves to make an application to court for an administration order, or to give notice of intention to appoint an administrator, or file a notice of appointment of an administrator in respect of the Contractor or the Guarantor, or any person makes an administration application, gives or files notice of intention to appoint an administrator or files notices of appointment of an administrator in respect of the Contractor or the Guarantor, or an administrator of the Contractor or the

Guarantor is appointed);

- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to the winding up of the Contractor or the Guarantor (including, without limitation, any meeting of the Contractor's or the Guarantor's members at which a resolution to wind up the Contractor or the Guarantor is due to be considered, notice of intention to wind up the Contractor is given, or an effective resolution for the winding up or dissolution of the Contractor or the Guarantor is passed (other than, in each case, for the purposes of a solvent winding up as part of an amalgamation, reorganisation or reconstruction, undertaken with the prior consent of the Councils));
- (e) a petition is presented to court for the winding up of the Contractor or the Guarantor (unless the petition is frivolous or vexatious and is withdrawn or dismissed within fourteen (14) days of the petition being served on the Contractor or Guarantor) or an order for the winding up of the Contractor or the Guarantor is made;
- (f) any corporate action, legal proceedings or other procedure or step is taken in relation to the appointment of a receiver of the whole or any part of the assets, rights or revenue of the Contractor or the Guarantor, or the appointment of an administrative receiver of the Contractor or the Guarantor or the appointment of a receiver manager, special manager, a judicial custodian, a trustee in bankruptcy, a compulsory manager or other similar officer in respect of the Contractor or the Guarantor;
- (g) by reason of actual or anticipated financial difficulties the Contractor or the Guarantor commences negotiations with one or more of its creditors with a view to the general readjustment or rescheduling of all or part of its debts;
- (h) any moratorium, arrangement, compromise, assignment or composition of some or all of the Contractor's or Guarantor's accreditors (including any voluntary arrangement as defined in the Insolvency Act 1986, scheme of arrangement or otherwise) is obtained, approved, agreed, sanctioned, entered into

by or in relation to the Contractor or the Guarantor;

- (i) any corporate action, legal proceedings or other procedure or step is taken in relation to enforcement of any security over any assets of the Contractor or the Guarantor to the extent that the Councils reasonably considers that the same has a material adverse effect on the ability of the Contractor to comply with their obligations under this agreement;
- (j) any expropriation, attachment, sequestration, execution, use of the procedure in Schedule 12 of the Tribunals, Courts and Enforcement Act 2007, lien being exercised or analogous event affects any asset or assets of the Contractor or the Guarantor;
- (k) any event or step analogous to the events or steps set out in limb (a) to (j) (inclusive) occurs in any jurisdiction;
- (l) a breach by the Contractor of clause 47.2 occurs;
- (m) a breach of clause 48 occurs;
- (n) a Performance Default occurs;
- (o) subject to clause 29.2, a breach by the Contractor of its obligations to take out and maintain any of the Required Insurances;
- (p) the Parent Company Guarantee becomes invalid, void or unenforceable and the Contractor has failed within ten (10) Business Days of a written request from the Council to provide a replacement Parent Company Guarantee or other security on terms acceptable to and no less favourable to the Councils; and
- (q) breach of clause 3.2;

**Contractor's
Equipment**

any physical, moveable asset at the Site being (without limitation) Mobile Plant, tools, equipment, IT equipment, all Vehicles, and similar items and which are procured (or the use of which is procured) by the Contractor in connection with the Services before or during the Term;

**Contractor Related
Parties**

the Contractor's agents, Sub-Contractors and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in

	relation to this agreement and any person on or at the Site at the express or implied invitation of the Contractor (other than the Councils or any Councils' Related Parties);
Contractor's Representative	the person appointed as such by the Councils in accordance with clause 18.3.4;
Contractor Termination Sum	has the meaning given in clause 38.1;
Controller	as defined in the Data Protection Legislation;
Conviction	other than in relation to minor road-traffic offences, any previous prosecutions, convictions, cautions and binding over orders (excluding any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in part II of Schedule 1 of the Rehabilitation of Offenders Act (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendments to that Order);
Councils' Change	(a) a Change that is initiated by the Councils by submitting a Councils' Change Notice to the Contractor; and (b) for the purpose of the Change Control Procedure, a Qualifying Change in Law shall also be treated as a Councils' Change;
Councils' Change Notice	a written notice submitted by the Councils to the Contractor requiring a Change;
Councils' Default	means one of the following events: (a) a failure by the Councils to make payment of any amount of money exceeding the last three (3) Monthly Payments (at the date of the relevant Councils' Default) that is due and payable by the Councils under this agreement within forty (40) Business Days of service of a formal written demand by the Contractor, where that amount fell due to and payable by two (2) Months prior to the date of service of the written demand; (b) a breach by the Councils of clause 47.1;
Councils' Related Parties	any of the following: (a) any officer, servant, employee or agent of the Councils acting in that capacity; (b) any contractor or sub-contractor of the

	Councils of any tier;
Councils' Representative	the person appointed as such by the Councils in accordance with clause 18.3.1 who, for the avoidance of doubt, need not be an officer of the Councils;
Councils' Termination Sum	has the meaning given in clause 36.1;
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (the " DPA 2018 ") (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (<i>SI 2003/2426</i>) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory councils and applicable to a Party;
Data Subject	as defined in the Data Protection Legislation;
Deduction Frequency	means the deduction frequency set out in Table 2 of Schedule 6;
Defect	any defect (including any fault, non-compliance, error or omission) in any of the Contractor's Equipment such that the Contractor's Equipment (or part thereof) does not comply with all the requirements of this agreement;
DEFRA	the Department for the Environment, Food & Rural Affairs, and any successor or replacement body;
Deposit Return Scheme	the deposit return scheme for single use drinks packaging which is to be implemented pursuant to the Environment Act 2021;
Direct Losses	all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
Dispute Resolution Procedure	the procedure set out in Schedule 12;
Domestic Law	the law of the United Kingdom or part of the United Kingdom;
Duty of Care	the obligations under section 34 of the EPA and the Waste Duty of Care Code of Practice published on 11 March 2016 and updated on 26 November 2018 by

	the Department for Environment, Food & Rural Affairs, as amended or replaced from time to time;
EIRs	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
Environmental Permit	a permit for Handling Waste issued by a Relevant Authority pursuant to Environmental Permitting (England and Wales) Regulations 2016 as amended or replaced from time to time;
EPA	Environmental Protection Act 1990 as amended or replaced from time to time;
Expiry Date	the date being the fifth anniversary of the Services Commencement Date or such later date as a result of an extension of the Term in accordance with clause 4;
Extension Period	has the meaning given in clause 4.1;
Extended Producer Responsibility	the extended producer responsibility framework that is to be implemented pursuant to the Environment Act 2021;
FOIA	the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
Forecast income Share	such share of the total value of sales of Contract Materials as is forecast to be owed to the Councils in the Annual Report;
Force Majeure Event	any circumstance after the Commencement Date not within a Party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (c) nuclear, chemical or biological Contamination or sonic boom unless the source or cause of the Contamination is the result of any actions or breach by the Contractor, its Sub-Contractors except where such actions or

	breach of the Contactor constitute solely the receipt or treatment by the Contractor or Sub-Contractor of Contract Materials (containing nuclear, chemical or biological Contamination) in accordance with this agreement;
	which directly causes either Party (the “ Affected Party ”) to be unable to comply with all or a material part of its obligations under this agreement;
Force Majeure Termination Sum	has the meaning given in clause 39.4.1;
General Change in Law	a Change in Law which is not a Qualifying Change in Law;
Good Industry Practice	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor engaged in the same type of undertaking as that of the Contractor under the same or similar circumstances;
Guidance	any applicable guidance or direction with which the Contractor is bound to comply;
Handle	to handle Waste which includes to do all things relevant to Waste such as (without limitation) receive, Accept, manage, inspect, weigh, test, sort, segregate, tip, store, bulk, transfer, compact, transport, Re-use, Recycle, Compost, Recover, Beneficially Use, process, Treat, process, dispose, Landfill (or otherwise dispose of) and disposal of all residues following treatment or processing and “ Handle ” and “ Handling ” shall be interpreted accordingly;
Hazardous Waste	has the meaning given in Regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005
HSE or Health and Safety Executive	Health and Safety Executive, or any successor or replacement organisation;
Indemnifier	has the meaning given to it in clause 33.1;
Indexation	has the meaning given to it in Schedule 3 (DMR Processing Payment Mechanism);
Indirect Losses	loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

Information	has the meaning given under section 84 of FOIA;
Initial Term	the period commencing on the Commencement Date and ending on the fifth anniversary of the Services Commencement Date;
Insurance Term	any terms and/or conditions required to be included in a policy of insurance by clause 29 (Insurances);
Intellectual Property Rights	any and all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world which are created, brought into existence, acquired, used or intended to be used by the Contractor or any Contractor Related Parties for the purposes of providing the Services and/or otherwise for the purposes of this agreement;
Law	the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Contractor is bound to comply;
Liaison Officer	has the meaning given to it in clause 15.2;
Lock In Period	means the period expiring on the date that is twelve (12) Months after the Commencement Date;
Losses	all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
Lots	the Authorities have procured contractors to provide the transportation/receipt, sorting and onward sale/re-processing of commingled dry recyclable materials and have awarded the service requirement as separate lots and the Councils have appointed the Contractor to carry out the Services which constitutes one of the Lots (Lot).

Maintenance Report	has the meaning given to it in the Monthly Report;
Materials Recycling Facility (MRF)	means specialist plant(s) that receives and prepares recyclable materials;
Mobile Plant	wheeled vehicles used for the handling of Contract Materials;
Mobilisation Meeting	a monthly mobilisation meeting during the mobilisation period between the Councils and the Contractor;
Mobilisation Plan	the component of the Services Delivery Plan relating to mobilisation;
Monitoring Frequency	means the monitoring frequency set out in Table 2 of Schedule 6;
Month	a calendar month;
Monthly Payment	for any Month during the Term the monthly payment in respect of the Services determined in accordance with Schedule 3 (DMR Processing Payment Mechanism);
Monthly Reply	the Councils' reply to the Contractor in respect of the Monthly Report pursuant to clause 21.2.2(a);
Monthly Report	the report to be submitted on a monthly basis by the Contractor to the Councils in accordance with clause 21.2.1 including the relevant information set out within Schedule 6 (Reporting and Performance Monitoring (Processing));
NNDR	National Non-Domestic Rates;
Non-Recyclable Materials	as defined in Schedule 3 (DMR Processing Payment Mechanism);
Non-Target Materials	the non-target materials that are listed in Appendix 8 of the Specification;
Parent Company Guarantee	the guarantee dated on or around the date of this agreement between the Councils and the Guarantor under which the Guarantor provides a guarantee in favour of the Councils in relation to the performance of this agreement by the Contractor in the form set out in Schedule 18);
Payment Mechanism	The DMR Processing Payment Mechanism set out in Schedule 3;
Performance Deductions	means the performance deductions set out in Schedule 6 (Reporting and Performance Monitoring (Processing));

Performance Default	in any Contract Year the value of the Performance Deductions exceeds the figure stated in paragraph 5.8 of Schedule 6 (Reporting and Performance Monitoring (Processing)) as the Performance Default figure;
Performance Framework	the Performance Framework as set out in Schedule 6 (Reporting and Performance Monitoring (Processing));
Performance Report	means the report the Contractor is obliged to provide to the Councils in accordance with Paragraph 1 of Schedule 6 (Reporting and Performance Monitoring (Processing));
Performance Standards	the performance standards detailed in Schedule 6 (Reporting and Performance Monitoring (Processing));
Performance Standards Failure	a failure to meet the relevant Performance Standards;
Performance Standards	the performance standards set out in Schedule 6 (Reporting and Performance Monitoring (Processing));
Personal Data	as defined in the Data Protection Legislation.
Planning Obligation	any agreement or obligation undertaken pursuant to: (a) section 106 of the Town and Country Planning Act, as amended or replaced from time to time; (b) section 111 of the Local Government Act 1972, as amended or replaced from time to time; (c) section 38 or 278 of the Highways Act 1980, as amended or replaced from time to time; (d) section 104 Water Industry Act 1992 (as amended or replaced from time to time) or any other provision of similar intent, within the meaning of the Water Act 1989 (as amended or replaced from time to time), with a Relevant Authority for the supply of water or the drainage of surface or foul water from the Site; (e) any agreement with a Relevant Authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any of them; or

	or any relevant planning permissions relating to the Site;
Planning Permissions	any relevant planning permission relating to the Site;
Processor	as defined in the Data Protection Legislation;
Programmed Maintenance	in respect of the Site, maintenance work which the Contractor is to carry out in accordance with the Annual Programmed Maintenance Schedule for the Site;
Prohibited Act	the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Councils, a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement or any other agreement with the Councils; (c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Councils; (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK;
Prohibited Materials	any Waste which cannot be received lawfully at a facility because it would not be permitted by the terms of the Environmental Permit or any Hazardous Waste;;
Qualifying Change in Law	means any of: (a) a Specific Change in Law which was not foreseeable at the date of this agreement; (b) implementation by DEFRA of a Deposit Return Scheme and or Extended Producer Responsibility scheme affecting the Administrative Area; (c) any change to or revocation of any condition

of an Environmental Permit for the Sites other than where such change or revocation arises as a result of the acts or omissions of the Contractor or any Contractor Related Party (save for acts or omissions directly resulting from compliance with the Contractor's obligation under this agreement); and/or

- (d) a change made by the Environment Agency (and confirmed in writing) to any guidance in relation to, or any explanation or interpretation of, or any explanation or interpretation of any Law or Guidance.

Rectified	the implementation of measures to remedy any Performance Standards Failure pursuant to Paragraph 5, Schedule 6 (Reporting and Performance Monitoring (Processing)), Schedule 2 (Specification) and "Rectify" and "Rectified" shall be construed accordingly;
Rectifiable Contractor Defaults	has the meaning given to it in clause 37.2.2;
Rectification Notice	the notice to be issues by the Councils which sets out the requirements for the Contractor to Rectify a Performance Standard Failure and shall contain the information set out in paragraph 5.2 of Schedule 6.
Rectification Period	a period in which the Contractor may Rectify a Performance Standards Failure and shall be a period of time as set out in the relevant Rectification Notice.
Recyclable Materials	Contract Materials consisting of dry, recyclable materials as described in Appendix 8 (Target Materials) of the Specification;
Recycling Performance Target	means the Recycling Performance Target set out in paragraph 4 of the Specification
Rejected	as described in paragraph 11.1 of the Specification;
Rejected Materials	as defined in Schedule 3 (DMR Processing Payment Mechanism);
Rejection Procedure	as described in paragraph 11.10 of the Specification;
Relevant Agreements	means any Sub-Contracts;
Relevant Authority	any court with the relevant jurisdiction and any local, national or supra-national agency, authority,

	inspectorate, minister, official or public or statutory person of the government of the United Kingdom;
Relevant Persons	any employee, servant, agent, representative or person engaged by the Contractor or Sub-Contractor (of any tier), involved directly, or indirectly, in carrying out the Services;
Relevant Requirements	all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
Relevant Transfer	a relevant transfer for the purposes of TUPE;
Replacement Contractor	any third-party Contractor of Replacement Services appointed by the Councils from time to time;
Replacement Services	any services that are identical or substantially similar to any of the Services and which the Councils receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Councils internally or by any Replacement Contractor;
Request for Information	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs;
Required Action	has the meaning given to it in clause 20.3;
Restricted Share Transfer	any transfer of shares in the Contractor: (a) to any person engaged or with substantial interests in gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco, the production or sale of products containing or derived from cannabis or the manufacture or sale of arms and weapons; (b) to any person whose activities are, in the reasonable opinion of the Councils, incompatible with the purposes of this agreement; (c) to any person whose activities in the reasonable opinion of the Councils, could pose a threat to national security.
RIDDOR	the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013, as amended or replaced from time to time;

Service Credits	means Performance Deductions;
Services	the services to be delivered by or on behalf of the Contractor under this agreement, as more particularly described in Schedule 2 (Specification);
Services Commencement Date	1 September 2024;
Services Delivery Plan (SDP)	the Contractor's services delivery plan for delivery of the Services set out in Schedule 4 (Services Delivery Plan);
Services Emergency	an emergency, incident and/or extraordinary event at the Site which affects the delivery of the Services;
Site	Biffa Edmonton MRF located at Unit 2, Aztec 406, 12 Ardra Rd, London N9 0BD;
Specific Change in Law	any Change in Law which specifically refers to the provision of services the same as or similar to the Services;
Specification	the specification of the Services set out in Schedule 2;
Sub-Contract	any contract or agreement, or proposed contract or agreement, between the Contractor and a third party pursuant to which that third party agrees to provide to the Contractor the Services or any part of the Services;
Sub-Contractors	any person engaged by the Contractor from time to time as may be permitted by this agreement to procure the provision of the Services (or any of them) and references to "sub-contractors" means sub-contractors (of any tier) of the Contractor;
Summary Report	means the summary report required by paragraph 1.1 of Schedule 6;
Supplier	the third party that supplies the Goods purchased by the Contractor on behalf of the Councils and subject to the Councils' written approval;
Target Materials	the target materials that are listed in Appendix 8 of the Specification;
Term	the period of the Initial Term as may be varied by: (a) the Extension Period; or (b) the earlier termination of this agreement in accordance with its terms;

Termination Date	the date of early termination of this agreement in accordance with the Termination Notice and the terms of this agreement;
Termination Notice	a notice of termination issued in accordance with this agreement;
Termination Sum	the Councils' Termination Sum, Force Majeure Termination Sum or the Contractor Termination Sum (as applicable);
Third Party Agreements	the agreements set out in Schedule 16 and such other agreements entered into by the Contractor over the Term and notified to the Councils as set out in clause 6;
Third Party Materials	means Waste that is not Contract Materials;
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (<i>SI 2006/246</i>);
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
Unsuitable Person	any person who: (a) has any Conviction; (b) is or is likely to cause damage to the reputation of the Councils; (c) persistently fails or would fail to comply with the health and safety or other material obligations of the Contractor under this agreement; (d) is not a fit and proper person to be engaged or employed in or in connection with the provisions or performance of any part of the Services; (e) may present an actual or potential risk to the health, safety or welfare of any Councils' Related Parties or member of the public; or (f) is not appropriately trained, qualified, skilled and/or competent to carry out any part of the Services;
VAT	value added tax or any equivalent tax chargeable in the United Kingdom;

Vehicle	vehicles used by the Contractor for the Handling of Contract Materials or other activities related to the carrying out of the Services;
Warning Notice	as described in Schedule 6;
Waste	has the meaning given to it in section 75 of the EPA;
Waste Disposal Authority	Cambridgeshire County Council;
WasteDataFlow	the web based system for municipal Waste data reporting by UK local authorities to central government which can be found at https://www.wastedataflow.org/ or any successor or replacement organisation carrying out such function; and
Working Day	means in respect of the Site, a day on which the Site is required to be open to Accept Contract Materials in accordance with this agreement.

Schedule 2 Specification

SCHEDULE 2: LOT 2 - SPECIFICATION FOR THE TRANSPORTATION/RECEIPT, SORTING AND ONWARD SALE/RE-PROCESSING OF COMMINGLED DRY RECYCLABLE MATERIALS

1 SCOPE OF THE SERVICE

1.1 The Contractor must:

- Accept Contract Materials from the Council, collect and transport Contract Materials from the Council's Bulking Facilities to the Contractor's Materials Recycling Facility.
- Sort and separate Contract Materials at a Materials Recycling Facility in a manner that maximises quality, quantity and value; whilst taking account of the carbon impact.
- Undertake all best endeavours to maximise the value and income from Contract Materials.
- Secure arrangements for the onward processing/sale of Recyclable Materials for recycling; and
- Handle and dispose of any Recyclable Materials resulting from the processing of Contract Materials whilst maximising value and taking account of the carbon impact.

1.2 In addition, the Contractor shall handle and dispose of any Rejected Materials, at cost to the Council.

1.3 Contract Materials will include commingled dry recyclable materials collected from household and from commercial premises (where such a service is provided) through the Council's schemes.

1.4 The current quantities and composition of materials collected by the Council are provided in Appendix 1, Appendix 4 and Appendix 6 as an indicator only of anticipated Contract Materials. This is provided for information only and is not to be relied upon by the Contractor as any guarantee of future Recyclable Materials composition or tonnages.

2 GENERAL SERVICE REQUIREMENTS

2.1 The Council requires the Contractor to, as a minimum, sort, separate and sell all of the Target Materials listed in Appendix 8 along with any Non-Target Materials that the Contractor should like to suggest. The Council expects proposals for additional Target Materials in a manner that maximises quality, quantity and value; whilst taking account of the carbon impact.

2.2 The Contractor shall ensure that the MRF facility has sufficient capacity to Accept and process all Contract Material assigned within relevant Lot or Lots, in accordance with the requirements of this Specification for the duration of the Term.

2.3 The Contractor must, at all times, ensure that all Contract Materials are handled and stored to ensure that the value and integrity of Contract Materials is preserved.

2.4 The Contractor shall make provision for reasonably foreseeable industry changes in quantity and composition of Contract Materials over the Term as a result of any changes to consumer behaviour, seasonal changes, population and housing growth,

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at no additional cost to the Council. Appendix 3 provides indicative information only in the form of current estimated forecasts for population growth in the area.

- 2.5 The Contractor must be able to receive, sort and separate a proportion of Contract Materials collected in transparent plastic sacks, where used by an Authority. Transparent plastic sacks are currently used within four Authority areas where properties do not have enough space to accommodate a wheeled bin collection.
- 2.6 The Contractor must hold and maintain and operate in accordance with all necessary permits, authorisations and permissions required for the provision of the Service and operate in accordance with all relevant legislation and Good Industry Practice.
- 2.7 The Contractor shall accommodate inspection requests (plant, equipment and/or information regarding performance) when requested by the Council, with the Council giving reasonable notice to the Contractor. The Contractor shall be present at all such inspections and cooperate fully with the Council.

3 SERVICE COMMENCEMENT/TERM

- 3.1 Services are required to commence for Council from the Services Commencement Date.

4 Not Used

5 CONTRACT TARGETS

- 5.1 The Partnership has set the Contractor an annual Recycling Performance Target of 96% by weight of Recyclable Materials. The Contractor must sell for recycling a minimum 96% by weight of all Recyclable Materials within Contract Materials.
- 5.2 Should the Contractor fail to achieve the Recycling Performance Target, a Service Credit will be applied as defined in the Payment Mechanism.

6 PERFORMANCE STANDARDS

- 6.1 This is a performance based agreement; the Council will assess the Contractor performance in providing Services against the Council's Performance Standards. These Performance Standards are set out in Schedule 6 of the agreement.
- 6.2 The Performance Standards shall be reported by the Contractor to the Council in Monthly Reports and provide an annual report and Annual Services Improvement Plan, as set out in Schedule 6 of the agreement.
- 6.3 For the avoidance of doubt, any remaining residual Recycling Materials (process loss) not sorted and captured within the MRF process for onward sale are to be disposed of at the Contractors expense and will therefore be included within the gate fee quoted.

7 DUTY OF CARE

- 7.1 All Contract Materials shall be the property of the Contractor once Accepted by the Contractor.
- 7.2 The Contractor shall comply with the requirements of The Waste (Circular Economy) Regulations 2020(or as amended).

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- 7.3 The Contractor shall provide all relevant information to the Council as may be requested from time to time, for the Council to ensure that it complies with its requirements under The Waste (Circular Economy) Regulations 2020 (or as amended).

8 COLLECTION OF CONTRACT MATERIALS FROM BULKING FACILITY LOCATIONS / RECEIPT OF CONTRACT MATERIALS

- 8.1 Peterborough City Council (**Peterborough**) operates its own Bulking Facility at Nursery Lane, Fengate, Peterborough, PE1 5BG. All other Authorities are procuring required Bulking Facilities within a separate procurement, to be operable from the Services Commencement Date.
- 8.2 Except for Peterborough, the locations of all other Bulking Facilities are to be determined by a separate procurement process.
- 8.3 The Contractor shall collect Contract Materials from the Bulking Facility at Fengate, Peterborough, PE1 5BG, and transport Contract Materials to the Contractor's Materials Recycling Facility.
- 8.4 For all other Authorities, the Contractor is required to either:
- a) Collect and transport Contract Materials from a Bulking Facility within a specified area to the Contractors Materials Recycling Facility; or
 - b) Receive Contract Materials directly from the relevant Authority at the Contractor's Materials Recycling Facility in the event that this Facility is located within an Authority area as defined by the Map in Appendix 5.
- 8.5 Where Contract Materials are received directly from the Council at the Materials Recycling Facility, this facility must:
- a) Be able to receive deliveries in accordance with the minimum hours of delivery/operation and operate in accordance with all other requirements set out in Appendix 10. The Contractor shall provide prices in accordance with Appendix 16 - Pricing Schedule.
- 8.6 In accordance with the requirements for interface management, the Contractor **must** agree all required transportation arrangements to ensure transfer station storage capacity is maintained, in particular, the frequency of materials collection and timing, with the Bulking Facility Contractor to ensure continual service provision for all parties.

9 SERVICE INTEGRATION AND INTERFACE MANAGEMENT

- 9.1 The Contractor shall provide effective integration of the Services with other services provided by or procured by the Council, in particular, providing effective interface arrangements for the Acceptance of Contract Materials, as follows:
- a) Contract Materials loaded onto the Contractor's transfer/haulage vehicles by the Council and/or their Contractor's/agents at the Council's nominated and, where necessary, contingency, Bulking Facilities.
 - b) Contract Materials delivered directly to the Materials Recycling Facility by the Council and/or their Contractor's/agents; and
- 9.2 It shall be the Contractors duty to maintain a close liaison between the appropriate levels of management of the Contractor and Council and their nominated Contractor's/agents, to ensure effective integration of the Services and interface arrangements at all times.

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- 9.3 The Contractor shall, prior to implementation of the contract, meet together with representatives of the Council and/or their Contractor's/agents to present and agree effective Service interface arrangements and plans with the Council, including provisions for effective mediation of any disputes.
- 9.4 The Contractor shall, where required, provide any required performance information to demonstrate effective service integration and interface management.
- 9.5 All Contractors are required to manage any interfaces between the Council, and other agencies such that each of the Authorities receive a seamless service.

10 TRANSPORTATION

- 10.1 The Contractor shall ensure that all Contract Materials are kept separate from any Third Party Materials, avoiding cross-contamination at all times during the collection, transportation and tipping at the Materials Recycling Facility.
- 10.2 The Contractor shall ensure that Contract Materials are transported in accordance with Good Industry Practice and that material value is maintained as a result.
- 10.3 The Contractor shall execute all operations necessary for collecting and transferring Contract Materials safely.
- 10.4 The Contractor shall ensure that all vehicle operators and other operatives are suitably trained and qualified for their tasks.
- 10.5 Contract Materials shall only be transported in enclosed containers or suitably netted/sheeted vehicles such that there is no risk of materials escaping in transit. The sheeting of 'empty' vehicles to reduce litter is expected Good Industry Practice.
- 10.6 The Contractor, acting reasonably, shall ensure that all vehicles, containers and trailers used by the Contractor for the performance of the Service are kept in a clean and presentable condition.
- 10.7 In the event of spillage occurring during transit, the Contractor shall use all reasonable endeavours to clear the spillage as soon as reasonably practicable.

11 WEIGHBRIDGES

- 11.1 The Contractor shall use an electronic weighbridge (that will comply with the Weights and Measures Act 1985, or as amended) at its Sites when receiving deliveries in order to record the quantities of Contract Material arriving at each Site. All Contract Materials entering and leaving each Site should also be weighed on an electronic weighbridge. The Sites shall be equipped or have access to electronic weighbridges of modern design and capable of accommodating the longest and heaviest vehicles likely to be delivering Contract Materials to or transferring Contract Materials from the Sites.
- 11.2 In operating the weighbridge installations, the Contractor shall comply with all relevant Legislation, including the obligations of the relevant Duty of Care Code of Practice (or equivalent).
- 11.3 The weighbridge system shall issue weighbridge tickets generated from secure computerised records and the system shall have been authorised by a weights and measures inspector as fit for use in accordance with Section 11 of the Weights and Measures Act 1985 (or equivalent).
- 11.4 Weighbridges shall be appropriately calibrated, tested and independently certified at least annually.

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- 11.5 All Contract Material shall, wherever possible, be attributed and logged to an individual Authority, in order to facilitate the creation of correct invoices, generate correct charging or payments.
- 11.6 The Contractor shall ensure that weight data is accurate. All weight data shall be auditable by the relevant Authority.
- 11.7 The weighbridge system shall be capable of recording and printing, evolving in line with new technology, at least the following information for any Contract Material arriving at the Sites:
- Address of the Sites;
 - Date;
 - Ticket Number;
 - Description of Contract Material carried/European Waste Code;
 - Gross, net and tare weights (where applicable);
 - Local Authority, Carrier and source of Contract Material (provided by the driver);
 - Time of arrival/departure;
 - Vehicle registration number;
 - Driver's full name (printed and signature);
 - Household or Commercial;
 - Round details (where possible); and
 - Rejected Material Loads/Part Loads.

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- 11.8 A weighbridge ticket shall be provided to a carrier delivering Contract Material, as evidence of arrival of the Contract Material Load (**Contract Material Load**).
- 11.9 Original Weighbridge tickets data shall be kept by the Contractor for a minimum of the two (2) previous financial years for verification.
- 11.10 The Contractor shall expect to receive from the relevant bulking Contractor all weighbridge data for tonnages received from each Authority and collected by the Contractor within five (5) working days after the end of the reporting month. This is for the purposes of reconciliation of tonnages, we would expect the Contractor to be weighing all inbound tonnages.
- 11.11 All data shall be submitted within an Excel compatible format.

In determining whether a Material Load should be Rejected, the Contractor and the Council shall follow the Rejection Procedure outlined below:

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

- [REDACTED]

13 SAMPLING OF MATERIALS

- 13.1 To support reporting requirements of DEFRA, including Extended Producer Responsibilities, the Contractor shall undertake regular sampling of Contract Materials in accordance with the MRF Code of Practice, as a minimum and as detailed in their Method Statement 1.
- 13.2 The Contractor must at all times ensure that any material compositional data used in the calculation of Contract payments and performance reporting is derived only from the sampling of Contract Materials and no other Third Party Material, and that the samples are representative of Contract Materials as a whole. The sampling method to provide a representative composition of Contract Materials for the calculation of Contract payments and performance reporting shall be agreed with the Council as part of the mobilisation of the Contract.
- 13.3 Where the Contractor is collecting materials from a Bulking Facility where more than one authority deposits waste and these materials cannot be kept separately or need to be loaded for transit together, then arrangements for the separation of clearly marked samples should be arranged with the Bulking Facility Contractor through a means agreed with all parties. We would suggest the use of tonne bags or similar clearly marked containers that can then be separated easily for sampling upon delivery at the MRF.
- 13.4 The Council reserves the right to observe and challenge any sampling by the Contractor without notice, and, acting reasonably, request the re-sampling of Contract Materials.
- 13.5 Upon request by an Authority, the Contractor shall undertake ad-hoc sampling of an individual Authority's materials.
- 13.6 In the event that the Council commissions a third party to undertake any further additional sampling/analysis of Contract Materials to inform service development, the Contractor shall make reasonable provision to support this work.
- 13.7 The Council reserves the right to employ a representative to observe the sampling of materials at the Contractor's Sites.

14 QUALITY AND VALUE

- 14.1 The Council requires the Contractor to maximise the value of Recyclable Materials, generating materials of sufficiently high-quality recycling to meet the needs and quality requirements of re-processors. Should the Contractor wish to pass the sale of materials to a third party including an Affiliate – the Council will need to approve this approach and the third party will be subject to the same levels of audit and transparency as the Contractor.

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- 14.2 The Contractor shall have in place a system and strategy for monitoring, managing and maximising the quality and value derived from material produced through the Sites. The success of this strategy will be reported through the monthly and annual reporting mechanisms.
- 14.3 The Contractor and Council will continually review quality as part of Service Improvements on a standing agenda at Contract Management meetings and through the requirement of an Annual Services Improvement Plan.
- 14.4 The Contractor shall keep abreast of developments in technology, legislation and best practice.

15 CONTRACT MANAGEMENT

- 15.1 The Contractor shall be prepared to attend monthly Contract Management Meetings including representatives of all the partnering Authorities and representatives from relevant service Contractors/agents at a partnering Authority location or via MS Teams. Contractors may, at all times with the Council acting reasonably, be required to attend more frequent meetings where service and income sharing issues require this and as required during the mobilisation period.
- 15.2 The Contractor shall ensure that either the Contract Manager and/or suitably qualified and authorised staff are in attendance at all contract meetings.
- 15.3 The Contractor's point of contact for all matters relating to the day-to-day running of the Contract will be the Nominated Officer within each Authority.
- 15.4 The Council will employ a Contract Manager to act as the point of contact for all matters relating to all relevant Authorities' contracts, to ensure efficient operational response between the Contractor and the Council.
- 15.5 Any re-occurring issues will be escalated to the Authorities Partnership Board or other partnership governance for resolution, led by the Chair of this group.
- 15.6 As part of mobilisation, the Council shall establish mutually convenient contract management and communications arrangements.
- 15.7 The Contract will be conducted on an 'Open Book' basis; as related to materials handled in the contract, under which the Contractor and relevant and agreed Subcontractors(s) shall make available to the Council and their representatives or auditors all necessary and relevant information (including information from organisations to which the Contractor sells Recyclable Materials) to establish and validate the value, net of transport costs, of all income achieved by the Contractor from the sale of Recyclable Materials.

16 CONTINGENCY ARRANGEMENTS

- 16.1 The Contractor shall develop, agree and maintain Contingency Plans that detail how the Service will be operated in the event of any Services or Sites being unavailable. The Contingency Plans will include Contingency Delivery Points where an Authority delivers Contract Materials directly to a Contractor's Sites, and the provision for alternative Contract Sites.
- 16.2 Contingency Plans shall be updated and reviewed annually as appropriate by the Contractor, changes to the plan do not allow the Contractor to increase cost. Changes to the Plan must be approved by the Authority.
- 16.3 The Contractor shall notify the Council prior to implementing the Contingency Plan.

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- 16.4 The Contractor shall notify the Council within one (1) hour of the Contractor being aware of any need to divert collection vehicles to a Contingency Delivery Point.
- 16.5 Any contingency arrangements will be carried out at no additional cost to the Council (in accordance with the Payment Mechanism).
- 16.6 The Contractor will indemnify the Council for any consequential costs incurred by the Council in the case of contingency arrangements being put in place, or costs resulting from Service unavailability, in accordance with the Payment Mechanism.

17 HEALTH AND SAFETY

- 17.1 The Contractor will retain management responsibility for health and safety at all of its designated Sites and shall maintain and conduct all operations at the Sites in a clean and orderly and safe manner maintaining a safe system of work that is consistent with good industry practice and legislation, including compliance with Environment Agency site permit requirements, health and safety legislation and duty of care principles.

18 COMPLAINTS

- 18.1 The Contractor shall make provision for the recording and monitoring of any complaints relating to the delivery of the service and shall notify the Council immediately of any complaints received and what form of action has been taken to resolve the complaint.

19 WASTE AWARENESS AND EDUCATION

- 19.1 The Contractor shall where possible be expected to support the Council through co-operation with their waste awareness and education initiatives and support their promotion of general waste awareness within the Authority areas.
- 19.2 The Contractor shall provide relevant information to the Council, upon request, for the Council to publish on their website or in information to be sent to residents.
- 19.3 The Contractor shall notify and consult with the Council in advance of issuing any form of public communication relating to this Contract or the Council.

20 MOBILISATION

- 20.1 The Contractor shall develop and agree a Mobilisation Plan for each Authority, which shall be documented at Schedule 7 of the agreement.
- 20.2 The Contractor shall attend an initial mobilisation meeting prior to the Service Commencement Date. The meetings will be attended by the Contractor's Contract Manager or suitably qualified and authorised staff.

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SCHEDULE 1: Appendix 1 – Detailed Dry Mixed Recycling Composition.

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

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		2019	2020
		2019	2020
A	1	100	100
	2	80	80
	3	60	60
	4	70	70
	5	50	50
	6	40	40
	7	30	30
	8	20	20
	9	10	10
	10	90	90
	11	70	70
	12	50	50
	13	30	30
	14	10	10
B	1	100	100
	2	80	80
	3	60	60
	4	70	70
	5	50	50
	6	40	40
	7	30	30
C	1	100	100
	2	80	80
	3	60	60
	4	70	70
	5	50	50
	6	40	40
	7	30	30
	8	20	20
	9	10	10
	10	90	90

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		2019	2020
		2019	2020
A	1	100	100
	2	80	80
	3	60	60
	4	70	70
	5	50	50
	6	40	40
	7	30	30
	8	20	20
	9	10	10
	10	90	90
	11	70	70
	12	60	60
	13	50	50
	14	40	40
B	1	100	100
	2	80	80
	3	60	60
	4	70	70
	5	50	50
	6	40	40
	7	30	30
C	1	100	100
	2	80	80
	3	60	60
	4	70	70
	5	50	50
	6	40	40
	7	30	30
	8	20	20
	9	10	10
	10	90	90

SCHEDULE 2 – Appendix 3

Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts

The following tabs provide Cambridgeshire County Council's 2021-based dwelling stock forecasts by district and ward to 2041 for Cambridgeshire and Peterborough.

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[Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for East Cambridgeshire](#)

[Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for Fenland](#)

[Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for Huntingdonshire](#)

[Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for South Cambridgeshire](#)

[Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for Peterborough](#)

Method

2021: Mid-year estimates

2026, 2031, 2036, 2041: Forecast figures mainly derived from published Local Authority 2022 housing trajectories, with some interpolation or extrapolation.

Ward forecasts are provided based on the ward boundaries in place as at mid-2023.

All data is rounded to the nearest 5.

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The Cambridgeshire and Peterborough Waste Partnership

Cambridgeshire County Council's 2021- Based Dwelling Stock Forecasts Summary

Data rounded to
nearest 5

Area	2021	2026	2031	2036	2041	Change 2021 to 2026	Change 2026 to 2031	Change 2031 to 2036	Change 2036 to 2041	Change 2021 to 2036	Change 2021 to 2041
Cambridge	56,505	59,610	62,310	63,895	64,850	3,105	2,700	1,585	955	7,390	8,345
East Cambridgeshire	38,955	43,345	46,945	48,990	49,770	4,390	3,600	2,045	780	10,035	10,815
Fenland	46,390	50,025	54,545	57,750	59,790	3,635	4,520	3,205	2,040	11,360	13,400
Huntingdonshire	80,110	85,370	90,125	93,915	96,575	5,260	4,755	3,790	2,660	13,805	16,465
South Cambridgeshire	69,805	77,150	85,630	92,220	97,455	7,345	8,480	6,590	5,235	22,415	27,650
Cambridgeshire	291,765	315,500	339,555	356,770	368,440	23,735	24,055	17,215	11,670	65,005	76,675
Peterborough	88,250	92,995	99,260	104,890	106,700	4,745	6,265	5,630	1,810	16,640	18,450
Cambridgeshire and Peterborough	380,015	408,495	438,815	461,660	475,140	28,480	30,320	22,845	13,480	81,645	95,125

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Cambridgeshire County Council's 2021- Based Dwelling Stock Forecasts for Cambridge

Data rounded to
nearest 5

Ward	2021	2023	2026	2031	2036	2041	Change 2021 to 2026	Change 2026 to 2031	Change 2031 to 2036	Change 2036 to 2041	Change 2021 to 2036	Change 2021 to 2041
Abbey	4,740		4,775	4,860	4,925	5,010	35	85	65	85	185	270
Arbury	4,365		4,475	4,525	4,590	4,655	110	50	65	65	225	290
Castle	2,705		4,055	5,115	5,300	5,365	1,350	1,060	185	65	2,595	2,660
Cherry Hinton	3,865		4,145	4,540	4,900	4,970	280	395	360	70	1,035	1,105
Coleridge	4,345		4,350	4,495	4,810	4,885	5	145	315	75	465	540
East Chesterton	4,300		4,320	4,370	4,435	4,500	20	50	65	65	135	200
King's Hedges	4,495		4,600	4,745	4,810	4,875	105	145	65	65	315	380
Market	3,135		3,160	3,280	3,355	3,420	25	120	70	70	215	285
Newnham	1,800		1,905	1,955	2,020	2,085	105	50	65	65	220	285
Petersfield	4,835		5,160	5,210	5,275	5,340	325	50	65	65	440	505
Queen Edith's	4,215		4,560	4,715	4,780	4,855	345	155	70	70	570	640

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Romsey	4,330		4,610	4,780	4,845	4,910	280	170	65	65	515	580
Trumpington	5,260		5,320	5,440	5,505	5,570	60	120	65	65	245	310
West Chesterton	4,115		4,170	4,260	4,325	4,390	55	90	65	65	210	275
Total	56,505	60,805	59,610	62,310	63,895	64,850	3,105	2,700	1,585	955	7,390	8,345

Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for East Cambridgeshire

Data rounded to nearest 5

Ward	2021	2026	2031	2036	2041	Change 2021 to 2026	Change 2026 to 2031	Change 2031 to 2036	Change 2036 to 2041	Change 2021 to 2036	Change 2021 to 2041
Bottisham	2,475	2,590	2,610	2,630	2,650	115	20	20	20	155	175
Burwell	2,850	3,110	3,360	3,375	3,390	260	250	15	15	525	540
Downham Villages	1,285	1,395	1,425	1,445	1,465	110	30	20	20	160	180
Ely East	3,000	3,085	3,180	3,275	3,295	85	95	95	20	275	295
Ely North	2,020	2,720	3,780	4,575	4,950	700	1,060	795	375	2,555	2,930
Ely West	4,380	4,395	4,565	4,835	4,855	15	170	270	20	455	475

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	2,85	3,55	4,00	4,10	4,12						
Fordham & Isleham	5	0	0	5	0	695	450	105	15	1,250	1,265
	1,52	1,75	1,77	1,79	1,81						
Haddenham	0	5	5	5	5	235	20	20	20	275	295
	4,27	4,80	5,46	5,64	5,66						
Littleport	5	5	0	5	0	530	655	185	15	1,370	1,385
	2,95	3,27	3,43	3,44	3,46						
Soham North	5	0	0	5	0	315	160	15	15	490	505
	2,82	3,20	3,73	4,18	4,37						
Soham South	0	5	5	5	5	385	530	450	190	1,365	1,555
	2,95	3,46	3,48	3,50	3,52						
Stretham	5	0	0	0	0	505	20	20	20	545	565
	2,45	2,70	2,82	2,84	2,85						
Sutton	0	5	5	0	5	255	120	15	15	390	405
	3,11	3,29	3,31	3,33	3,35						
Woodditton	0	0	0	0	0	180	20	20	20	220	240
	38,9	43,3	46,9	48,9	49,7						
Total	55	45	45	90	70	4,390	3,600	2,045	780	10,035	10,815

Ward and parish boundary changes 2023

The East Cambridgeshire Community Governance Review 2022, which came into effect at local elections in May 2023, amended the parish boundary between Westley Waterless and Burrough Green.

The East Cambridgeshire (Electoral Changes) Order 2023 amended the ward boundary between Bottisham and Woodditton to match the adjustment made to Burrough Green and Westley Waterless parishes.

Cambridgeshire County Council's 2021- Based Dwelling Stock Forecasts for Fenland

Data rounded to
nearest 5

Ward	2021	2026	2031	2036	2041	Change 2021 to 2026	Change 2026 to 2031	Change 2031 to 2036	Change 2036 to 2041	Change 2021 to 2036	Change 2021 to 2041
Chatteris North & Manea	3,295	3,680	3,920	3,975	4,030	385	240	55	55	680	735
Chatteris South	2,920	3,240	3,945	4,390	4,445	320	705	445	55	1,470	1,525
Doddington & Wimblington	2,170	2,280	2,375	2,425	2,475	110	95	50	50	255	305
Elm & Christchurch	2,240	2,385	2,435	2,485	2,535	145	50	50	50	245	295
Leverington & Wisbech Rural	3,090	3,430	4,035	4,595	5,060	340	605	560	465	1,505	1,970
March East	3,375	3,435	3,495	3,545	3,595	60	60	50	50	170	220
March North	3,725	3,940	4,015	4,065	4,115	215	75	50	50	340	390
March South	1,640	2,015	3,450	4,495	5,045	375	1,435	1,045	545	2,855	3,400
March West & Benwick	2,230	2,455	2,505	2,555	2,605	225	50	50	50	325	375
Parson Drove & Wisbech St Mary	3,010	3,215	3,285	3,335	3,385	205	65	50	50	320	370

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Whittlesey East & Villages	2,735	3,190	3,325	3,380	3,435	455	135	55	55	645	700
Whittlesey Lattersey	665	800	920	975	0	135	120	55	55	310	365
Whittlesey North West	2,205	2,245	2,315	2,365	2,415	40	70	50	50	160	210
Whittlesey South	2,485	2,525	2,575	2,625	2,675	40	50	50	50	140	190
Wisbech North	1,300	1,375	1,460	1,510	1,560	75	85	50	50	210	260
Wisbech Riverside	2,150	2,330	2,470	2,555	2,640	180	140	85	85	405	490
Wisbech South	4,160	4,415	4,570	4,625	4,680	255	155	55	55	465	520
Wisbech Walsoken & Waterlees	3,000	3,090	3,480	3,880	4,090	90	390	400	210	880	1,090
	46,300	50,000	54,500	57,700	59,700						
Total	90	25	45	50	90	3,635	4,520	3,205	2,040	11,360	13,400

Ward boundary changes 2023

The Fenland (Electoral Changes) Order 2023, which came into force at local elections in May 2023, abolished the existing 24 wards of Fenland and replaced them with 18 wards.

In practice, the wards of Doddington & Wimblington and Elm & Christchurch remain unchanged.

March parish is now covered by 4 wards, with March West & Benwick ward including Benwick parish.

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Chatteris parish is now covered by 2 wards, with March North & Manea ward including Manea parish.

Wisbech parish is now covered by 4 wards and part of Leverington & Wisbech Rural ward.

Whittlesey parish is now covered by 4 wards.

Gorefield parish has been moved to Parson Drove & Wisbech St Mary ward.

Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for Huntingdonshire

Data rounded to nearest 5

Ward	2021	2026	2031	2036	2041	Change 2021 to 2026	Change 2026 to 2031	Change 2031 to 2036	Change 2036 to 2041	Change 2021 to 2036	Change 2021 to 2041
Alconbury	1,615	1,640	1,675	1,710	1,745	25	35	35	35	95	130
Brampton	3,910	4,155	4,275	4,305	4,335	245	120	30	30	395	425
Buckden	1,620	1,760	1,970	2,110	2,140	140	210	140	30	490	520

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Fenstanton	1,790	1,825	1,905	1,940	1,975	35	80	35	35	150	185
Godmanchester & Hemingford Abbots	4,490	4,975	5,115	5,150	5,185	485	140	35	35	660	695
Great Paxton	1,360	1,405	1,475	1,510	1,545	45	70	35	35	150	185
Great Staughton	1,460	1,490	1,525	1,560	1,595	30	35	35	35	100	135
Hemingford Grey & Houghton	2,860	2,985	3,095	3,130	3,165	125	110	35	35	270	305
Holywell-cum-Needingworth	2,955	3,115	3,205	3,235	3,265	160	90	30	30	280	310
Huntingdon East	2,955	2,975	3,010	3,045	3,080	20	35	35	35	90	125
Huntingdon North	5,580	5,760	5,920	5,950	5,980	180	160	30	30	370	400
Kimbolton	1,540	1,595	1,670	1,730	1,765	55	75	60	35	190	225
Ramsey	4,810	5,550	5,845	6,045	6,080	740	295	200	35	1,235	1,270
Sawtry	2,890	3,215	3,525	3,600	3,635	325	310	75	30	710	740
Somersham	1,700	1,765	1,965	2,075	2,110	65	200	110	35	375	410
St Ives East	2,955	2,975	3,010	3,045	3,080	20	35	35	35	90	125
St Ives South	3,830	3,995	4,115	4,150	4,185	165	120	35	35	320	355
St Ives West	1,320	1,345	1,380	1,415	1,450	25	35	35	35	95	130

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St Neots East	1,510	2,245	3,100	3,955	4,550	735	855	855	595	2,445	3,040
St Neots Eatons	4,915	4,935	4,970	5,005	5,040	20	35	35	35	90	125
St Neots Eynesbury	5,550	5,760	6,130	6,340	6,390	210	370	210	50	790	840
St Neots Priory Park & Little Paxton	4,825	5,045	5,115	5,150	5,185	220	70	35	35	325	360
Stilton, Folksworth & Washingley	2,965	3,160	3,225	3,260	3,295	195	65	35	35	295	330
The Stukeleys	2,520	3,410	4,440	5,870	7,105	890	1,030	1,430	1,235	3,350	4,585
Warboys	3,435	3,485	3,625	3,755	3,790	50	140	130	35	320	355
Yaxley	4,765	4,805	4,840	4,875	4,910	40	35	35	35	110	145
Total	80,110	85,370	90,125	93,915	96,575	5,260	4,755	3,790	2,660	13,805	16,465

Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for South Cambridgeshire

Data rounded to nearest 5

Ward	2021	2023	2026	2031	2036	2041	Change 2021 to 2026	Change 2026 to 2031	Change 2031 to 2036	Change 2036 to 2041	Change 2021 to 2036	Change 2021 to 2041
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Balsham	1,595	1,605	1,635	1,680	1,725	10	30	45	45	85	130
Bar Hill	1,780	1,820	1,855	1,900	1,945	40	35	45	45	120	165
Barrington	1,530	1,740	1,785	1,830	1,875	210	45	45	45	300	345
Bassingbourn	1,645	1,715	1,750	1,795	1,840	70	35	45	45	150	195
Caldecote	1,545	1,855	2,675	3,470	4,430	310	820	795	960	1,925	2,885
Cambourne	4,375	5,305	6,125	6,920	7,095	930	820	795	175	2,545	2,720
Caxton & Papworth	2,695	2,750	2,785	2,830	2,875	55	35	45	45	135	180
Cottenham	3,045	3,420	3,455	3,500	3,545	375	35	45	45	455	500
Duxford	1,580	2,030	3,060	3,155	3,200	450	1,030	95	45	1,575	1,620
Fen Ditton & Fulbourn	4,820	5,615	6,635	6,750	6,805	795	1,015	125	50	1,935	1,985
Foxton	1,475	1,475	1,505	1,550	1,595	0	30	45	45	75	120
Gamlingay	1,660	1,780	1,815	1,860	1,905	120	35	45	45	200	245
Girton	2,235	2,755	3,285	3,390	3,435	520	530	105	45	1,155	1,200
Hardwick	1,390	1,615	1,655	1,690	1,745	225	35	45	45	305	350
Harston & Comberton	4,685	4,785	4,835	4,890	4,935	100	45	60	45	205	250

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Histon &	4,830		5,075	5,405	6,150	6,200							
Impington							245	330	745	50	1,320	1,370	
	3,195		3,315	3,350	3,395	3,440							
Linton							120	35	45	45	200	245	
	2,995		4,215	5,760	7,315	8,860							
Longstanton							1,220	1,545	1,550	1,550	4,315	5,865	
	3,605		3,770	3,805	3,850	3,895							
Melbourn							165	35	45	45	245	290	
Milton &	4,950		5,665	7,145	8,695	10,245							
Waterbeach							715	1,480	1,550	1,550	3,745	5,295	
Over &	3,110		3,370	3,405	3,450	3,495							
Willingham							260	35	45	45	340	385	
	3,130		3,400	3,565	3,605	3,650							
Sawston							270	160	45	45	475	520	
	3,315		3,330	3,475	3,520	3,565							
Shelford							20	140	45	45	205	250	
	1,695		1,790	1,825	1,870	1,915							
Swavesey							95	35	45	45	175	220	
	1,450		1,475	1,510	1,555	1,600							
The Mordens							25	35	45	45	105	150	
	1,470		1,475	1,560	1,605	1,650							
Whittlesford							5	85	45	45	135	180	
	69,805	71,983	77,150	85,630	92,220	97,455							
Total							7,345	8,480	6,590	5,235	22,415	27,650	

Ward and parish
boundary changes
2022

The Cambridgeshire and Peterborough Waste Partnership

Changes to Cambourne and Caxton & Papworth ward boundaries

The South Cambridgeshire (Electoral Changes) Order 2018 made on 30th November 2018 amended the ward boundaries of Cambourne and Caxton and Papworth.

This was to reflect the boundary changes made to the parishes of Cambourne, Caxton and Elsworth implemented in The South Cambridgeshire District Council (Reorganisation of Community Governance) Order 2017.

The ward boundary changes applied in respect of elections held on and after the ordinary day of election of councillors in England in 2022.

The boundary change places the development of Cambourne West in the ward of Cambourne.

Changes to Sawston and Babraham parish boundaries and associated ward boundaries

The South Cambridgeshire District Council (Reorganisation of Community Governance) Order 2021, which came into force on 1 April 2022, amended the parish boundary between Babraham and Sawston parishes.

The boundary change places two housing developments on Babraham Road in the parish of Sawston.

The South Cambridgeshire (Electoral Changes) Order 2022, which came into effect on the ordinary day of election of councillors in England in 2022, amended the ward boundary between Sawston and Duxford wards to match the adjustment made to the parish boundary.

Changes to Longstanton and Over & Willingham ward boundaries

The Cambridgeshire and Peterborough Waste Partnership

The South Cambridgeshire (Electoral Changes) Order 2021, which came into effect on the ordinary day of election of councillors in England in 2021, amended the ward boundary between Longstanton and Over & Willingham.

This boundary change matches the changes made to Longstanton and Willingham parishes by the South Cambridgeshire District Council (Reorganisation of Community Governance) Order 2021.

Cambridgeshire County Council's 2021-Based Dwelling Stock Forecasts for Peterborough

Data rounded to nearest 5

Ward	2021	2026	2031	2036	2041	Change 2021 to 2026	Change 2026 to 2031	Change 2031 to 2036	Change 2036 to 2041	Change 2021 to 2036	Change 2021 to 2041
Barnack	1,525	1,560	1,670	1,705	1,740	35	110	35	35	180	215
Bretton	4,205	4,210	4,240	4,270	4,305	5	30	30	35	65	100
Central	5,690	6,625	7,525	7,710	7,745	935	900	185	35	2,020	2,055
Dogsthorpe	4,290	4,305	4,335	4,365	4,400	15	30	30	35	75	110
East	4,920	5,080	5,145	5,525	5,560	160	65	380	35	605	640
Eye, Thorney & Newborough	4,400	4,610	4,895	4,945	4,980	210	285	50	35	545	580

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Fletton & Stanground	4,920	5,165	5,195	5,255	5,290	245	30	60	35	335	370
Fletton & Woodston	5,070	5,220	5,250	5,280	5,315	150	30	30	35	210	245
Glington & Castor	2,830	2,880	2,930	2,960	2,995	50	50	30	35	130	165
Gunthorpe	4,270	4,570	5,550	6,465	6,600	300	980	915	135	2,195	2,330
Hampton Vale	3,120	3,490	3,760	3,910	3,945	370	270	150	35	790	825
Great Haddon (Hampton Vale ward)	0	510	2,495	4,445	5,385	510	1,985	1,950	940	4,445	5,385
Hargate & Hempsted	3,930	4,955	5,765	6,130	6,165	1,025	810	365	35	2,200	2,235
North	4,230	4,265	4,295	4,325	4,360	35	30	30	35	95	130
Orton Longueville	4,595	4,620	4,650	4,680	4,715	25	30	30	35	85	120
Orton Waterville	4,355	4,605	4,995	5,580	5,615	245	395	585	35	1,225	1,260
Park	3,915	3,950	3,980	4,010	4,045	35	30	30	35	95	130
Paston & Walton	4,555	4,575	4,605	4,635	4,670	20	30	30	35	80	115
Ravensthorpe	4,340	4,345	4,375	4,865	4,900	5	30	490	35	525	560
Stanground South	4,640	4,830	4,860	4,890	4,925	190	30	30	35	250	285
Werrington	4,580	4,590	4,620	4,750	4,785	10	30	130	35	170	205

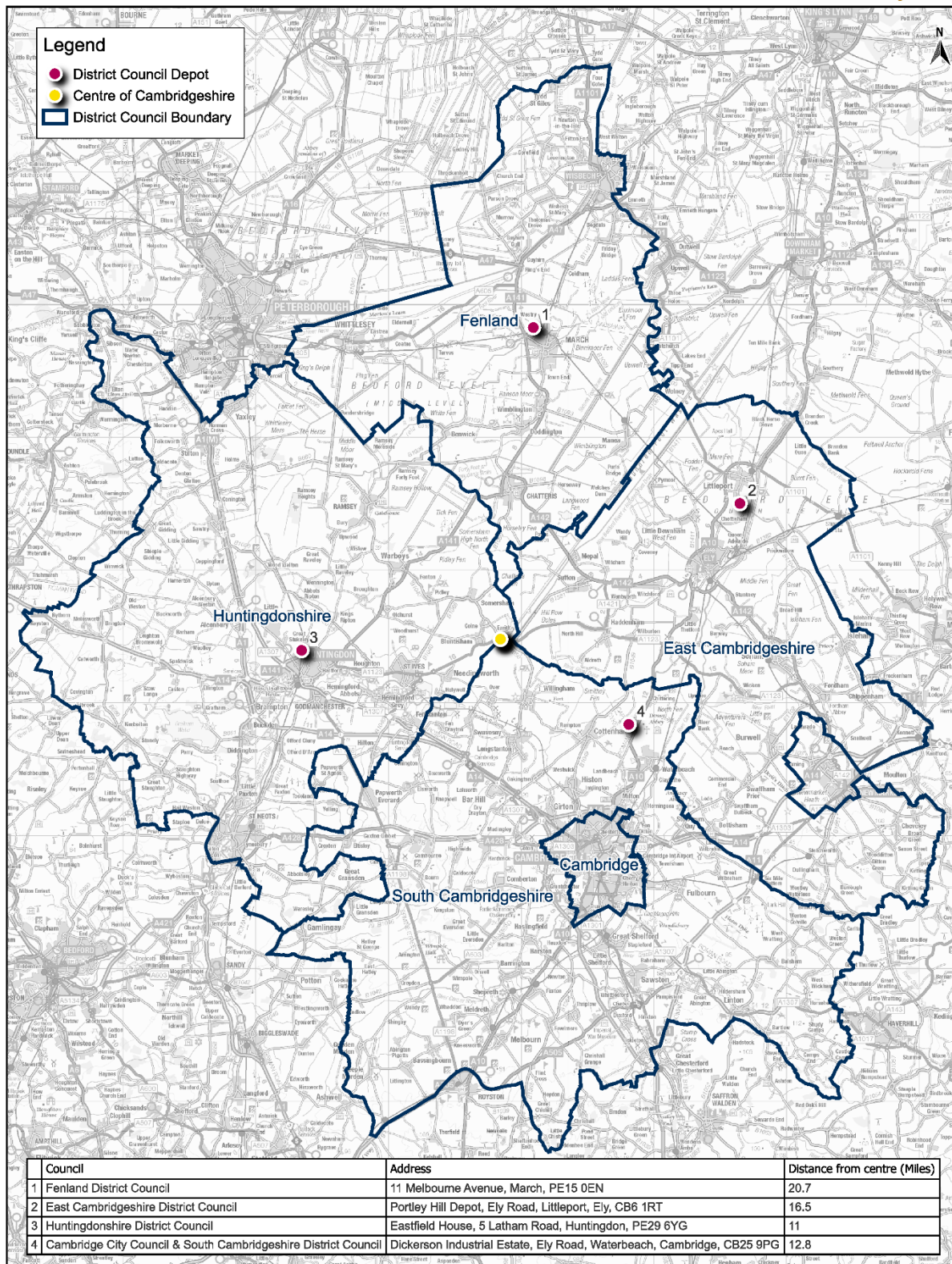
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West	2,365	2,370	2,400	2,430	2,465	5	30	30	35	65	100
Wittering	1,505	1,665	1,725	1,755	1,790	160	60	30	35	250	285
Total	88,250	92,995	99,260	104,890	106,700	4,745	6,265	5,630	1,810	16,640	18,450

	Category 1		Category 2		Category 3		Category 4		Category 5	
	Subcategory 1.1	Subcategory 1.2	Subcategory 2.1	Subcategory 2.2	Subcategory 3.1	Subcategory 3.2	Subcategory 4.1	Subcategory 4.2	Subcategory 5.1	Subcategory 5.2
Item 1	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 2	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 3	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 4	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 5	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 6	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 7	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 8	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 9	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2
Item 10	Value 1.1	Value 1.2	Value 2.1	Value 2.2	Value 3.1	Value 3.2	Value 4.1	Value 4.2	Value 5.1	Value 5.2

Appendix 5 Contract Map All Locations

Locations of District Council Depots



Scale 1:250,000 at A3 Date: 11/04/2024

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SCHEDULE 2: Appendix 6 – Indicative daily tonnage and vehicle movements by Authority ¹

Authority	Monday	Tuesday	Wednesday	Thursday	Friday
East Cambridgeshire District Council (ECDC) ² .	Input loads: 5.25 Tonnage: 25.61	Input loads: 4.5 Tonnage: 25.12	Input loads: 4.5 Tonnage: 27.04	Input loads: 6 Tonnage: 32.33	Input loads: 5.5 Tonnage: 33.76
Fenland District Council (FDC).	Input loads: 7.5 Tonnage: 34.82	Input loads: 6.75 Tonnage: 31.01	Input loads: 6.5 Tonnage: 33.31	Input loads: 9.5 Tonnage: 37.02	Input loads: 8.5 Tonnage: 35.31
Greater Cambridge Shared Waste Service (GCSWS).	Input loads: 21.25 Tonnage: 103.03	Input loads: 24.25 Tonnage: 106.37	Input loads: 18.75 Tonnage: 95.96	Input loads: 25.75 Tonnage: 106.75	Input loads: 22.5 Tonnage: 104.06
Huntingdonshire District Council (HDC).	Input loads: 14.75 Tonnage: 59.4	Input loads: 16 Tonnage: 66.71	Input loads: 13.75 Tonnage: 63.93	Input loads: 13.5 Tonnage: 60.8	Input loads: 17.75 Tonnage: 67.39

¹

² Currently East Cambridgeshire, Greater Cambridges Shared Waste direct tip at the MRF and do not go through a transfer station.

The Cambridgeshire and Peterborough Waste Partnership

Peterborough City Council ³ (PCC).	Input loads: 4.25	Input loads: 1.75	Input loads: 3.75	Input loads: 6	Input loads: 4.25
	Tonnage: 68.76	Tonnage: 28.67	Tonnage: 60.39	Tonnage: 95.19	Tonnage: 65.68

The data in this table presents the average number of input loads and tonnage for the period of 06-31 March 2023. These are to be taken as indicative rather than guaranteed figures and will be subject to variation.

³ Peterborough City Council Data is Based on Bulk Transfer Movements Only as Waste Transfer Station Used by this Authority is Operated by a Third Party and Does not Have Weigh Bridge Facility.

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SCHEDULE 2: Appendix 8 –Target Materials

Partners currently collect the following co-mingled materials which are identified as Target Materials for the purpose of this Contract.

For

Material
Paper • Newspapers • Pamphlets / Leaflets / Junk Mail • White Paper and Letters • Magazines • Telephone Directories • Envelopes (Including Windows) • Brown Paper Packaging. Including Single Ply Card • Waxed paper (inc drinks cups)
Cardboard • Corrugated Cardboard (OCC)
Cardboard Cartons • Paper Based Liquid Food, Drink Cartons: ○ Foil Lined (Tetra Pak) ○ Plastic Lined
Metals: • Steel Cans • Aluminium Cans • Aluminium Trays and Foil • Aerosol Cans
Plastics: • Plastic Bottles: ○ HDPE Natural ○ HDPE Coloured ○ PET Clear & Light Blue ○ PET Coloured • Flexibles / LDPE: ○ Plastic Film ○ Plastic Bags ○ Plastic Laminates / Flexible Plastics • Mixed Plastics: ○ Pots, Tubs and Trays ○ Hard Rigid Plastics ○ Polypropylene •
Glass: • MRF Grade Mixed Glass

sampling and reporting, the processing contractor will be required to provide classification of materials to meet with the needs of DEFRA reporting including Extended Producer Responsibility (EPR).

SCHEDULE 2: Appendix 10 – Direct Tipping Facility Requirements

Minimum hours of delivery/operation

The Facilities shall be open to receive deliveries of Contract Materials between the following hours, with the exception of bank holidays:

- Monday to Friday: 07:00 and 17:30.
- Saturday: 07:00 and 11:30 (but until 17:30 on a Saturday following a bank holiday).

Exceptionally, when requested by any of the Authorities (reasonably and in any event giving not less than seven calendar days' notice), the Contractor shall permit delivery of Contract Material outside of the hours stated above. The Authorities will be charged per hour for any additional opening hours as per Appendix 16 – Pricing Schedule.

Authorities will from time to time require Facilities to receive deliveries on bank holidays. In this event the Contractor will be given not less than seven calendar days' notice and the Authorities charged in accordance with Appendix 16 - Pricing Schedule. Pricing Schedule 2.

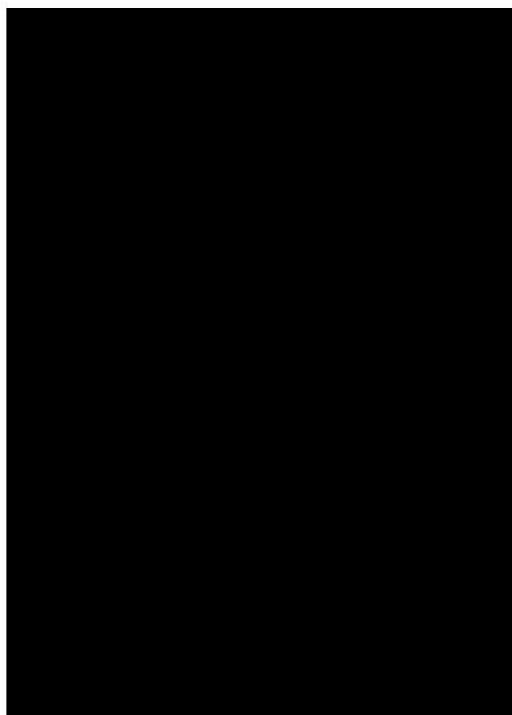
General tipping facility requirements

- Facilities must maintain sufficient capacity to receive all loads. Indicative current daily tonnages and vehicle movements are provided for each Authority in Appendix 6.
- The Contractor must hold and maintain all necessary permits, authorisations and permissions required for the provision of the Service.
- The Contractor must, at all times, manage Contract Materials separately from any other waste or Third Party Material, without any risk of cross-contamination, and ensure that the value and integrity of Contract Materials is preserved at all times. If more than one Authority tips at the Facilities the combined material is Contract Materials therefore this can be handled together.
- The Contractor must, at all times, ensure that all handling and storage arrangements at the Facilities mitigate the risk of damage, deterioration, cross-contamination and loss of value to Contract Materials.
- The Contractor must provide an adequate number and sufficient size storage and loading bays, with effective separation from Third Party Material.
- The Contractor shall provide legally compliant quarantine facilities and all associated infrastructure to allow the Contractor to isolate any hazardous or contaminated waste.
- The Contractor must receive Contract Material arriving at the Facilities in any vehicle of a type which would reasonably be deployed by the Authorities, such vehicles usually being Refuse Collection Vehicles (RCVs), electric Refuse Collection Vehicles (e-RCVS), skip vehicles and underground bank vehicles.
- The Contractor must be able to receive and be capable of effectively loading Contract Materials onto any vehicle which would be reasonably deployed by a Contractor appointed by the Authorities to transport materials for processing.

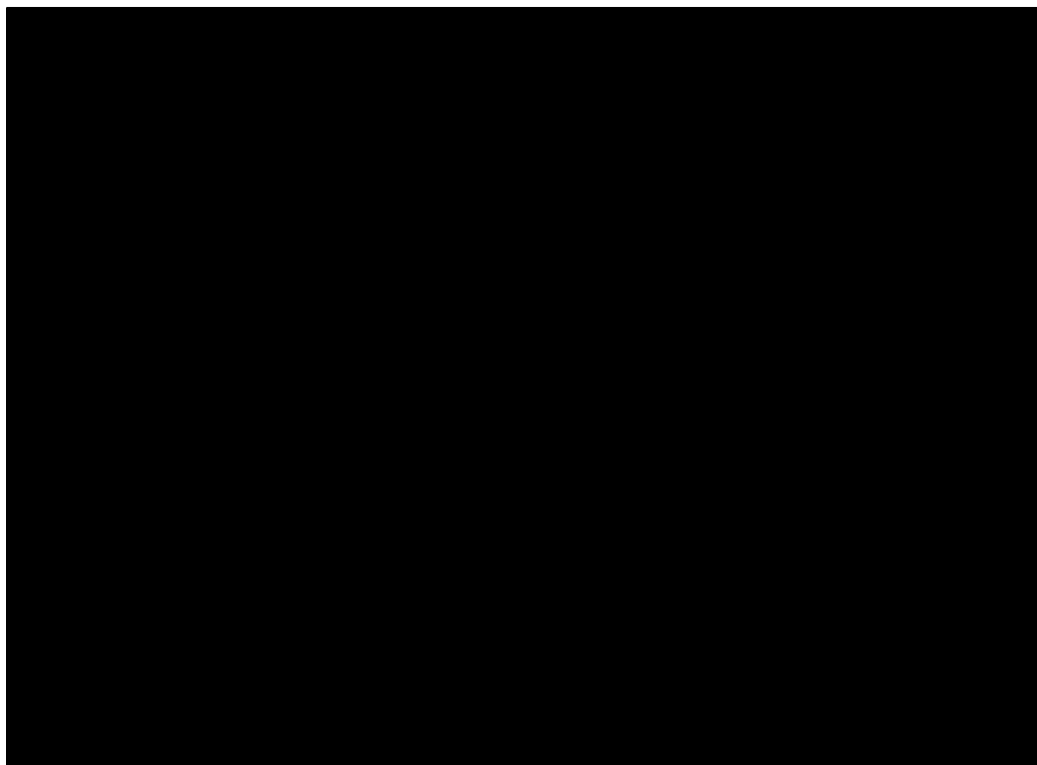
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- The Contractor must ensure that adequate capacity is provided at Facilities to minimise queuing. Authorised vehicles shall not have to queue for a period in excess of 10 minutes prior to being weighed in on initial presentation at the site.
- The Contractor shall ensure that the Turnaround Time, i.e. from weighbridge to weighbridge for any Authorised Vehicle delivering Contract Materials to any Bulking Facility shall not exceed 15 minutes.
- The Contractor shall deploy all available technology to facilitate efficient vehicle circulation on-site, for all vehicles RCVs, Bulking Vehicles and Third-Party Contractors' Vehicles. The Contractor must ensure that the facility has adequate traffic control and management, safety barrier systems, signage and fire prevention systems.
- Access to the Facility must be suitably engineered so as to be safe for (e.g. a metalled surface) and not cause damage to vehicles.
- The Contractor shall ensure that the facility is are capable of receiving Contract Materials regardless of weather conditions.
- The Contractor must ensure that the facility has sufficient lighting to allow safe operation.
- The Contractor shall ensure that the facility is operated in accordance with the sites' Environmental Permits, Good Industry Practice and incorporate drainage, effluent management/treatment, and ventilation, dust and odour suppression equipment as necessary to comply with all relevant Legislation and guidance.
- All Contractor's staff must be fully trained, qualified and competent to undertake the Services for this Contract. They shall at all times exercise care in accordance with Health and Safety guidelines in the execution of their duties.

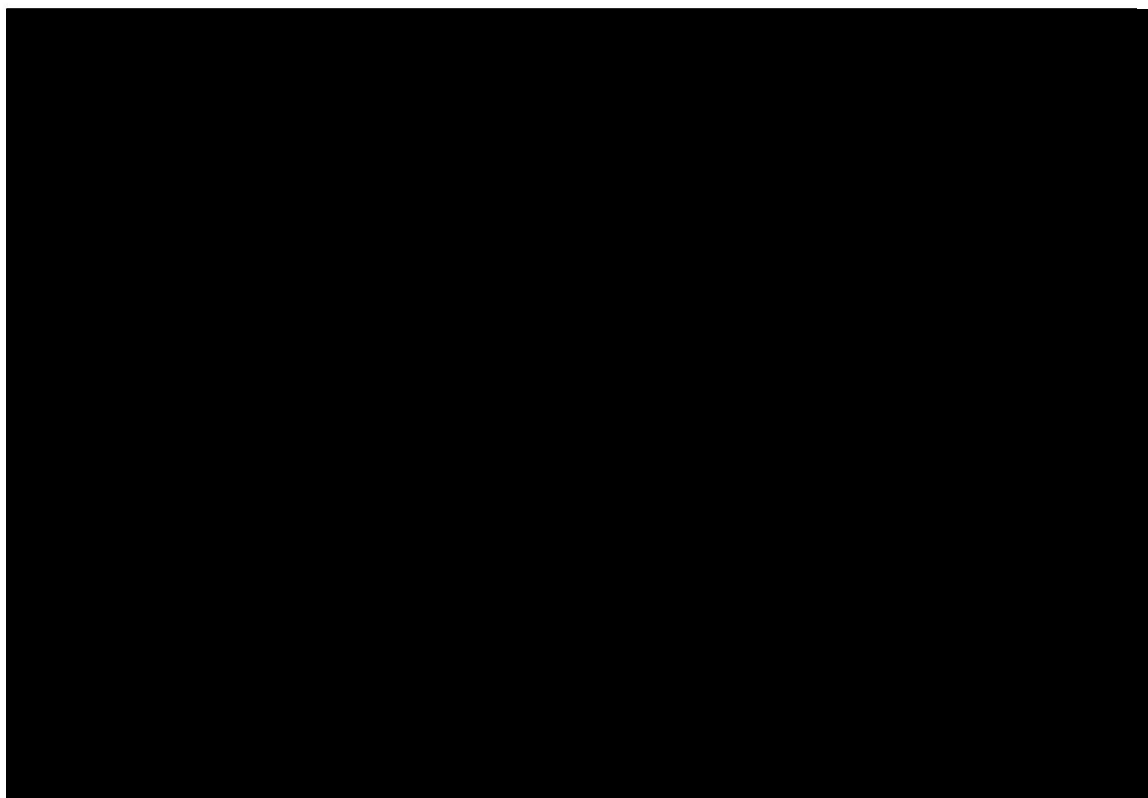
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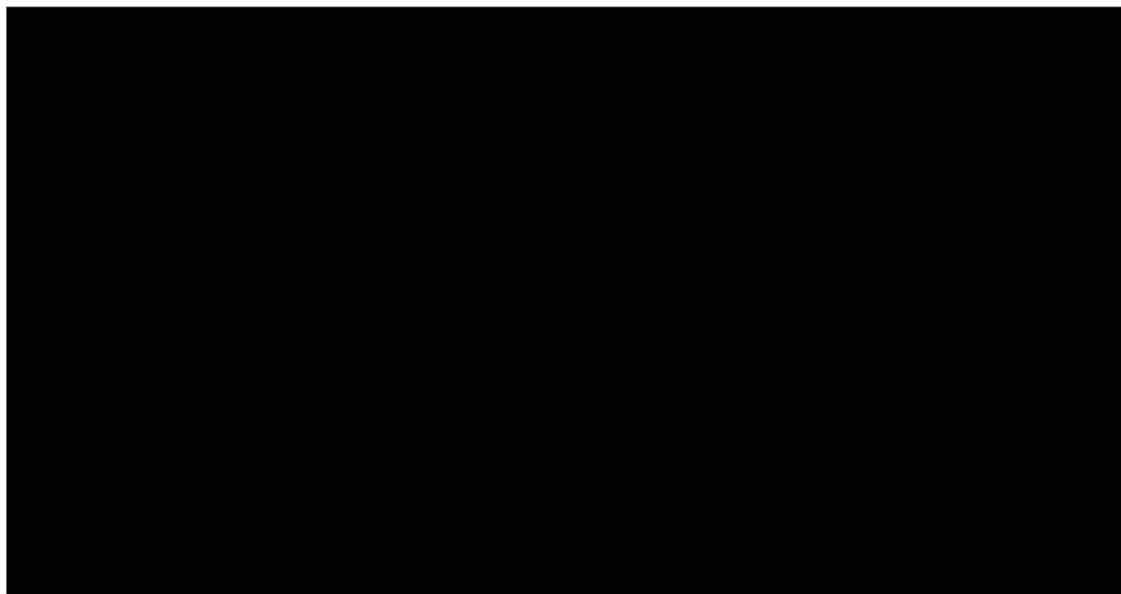
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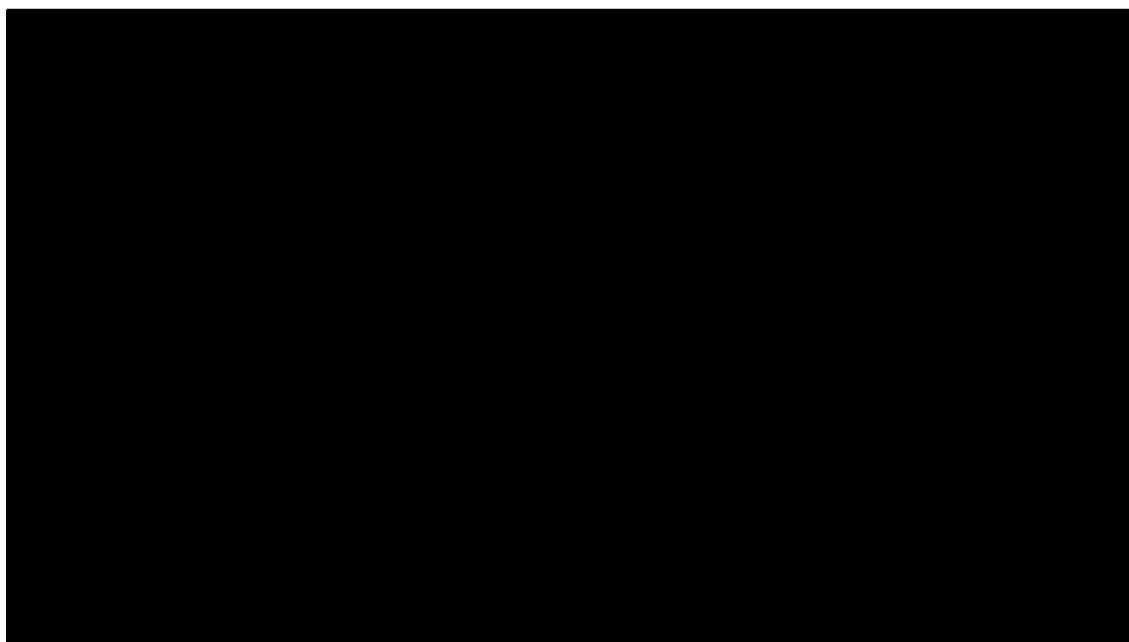
The Cambridgeshire and Peterborough Waste Partnership



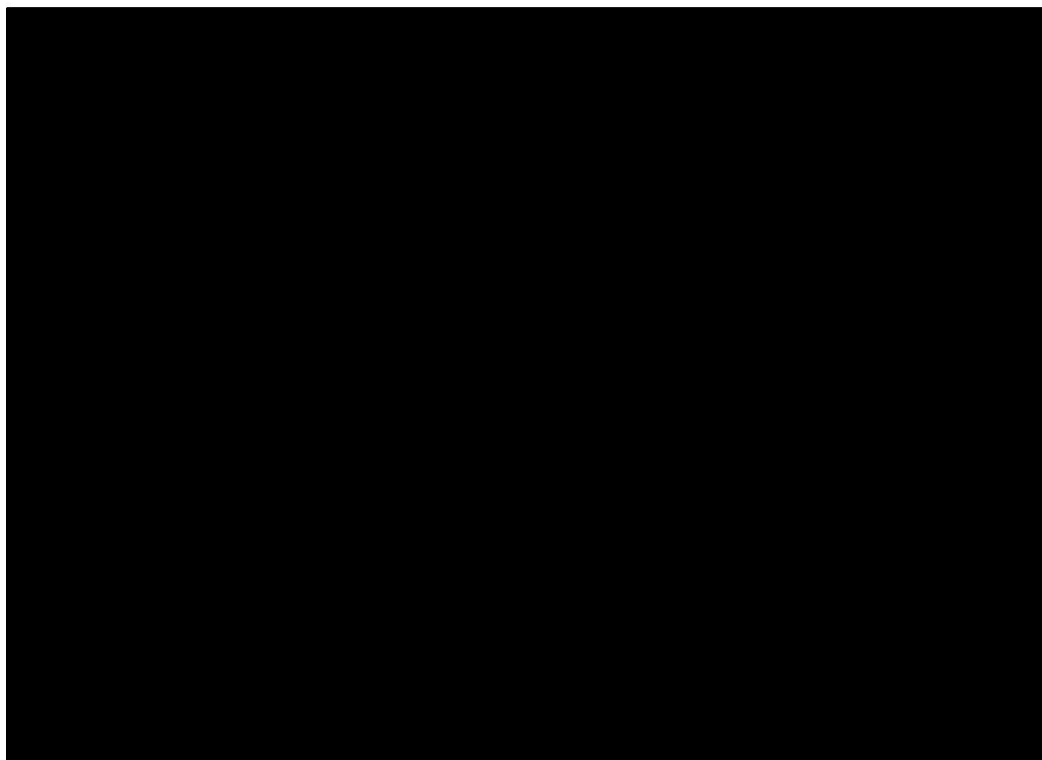
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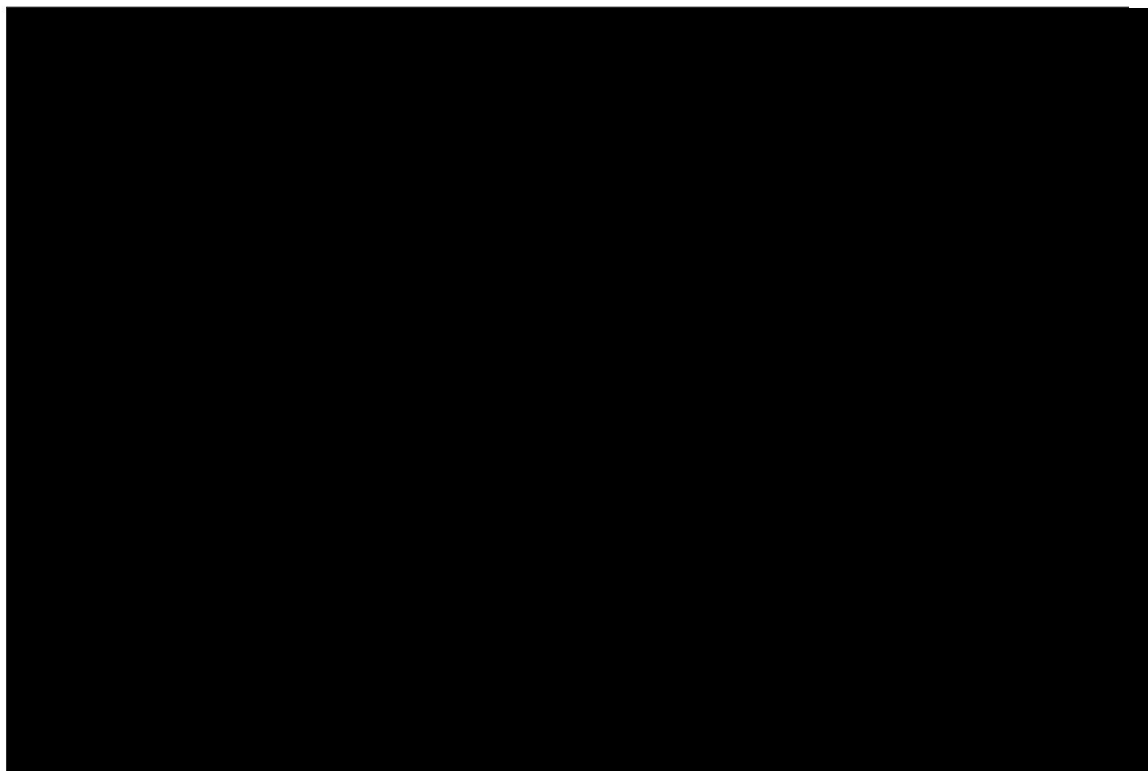
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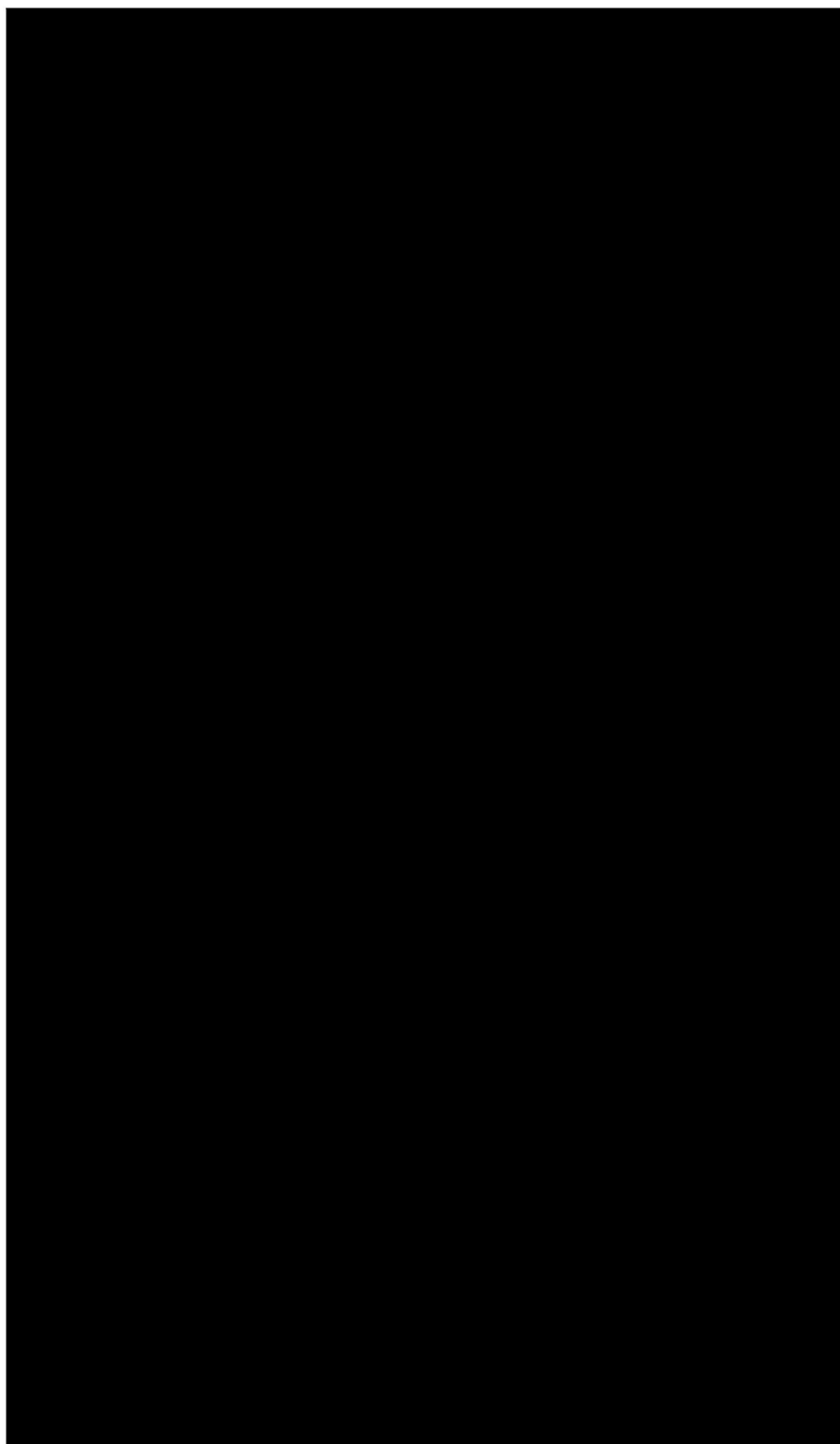


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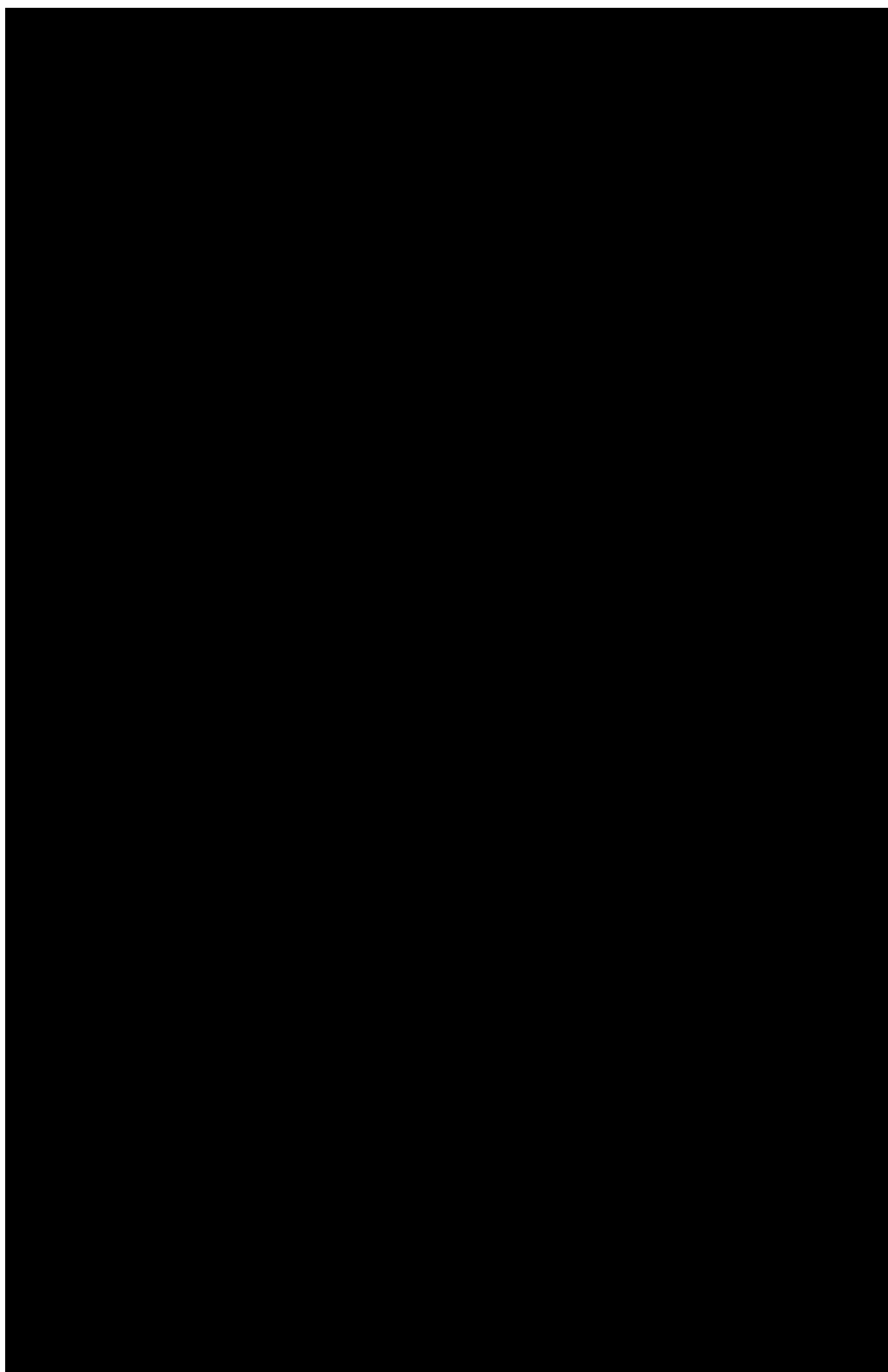


The Cambridgeshire and Peterborough Waste Partnership

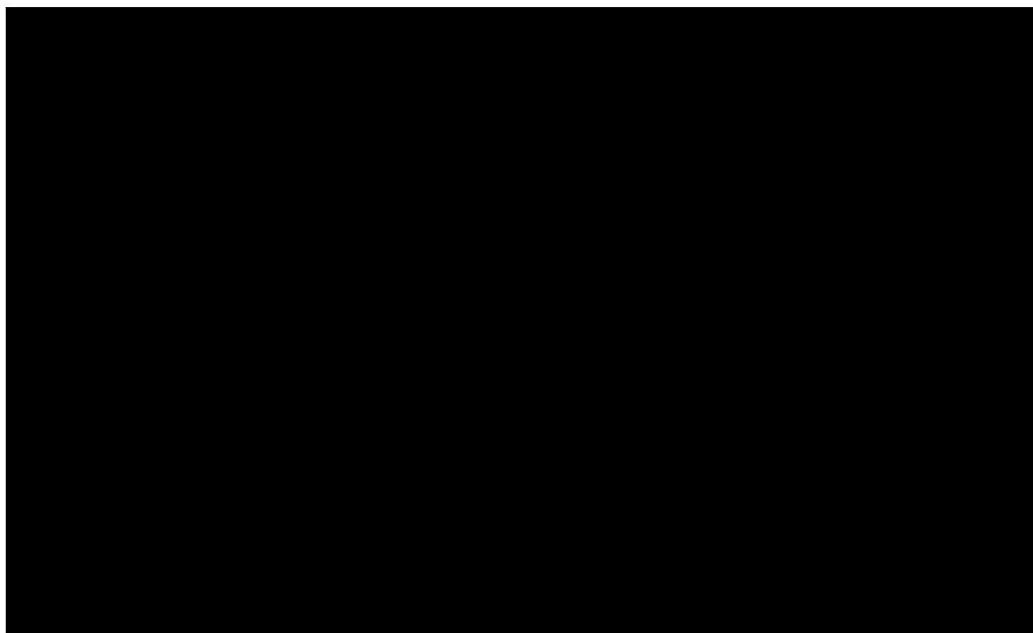


The Cambridgeshire and Peterborough Waste Partnership

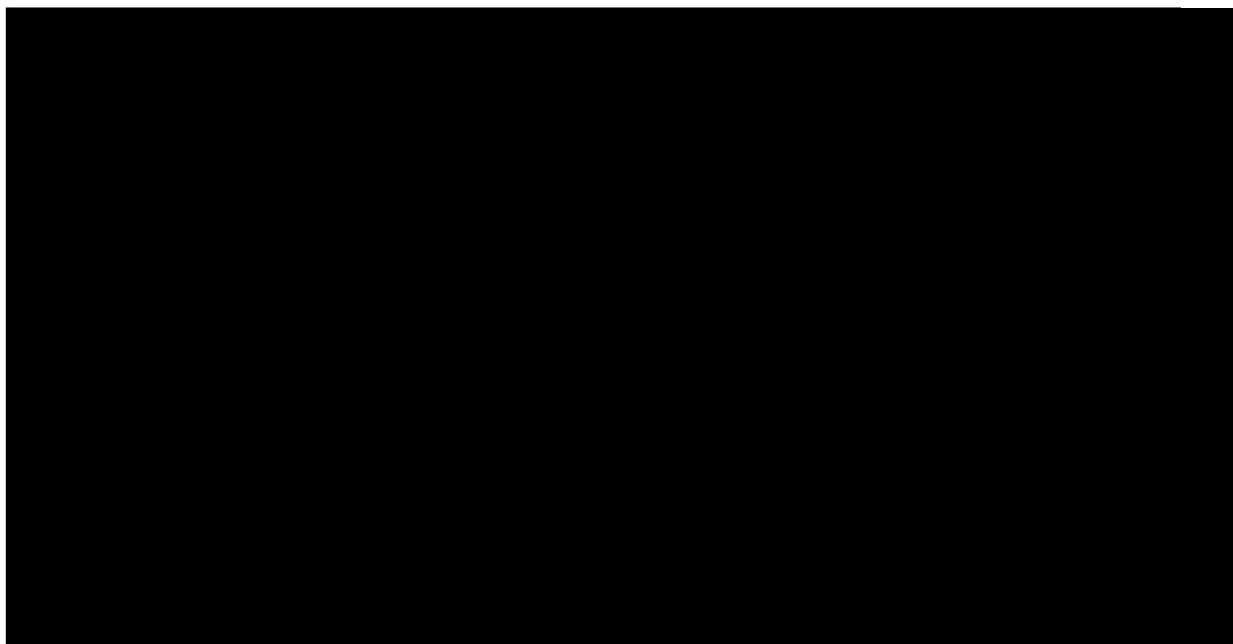
The Cambridgeshire and Peterborough Waste Partnership



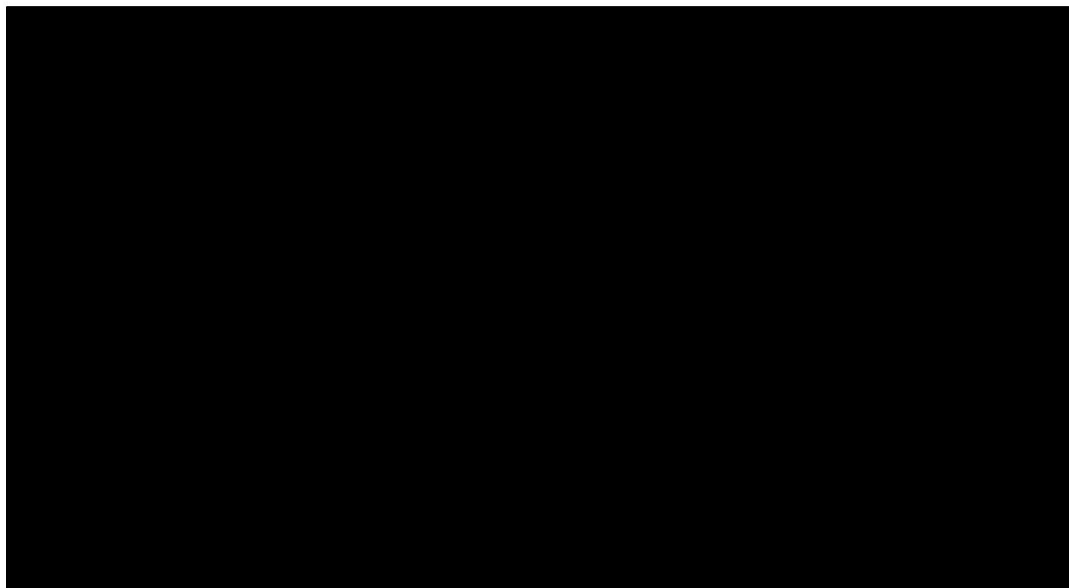
The Cambridgeshire and Peterborough Waste Partnership



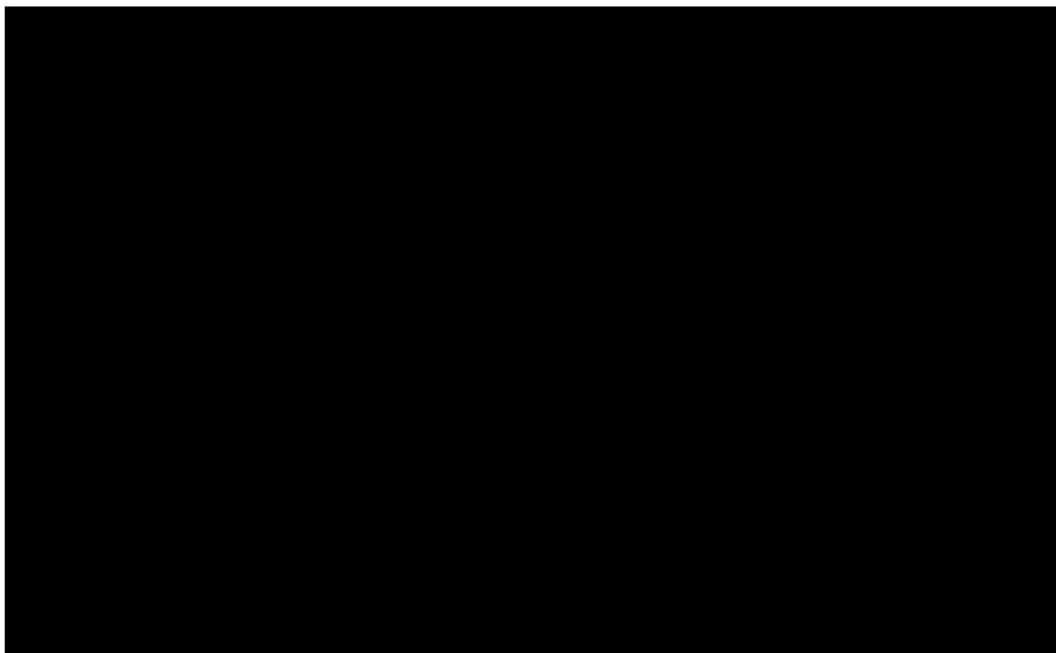
The Cambridgeshire and Peterborough Waste Partnership



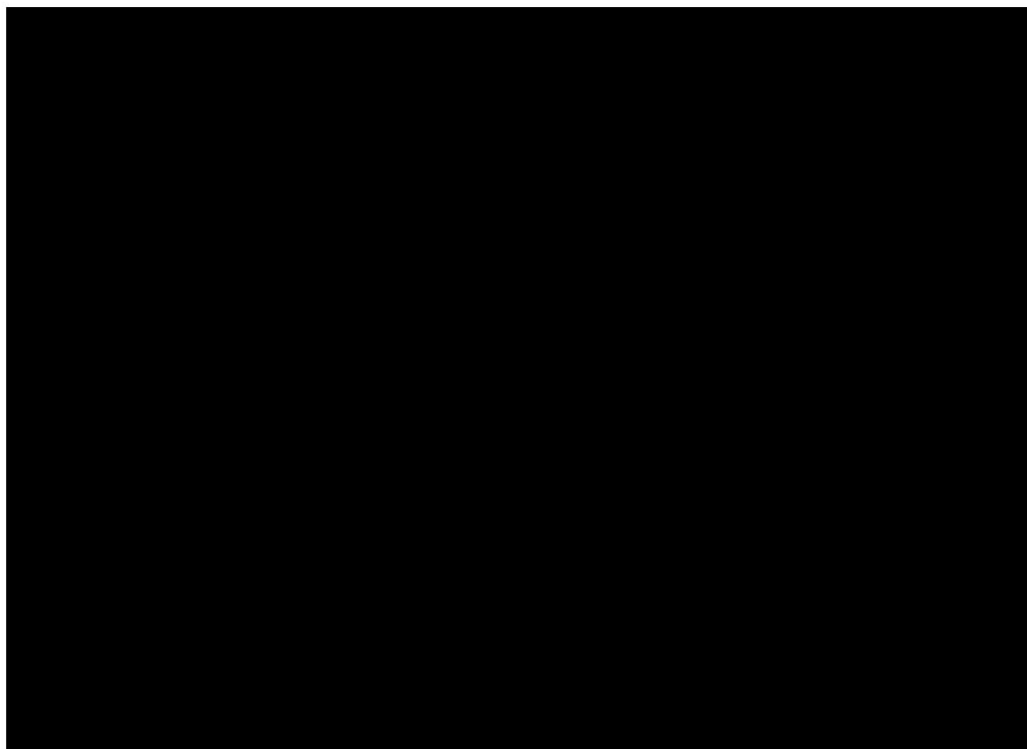
The Cambridgeshire and Peterborough Waste Partnership



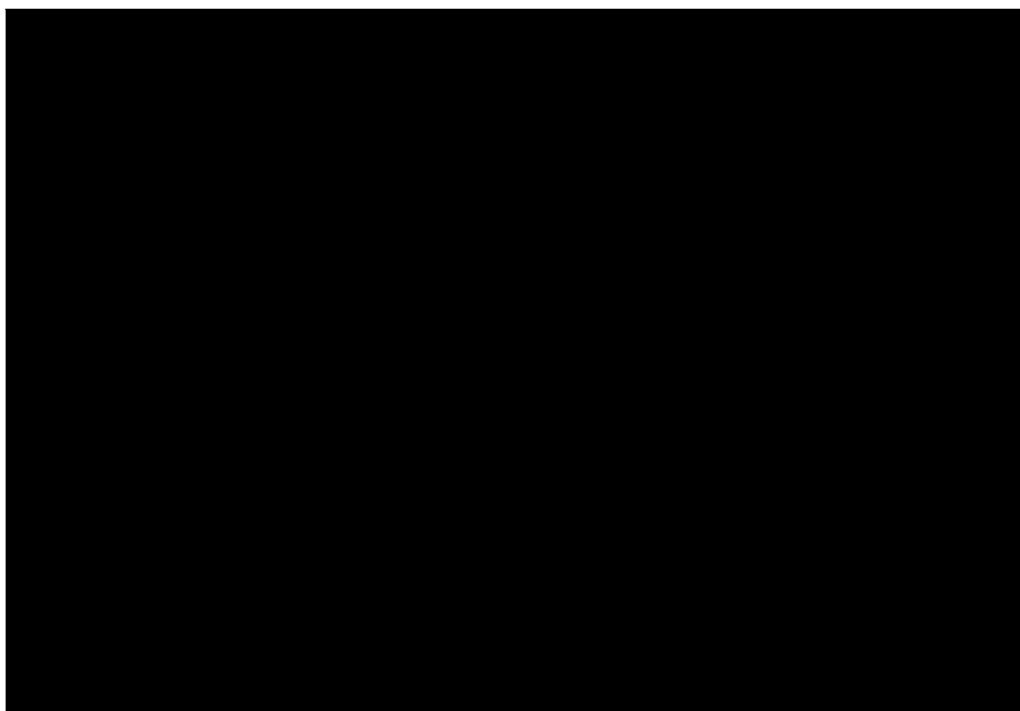
The Cambridgeshire and Peterborough Waste Partnership



The Cambridgeshire and Peterborough Waste Partnership



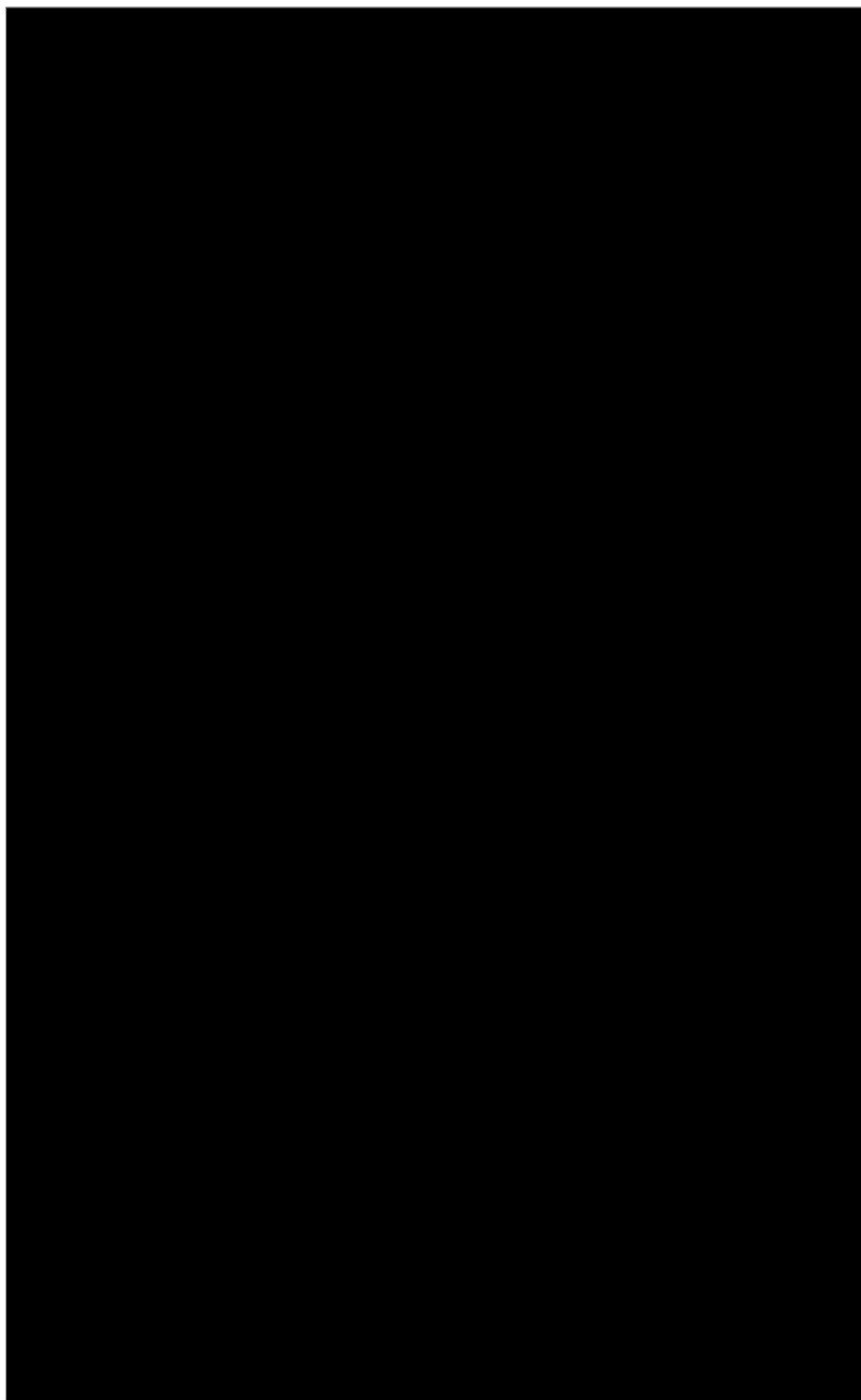
The Cambridgeshire and Peterborough Waste Partnership



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The Cambridgeshire and Peterborough Waste Partnership



The Cambridgeshire and Peterborough Waste Partnership



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Row	Bar Length (approx. %)
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4	100
5	80
6	100
7	100
8	100
9	100
10	40

Country	Year	Value
China	2017	10.0
China	2018	10.0
China	2019	10.0
China	2020	10.0
China	2021	10.0
China	2022	10.0
China	2023	10.0
China	2024	10.0
China	2025	10.0
China	2026	10.0
China	2027	10.0
China	2028	10.0
China	2029	10.0
China	2030	10.0
China	2031	10.0
China	2032	10.0
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China	2099	10.0
China	2100	10.0

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10/10/2019

§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

11/11/2016

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| Previous government | 35% |

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A horizontal bar chart consisting of 10 rows. Each row features a small black square on the left side, followed by a horizontal black bar of varying length. The bars are arranged in a staggered, descending pattern from top-left to bottom-right. The first row has a bar that is nearly the full width of the chart. Subsequent rows have bars that are progressively shorter and shifted further to the right, creating a staircase effect. The final row has a bar that is the shortest and is shifted the furthest to the right.



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Schedule 8 Change Control Procedure

1 General Principles

- 1.1 Where the Councils see a need to change this agreement, the Councils may at any time request such Change only in accordance with the Change Control Procedure set out in paragraph 5 of this Schedule.
- 1.2 The Contractor may at any time recommend such Change only in accordance with the Change Control Procedure set out in paragraph 6 of this Schedule.
- 1.3 Until such time as a Change is made in accordance with the Change Control Procedure, the Councils and the Contractor shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.4 Any discussions which may take place between the Councils and the Contractor in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.5 Any work undertaken by the Contractor and the Contractor's Relevant Persons which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule, shall be undertaken entirely at the expense, risk and liability of the Contractor.
- 1.6 Neither Party to this agreement may propose or implement a Change that:
 - 1.6.1 requires the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;
 - 1.6.2 would result in a breach of the Public Contracts Regulations 2015 (as may be amended or replaced from time to time);
 - 1.6.3 would cause any Consent to be revoked (or where a new Consent is required to implement and the relevant Change is unobtainable);
 - 1.6.4 would materially and adversely affect the Contractor's ability to deliver the Services as originally specified or subsequently varied;
 - 1.6.5 would materially and adversely affect the health of any person;
 - 1.6.6 would require the Contractor to implement a Change in an unreasonable period of time; or
 - 1.6.7 a Party does not have the legal power or capacity to require implementation.
- 1.7 The Councils have an absolute discretion to accept or reject any Contractor Change unless such Change is required as a result of a Change in Law and provided that any Change in Law Changes are subject clause 28 and paragraph 7 of this Schedule.

2 Change Process

2.1 Either Party may serve a Change Notice proposing or recommending a Change (as applicable) and such Change Notice shall be processed in accordance with the following parts of the Change Control Procedure:

2.1.1 a Councils' Change Notice shall be processed in accordance with paragraph 5 of this Schedule;

2.1.2 a Contractor Change Notice shall be processed in accordance with paragraph 6 of this Schedule.

3 **Implementation**

3.1 No amendments to this agreement shall be made as a result of any Change unless otherwise agreed by the Parties in writing.

3.2 All agreed Changes shall be implemented under the terms of this agreement and all provisions applying to the Services shall apply to the carrying out of any additional services or changes to the Services (as the case may be).

3.3 The Contractor shall keep a record of all Changes (both completed and outstanding).

4 **Payment**

Insofar as a Change relates to the Services, the Monthly Payment shall be adjusted in accordance with Schedule 3 (DMR Processing Payment Mechanism) by the amounts agreed or determined in accordance with this Change Control Procedure for carrying out or implementing any Change (together referred to as the "**Change Payment**").

5 **Councils' Change**

5.1 The Councils' Representative shall be entitled to issue to the Contractor instructions in writing in relation to a Change.

5.2 The Councils' Change Notice shall:

5.2.1 set out the Change required in sufficient detail to enable the Contractor to evaluate it in full and provide the Change Control Note in accordance with paragraph 5.3;

5.2.2 specify the Councils' reasons for proposing the Change; and

5.2.3 require the Contractor to provide the Councils within 28 days of receipt of the Councils' Change Notice with the Change Control Note.

5.3 As soon as practicable and in any event within 28 days after having received the Councils' Change Notice the Contractor shall deliver to the Councils, the Change Control Note. The Change Control Note shall include:

5.3.1 the title of the Change;

5.3.2 the originator and date of the request or recommendation for the Change;

5.3.3 the reason for the Change;

- 5.3.4 full details of the Change, including any changes to the Specification;
- 5.3.5 the price, if any, of the Change on an open book basis and any corresponding change to the Contract Price;
- 5.3.6 a timetable for implementation, together with any proposals for acceptance of the Change;
- 5.3.7 a schedule of payments if appropriate;
- 5.3.8 any amendment required to this agreement or any other contractual document between the Contractor and the Councils;
- 5.3.9 details of the likely impact, if any, of the Change or other aspects of this Change including:
 - (a) the timetable for the provision of the Change;
 - (b) the personnel to be provided including any Contractor's Personnel changes (to include, but not be limited to, details of any increase or decrease in numbers of personnel required, grade, salary and overheads and details of potential redundancy costs if there is to be a reduction in Contractor's Personnel);
 - (c) any of the Consents;
 - (d) any Capital Expenditure necessitated by a Qualifying Change in Law (if applicable);
 - (e) the documentation to be provided;
 - (f) the training to be provided;
 - (g) working arrangements;
 - (h) any capital funding contribution required from either Party;
 - (i) details of the likely impact, if any, of the Change on other aspects of this agreement including the terms and conditions;
 - (j) the date of expiry of validity of the Change Control Note (which shall not be less than 40 Business Days); and
- 5.3.10 provision for signature by the Councils and the Contractor.
- 5.4 Any changes to the Contract Price or additional costs proposed by the Contractor shall be no more than is reasonable in all the circumstances.
- 5.5 As soon as practicable after the Councils receives the Change Control Note the Parties shall discuss and endeavour to agree (such agreement on the part of the Contractor not to be unreasonably withheld or delayed) the issues set out in the Change Control Note and in such discussions, the Councils may if reasonable in all the circumstances, require the Contractor to obtain and

evaluate competitive tenders for any capital works and in each case the Contractor shall within 21 days notify the Councils of any consequential changes to the Change Control Note.

- 5.6 If the Parties cannot agree on the contents of the Change Control Note, then the matter will be referred to and be determined through the Dispute Resolution Procedure.
- 5.7 If the Contractor does not intend to use its own resources to implement any Change it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including the requirement that the Contractor should not be worse off as a result of the implementation of the Change) when procuring any works, services, supplies, materials or equipment required in relation to the Change.
- 5.8 The Contractor shall not be permitted to reject a Change Control Note in circumstances where:
 - 5.8.1 the Parties have agreed in writing or it has been determined through the Dispute Resolution procedure that a Qualifying Change in Law has occurred; or
 - 5.8.2 the Parties have agreed in writing or it has been determined through the Dispute Resolution Procedure that the changes proposed in the Change Control Note are required in order to permit the Councils to comply with a Qualifying Change in Law.
- 5.9 Once the Change Control Note has been agreed by the Councils and the Contractor pursuant to this paragraph 5, the Councils and the Contractor shall arrange for three copies of the Change Control Note to be signed by or on behalf of each of them and return one of the copies to each Party.
- 5.10 A Change Control Note signed by the Councils and by the Contractor shall constitute an amendment to this agreement.

6 Contractor Change

- 6.1 If the Contractor wishes to recommend a Change including (but without limitation) those arising as a result of a Qualifying Change in Law, it must serve a Contractor's Change Notice on the Councils.
- 6.2 The Contractor Change Notice shall:
 - 6.2.1 set out the title of the Change;
 - 6.2.2 specify the reasons for the Change and any impact on the provision of the Services;
 - 6.2.3 set out the Change in sufficient detail to enable full evaluation by the Councils;
 - 6.2.4 the price, if any, of the Change on an open book basis and any corresponding change to the Contract Price;

- 6.2.5 request the Councils to consult with the Contractor and to specify what consequential changes the Councils require as a result of the Change;
- 6.2.6 a schedule of payments if appropriate;
- 6.2.7 indicate if there are any dates by which the decision of the Councils is critical and set out the timetable for implementing the Change;
- 6.2.8 specify details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (a) the timetable for the provision of the Change;
 - (b) the personnel affected;
 - (c) any of the Consents;
 - (d) any Capital Expenditure necessitated by a Qualifying Change in Law (if applicable);
 - (e) the documentation affected;
 - (f) the training to be provided;
 - (g) working arrangements;
 - (h) any capital funding contribution to be required from either Party;
 - (i) details of the likely impact, if any, of the Change on other aspects of this agreement including the terms and conditions;
 - (j) the date of expiry of validity of the Contractor's Change Notice (which shall not be less than 40 Business Days);
- 6.2.9 provide for signature by the Councils and the Contractor.
- 6.3 The Councils shall evaluate the Contractor's proposed Change in good faith taking into account all relevant issues including whether:
 - 6.3.1 a change in the Contract Price will occur;
 - 6.3.2 the Change affects the quality of the Services or the likelihood of successful delivery of the Services;
 - 6.3.3 the Change will interfere with the relationship of the Councils with third parties;
 - 6.3.4 the Change materially affects the liabilities, risks, or costs to which the Councils is exposed.
- 6.4 As soon as practicable after receiving the Contractor Change Notice, the Parties shall meet and discuss the Contractor Change Notice and seek to agree any changes or revised or additional costs as a result.

- 6.5 If the Parties cannot agree on the contents of the Contractor Change Notice, then the matter will be referred to and determined through the Dispute Resolution Procedure.
- 6.6 The Councils shall not be permitted to reject a Contractor Change Notice in circumstances where:
- 6.6.1 the Parties have agreed in writing or it has been determined through the Dispute Resolution Procedure that a Qualifying Change in Law has occurred; or
 - 6.6.2 the Parties have agreed in writing or it has been determined through the Dispute Resolution Procedure that the changes proposed in the Contractor Change Notice are required in order to permit the Contractor and/or the Councils (as appropriate) to comply with the Qualifying Change in Law.
- 6.7 Once the Contractor Change Notice has been agreed by the Councils and the Contractor pursuant to this paragraph 6, the Councils and the Contractor shall arrange for three copies of the Contractor Change Notice to be signed by or on behalf of each of them and return one of the copies to each Party.
- 6.8 A Contractor Change Notice signed by the Councils and by the Contractor shall constitute an amendment to this agreement.

7 Qualifying Change in Law

- 7.1 Where a Change resulting from a Qualifying Change in Law is referred to this Change Control Procedure through the application of clause 28.2, the provisions relating to Councils Change in this Change Control Procedure shall apply including in respect of payment provided that any Change in Law that is not a Qualifying Change in Law shall be deemed to be a Contractor Change.
- 7.2 Notwithstanding anything to the contrary elsewhere in this Change Control procedure, any Councils Change relating to the Qualifying Change in Law may not be withdrawn by the Councils.

8 Disputes

Any disputes arising in respect of any Change and/or this Change Control Procedure shall be resolved in accordance with the Dispute Resolution Procedure.

Schedule 9 TUPE

1 Definitions

In this Schedule 9 the following expressions (in addition to those specified in Schedule 1) shall (save where the context or the express provisions of this agreement otherwise requires or admits) have the following meanings:

Contractor's Final Staff List: the list of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Services Transfer Date.

Contractor's Provisional Staff List: the list prepared and updated by the Contractor of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Councils or a Replacement Contractor by virtue of the application of TUPE.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-Contractor to the Councils or any Replacement Contractor.

Staffing Information: in relation to all persons detailed on the Contractor's Provisional Staff List, in an anonymised format, such information as the Councils may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

2 Employment Exit Provisions

2.1 This agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Councils or Replacement Contractor will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

2.2 The Contractor shall (and shall procure that any Sub-Contractor shall) within a period of 12 Months immediately preceding the expiry of the Term of this agreement or following the service of a Termination notice or as a consequence of the Councils notifying the Contractor of its intention to retender this agreement:

2.2.1 Within twenty (20) Business Days of receiving a written request from the Councils and at no cost to the Councils provide:

(a) the Contractor's Provisional Staff List (in a suitably anonymised format so as to comply with the Data Protection

Legislation). The Contractor's Provisional Staff List shall include a list of roles (on a role by role basis rather than group basis), any roles that are currently vacant but which have previously been filled for the provision of the Services and which it expects to transfer to the Councils or a Replacement Contractor upon termination or earlier expiry of this agreement;

- (b) the Staffing Information together with any additional information required by the Councils, including information as to the application of TUPE to the employees;

2.2.2 Notify the Councils immediately in writing of any material changes to the Contractor's Provisional Staff List, the Staffing Information and any other information provided promptly as and when such changes arise;

2.2.3 Be precluded from assigning any person to the provision of the Services who is not listed on the Contractor's Personnel List and shall, unless otherwise instructed by the Councils (acting reasonably);

- (a) not replace or re-deploy any employees listed on the Contractor's Provisional Staff List other than where any replacement is of equivalent grade, skill, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) not to make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earning which were not previously pensionable or reduce the pensions contributions payable) of the employees on the Contractor's Provisional Staff List (including any payments connected with the termination of employment);
- (c) not to increase the proportion of working time spent on the Services (or the relevant part of the Services) by any employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed in writing with the Councils;
- (d) not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List save for any such changes in the ordinary course of business as applicable to the Contractor's staff as a whole;
- (e) not replace any of the employees listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part of the Services) or terminate or give notice to terminate the employment or

contracts of any persons on the Contractor's Provisional Staff List other than in the ordinary course of business;

- (f) not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Councils or the Replacement Contractor;
- (g) give the Councils and/or the Replacement Contractor reasonable access to the employees listed on the Contractor's Provisional Staff List and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Councils or the Replacement Contractor in respect of the Relevant Employees;
- (h) co-operate with the Councils and the Replacement Contractor to ensure an effective consultation process and smooth transfer in respect of the Relevant Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place;
- (i) promptly notify the Councils or, at the direction of the Councils, any Replacement Contractor of any notice to terminate employment given by the Contractor or received from any person listed on the Contractor's Provisional Staff List regardless of when such notice takes effect;
- (j) not adversely affect any pension rights accrued by all and any employees listed on the Contractor's Provisional Staff List in the period ending on the Service Transfer Date;
- (k) fully fund any broadly comparable pension schemes set up by the Contractor;
- (l) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this agreement;
- (m) fully co-operate (and procure that the trustees of any broadly comparable pension scheme shall fully co-operate) with the reasonable requests of the Councils or, at the direction of the Councils, any Replacement Contractor relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this agreement.

2.3 At least 28 days prior to the Service Transfer Date, the Contractor shall and shall procure that any Sub-Contractor shall prepare and provide to the Councils and/or, at the direction of the Councils, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all

material respects. The Contractor's Final Staff List shall identify which of the Contractor's and Sub-Contractor's personnel named are Relevant Employees.

- 2.4 The Councils shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services that are substantially the same type of services as the Services (or any part of the Services).
- 2.5 The Contractor warrants to the Councils and the Replacement Contractor that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Contractor's Final Staff List.
- 2.6 The Contractor shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 2.7 The Councils regards compliance with this paragraph 2 as fundamental to this agreement. In particular, failure to comply with paragraph 2.1 and paragraph 2.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Councils to suspend payment of the Contract Price until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 2.7 shall not exceed an amount equivalent to the Contract Price that would be payable in the three Month period following the Contractor's failure to comply with paragraph 2.1 or paragraph 2.3, as the case may be.
- 2.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the twelve (12) Months prior to expiry or termination of this agreement shall not (so far as reasonably practicable) take place without the Councils' prior written consent, unless such changes are required by Law. The Contractor shall and shall procure that any Sub-Contractor shall supply to the Councils full particulars of such proposed changes and the Councils shall be afforded reasonable time to consider them.
- 2.9 The Contractor shall comply with all its obligations in respect of the Relevant Employees arising under TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge all its obligations in respect of all the Relevant Employees arising in respect of the period from the TUPE Effective Date up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date).
- 2.10 The Contractor shall promptly provide to the Councils and any Replacement Contractor in writing such information as is necessary to enable the Councils and any Replacement Contractor to carry out their respective duties under regulation 13 of TUPE.
- 2.11 The Contractor shall indemnify the Councils and/or each Replacement Contractor for any Employee Liabilities in respect of any Relevant Employees

(or, where applicable any employee representative as defined in TUPE) arising from or as a result of:

- 2.11.1 any act or omission of the Contractor or any Sub-contractor after the TUPE Effective Date but otherwise whether occurring before, on or after the Service Transfer Date;
- 2.11.2 the breach or non-observance by the Contractor or any Sub-contractor in the period from the TUPE Effective Date up to the Service Transfer Date of:
 - (a) any collective agreement applicable to the Relevant Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Relevant Employees which the Contractor is contractually bound to honour;
- 2.11.3 any claim by any trade union or other body or person representing any Relevant Employees arising from or connected with any failure by the Contractor to comply with any legal obligation to such trade union, body or person arising in the period from the TUPE Effective Date up to the Service Transfer Date;
- 2.11.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Relevant Employees, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising in the period from the TUPE Effective Date up to the Service Transfer Date; and
 - (b) in relation to any employee who is not a Relevant Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Contractor to the Councils and/or Replacement Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising in the period from the TUPE Effective Date up to the Service Transfer Date;
- 2.11.5 a failure of the Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Relevant Employees in respect of the period from the TUPE Effective Date up to (and including) the Service Transfer Date;
- 2.11.6 any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-Contractor other than a Relevant Employee for whom it is alleged, the Councils and/or the Replacement Contractor may be liable by virtue of this agreement and/or TUPE; and

- 2.11.7 any claim made by or in respect of a Relevant Employee or any appropriate employee representative (as defined in TUPE) of any Relevant Employees relating to any act or omission of the Contractor in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Councils and/or Replacement Contractor to comply with regulation 13(4) of TUPE.
- 2.12 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 2.13 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 2.1 to paragraph 2.11, to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.14 Despite paragraph 2.13, it is expressly agreed that the parties may by agreement rescind or vary any terms of this agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

Schedule 10 Councils' Policies

- 1 The Councils shall provide to the Contractor such other Councils' Policies during the Term. The Councils at the date of this agreement have provided to the Contractor the following Councils' Policies:

[Council Policies | East Cambridgeshire District Council \(eastcambs.gov.uk\)](#)

[Policies and Strategies - Fenland District Council](#)

Schedule 11 Not Used

Schedule 12 Dispute Resolution Procedure

- 1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it including in connection with the Services ("**Dispute**") then, the Parties shall follow the procedure set out in this Schedule:
 - 1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Councils' Representative and the Contractor's Representative shall attempt in good faith to resolve the Dispute;
 - 1.2 if the Councils' Representative and the Contractor's Representative are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice (or sooner at the discretion of the Councils), the Dispute shall be referred to an Executive Director (or equivalent) of the Councils and the Contractor's Managing Director who shall attempt in good faith to resolve it; and
 - 1.3 if an Executive Director (or equivalent) of the Councils and the Contractor's Managing Director are for any reason unable to resolve the Dispute within 30 days of it being referred to them, such dispute may be referred, by agreement between the Parties, to a single independent expert. The independent expert shall be selected by mutual agreement or, failing such agreement within 21 days, shall be selected by the appropriate professional body in accordance with paragraph 2 of this Schedule 12. Decisions of the independent expert shall be final and binding. The fees of the independent expert shall be borne by the Parties in such proportions as may be determined by the independent expert or, if the expert declines to make a decision, equally.
- 2 For the purpose of paragraph 1.3 of this Schedule 12, the appropriate professional body shall be:
 - 2.1 In the case of a dispute relating to clause 19 (Deductions), clause 21 (Contract Price, Invoicing and Payment), Schedule 3 (DMR Processing Payment Mechanism), the Institute of Chartered Accountants in England and Wales (or any successor body);
 - 2.2 in the case of a dispute in connection with the provision of the Services or Schedule 2 (Specification), the Chartered Institute of Waste Management (or any successor body); and
 - 2.3 in the case of all other disputes, the Law Society of England and Wales or such other professional body as designated or recommended by it.
- 3 If either the Councils or the Contractor does not agree with any dispute being referred for resolution in accordance with this Schedule 12, then the dispute shall be determined by the courts in accordance with clauses 67 (Governing Law) and 68 (Jurisdiction).

[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]

Schedule 14 Data Processing

- 1 The Contractor shall comply with any further written instructions with respect of processing by the Councils.
- 2 Any such further instructions shall be incorporated into this Schedule.
- 3 The table below sets out the details of processing as required by Article 28 of the GDPR.

Legal Basis for Sharing Personal Data	N/A
Purposes for which the Personal Data shall be processed Please specify the purposes for which the Data Processor intends to process the Personal Data.	Personal Data shall not be processed as part of this agreement.
Description of the categories of the Data Subjects Please specify the categories of Data Subject whose Personal Data shall be processed under this agreement.	Personal Data shall not be processed as part of this agreement.
Description of the categories of Personal Data Please specify the categories of Personal Data that shall be processed under this agreement.	Personal Data shall not be processed as part of this agreement.
Description of the categories of Special Category Data Please specify the categories of Special Category Data that shall be processed under this agreement.	Commercial data only to be shared as part of this agreement.

Duration of the processing of Personal Data Please set out the duration of the processing including dates	N/A
Description of transfers of Personal Data to a country outside of the UK Please record transfers of Personal Data outside of the UK, recording the country and/or international organisation and, where applicable, please document suitable safeguards.	N/A
The envisaged time limits for erasure of the different categories of Personal Data and how the processor plans to return or destroy data once the processing is complete Please specify how long you think the Personal Data will be retained for, where possible. Describe how the Data will be returned or destroyed	N/A
General description of technical and organisational security measures Where possible, please describe the measures put in place under Article 32(1) GDPR.	We have a full GDPR policy in place available on request.
Authorised Sub-Processors List the sub-processors who will process Personal Data.	B/A

Transmission of Personal Data Please explain how Personal Data will be transmitted.	Personal Data shall not be processed as part of this agreement.
Data Quality and Accuracy	N/A

Schedule 15 Contractor Ownership Data

Registered Name of Contractor	Biffa Waste Services Limited
Company Registration Number	946107
Registered Address of Contractor	Coronation Road, Cressex Business Park, High Wycombe. HP12 3TZ
Directors of Contractor	Michael Davis, Paul James, Maxine Mayhew, Michael Topham
Company Secretary	Sarah Parsons
Shareholders of Contractor and respective shareholdings / class of shares	100% - Biffa Holdings Limited

Schedule 16 Third Party Agreements

Part A. Executed Third Party Agreements

Part B. Agreed but not Executed Third Party Agreements

Schedule 17 NOT USED

Schedule 18 Parent Company Guarantee

Dated 202[]

(1) []

(2) []

Parent Company Guarantee

Date:

Parties

- (1) [] (Councils).
- (2) [] (Guarantor).

Introduction

- (A) By a waste agreement dated on or about the date of this guarantee (Agreement) the Councils agreed to engage [] (Contractor) for [].
- (B) The Guarantor has agreed to guarantee to the Councils (in accordance with the terms of this Guarantee) as a continuing guarantee, the due and proper performance by the Contractor of the Contractor's duties and obligations arising under the Agreement.

Agreed terms

1 Interpretation

The following definitions and rules of interpretation apply in this guarantee.

1.1 Definitions:

Agreement:	the [] agreement dated on or about the date of this guarantee and made between (1) [] and (2) [] Limited (as such agreement may be amended, varied and/or supplemented from time to time);
Business Day:	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours:	the period from 9.00 am to 5.00pm on any Business Day except any Business Day which is a Friday in which case the period shall be from 9:00 am to 4:30 pm.
Contractor:	[];
control:	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Guaranteed Obligations:	has the meaning given in clause 2.1.1 (<i>Guarantee</i>).
VAT:	value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Clause headings shall not affect the interpretation of this guarantee.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to writing or written includes fax and email.
- 1.7 A reference to this guarantee or to any other agreement or document referred to in this guarantee is a reference to this guarantee or such other guarantee or document as varied, novated (in each case, other than in breach of the provisions of this guarantee) from time to time.
- 1.8 References to clauses are to the clauses of this guarantee.
- 1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Guarantee and indemnity

- 2.1 The Guarantor:
 - 2.1.1 irrevocably guarantees to the Councils and their successors, transferees and assignees the proper, due and punctual, true and faithful performance of all of the Contractor's present and future obligations under and in connection with the Agreement if and when they become due and performable in accordance with the terms of the Agreement (**Guaranteed Obligations**);
 - 2.1.2 shall pay to the Councils from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) which have become payable by the Contractor to the Councils under the Agreement but which has not been paid at the time the demand is made; and
 - 2.1.3 shall, if the Contractor fails to perform in full and on time any of its obligations, duties, responsibilities and undertakings under the Agreement, immediately on demand perform or procure performance of the same at its own cost and expenses.
- 2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1.1 and clause 2.1.3 agrees to indemnify and keep indemnified the Councils in full and on demand from and against all and any losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court fees and legal fees, together with any disbursements) of whatever nature, whether arising under statute, contract or at common law, suffered or incurred by the Councils arising out of, or in connection with:
 - 2.2.1 any failure by the Contractor to perform or discharge the Guaranteed Obligations except where the Contractor's failure to perform or discharge the Guaranteed Obligations results from the Councils' failure to comply with its obligations under this guarantee

or the Contractor contesting any payment or part of a payment in good faith; or

- 2.2.2 any of the Guaranteed Obligations being or becoming totally or partially unenforceable by reason of illegality, capacity, lack or exceeding of powers, ineffectiveness of execution or any other matter,

but the Guarantor's liability under this clause 2.2 shall be no greater than the Contractor's liability under the Agreement was (or would have been, had the relevant obligation been fully enforceable).

3 Councils' protections

- 3.1 **Continuing guarantee.** This guarantee is and shall, at all times, be a continuing security until the Guaranteed Obligations have been satisfied or performed in full, and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Councils may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security.

- 3.2 **Preservation of Guarantor's liability.** The Guarantor's liability under this guarantee shall not be reduced, discharged or otherwise adversely affected by:

- 3.2.1 any arrangement made between the Contractor and the Councils;
- 3.2.2 any alteration in the obligations undertaken by the Contractor whether by way of any addendum or variation referred to in clause 4 or otherwise;
- 3.2.3 any waiver or forbearance by the Councils whether as to payment, time, performance or otherwise;
- 3.2.4 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Contractor or any other person;
- 3.2.5 any unenforceability, illegality or invalidity of any of the provisions of the Agreement or any of the Contractor's obligations under the Agreement, so that this guarantee shall be construed as if there were no such unenforceability, illegality or invalidity;
- 3.2.6 any legal limitation, disability, incapacity or other circumstances relating to the Contractor, or any other person; or
- 3.2.7 the dissolution, merger, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation or the appointment of an administrator or receiver of the Contractor or any other person.

- 3.3 **Immediate demand.** The Guarantor waives any right it may have to require the Councils (or any trustee or agent on their behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this guarantee.

3.4 **Deferral of rights.** Until all amounts which may be or become payable under the Agreement or this guarantee have been irrevocably paid in full, the Guarantor shall not, as a result of this guarantee or any payment performance under this guarantee:

3.4.1 be subrogated to any right or security or monies held, received or receivable by the Councils or be entitled to any right of contribution or indemnity in respect of any payment made or monies received on account of the Guarantor's liability under this guarantee;

3.4.2 claim, rank, prove, or vote as a creditor of the Contractor or its estate or any other person in competition with the Councils;

3.4.3 demand or accept repayment of any monies or claim any right of contribution, set-off or indemnity, and

any sums received by the Guarantor in breach of this clause 3.4 (*Deferral of rights*) shall be held by the Guarantor in trust for and shall be promptly paid to the Councils.

3.5 **Guarantee additional to all other security.** This guarantee is in addition to and shall not affect nor be affected by or merge with any other judgment, security, right or remedy obtained or held by the Councils from time to time in respect of the discharge and performance of the Guaranteed Obligations by the Contractor.

4 **Addendum or variation to the Agreement**

4.1 The Guarantor authorises the Contractor and the Councils to make any addendum or variation to the Agreement, the due and punctual performance of which addendum and variation shall, subject to the terms of this guarantee and, amongst other things, be guaranteed by the Guarantor in accordance with the terms of this guarantee.

4.2 The Guarantor's liability under this guarantee shall not be released, reduced or adversely affected by:

4.2.1 any invalidity, avoidance or termination of the Agreement;

4.2.2 any waiver, concession, allowance, compromise or forbearance whether as to payment, time, performance or otherwise given to, or made with, the Contractor and the terms of this guarantee shall apply to the terms of any such compromise as they apply to the Agreement;

4.2.3 any other act, event, omission or circumstance that, but for this provision, might operate to exonerate the Guarantor.

5 **Payment**

5.1 All sums payable by the guarantor under this guarantee shall be paid in full to the Councils in pounds sterling:

5.1.1 without any set-off, condition or counterclaim whatsoever; and

- 5.1.2 free and clear of any deductions or withholdings whatsoever except as may be required by law or regulation which is binding on the Guarantor.
- 5.2 If any deductions or withholding is required by any law or regulation to be made by the Guarantor, the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.
- 5.3 The Guarantor shall promptly deliver or procure delivery to the Councils of all receipts issued to it evidencing each deduction or withholding which it has made.
- 5.4 The Guarantor shall not and may not direct the application by the Councils of any sums received by the Councils from the Guarantor under any of the terms in this guarantee.
 - 5.4.1 The Guarantor shall pay interest on any sum due under this guarantee, calculated as follows:
 - 5.4.2 **Rate.** 4% a year above the Bank of England's base rate from time to time, but at 4% for any period when that base rate is below 0%.
 - 5.4.3 **Period.** From when the overdue sum became due, until it is repaid.
- 5.5 The Councils shall not be entitled to recover any amount in respect of interest under both this guarantee and any arrangements entered into between the Contractor and the Councils in respect of any failure by the Contractor to make any payment in respect of the Guaranteed Obligations.

6 Costs

- 6.1 The **Guarantor** shall, on a full indemnity basis pay to the Councils on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Councils incurs in connection with:
 - 6.1.1 the preservation, or exercise and enforcement, of any rights under or in connection with this guarantee or any attempt to do so; and
 - 6.1.2 any discharge or release of this guarantee.
- 6.2 Each Party shall pay its own costs in connection with the negotiation, preparation, execution and registration of this guarantee, and all documents ancillary to it.

7 Conditional discharge

- 7.1 Any release, discharge or settlement between the Guarantor and the Councils in relation to this guarantee shall be conditional on no right, security, disposition or payment to the Councils by the Guarantor, the Contractor or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy,

liquidation, administration, protection from creditors generally or insolvency for any other reason.

- 7.2 If any such right, security, disposition or payment as referred to in clause 7.1 (*Conditional discharge*) is avoided, set aside or ordered to be refunded, the Councils shall be entitled subsequently to enforce this guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

8 Representations and warranties

- 8.1 Without prejudice to any warranties or conditions implied by law, the Guarantor represents and warrants to the Councils:

- 8.1.1 that it is duly incorporated with limited liability and validly existing under the laws of England;
- 8.1.2 that it has full power and capacity under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this guarantee;
- 8.1.3 that it has full power and capacity to perform the obligations expressed to be assumed by it or contemplated by this guarantee;
- 8.1.4 that it has been duly authorised to enter into this guarantee;
- 8.1.5 that it has taken all necessary corporate action to authorise the execution, delivery and performance of this guarantee;
- 8.1.6 the obligations of the Guarantor under this guarantee rank and will rank at least *pari passu* with all of its other unsecured obligations;
- 8.1.7 that this guarantee when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;
- 8.1.8 that all necessary consents and authorisations for the giving and implementation of this guarantee have been obtained;
- 8.1.9 its entry into and performance of its obligations under this guarantee will not constitute any breach of or default under any contractual, government or public obligation binding on it; and
- 8.1.10 it is not engaged in any litigation, arbitration or administrative proceedings that might affect its capacity or ability to perform its obligations under this guarantee and to the best of its knowledge no such legal, arbitration or administrative proceedings have been threatened or are pending against it;
- 8.1.11 no proceedings or other steps have been taken and not discharged (nor to the best of the knowledge of the Guarantor threatened) for its winding up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, judicial factor manager, trustee or similar officer in relation to any of its material assets or revenues.

9 General

9.1 Confidentiality

9.1.1 Each Party undertakes that it shall not at any time during this guarantee, and for a period of five years after termination or expiry of this guarantee, disclose to any person any Confidential Information concerning the business, affairs, customer, clients or suppliers or the other Party, except as permitted by clause 9.1.2 (Permitted disclosure).

9.1.2 Each Party may disclose the other Party's Confidential Information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights of carrying out its obligations under or in connection with this guarantee. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 9.1 (*Confidentiality*); and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.1.3 No Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this guarantee.

9.2 **Announcements.** No Party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this guarantee, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or any court or other authority of competent jurisdiction.

9.3 **Assignment.** The Councils shall be entitled by notice in writing to the Guarantor to assign the benefit of this guarantee at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this guarantee.

9.4 **Further assurance.** Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this guarantee.

9.5 **Variation.** No variation of this guarantee shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.6 Notices

9.6.1 Any notice given to a Party under or in connection with this guarantee shall be in writing and shall be:

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

(b) sent by email to:

[]

9.6.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt;

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

(c) if sent by email, at the time of transmission, or if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

9.6.3 This clause 9.6 (*Notices*) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

9.7 Entire agreement

9.7.1 This guarantee constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

9.7.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this guarantee. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this guarantee.

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

9.9 Severance

9.9.1 If any provision or part-provision of this guarantee is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this guarantee.

9.9.2 If any provision or part-provision of this guarantee is deemed deleted under clause 9.9.1 (Deemed deletion) the parties shall

negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

9.10 Third party rights

9.10.1 Unless it expressly states otherwise, this guarantee does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this guarantee.

9.10.2 The Guarantor shall not be entitled to contend that any person to whom this guarantee is assigned in accordance with clause 9.3 is precluded from recovering under this guarantee any loss incurred by such assignee resulting from any breach of this guarantee by reason that such person is an assignee and not a named person hereunder.

9.10.3 The rights of the parties to rescind or vary this guarantee are not subject to the consent of any other person.

9.11 **Counterparts.** This guarantee may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one deed.

10 Governing law

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

11 Jurisdiction

Each Party irrevocably agrees, for the sole benefit of the Councils that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this guarantee or its subject matter or formation. Nothing in this clause shall limit the right of the Councils to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

This deed has been entered into on the date stated at the beginning of it.

THE COMMON SEAL of)
[])
was hereunto affixed)
in the presence of:)

Authorised Signatory

Executed as a deed by the **GUARANTOR**

acting by two directors

.....

Director

.....

Director