

SCHEDULE 5

Payment Mechanism

This is Schedule 5 comprising the Payment Mechanism referred to in the Project Agreement for the provision of waste services to Cumbria

between

CUMBRIA COUNTY COUNCIL

and

SHANKS CUMBRIA LIMITED



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SCHEDULE 5 - PAYMENT MECHANISM

1. DEFINITIONS

In this Schedule 5, unless the context otherwise requires, the following words and expressions shall have the following meanings:-

“Acceptable SRF”	means SRF which:- (a) is the subject of a current SRF Offtake Contract and in respect of which an SRF Contract Direct Agreement has been completed; (b) has met the On-Specification test specified in the relevant SRF Offtake Contract; (c) has been supplied to an SRF Offtaker and has not been Landfilled unless such failure to supply and/or Landfill has been on the basis of a written instruction from the Authority;
“Acceptance Certificate “	has the meaning given in clause 1.1 (Definitions) of this Agreement;
“Active Contract Waste”	means any Contract Waste and Residues (but, for the avoidance of doubt, excluding SRF, any Commissioning Waste and any Specific Waste Items) which falls within the definition of Active Waste;
“Active Waste Standard”	means the target amount (in tonnes) which the Contractor is entitled to landfill in the relevant Contract Year as determined in accordance with Appendix 1 of this Schedule 5 for that Contract Year;
“Active Waste”	means Waste which does not constitute Inactive Waste and which attracts Landfill Tax at the higher rate pursuant to section 42(1) of the Finance Act 1996;
"Actual HWRC Recycling and Composting Rate"	means the recycling and composting rate achieved at the HWRCs, being the proportion (expressed as a percentage) of the total Contract Waste which is Received at the HWRCs together with Waste collected at Bring Facilities which are situated on the HWRCs (in each case excluding Inactive Waste other than for the first three Relevant Years when Inactive Waste shall be included in the calculation) which is Recycled or Composted;
“Actual Net Operating Profit”	means, in respect of any Contract Year, the aggregate actual net operating profit (before interest and tax) earned by the Contractor under this Agreement in the period from the Commencement Date up to and including that Contract Year (as determined by reference to the Contractor's audited accounts for each Contract Year) save that in determining such

	amount any Authority Share Income shall be disregarded;
“Additional Mileage Deduction”	means the Deduction calculated in accordance with paragraph 6.5 of this Schedule 5;
“Additional Opening Costs”	has the meaning set out in paragraph 5.4 of this Schedule 5;
"Alternative Waste Facility"	means the alternative waste facility put in place by the Contractor in place of an Interface Site which is Unavailable in accordance with the Business Continuity Plan;
“Annual Unitary Charge”	means the amount calculated in accordance with paragraph 2.1 of this Schedule 5;
"Authority's LATS Target"	means the Authority’s annual target set out in the table included at Appendix 9 to this Schedule;
“Authority Share Income”	<p>means any income of the Contractor which, under the terms of this Agreement is (otherwise than pursuant to paragraph 10 of this Schedule 5) subject to an upside sharing mechanism with the Authority, including (for the avoidance of doubt and without limitation):-</p> <ul style="list-style-type: none"> (a) any income in relation to SRF (to which paragraph 7 of this Schedule 5 shall apply); (b) any Landfill Bonus, Household Recycling Centre Recycling and Composting Bonus, or BMW Diversion Bonus payable pursuant to this Schedule 5, any Third Party Income or any other income to which a reconciliation or adjustment applies pursuant to paragraphs 8 or 9 of this Schedule 5; (c) any Refinancing Gain (to which clause 48 applies); (d) any income, gain or reduction of costs in relation to insurance costs (to which clause 51 applies); (e) any income, gain or reduction in costs in relation to electricity costs (to which paragraph 3 of Appendix 8 to this Schedule 5 applies); and (f) any income, gain or reduction in tax to which Schedule 34 (Tax Risk Sharing Mechanism) applies, including (for the avoidance of doubt) any payment by the Authority to the Contractor under those provisions, <p>whether or not the relevant thresholds or other conditions triggering an Authority share of such income, gain or cost reduction have been met;</p>
“Average Earnings Index” or "AEI"	means the Average Earnings Index published in labour market trends table E.2 average earnings index; all employee jobs; by industry (unadjusted); excluding bonuses (group “other

	services” JVVS) as published by the Office of National Statistics;
“Average Price of LATS”	means the average price of a LATS Allowance for a LATS Trading Year as published annually by the Environment Agency, or if no longer published by the Environment Agency or if there is a material change in the nature or basis of the calculation the parties shall agree upon an alternative basis which replicates the current basis as closely as possible;
“Base Date”	means 31 March 2008;
“Beach Waste”	means Contract Waste from a beach which is not Oily Beach Waste;
“Biodegradable Contract Waste”	means:- <ul style="list-style-type: none"> (a) Contract Waste; (b) all Residues and Waste Derived Products (excluding SRF); (c) all SRF which is Landfilled by the Contractor or Sub-Contractor (with or without the consent of the Authority) <p>which is deemed to be biodegradable municipal waste, as defined under section 21 of the Waste and Emissions Trading Act 2003, and measured in accordance with the procedure set out in Schedule 2 (Service Delivery Plan);</p>
"Biodegradable Contract Waste Landfill Tonnage Bonus Threshold"	means the figure determined in accordance with paragraph 1 in Appendix 5 for the relevant Contract Year;
“Biodegradable Contract Waste Landfill Tonnage Deduction Threshold”	means the figure determined in accordance with paragraph 2 in Appendix 5 for the relevant Contract Year;
“BMW Diversion Bonus Payment”	means the sum calculated in accordance with paragraph 9.4 of this Schedule 5;
“BMW Diversion Deduction”	means the sum calculated in accordance with paragraph 9.5 of this Schedule 5;
"Bulky Waste"	means any article of waste which exceeds 25 kilograms in weight or any article of waste which does not fit, or cannot be fitted into (a) a receptacle for household waste provided in accordance with section 46 of the EPA 1990, or, (b) where no such receptacle is provided, a cylindrical container 75cm or more in diameter and 100cm or more in length;
"Business Continuity Plan"	the contingency arrangements put in place by the Contractor to mitigate the effects of any Unavailability, as set out in the

	Service Delivery Plan;
“Commencement Date”	has the meaning given in clause 1.1 of this Agreement;
“Commissioning Waste”	means any Contract Waste Processed at either Resource Park during the period between the date of Practical Completion of the relevant Resource Park and the Service Availability Date for that Resource Park;
“Contract Month”	means each Month within a Contract Year, in each case commencing on the first day of the calendar month, save that:- <ul style="list-style-type: none"> (a) the first Contract Month shall be the period commencing on the Commencement Date and ending on the last day of the calendar month on which the Commencement Date occurs; and (b) the final Contract Month shall be the period commencing on the first day of the calendar month in which the Expiry Date occurs and ending on the Expiry Date;
“Contract Waste”	has the meaning given in clause 1.1 of this Agreement;
“Contract Year”	has the meaning given in clause 1.1 of this Agreement;
“Cumulative Active Waste Threshold”	means the amount (in tonnes) determined in accordance with paragraph 4.8 of this Schedule 5;
“Deductions”	means the deductions calculated in accordance with paragraph 6 of this Schedule 5;
“Delay Month”	means each Contract Month falling within a Delay Period;
“Delay Period”	has the meaning given in paragraph 2.2.3 of this Schedule 5;
“DFI”	means the Derv Fuel Index of the Civil Engineering Formula "1990 Series" published in the Monthly Bulletin of Construction Indices as published by the Department for Business Enterprise and Regulatory Reform;
“Distington TS Contract”	has the meaning given in clause 1.1 of this Agreement;
“Distribution Account”	has the meaning given in the Loan Agreement;
“Distribution Date”	has the meaning given in paragraph 10.1;
“Electricity Supplier”	means a supplier of Utilities pursuant to a Purchase Agreement entered into in accordance with clause 27A.7;
“Emergency”	an event causing, or in the reasonable opinion of a Party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people, or extensive damage to property, or contamination of the environment, in each case on a scale beyond the capacity of the emergency

services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services;

"Excess Profit Amount" means the amount determined in accordance with paragraph 10.4;

"Excusing Cause" means each of the following:-

- (a) a breach of the terms of this Agreement by the Authority or any Authority Related Party and any act or omission of any Authority Related Party which would, if that Authority Related Party was a party to this Agreement in place of the Authority, constitute a breach of this Agreement; or
- (b) the closure of either EcoDeco Plant for the purposes of carrying out the replacement of the biofilter as more particularly described in paragraph 2.2.3 of Schedule 23 (Asset Management Plan); or
- (c) an Emergency to the extent not caused or contributed to by the Contractor or a Contractor Related Party;
- (d) a Compensation Event;
- (e) a Qualifying Change in Law;
- (f) the exercise by the Authority of its rights to step-in under clause 47 (Authority Step-In), without prejudice to the rights of the Authority to deduct the Authority's costs of operation in taking the Required Action under clause 47.5.2 (Step-in on Contractor Breach) and the other provisions of this Agreement;
- (g) the Authority's Representative making a specific written request of the Contractor or giving specific written instructions to the Contractor, compliance with which by the Contractor causes the Contractor to fail to comply with the Output Specification or would otherwise (but for this provision) give rise to a Deduction or adversely impact the Contractor's ability to achieve (or, where applicable, exceed) any Key Target;
- (h) a written waiver by the Authority's Representative of any obligation of the Contractor to comply with the Output Specification or of any other matter which would otherwise (but for this provision) give rise to a Deduction or adversely impact the Contractor's ability to achieve (or, where applicable, exceed) any Key Target;
- (i) any of:-
 - (i) a Low Value Change implemented (1) by the

Contractor in accordance with paragraph 4.1 of Part 2 of Schedule 27, or (2) by or on behalf of the Authority pursuant to paragraph 7.1 of Part 1 of Schedule 27 or paragraph 4.5 of Part 2 of Schedule 27;

(ii) a Medium Value Change implemented (1) by the Contractor in accordance with paragraph 6.1 of Part 1 of Schedule 27 and paragraph 4 of Part 3 of Schedule 27, or (2) by or on behalf of the Authority pursuant to paragraph 7.1 of Part 1 of Schedule 27 or paragraph 2.10 of Part 3 of Schedule 27; or

(iii) a High Value Change implemented (1) by the Contractor in accordance with paragraph 6.1 of Part 1 of Schedule 27 and paragraph 12 of Part 4 of Schedule 27, or (2) by or on behalf of the Authority pursuant to paragraph 7.1 of Part 1 of Schedule 27; and/or

(j) any other event or circumstance expressly identified or otherwise described as an "Excusing Cause" in this Agreement;

"First Acceptance Date" has the meaning given in paragraph 3.6.1 of this Schedule 5;

"First Annual Reconciliation" means the reconciliation amount calculated in accordance with paragraph 8.2 of this Schedule 5;

"First Step-Up Period" has the meaning given in paragraph 3.6.2 of this Schedule 5;

"Flusco TS Contract" has the meaning given in clause 1.1 of this Agreement;

"Fly Tipped Waste" means any Contract Waste which has not been deposited within the recognised Site boundary of any HWRC or Resource Park but which has been deposited within fifty (50) metres of the Site boundary of the said HWRC or Resource Park or for the length of the Site access road up to fifty (50) metres or such other distance as may be specified in the relevant Lease for the relevant HWRC or Resource Park;

"Full Service Period" has the meaning given in paragraph 3.6.3 of this Schedule 5;

"Gainshare LATS Price" means the Average Price of LATS for the relevant Contract Year PROVIDED THAT the Gainshare LATS Price shall always be capped at [REDACTED]

"Household Waste Recycling Centre Recycling and Composting Bonus" means the bonus payment to the Contractor calculated under paragraph 8.9 of this Schedule 5;

"Household Waste Recycling Centre, Recycling and" means the deduction amount calculated under paragraph 8.10

Composting Deduction”	of this Schedule 5;
“HWRC Network”	means all of the HWRCs operated by the Contractor under this Agreement from time to time;
"HWRC Target Recycling and Composting Rate"	means the target recycling and composting rate to be achieved at the HWRCs in each Contract Year as set out in Appendix 4 of this Schedule 5;
“Inactive Waste”	means Waste which attracts Landfill Tax at the lower rate as a consequence of being qualifying material under the Landfill Tax (Qualifying Material) Order 1996 pursuant to section 42(2) of the Finance Act 1996;
“Interface Sites”	means each of the following:- <ul style="list-style-type: none"> (a) a Resource Park; (b) a Transfer Station; and (c) a Landfill Site to which any WCA makes a direct delivery of Contract Waste in accordance with the terms of this Agreement;
"Interim Period"	has the meaning described in paragraph 3.6.4 of this Schedule 5;
“Key Target”	has the meaning given in paragraph 11.1 of this Schedule 5;
“Landfill”	has the meaning given in clause 1.1 of this Agreement;
“Landfill Bonus”	means the bonus payment to the Contractor calculated under paragraph 8.8 of this Schedule 5;
“Landfill Deduction”	means the amount calculated in accordance with paragraph 8.5.2 of this Schedule 5;
“Landfill Element”	means the amount determined in accordance with paragraph 4.3 of this Schedule 5;
"Landfill Gate Fee Deduction"	means the amount calculated in accordance with paragraph 8.6 of this Schedule 5;
"Landfill Reconciliation"	means the amount calculated in accordance with paragraph 8.5.1 of this Schedule 5;
“Landfill Site”	has the meaning given in clause 1.1 of this Agreement;
“Landfill Tax”	has the meaning given in clause 1.1 of this Agreement;
"Landfill Tax Deduction"	means the amount calculated in accordance with paragraph 8.7 of this Schedule 5;

“Late Resource Park”	means a Resource Park which has not achieved Service Availability by the Target Services Availability Date for that Resource Park
“LATS Allowance”	means a tradable allowance allocated to the Authority in accordance with LATS which permits the landfilling of BMW up to the stated limit of that allowance where a single LATS Allowance permits one tonne of BMW to be landfilled by or on behalf of the Authority;
“LATS Trading Year”	means the period of eighteen (18) months ending on 30 September in each Contract Year used by the Environment Agency for the purposes of calculating LATS Allowances;
“Market Testing”	has the meaning given in clause 1.1 of this Agreement;
“Monthly Monitoring Report”	means the monthly monitoring report compiled by the Contractor in accordance with the requirements of Schedule 36 (Reporting Proformas);
“Monthly Unitary Charge”	means the amount calculated in accordance with paragraph 2.2 of this Schedule 5;
“Northern Resource Park”	has the meaning given in clause 1.1 of this Agreement;
“Opening Hours”	has the meaning given in Schedule 1 Part 1 (Output Specification);
“Output Specification”	has the meaning given in clause 1.1 of this Agreement;
“Pass Through Cost Element”	means the element of the Monthly Unitary Charge calculated in accordance with paragraph 5 of this Schedule 5;
“Pass Through Reconciliation”	means the amount calculated in accordance with paragraph 8.4 of this Schedule 5;
“PC Date”	has the meaning given in paragraph 3.6.5 of this Schedule 5;
“Performance Criteria”	has the meaning given in column 3 of table 2 of the Performance Measurement Framework at Schedule 1 Part 2 to this Agreement;
“Performance Deduction”	means the deduction amount accrued in relation to a Performance Failure, determined by reference to the Performance Deduction Category for such Performance Failure, as set out in Table 4 in paragraph 6 of this Schedule 5;
“Performance Deduction Category”	means each category for a Performance Deduction set out in column 1 of Table 4 of this Schedule 5;
“Performance Deduction Reconciliation”	means the reconciliation amount calculated in accordance with paragraph 8.12 of this Schedule 5;

“Performance Failure”	has the meaning given in paragraph 1.3 of Schedule 1 Part 2 (Performance Measurement Framework);
“Performance Points”	has the meaning given in Schedule 1 Part 1 (Output Specification);
“Practical Completion”	has the definition set out in the Building Contract;
“Processed”	means, in respect of any Contract Waste, that such Contract Waste has passed through the primary shredder of an EcoDeco Plant;
“Purchase Agreement”	has the meaning given in clause 1.1 of this Agreement;
"Received"	means, in relation to any Waste, that such Waste has been accepted as Contract Waste by the Contractor at an HWRC and/or an Interface Site in accordance with (where applicable) the terms of the relevant Waste Acceptance Protocol;
“Reclaimed Materials”	means separated materials suitable for Reuse, Recycling or Composting;
“Relevant Year”	means a period of twelve (12) Months commencing on the date of this Agreement and each anniversary thereof;
"Remaining Profit"	means the Excess Profit Amount calculated in respect of any Distribution Date less the Authority's share of such Excess Profit Amount, as determined in accordance with paragraph 10.3 of this Schedule 5;
“Residues”	has the meaning given in clause 1.1 of this Agreement;
“Reuse”	has the meaning given to it in clause 1.1 of this Agreement;
"RPIx"	has the meaning given to it in clause 1.1 of this Agreement;
“RPIx Indexed”	has the meaning given in clause 1.1 of this Agreement;
“Second Acceptance Date”	has the meaning given in paragraph 3.6.6 of this Schedule 5;
“Second Annual Reconciliation”	means the reconciliation amount calculated in accordance with paragraph 9 of this Schedule 5;
“Second Step-Up Period”	has the meaning given in paragraph 3.6.7 of this Schedule 5;
“Services”	has the meaning given in clause 1.1 of this Agreement;
"Southern Resource Park"	has the meaning given in clause 1.1 (Definitions) of this Agreement;
“Specific Waste Element”	means the payment to the Contractor in respect of the handling and disposal of Specific Waste Items as calculated in accordance with paragraph 5.3 of this Schedule 5;

"Specific Waste Item Price"	means each of the prices for Specific Waste Items set out in the applicable table in Appendix 2 of this Schedule 5, or such other prices as are determined in accordance with clause 27A of this Agreement;
"Specific Waste Item"	means each of the types of Waste set out in Appendix 2 of this Schedule 5;
"SRF Base Fee"	means [REDACTED] per tonne (indexed from the Base Date in accordance with paragraph 7.4 of this Schedule 5);
"SRF Gainshare"	means the amount calculated in accordance with paragraph 7.3.1 of this Schedule 5;
"SRF Gainshare Period"	means each period of six (6) months:- <ul style="list-style-type: none"> (a) commencing on 1 April and ending on 30 September; and (b) commencing on 1 October and ending on 31 March, in each Contract Year, provided that the first SRF Gainshare Period shall commence on 1 April 2018;
"SRF Gate Fee"	means the fee (per tonne) payable for the SRF Offtake Service under the SRF Offtake Contract current in the relevant Contract Year (and in the event that there is more than one SRF Offtake Contract current the weighted average fee (per tonne) payable under all of the SRF Offtake Contracts, determined by reference to the proportionate volumes of SRF disposed of under each such SRF Offtake Contract);
"T Index"	means the amount determined in accordance with paragraph 3.7.2 and "T Indexed" shall mean, in relation to any figure, that figure multiplied by the T Index;
"Target Net Operating Profit"	means, in respect of any Contract Year, the aggregate net operating profit (before interest and tax) of the Contractor for the period from the Commencement Date up to and including that Contract Year, as shown in the Base Case financial model save that such amount shall be adjusted to disregard in the determination of any such net operating profit any Authority Share Income.
"Third Annual Reconciliation"	means the reconciliation amount calculated in accordance with paragraph 10 of this Schedule 5;
"Third Party Income"	means the sum calculated in accordance with paragraph 8.11 of this Schedule 5;
"Third Party Waste"	has the meaning given in clause 1.1 of this Agreement;

“Tonnage Band 1”	has the meaning set out in paragraph 3 of this Schedule 5;
“Tonnage Band 2”	has the meaning set out in paragraph 3 of this Schedule 5;
“Tonnage Based Element”	means the element of the Monthly Unitary Charge calculated in accordance with paragraph 3 of this Schedule 5;
“Tonnage Reconciliation”	means the reconciliation amount calculated in accordance with paragraph 8.3 of this Schedule 5;
“Tradable Permits”	means a LATS Allowance which is permitted for trade in accordance with the Waste and Emission Trading Act 2003;
“Transfer Station”	means a facility identified as such in Part 3 of Schedule 3 of this Agreement;
“TS Operator Default”	has the meaning given in clause 1.1 of this Agreement;
“Unavailable”	has the meaning set out in paragraph 6.5.2 of this Schedule 5;
“Untreated Landfill Waste”	means:- <ul style="list-style-type: none"> (a) Bulky Waste; and/or (b) Beach Waste; and/or (c) Fly Tipped Waste; and/or (d) Contract Waste (which is not Commissioning Waste, a Specific Waste Item, nor has it already been included in limbs (a) to (c) above) which is Received at any Interface Site prior to the First Acceptance Date; and/or (e) in any Contract Month during the Second Step Up Period, Contract Waste (which is not Commissioning Waste, a Specific Waste Item nor has it already been included within limbs (a) to (c) above), which is Received at an Interface Site and which is, when aggregated with all other such Contract Waste as defined within this limb (e), in excess of six thousand, seven hundred and fifty (6,750) tonnes;
“Waste Derived Products”	means all materials recovered from Contract Waste and converted through processing by the Contractor for presentation to the market for beneficial use without further processing;
“Waste Management Facility”	has the meaning given in clause 1.1 of this Agreement; and
“WCA”	has the meaning given in clause 1.1 of this Agreement.

PROVIDED THAT in the event of any inconsistency between any definition set out in this Schedule 5 and any term defined in clause 1.1 of the main body of the Agreement, the meaning of the definition given in the main body of the Agreement shall prevail.

2. THE ANNUAL UNITARY CHARGE AND MONTHLY UNITARY CHARGE

2.1 Annual Unitary Charge

The Annual Unitary Charge (“**AUC**”) for the provision of the Services for a Contract Year shall be calculated in accordance with the following formula:-

$$\mathbf{AUC = \Sigma MUC + \Sigma SRFG + FAR + SAR - TAR}$$

where:-

ΣMUC = the aggregate of the Monthly Unitary Charges for each Contract Month in the relevant Contract Year;

ΣSRFG = (from 1 April 2018) the aggregate of the SRF Gainshare for the relevant Contract Year, calculated in accordance with paragraph 7 of this Schedule 5;

FAR = First Annual Reconciliation for the relevant Contract Year, calculated in accordance with paragraph 8 of this Schedule 5;

SAR = Second Annual Reconciliation for the relevant Contract Year, calculated in accordance with paragraph 9 of this Schedule 5; and

TAR = Third Annual Reconciliation for the relevant Contract Year, calculated in accordance with paragraph 10 of this Schedule 5,

and any references in this Agreement to payment of the Annual Unitary Charge shall mean payment of its constituent parts pursuant to paragraph 2.2.2 below.

2.2 Monthly Unitary Charge

2.2.1 Subject to paragraph 2.2.3, the Monthly Unitary Charge (“**MUC**”) for each Contract Month shall be calculated in accordance with the following formula:-

$$\mathbf{MUC = Tm + Lm + Pm - Dm + DR}$$

where:-

Tm = Tonnage Based Element for the relevant Contract Month, calculated in accordance with paragraph 3 of this Schedule 5;

Lm = Landfill Element for the relevant Contract Month, as calculated in accordance with paragraph 4 of this Schedule 5;

Pm = Pass Through Cost Element for the relevant Contract Month, calculated in accordance with paragraph 5 of this Schedule 5;

Dm = Deductions for the relevant Contract Month, calculated in accordance with paragraph 6 of this Schedule 5; and

DR = in any DR Month, the Delay Reconciliation (if any) calculated in accordance with paragraph 2.2.3 and Appendix 6 below, and in every other Contract Month, zero.

- 2.2.2 The Monthly Unitary Charge (and each of the SRF Gainshare, the First Annual Reconciliation, the Second Annual Reconciliation and the Third Annual Reconciliation) shall be paid to the Contractor in accordance with clause 26 of this Agreement.
- 2.2.3 If the Service Availability Date for a Resource Park is not achieved by the end of the Contract Month in which the Target Service Availability Date for that Resource Park occurs (the "Target SA Month"), then a reconciliation will be undertaken which will reconcile the Monthly Unitary Charge payments made for the period from the Contract Month following the Target SA Month until the Contract Month following the Contract Month in which an Acceptance Certificate for such Resource Park was issued (the "Delay Period"), such calculation being on the basis set out in Appendix 6 provided that if at any time both Resource Parks are Late Resource Parks the Delay Period shall be the period commencing with the first Target SA Month to occur and ending at the end of the Contract Month in which the Second Acceptance Date occurs. The Delay Reconciliation shall be taken into account in the calculation of the Monthly Unitary Charge in the Contract Month ("DR Month") which is four (4) Contract Months after the end of the Delay Period to which it relates.

3. **TONNAGE BASED ELEMENT**

3.1 **Tonnage Based Element – Basis for Calculation**

The Tonnage Based Element shall be calculated:-

- 3.1.1 for each Contract Month in the Interim Period, in accordance with paragraph 3.2 below;
- 3.1.2 for each Contract Month in the First Step-up Period, in accordance with paragraph 3.3 below;
- 3.1.3 for each Contract Month in the Second Step-up Period, in accordance with paragraph 3.4 below; and
- 3.1.4 for each Contract Month in the Full Service Period, in accordance with paragraph 3.5 below.

3.2 **Calculation of the Tonnage Based Element in the Interim Period**

The Tonnage Based Element ("T") for each Contract Month m in the Interim Period shall be calculated as:-

$$T = (BP1 * TB1) + (BP2 * (ATR_{m-3} - TB1))$$

where:-

BP1 = the tariff (£/t) for Tonnage Band 1 for each Contract Year in the Interim Period, made up of:-

- 3.2.1 a non-indexed element set out in row 1 of Table 1 of Appendix 11 for the relevant Contract Year; and

3.2.2 an indexed element set out in row 2 of Table 1 of Appendix 11 for the relevant Contract Year, T Indexed in accordance with paragraph 3.7;

BP2 = the tariff (£/t) for Tonnage Band 2 for each Contract Year in the Interim Period as shown in row 4 of Table 1 of Appendix 11, T Indexed in accordance with paragraph 3.7;

TB1 = the tonnage per Contract Month for Tonnage Band 1 being two thousand five hundred (2,500) tonnes (which, for the avoidance of doubt, shall be the tonnage for Tonnage Band 1 regardless of the actual tonnage of Contract Waste which is received by the Contractor in the relevant Contract Month) save that in respect of the first Contract Month following the Commencements Date only such tonnage shall be reduced on a pro-rata basis to reflect the number of days in the first Contract Month; and

ATR_{m-3} = save as provided in paragraph 1.1 of Appendix 10, the actual tonnage of Contract Waste (excluding any Specific Waste Items) which is Received by the Contractor at the HWRCs in the Contract Month which is three (3) months prior to Contract Month m provided that in any Contract Month in which ATR_{m-3} is less than TB1, ATR_{m-3} shall be deemed to be equal to TB1.

3.3 Calculation of the Tonnage Based Element in the First Step-up Period

The Tonnage Based Element (“T”) for each Contract Month m in the First Step-Up Period shall be calculated as:-

T =

$$(\mathbf{BP1} * \mathbf{TB1}) + (\mathbf{BP2} * (\mathbf{ATR}_{m-3} - \mathbf{TB1})) + \mathbf{C1} + \mathbf{C2}$$

where:-

3.3.1 **BP1** = the tariff (£/t) for Tonnage Band 1 for each Contract Year in the First Step-Up Period, made up of:-

- (a) a non-indexed element set out in row 1 of Table 1 of Appendix 11 for the relevant Contract Year; and
- (b) an indexed element set out in row 2 of Table 1 of Appendix 11 for the relevant Contract Year, T Indexed in accordance with paragraph 3.7;

3.3.2 **BP2** = the tariff (£/t) for Tonnage Band 2 for the relevant Contract Year as shown in row 4 of Table 1 of Appendix 11, T Indexed in accordance with paragraph 3.7;

3.3.3 **TB1** = the tonnage per Contract Month for Tonnage Band 1 being two thousand five hundred (2,500) tonnes (which for the avoidance of doubt shall be the tonnage for Tonnage Band 1 regardless of the actual tonnage of Contract Waste which is Received by the Contractor in the relevant Contract Month);

3.3.4 **ATR_{m-3}** = the actual tonnage of Contract Waste (excluding any Specific Waste Items) which is Received by the Contractor at the HWRCs in Contract Month m-3 provided that in any Contract Month in which ATR_{m-3} is less than TB1, ATR_{m-3} shall be deemed to be equal to TB1;

3.3.5 **C1** =

- (a) in each Contract Month prior to the Contract Month in which the PC Date for the Northern Resource Park occurs, zero;
- (b) in each Contract Month from and including the Contract Month in which the PC Date for the Northern Resource Park occurs (save as provided in paragraph 1.2 of Appendix 10) the amount (in tonnes) of Commissioning Waste Processed at the Northern Resource Park in respect of Contract Month m-3 (if any) multiplied by the applicable C Tariff (RPIx Indexed in the proportion set out in Table 1 below) for the relevant Contract Month; and

3.3.6 **C2 =**

- (a) in each Contract Month prior to the Contract Month in which the PC Date for the Southern Resource Park occurs, zero;
- (b) in each Contract Month from and including the Contract Month in which the PC Date for the Southern Resource Park occurs, (save as provided in paragraph 1.3 of Appendix 10) the amount (in tonnes) of Commissioning Waste Processed at the Southern Resource Park in respect of Contract Month m-3 (if any) multiplied by the applicable C Tariff (RPIx Indexed in the proportion set out in Table 1 below) for the relevant Contract Month; and

3.3.7 **C Tariff =** the tariff (£/t) for the relevant Contract Month as set out in Table 1 below:-

TABLE 1		
NORTHERN RESOURCE PARK		
Contract Month	C Tariff	Proportion of C Tariff to be RPIx Indexed
The Contract Month in which the relevant PC Date occurs and the two (2) immediately following Contract Months	██████████	██████████
Third and fourth Contract Months following the Contract Month in which the relevant PC Date occurs	██████████	██████████
Fifth and subsequent Contract Months following the Contract Month in which the relevant PC Date occurs	██████████	██████████
SOUTHERN RESOURCE PARK		
Contract Month	C Tariff	Proportion of C Tariff to be RPIx Indexed
The Contract Month in which the relevant PC Date occurs and the two (2) immediately following Contract Months	██████████	██████████

TABLE 1		
Third and fourth Contract Months following the Contract Month in which the relevant PC Date occurs	██████████	██████████
Fifth and subsequent Contract Months following the Contract Month in which the relevant PC Date occurs	██████████	██████████

3.4 Calculation of the Tonnage Based Element in the Second Step-up Period

The Tonnage Based Element (“T”) for each Contract Month m in the Second Step-Up Period shall be calculated as:-

T =

$$(BP1 * TB1) + (BP2 * (ATR_{m-3} - TB1)) + C1 + C2$$

where:-

3.4.1 **BP1** = the tariff (£/t) for Tonnage Band 1 for each Contract Year in the Second Step-Up Period, made up of:-

- (a) a non-indexed element set out in row 1 of Table 2 of Appendix 11 for the relevant Contract Year; and
- (b) an indexed element set out in row 2 of Table 2 of Appendix 11 for the relevant Contract Year, T Indexed in accordance with paragraph 3.7;

3.4.2 **BP2** = the tariff (£/t) for Tonnage Band 2 for the relevant Contract Year as shown in row 4 of Table 2 of Appendix 11, T Indexed in accordance with paragraph 3.7;

3.4.3 **TB1** = the tonnage per Contract Month for Tonnage Band 1 being six thousand four hundred and fifty eight (6,458) tonnes (which for the avoidance of doubt shall be the tonnage for Tonnage Band 1 regardless of the actual tonnage of Contract Waste which is Received by the Contractor in the relevant Contract Month);

3.4.4 **ATR_{m-3}** = (**EFT_{m-3}** + **RPT_{m-3}**) where:

EFT_{m-3} = the actual tonnage of Contract Waste (excluding any Specific Waste Items) Received by the Contractor at the HWRCs; and

RPT_{m-3} = save as provided in paragraph 1.4 of Appendix 10, the actual tonnage of Contract Waste (excluding Untreated Landfill Waste, any Specific Waste Items and any Contract Waste included in the calculation of **EFT_{m-3}** above) Received by the Contractor,

in each case in Contract Month m-3 provided that in any Contract Month in which **ATR_{m-3}** is less than **TB1**, **ATR_{m-3}** shall be deemed to be equal to **TB1**;

3.4.5 **C1 =**

- (a) in each Contract Month prior to the Contract Month in which the PC Date for the Northern Resource Park occurs, zero; and
- (b) in each Contract Month from and including the Contract Month in which the PC Date for the Northern Resource Park occurs (save as provided in paragraph 1.2 of Appendix 10) the amount (in tonnes) of Commissioning Waste Processed at the Northern Resource Park in respect of Contract Month m-3 (if any), multiplied by the applicable C Tariff (RPIx Indexed in the proportion set out in Table 1 above) for the relevant Contract Month; and

3.4.6 **C2 =**

- (a) for each Contract Month prior to the Contract Month in which the PC Date for the Southern Resource Park occurs, zero; and
- (b) for each from and including the Contract Month in which the PC Date for the Southern Resource Park occurs (save as provided in paragraph 1.3 of Appendix 10) the amount (in tonnes) of Commissioning Waste which is Processed at the Southern Resource Park in respect of Contract Month m-3 (if any), multiplied by the C Tariff (RPIx Indexed in the proportion set out in Table 1 above) for the relevant Contract Month; and

3.4.7 **C Tariff =** the tariff (£/t) for the relevant Contract Month as set out in Table 1 above.

3.5 **Calculation of the Tonnage Based Element in the Full Service Period**

The Tonnage Based Element (“T”) for each Contract Month m in the Full Service Period shall be calculated as:-

$$T = (BP1 * TB1) + (BP2 * (ATR_{m-3} - TB1))$$

where:-

3.5.1 **BP1 =** the tariff (£/t) for Tonnage Band 1 for each Contract Year in the Full Service Period, made up of:-

- (a) a non-indexed element set out in row 1 of Table 3 of Appendix 11 for the relevant Contract Year; and
- (b) an indexed element set out in row 2 of Table 3 of Appendix 11 for the relevant Contract Year, T Indexed in accordance with paragraph 3.7;

3.5.2 **BP2 =** the tariff (£/t) for Tonnage Band 2 for the relevant Contract Year as shown in row 4 of Table 3 of Appendix 11, T Indexed in accordance with paragraph 3.7;

3.5.3 **TB1 =** the tonnage per Contract Month for Tonnage Band 1, being ten thousand four hundred and sixteen (10,416) tonnes (which for the avoidance of doubt, shall be the tonnage for Tonnage Band 1 regardless of the actual tonnage of

Contract Waste which is Received by the Contractor in the relevant Contract Year); and

- 3.5.4 **ATR_{m-3}** = save as provided in paragraph 1.5 in Appendix 10, the actual tonnage of Contract Waste (excluding Specific Waste Items) which is Received by the Contractor in Contract Month m-3 provided that:-
- (a) in the final Contract Month (being the Contract Month in which the Expiry Date occurs) the tonnage of Contract Waste that is Received by the Contractor in Contract Month m-3 shall be pro-rated to reflect the number of Days within the final Contract Month; and
 - (b) in any Contract Month in which ATR_{m-3} is less than TB1, ATR_{m-3} shall be deemed to be equal to TB1.

3.6 **Definitions**

For the purposes of this paragraph 3:-

- 3.6.1 the "First Acceptance Date" shall be the first of the following dates to arise:-
- (a) the Service Availability Date of the Northern Resource Park or 31 March 2012, whichever is the later; or
 - (b) the Service Availability Date for the Southern Resource Park or 31 March 2013, whichever is the later;
- 3.6.2 the "First Step-Up Period" shall be the period commencing on the first day of the Contract Month in which the first PC Date occurs and ending on the last day of the Contract Month immediately prior to the commencement of the Second Step-Up Period;
- 3.6.3 the "Full Service Period" shall be the period commencing on the first day of the Contract Month immediately following the end of the Contract Month in which the Second Acceptance Date occurs and ending on the Expiry Date or the Termination Date (if sooner);
- 3.6.4 the "Interim Period" shall be the period commencing on the Commencement Date and ending on the last day of the Contract Month immediately prior to the commencement of the First Step-Up Period;
- 3.6.5 the "PC Date" shall be the date of Practical Completion for either:-
- (a) the Northern Resource Park; or
 - (b) the Southern Resource Park;
- 3.6.6 the "Second Acceptance Date" shall be the second of the following dates to arise:-
- (a) the Service Availability Date of the Northern Resource Park or 31 March 2012, whichever is the later; or

(b) the Service Availability Date for the Southern Resource Park or 31 March 2013, whichever is the later;

3.6.7 the "Second Step-Up Period" shall be the period commencing on the first day of the Contract Month immediately following the Contract Month in which the First Acceptance Date occurs and ending on the last day of the Contract Month immediately prior to the commencement of the Full Service Period.

3.7 **Indexation of "T"**

3.7.1 All amounts referred to in this paragraph 3 as being "T Indexed" shall be recalculated on the Commencement Date and on 1 April in each Contract Year thereafter, (each an "Indexation Date") by multiplying the relevant amount by the T Index.

3.7.2 The T index shall be calculated as follows:-

$$\mathbf{T\ Index = 1 + RPIF + AEIF + DFIF}$$

where:-

RPIF = the RPIx indexation factor determined in accordance with paragraph 3.7.3 below;

AEIF = the AEI indexation factor determined in accordance with paragraph 3.7.3 below; and

DFIF = the DFI indexation factor determined in accordance with paragraph 3.7.3 below.

3.7.3 For the purposes of paragraph 3.7.2 the indexation factor for each of RPIX, AEI and the DFI (in each case "I") shall be calculated as follows:-

$$I = \left(\frac{IF_n - IF_b}{IF_b} \right) \times TC_T$$

where:-

IF_n = the index figure for the relevant index published in respect of the February immediately prior to the Contract Year in which the relevant Indexation Date occurs;

IF_b = the index figure for the relevant index published in respect of the Base Date; and

TC_T = the percentage weighting for the relevant index as shown in Table 2 below;

provided that if I is less than the figure calculated for I as at the immediately preceding Indexation Date (I_{n-1}), then I shall be deemed to be equal to I_{n-1}.

TABLE 2 - BASKET OF INDICES

Index	Percentage Weighting (TC)
RPIx	██████████
AEI	██████████
DFI	██████████

4. LANDFILL ELEMENT

4.1 For the avoidance of doubt, the Landfill Element applies only to Active Contract Waste; there shall be no payment of the Landfill Element by the Authority in respect of Inactive Contract Waste which is Landfilled by the Contractor.

4.2 Subject always to paragraphs 4.7 and 4.9 below, the Authority agrees to reimburse the Contractor in respect of Landfill Tax and Landfill Gate Fee in accordance with the following provisions in this paragraph 4.

4.3 The Landfill Element (“L”) for each Contract Month shall be calculated as:-

$$L = LT + LG$$

where:-

LT = Landfill Tax payment for the relevant Contract Month calculated in accordance with paragraph 4.4 below; and

LG = the total Landfill Gate Fees payment for the relevant Contract Month calculated in accordance with paragraph 4.5 below.

4.4 The Landfill Tax payment for a Contract Month m shall be calculated as:-

$$LT = CWLA * LTA$$

where:-

CWLA is, save as provided in paragraph 2.1 in Appendix 10, the total amount (in tonnes) of Active Contract Waste which is Landfilled by the Contractor in Contract Month m-3, and

LTA is the prevailing rate in Contract Month m of Landfill Tax per tonne for Active Waste.

4.5 The Landfill Gate Fees (“LG”) payment for a Contract Month m shall be the aggregate of the Landfill Gate Fee payments (“LGF”) for all Landfill Sites, calculated for each Landfill Site for Contract Month m-3 as:-

$$LGF = CWLAS * LGFA$$

where:-

CWLAS is, save as provided in paragraph 2.2 in Appendix 10, the total amount (in tonnes) of Active Contract Waste which is Landfilled by the Contractor at that Landfill

Site (or at an alternative landfill site in place of that Landfill Site in accordance with the Business Continuity Plan) in Contract Month m-3; and

LGFA is the fee per tonne payable in Contract Month m for the relevant Landfill Site, being:

- 4.5.1 for each of the first five (5) Relevant Years, the amount set out in Table 3 below for that Landfill Site, in each case indexed in accordance with paragraph 4.6 below; and
- 4.5.2 for each subsequent year, the Contractor Offered Price or Market Testing Tender Price (as the case may be) for the Landfill Service derived from the Market Review Exercise or the Market Testing exercise (as the case may be) carried out pursuant to clause 27B of this Agreement.

TABLE 3 - LANDFILL GATE FEES				
Relevant Years	Landfill Site 1 Flusco Penrith	Landfill Site 2 Distington Workington	Landfill Site 3 Hespin Wood Carlisle	Landfill Site 4 Bennett Bank Barrow
1 – 5 (inclusive)	██████████	██████████	██████████	██████████

- 4.6 The amounts set out in Table 3 above shall be indexed on 1 April in each Contract Year starting on 1 April 2010 (each an "Indexation Date"), by multiplying the relevant figure by the RPIx Index which shall be determined as follows:-

$$\text{RPIx Index} = 1 + \left(\frac{\text{IF}_n - \text{IF}_b}{\text{IF}_b} \right)$$

where:-

IF_n = the index figure for RPIx published in respect of the February immediately prior to the Contract Year in which the relevant Indexation Date occurs; and

IF_b = the index figure for RPIx published in respect of February 2009,

provided that if the RPIx Index figure is less than the figure calculated for the RPIx Index as at the immediately preceding Indexation Date (RPIx Index_{n-1}), then RPIx Index shall be deemed to be equal to RPIx Index_{n-1}.

- 4.7 If as at any Contract Month m the total amount of Active Contract Waste which has been Landfilled by the Contractor in that calendar year up to and including the corresponding Contract Month m-3 has exceeded the Cumulative Active Waste Threshold (as defined in paragraph 4.8 below), the Authority shall be entitled to withhold payment in such Contract Month m of any amount of the Landfill Element for that Contract Month m to the extent such Landfill Element relates to Landfill Tax or Landfill Gate Fees in respect of tonnages of Active Contract Waste in excess of the Cumulative Active Waste Threshold, provided that:-

- 4.7.1 any amount withheld by the Authority pursuant to this paragraph 4.7 shall be carried forward and paid by the Authority to the Contractor if and to the extent in any subsequent Contract Month m within that Contract Year the total amount of Active Contract Waste which is Landfilled by the Contractor in that calendar year (up to and including the corresponding Contract Month m-3) is below the Cumulative Active Waste Threshold for that subsequent Contract Month m. For the avoidance of doubt this paragraph 4.7.1 shall apply in each and every subsequent Contract Month m within that Contract Year in which the applicable Cumulative Active Waste Threshold is not exceeded, if and to the extent amounts previously withheld by the Authority have not already been paid;
- 4.7.2 the amount withheld referred to in paragraph 4.7.1 above in relation to Landfill Gate Fees shall be calculated on the assumption that the "lowest applicable gate fee" shall apply. On this basis the calculation shall be carried out first as if all Active Contract Waste which is Landfilled in the relevant Contract Month m-3 in excess of the Cumulative Waste Threshold was the Active Contract Waste which was Landfilled at the Landfill Site with the lowest gate fee. In the event that the tonnage Landfilled in excess of the Cumulative Waste Threshold exceeds the tonnage Landfilled at the Landfill Site with the lowest gate fee any further amount withheld shall be calculated on the basis of the next lowest gate fee and so on up to the Cumulative Waste Threshold;
- 4.7.3 the provisions of this paragraph 4.7 shall be without prejudice to the operation of the annual reconciliations to be carried out pursuant to paragraph 8.5 to 8.8 (inclusive) of this Schedule 5; and
- 4.7.4 the amount withheld in respect of Landfill Tax is capped at [REDACTED] per tonne of Active Contract Waste so that the Authority shall pay that element of Landfill Tax above [REDACTED] per tonne, even if the Contractor has Landfilled Active Contract Waste in excess of the Cumulative Active Waste Threshold.

4.8 **Cumulative Active Waste Threshold Calculation**

The Cumulative Active Waste Threshold ("**CAWT**") for any Contract Month m-3 shall be calculated as:-

$$\text{CAWT} = \text{AWS} * 1.1$$

where **AWS** means the Active Waste Standard (in tonnes) calculated in accordance with paragraph 1 of Appendix 1 of this Schedule by reference to tonnages of Contract Waste (excluding Inactive Waste and Specific Waste Items Received at the HWRC Network and excluding Specific Waste Items and Untreated Landfill Waste Received at the Interface Sites) received by the Contractor in the relevant Contract Year up to and including Contract Month m-3.

4.9 **Adjustment to Cumulative Active Waste Threshold**

- 4.9.1 Subject to paragraphs 4.9.3 and 4.9.5, if and to the extent that the Contractor has Landfilled any Active Contract Waste in excess of the Cumulative Active Waste Threshold as a result of an Excusing Cause (other than limb (b) of the Excusing Cause definition), then the Cumulative Active Waste Threshold shall be adjusted so as to ensure that the Contractor is no better and no worse off as

a result so that the Contractor is deemed to have met (but not exceeded) such Cumulative Active Waste Threshold.

- 4.9.2 To claim an adjustment under this paragraph 4.9, the Contractor shall submit to the Authority a notice (an "EC Notice") stating that an Excusing Cause has occurred and that it has adversely affected the Contractor's ability to achieve the Cumulative Active Waste Threshold and the resulting adjustment required to the Cumulative Active Waste Threshold.
- 4.9.3 For relief claimed by the Contractor due to an Excusing Cause under paragraph 4.9.1 above, within one (1) month of the date on which the Excusing Cause for which relief or an adjustment is claimed occurred, the Contractor must submit evidence to the Authority of the impact of the Excusing Cause on the Cumulative Active Waste Threshold.
- 4.9.4 The adjusted threshold shall take effect as the new Cumulative Active Waste Threshold from (and including) the Contract Month m where the corresponding Contract Month $m-3$ is the Contract Month in which the relevant Excusing Cause occurred.
- 4.9.5 The Contractor shall take all reasonable steps to mitigate the consequences of an Excusing Cause on the Contractor's ability to perform its obligations under this Agreement without incurring material expenditure. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to, and shall not receive, the relief specified in paragraph 4.9.

5. PASS THROUGH COST ELEMENT

5.1 Calculation of Pass Through Cost Element

The Pass Through Cost Element ("P") for each Contract Month m shall be calculated as:-

$$P = NDR + TSW + AOC + EC$$

where:-

NDR = the aggregate of the National Non Domestic Rates Elements for all the Waste Management Facilities for Contract Month m, determined for each Waste Management Facility in accordance with paragraph 5.2 below;

TSW = save as provided in paragraph 3.1 of Appendix 10, the Specific Waste Element calculated in accordance with paragraph 5.3 for Contract Month m-3;

AOC = save as provided in paragraph 3.2 of Appendix 10, the Additional Opening Costs in Contract Month m-3, calculated in accordance with paragraph 5.4 below; and

EC = the electricity pass-through costs in relation to the Resource Parks calculated in accordance with paragraph 5.5 below in respect of Contract Month m-3.

5.2 Rates

The National Non Domestic Rates Element for a Waste Management Facility for a Contract Month shall be an amount equal to the National Non Domestic Rates payable by the Contractor or the Operating Contractor (as the case may be) in respect of that Contract Month (or payable by the Contractor or the Operating Contractor (as the case may be) in respect of previous Contract Months but not previously invoiced by the Contractor) as evidenced by the invoice received by the Contractor or the Operating Contractor (as the case may be) in respect of that Waste Management Facility in respect of such National Non Domestic Rates (which shall be incorporated by the Contractor into the relevant Monthly Monitoring Report). The Contractor shall include in the Monthly Monitoring Report for the next following Contract Month reasonable evidence that such National Non Domestic Rates have been paid by the Contractor or the Operating Contractor (as the case may be). For the avoidance of doubt, the Authority will bear no responsibility for any additional fines or charges resulting from a failure of the Contractor or the Operating Contractor (as the case may be) to make timeous or accurate payment.

5.3 Specific Waste Items

The Specific Waste Element ("**TSW**") shall be calculated for a Contract Month m-3 as follows:-

$$TSW = \sum(Vw * Pw)$$

where:-

Vw = the number of items of a particular Specific Waste Item type, or where that Specific Waste Item type is measured by weight (as determined by reference to the applicable Table in Appendix 2) the amount in tonnes of that Specific Waste Item type, Received by the Contractor in the relevant Contract Month m-3; and

Pw = the Specific Waste Item Price for the relevant Specific Waste Item type as set out in the applicable Table in Appendix 2 for the period prior to the first Benchmarking Review Date and thereafter as determined in accordance with clause 27A, and

$\Sigma (Vw * Pw)$ shall be the aggregate of $Vw * Pw$ calculated in respect of each Specific Waste Item type.

5.4 **Additional Opening Costs**

If the Authority requests that the Contractor makes available any of the Waste Management Facilities outside of the agreed Opening Hours in accordance with paragraph 5.5 of the Output Specification, the Authority shall pay the Contractor for making such Waste Management Facilities available in accordance with the rates set out in Appendix 3 (Additional Opening Costs). The total of all such charges accrued in respect of availability of any Waste Management Facilities outside of the agreed Opening Hours in the relevant Contract Month m-3 shall be the "Additional Opening Costs" for the purposes of paragraph 5.1.

5.5 **Electricity Costs (EC)**

5.5.1 The Electricity Costs ("**EC**") for each Contract Month m-3 shall be payable only in respect of the EcoDeco Plant at each of the Resource Parks and are payable only from the relevant Service Availability Date for each Resource Park and shall be calculated in respect of each Resource Park as:-

$$EC = F + (EPU * V * WAPT)$$

where:-

F = the total fixed charges levied by the relevant electricity supplier in relation to the supply of electricity to the relevant EcoDeco Plant under the relevant Purchase Agreement in respect of that Contract Month (being those charges which are not dependent on consumption volumes).

EPU = the estimated electricity consumption in kilowatt hours (KWhr) per tonne of Contract Waste determined in accordance with Appendix 8 for the relevant Contract Year and amended under Appendix 8;

WAPT = the Weighted Average Power Tariff in that Contract Month; and

V = save as provided in paragraph 3.3 of Appendix 10, the total actual volume (in tonnes) of Contract Waste which is Received by the Contractor at the relevant Resource Park in that Contract Month m-3.

5.5.2 The Weighted Average Power Tariff ("**WAPT**") in any Contract Month is the charge per kilowatt hour for electricity consumption at the EcoDeco Plant levied by the relevant Electricity Supplier (disregarding fixed charges) in relation to that Contract Month calculated as:-

$$WAPT = TVC / TUV$$

where:-

TVC = the total variable charges levied by the Electricity Supplier (incurred on a unit cost basis dependent on consumption volumes and other variable factors including without limitation the time of day of the consumption) in relation to electricity consumed at the relevant EcoDeco Plant in the relevant Contract Month; and

TUV = the total units (KWhrs) of electricity consumed at the relevant EcoDeco Plant in the relevant Contract Month.

6. DEDUCTIONS

6.1 Calculation of Deductions

Subject to paragraphs 6.3 and 6.6 below the Deductions (“**D**”) in respect of each Contract Month m shall be calculated as follows:-

$$\mathbf{D = PD + AMD}$$

where:-

PD = the aggregate of all Performance Deductions accrued in respect of Performance Failures arising in Contract Month m-3; and

AMD = the aggregate of all Additional Mileage Deductions accrued in respect of Unavailability of any Interface Site in Contract Month m-3,

provided that:-

- 6.1.1 the aggregate of all Performance Deductions and Additional Mileage Deductions calculated in respect of the relevant Contract Month m (“**PD + AMD**”) shall not exceed (and shall be capped at) [REDACTED], of the Tonnage Based Element for the relevant Contract Month m; and
- 6.1.2 the aggregate of all Performance Deductions accrued in respect of Performance Failures arising in Contract Month m-3 shall not exceed (and shall be capped at) [REDACTED] of the Tonnage Based Element for that Contract Month m; and
- 6.1.3 if applicable, the caps on Deductions specified in paragraph 12 of this Schedule shall be taken into account.

6.2 Performance Deductions

- 6.2.1 Subject to paragraph 6.3, Performance Points and Performance Deductions shall apply in respect of Performance Failures in accordance with the Performance Measurement Framework and the following provisions of this paragraph 6.2.
- 6.2.2 In the event that the Contractor fails to rectify any Performance Failures within any specified Rectification Period set out in the Performance Measurement Framework, further Performance Points and Performance Deductions shall accrue in respect of the Second Failure, Third Failure, Fourth Failure or any Subsequent Failure (as such failures are determined in accordance with paragraph 1.8.4 in the Performance Measurement Framework) on the basis set out therein.
- 6.2.3 Subject to paragraph 6.3 below, the Performance Deductions which shall accrue in respect of each Performance Failure shall be determined by reference to Table 4 below in accordance with the Performance Measurement Framework.

TABLE 4

Deduction Category	Type	First Failure		Second Failure		Third Failure		Fourth Failure Onwards
		Performance Points	Deduction (£)	Performance Points	Deduction (£)	Performance Points	Deduction (£)	
A	Critical	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Third Failure levels will continue to apply until the Performance Failure has been rectified
B	Important	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Any Fourth Failure shall be deemed to be a Performance Failure with a Deduction Category B instead of a C or D and Subsequent Failures shall be deemed to be a First Failure, Second Failure, Third Failure etc for Deduction Category B until rectified
C	Necessary	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
D	Routine	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

6.3 **Limitations on Performance Deductions and Performance Points**

- 6.3.1 Where a failure to meet a Performance Criteria is such that it can be classified as a failure to meet more than one (1) Performance Criteria then the Authority shall only be entitled to award Performance Deductions and Performance Points in respect of that failure by reference to one (1) such Performance Criteria and not to each such Performance Criteria but shall be entitled to award a Performance Deduction and Performance Points by reference to such Performance Criteria as attracts the greatest Performance Deduction and number of Performance Points.
- 6.3.2 No Performance Deductions and Performance Points may be incurred in respect of any failure to meet a Performance Criteria in relation to an Interface Site which is Unavailable and in respect of which an Additional Mileage Deduction is levied by the Authority.
- 6.3.3 No Performance Deductions and Performance Points may be incurred if, and to the extent that, it has been demonstrated to the reasonable satisfaction of the Authority that the failure to meet the Performance Criteria is a direct result of an Excusing Cause.
- 6.3.4 No Performance Deductions and Performance Points shall apply in respect of the first three (3) Contract Months following the Commencement Date.
- 6.3.5 No Performance Deductions and Performance Points shall apply prior to:-
- (a) the Second Step-Up Period in relation to the first Resource Park to achieve Service Availability; and
 - (b) the Full Service Period in relation to the second Resource Park to achieve Service Availability.
- 6.3.6 No Performance Deductions and Performance Points shall apply in respect of either Transfer Station prior to the PC Date for the Northern Resource Park.

6.4 **Indexation of PD**

- 6.4.1 The Performance Deduction amounts set out in Table 4 above shall be recalculated on the Commencement Date and on 1 April of each Contract Year thereafter (each an "Indexation Date") by multiplying each such amount by [REDACTED], of the "PD Index", calculated as follows:-

$$\text{PD Index} = 1 + \text{RPIF} + \text{AEIF} + \text{DFIF}$$

where:-

RPIF = the RPIX indexation factor determined in accordance with paragraph 6.4.2 below;

AEIF = the AEI indexation factor determined in accordance with paragraph 6.4.2 below; and

DFIF = the DFI indexation factor determined in accordance with paragraph 6.4.2 below.

- 6.4.2 For the purposes of paragraph 6.4.1 the indexation factor for each of RPIX, AEI and the DFI Index (in each case "I") shall be calculated as follows:-

$$I = \left(\frac{IF_n - IF_b}{IF_b} \right) \times TC_D$$

where:-

IF_n = the index figure for the relevant index published in respect of the February immediately prior to the Contract Year in which the relevant Indexation Date occurs;

IF_b = the index figure for the relevant index published in respect of the Base Date; and

TC_D = the percentage weighting for the relevant index as shown in Table 2 above for that index,

provided that if "I" is less than the figure calculated for "I" as at the immediately preceding Indexation Date (I_{n-1}) then I shall be deemed to be equal to I_{n-1}.

6.5 **Additional Mileage Deduction**

- 6.5.1 An Additional Mileage Deduction shall apply to each Interface Site that is Unavailable (as defined in paragraph 6.5.2 below), save that no Additional Mileage Deduction shall apply in respect of:-

- (a) the Resource Park which has not yet achieved Service Availability during the Second Step Up Period; and/or
- (b) any Transfer Station prior to the date of Practical Completion of the Northern Resource Park.

- 6.5.2 An Interface Site shall be Unavailable if it:-

- (a) is closed during the agreed Opening Hours; or
- (b) is unable to receive Contract Waste during the agreed Opening Hours; or
- (c) fails to meet Health and Safety Law obligations applicable to that Interface Site; or
- (d) in the case of either Transfer Station it is not constructed and completed by the PC Date for the Northern Resource Park.

- 6.5.3 Additional Mileage Deductions shall apply regardless of whether the Contractor puts in place alternative waste facilities in accordance with the Business Continuity Plan.

- 6.5.4 The Additional Mileage Deductions ("**AMD**") for each Contract Month m shall be the aggregate of the deductions calculated in accordance with the following formula in respect of each Interface Site which is Unavailable in that Contract Month m-3:-

$$\mathbf{AMD}_{IS} = (\mathbf{DD}_{(RCV)} * \mathbf{CTM} * \mathbf{MR}_{(RCV)}) + (\mathbf{DD}_{(nonRCV)} * \mathbf{CTM} * \mathbf{MR}_{(nonRCV)})$$

where:-

AMD_{IS} = the Additional Mileage Deduction calculated in respect of the relevant Interface Site;

DD_(RCV) = the total number of trips made by WCAs in refuse collection vehicles ("RCVs") in that Contract Month m-3 to the relevant Alternative Waste Facility on diversion from the Interface Site which is Unavailable;

DD_(nonRCV) = the total number of trips made by WCAs in vehicles other than RCVs ("Non-RCVs") in that Contract Month m-3 to the relevant Alternative Waste Facility on diversion from the Interface Site which is Unavailable;

CTM = the distance in miles above the normal distance that would have been travelled if the relevant Interface Site had been Available, as set out for the relevant Interface Site and Alternative Waste Facility in Appendix 7;

MR_(RCV) = the cost per mile for an RCV being [REDACTED] indexed from the Base Date in accordance with paragraph 6.7 below; and

MR_(nonRCV) is the cost per mile for a Non-RCV being one pound eighty five pence (£1.85) indexed from the Base Date in accordance with paragraph 6.7 below.

6.6 Limitations on Additional Mileage Deductions

No Additional Mileage Deductions may be made if, and to the extent that, it has been demonstrated to the reasonable satisfaction of the Authority that the Unavailability of the Interface Site is a direct result of an Excusing Cause.

6.7 Indexation of MR

The costs per mile for an RCV and Non-RCV respectively set out in paragraph 6.5 above shall be recalculated on the Commencement Date and on 1 April in each Contract Year thereafter (each an "Indexation Date") by multiplying such amounts by the "MR Index" calculated as follows:-

6.7.1 **MR Index = 1 + RPIF + AEIF + DFIF**

where:-

RPIF = the RPIx indexation factor determined in accordance with paragraph 6.7.2 below;

AEIF = the AEI indexation factor determined in accordance with paragraph 6.7.2 below;

DFIF = the DFI indexation factor determined in accordance with paragraph 6.7.2 below; and

6.7.2 For the purposes of paragraph 6.7.1 the indexation factor for RPIx, AEI and DFI respectively (in each case "I") shall be calculated as follows:-

$$I = \left(\frac{IF_n - IF_b}{IF_b} \right) \times TC_{MR}$$

where:-

IF_n = the index figure for the relevant index published in respect of the February immediately prior to the Contract Year in which the relevant Indexation Date occurs;

IF_b = the index figure for the relevant index published in respect of the Base Date; and

TC_{MR} = the percentage weighting for the relevant index, being:-

- (a) for RCVs, [REDACTED] for RPIx, [REDACTED] for AEI and [REDACTED] for DFI; and
- (b) for Non-RCVs, [REDACTED] for RPIx, [REDACTED] for AEI and [REDACTED] for DFI.

7. SRF SIX MONTHLY RECONCILIATION

7.1 Within twenty (20) Working Days after the end of each SRF Gainshare Period, the Contractor shall calculate the SRF Gainshare for such period and shall submit the Calculation with the SRF Six Monthly Reconciliation Report.

7.2 Prior to 1 April 2018, the SRF Gainshare shall be zero.

7.3 SRF Gainshare

7.3.1 Calculation of SRF Gainshare

The SRF Gainshare ("**SRFG**") shall be calculated as:-

SRFG = SRFT * GA

where:-

SRFT = the total actual tonnage of Acceptable SRF produced in the relevant SRF Gainshare Period provided that SRFT shall be capped at an amount equal to [REDACTED], of the total actual tonnage of Contract Waste which is Processed in the EcoDeco Plants in that SRF Gainshare Period; and

GA = SRFD * GP

where:-

SRFD = the SRF Differential, calculated in accordance with paragraph 7.3.2 below; and

GP = the Gainshare Percentage set out in column 2 of Table 5 below, in each case determined by reference to the corresponding band of the SRF Differential set out in column 1 of Table 5 (indexed in accordance with paragraph 7.4 below);

calculated on an aggregated cumulative basis such that where the SRF Differential is (for example):-

- (a) [REDACTED], the **GA** shall be [REDACTED]
- (b) [REDACTED] the **GA** shall be [REDACTED]; and
- (c) [REDACTED], the **GA** shall be [REDACTED].

For the avoidance of doubt **SRFG** can be either a negative or a positive figure.

TABLE 5	
SRF Differential (+/-)	Gainshare Percentage (Authority)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

7.3.2 The SRF Differential ("**SRFD**") shall be calculated as:-

$$\mathbf{SRFD} = \mathbf{SRFGF} - \mathbf{SRFB}$$

where:-

SRFGF = the SRF Gate Fee per tonne payable in respect of SRF Offtake Services in respect of that SRF Gainshare Period; and

SRFB = the SRF Base Fee.

For the avoidance of doubt **SRFD** can be either a negative or a positive figure.

7.4 **Indexation**

7.4.1 The SRF Base Fee and each figure set out in column 1 of Table 5 shall be indexed on 1 April 2018 and on 1 April each Contract Year thereafter (each an "Indexation Date") by multiplying each such figure by the "SRF Index" which shall be calculated as follows:-

$$\mathbf{SRF\ Index} = \mathbf{1 + RPIF + DFIF}$$

where:-

RPIF = the RPIx indexation factor determined in accordance with paragraph 7.4.2 below; and

DFIF = the DFI indexation factor determined in accordance with paragraph 7.4.2 below.

7.4.2 For the purposes of paragraph 7.4.1 the indexation factor for each of RPIx and DFI (in each case "I") shall be calculated as follows:-

$$I = \left(\frac{IF_n - IF_b}{IF_b} \right) \times TC_{SRF}$$

where:-

IF_n = the index figure for the relevant index published in respect of the February immediately prior to the Contract Year in which the relevant Indexation Date occurs;

IF_b = the index figure for the relevant index published in respect of the February immediately prior to the Base Date; and

TC_{SRF} = the percentage weighting for the relevant index, being [REDACTED] for RPIx and [REDACTED] for DFI.

8. FIRST ANNUAL RECONCILIATION

8.1 Within twenty (20) Working Days of the end of each Contract Year the Contractor shall calculate the First Annual Reconciliation for the previous Contract Year and submit the calculation with the Monthly Monitoring Report and MUC invoice for that month for payment in accordance with clause 26 of this Agreement.

8.2 The First Annual Reconciliation ("FAR") for any Contract Year is calculated as follows:-

$$\text{FAR} = \text{TR} + \text{PTR} + \text{LR} - \text{LD} + \text{LB} + \text{HRB} - \text{HRD} - \text{TPI} - \text{PDR} - \text{AMDR}$$

where:-

TR = Tonnage Reconciliation determined in accordance with paragraph 8.3 below;

PTR = Pass Through Reconciliation determined in accordance with 8.4 below;

LR = Landfill Reconciliation determined in accordance with paragraph 8.5.1 below;

LD = Landfill Deduction determined in accordance with paragraph 8.5.2 below;

LB = Landfill Bonus determined in accordance with paragraph 8.8 below;

HRB = Household Waste Recycling Centre Recycling and Composting Bonus determined in accordance with paragraph 8.9 below;

HRD = Household Waste Recycling Centre Recycling and Composting Deduction determined in accordance with paragraph 8.10 below;

TPI = Third Party Income determined in accordance with paragraph 8.11 below;

PDR = Performance Deduction Reconciliation determined in accordance with paragraph 8.12 below; and

AMDR = the Additional Mileage Deduction Reconciliation determined in accordance with 8.13 below.

For the avoidance of doubt FAR may be positive or negative.

8.3 Tonnage Reconciliation

8.3.1 In any Contract Month the Tonnage Based Element is calculated by reference to the actual tonnage of Contract Waste (excluding any Specific Waste Items) which is Received in the Contract Month falling three (3) months prior to that Contract Month. An annual reconciliation is required to reflect the actual tonnages that are Received in the Contract Year. Subject to paragraphs 8.3.4 and 8.3.6 below, in each Contract Year, the Tonnage Reconciliation shall be calculated as follows:-

$$\text{TR} = \text{TBA2} - \Sigma \text{T} + \text{CA} - \Sigma \text{C}$$

where:-

$$\text{TBA2} = (\text{BP1} * \text{TBY1}) + (\text{BP2} * (\text{ATCY} - \text{TBY1}))$$

where:-

BP1 = the tariff (£/t) for Tonnage Band 1 as specified in paragraph 8.3.3 for the relevant Contract Year, with the indexed element T Indexed in accordance with paragraph 3.7 above;

BP2 = the tariff (£/t) for Tonnage Band 2 as specified in paragraph 8.3.3, and T Indexed in accordance with paragraph 3.7 above;

TBY1 = the tonnage per Contract Year for Tonnage Band 1, as specified in paragraph 8.3.3; and

ATCY = the actual tonnage of Contract Waste (excluding Specific Waste Items and Commissioning Waste) which is Received by the Contractor in the relevant Contract Year, provided that if ATCY is less than TBY1 ATCY shall be deemed to be equal to TBY1; and

ΣT = the aggregate value of the Tonnage Based Elements calculated in accordance with paragraph 3 above paid by the Authority in each Contract Month in the relevant Contract Year LESS **ΣC**; and

CA = the aggregate of all C1 and C2 elements of the Tonnage Based Element as calculated in accordance with paragraph 3.3 (in respect of each Contract Month in the First Step Up Period) and paragraph 3.4 (in respect of each Contract Month in the Second Step Up Period) as applicable in respect of all Contract Months in the relevant Contract Year (but by reference in each case to the actual amount of Commissioning Waste which is Processed by the Contractor in each Contract Month m and not, for the avoidance of doubt, by reference to Contract Month m-3 or to Appendix 10);

ΣC = the aggregate of all C1 and C2 elements paid by the Authority as part of the Tonnage Based Element in respect of each Contract Month in the relevant Contract Year, as calculated in accordance with paragraph 3.3 (in respect of each Contract Month in the First Step Up Period) and paragraph 3.4 (in respect of each Contract Month in the Second Step Up Period) as applicable, by reference in each case to amounts of Commissioning Waste Processed by the Contractor in Contract Month m-3 or by reference to paragraph 1.2 and/or paragraph 1.3 of Appendix 10 where applicable.

8.3.2 For the avoidance of doubt TR may be positive or negative.

8.3.3 In determining the relevant tariff and maximum tonnage which should apply for the purposes of the calculation in paragraph 8.3.1:-

(a) during the Interim Period and the First Step-Up Period:-

- (i) the tariff for Tonnage Band 1 is that specified in the definition of "**BP1**" in paragraph 3.2 above;
- (ii) the tariff for Tonnage Band 2 is that specified in the definition of "**BP2**" in paragraph 3.2 above;
- (iii) the tonnage for Tonnage Band 1 is thirty thousand (30,000) tonnes, such tonnage to be reduced in the first Contract Year only on a pro-

rata basis to reflect the number of Contract Months in that Contract Year and the number of days in the first Contract Month.

(b) during the Second Step-Up Period:-

- (i) the tariff for Tonnage Band 1 is that specified in the definition of "BP1" in paragraph 3.4 above;
- (ii) the tariff for Tonnage Band 2 is that specified in the definition of "BP2" in paragraph 3.4 above;
- (iii) the tonnage for Tonnage Band 1 is seventy seven thousand five hundred (77,500) tonnes;

(c) during the Full Service Period:-

- (i) the tariff for Tonnage Band 1 is that specified in the definition of "BP1" in paragraph 3.5 above;
- (ii) the tariff for Tonnage Band 2 is that specified in the definition of "BP2" in paragraph 3.5 above;
- (iii) the tonnage for Tonnage Band 1 is [REDACTED], such tonnage to be reduced in the final Contract Year of the Contract Period only on a pro-rata basis to reflect the number of Contract Months in that Contract Year and the number of days in the final Contract Month.

8.3.4 Recalculations in Step Up Periods

In any Contract Year where any of the First Step-Up Period, the Second Step-Up Period and/or the Full Service Period commences (the first Contract Month of each such period being a "Step Up Month"), a separate reconciliation shall be calculated in respect of each of:-

- (a) the period from the start of the Contract Year up to and including the Contract Month immediately prior to the first (or only) Step Up Month to occur in that Contract Year; and
- (b) the period from the last (or only) Step Up Month to occur in that Contract Year until the end of that Contract Year; and
- (c) if applicable, where more than one Step Up Month occurs in that Contract Year, each period which falls between the Step Up Months within that Contract Year,

each such period being a "Reconciliation Period", and the Tonnage Reconciliation for that Contract Year shall be the aggregate of the reconciliation amounts calculated in respect of each Reconciliation Period in that Contract Year in accordance with paragraph 8.3.5.

8.3.5 For the purposes of paragraph 8.3.4, but subject to paragraph 8.3.6, the reconciliation amount in respect of any Reconciliation Period shall be calculated

in accordance with the formula set out in paragraph 8.3.1, but adjusted on the following basis:-

- (a) **TBY1** = the tonnage for Tonnage Band 1 for the Reconciliation Period shall be the relevant tonnage figure specified in paragraph 8.3.3 above for TBY1 (depending on which of the Interim Period, the First Step-Up Period, or the Second Step-Up Period, the Reconciliation Period relates to), divided by 12 and multiplied by the number of Contract Months falling within the Reconciliation Period; and
- (b) otherwise within the formula, references to “Contract Year” shall be replaced with “Reconciliation Period”.

8.3.6 Delay Period Adjustment

In calculating any Tonnage Reconciliation (either in accordance with paragraph 8.3.1 or 8.3.5 (as applicable)), any Contract Month falling within a Delay Period shall be disregarded in such calculation, such that:-

- (a) **ACTY** shall be the actual tonnage of Contract Waste (excluding Specific Waste Items and Commissioning Waste) which is Received by the Contractor in the relevant Contract Year LESS the tonnage of such Contract Waste which is Received during any Delay Period in that Contract Year, provided always that if ACTY is less than TBY1 (as adjusted under paragraph 8.3.6(b) below), ACTY shall be deemed to equal TBY1; and
- (b) **TBY1** shall be the relevant tonnage figure specified in paragraph 8.3.3 above for TBY1 (depending on which of the Interim Period, the First Step-Up Period, or the Second Step-Up Period, the Contract Year or Reconciliation Period (as applicable) relates to), divided by 12 and multiplied by the number of Contract Months falling within the Contract Year or Reconciliation Period (as applicable) which are not Delay Months; and
- (c) **ΣT** shall be the aggregate value of the Tonnage Based Elements calculated in accordance with paragraph 3 above paid by the Authority in each Contract Month in the relevant Contract Year or Reconciliation Period (as applicable) LESS ΣC and LESS any such Tonnage Based Elements paid in respect of a Delay Month; and
- (d) **ΣC** and **CA** shall each exclude any C1 or C2 element of the Tonnage Based Element calculated in respect of a Delay Month.

8.4 Pass Through Reconciliation

In any Contract Month the Pass Through Cost Element (save for National Non Domestic Rates) is calculated by reference to the following:-

- 8.4.1 in the case of Specific Waste Items, the Specific Waste Items received by the Contractor in the Contract Month falling three (3) months prior to that Contract Month;
- 8.4.2 in the case of Additional Opening Costs incurred by the Contractor in the Contract Month falling three (3) months prior to that Contract Month;

8.4.3 in the case of the Electricity Costs incurred by the Contractor in the Contract Month falling three (3) months prior to that Contract Month;

and an annual reconciliation shall be carried out to determine the actual Pass Through Cost Element that is incurred by the Contractor in each Contract Year. The Pass Through Reconciliation (“PTR”) shall be calculated as follows:-

$$\text{PTR} = \text{TSWR} + \text{AOCR} + \text{ECR}$$

where:-

TSWR is the Specific Waste Items Reconciliation calculated in accordance with paragraph 8.4.4 below;

AOCR is the Additional Opening Costs Reconciliation calculated in accordance with paragraph 8.4.5 below; and

ECR is the Electricity Costs Reconciliations calculated in accordance with paragraph 8.4.6 below.

8.4.4 In each Contract Year, the Specific Waste Items Reconciliation “**TSWR**” shall be calculated as follows:-

$$\text{TSWR} = \Sigma (\text{Vw} * \text{Pw}) - \Sigma \text{TSW} \text{ where:-}$$

Vw = the number of items of that Specific Waste Item type, or where that Specific Waste Item type is measured by weight (as determined by reference to the Table in Appendix 2) the amount in tonnes of that Specific Waste Item type, Received by the Contractor in the relevant Contract Year; and

Pw = the Specific Waste Item Price for the relevant Specific Waste Item type for that Contract Year.

where $\Sigma(\text{Vw} * \text{Pw})$ means the aggregate of $\text{Vw} * \text{Pw}$ calculated in respect of each Specific Waste Item type; and

ΣTSW = the aggregate of all Specific Waste Elements which were calculated in respect of each Contract Month m in the relevant Contract Year in accordance with paragraph 5.3 above by reference to Contract Month m-3.

8.4.5 In each Contract Year, the Additional Opening Costs Reconciliation (“**AOCR**”) shall be calculated as the total of all charges accrued in respect of availability of any Waste Management Facilities outside of the agreed Opening Hours in the relevant Contract Year (calculated on the basis of the rates set out in Appendix 3) LESS the aggregate of the Additional Opening Costs which were calculated in respect of each Contract Month m in the relevant Contract Year in accordance with paragraph 5.4 by reference to Contract Month m-3.

8.4.6 In each Contract Year, the Electricity Costs Reconciliation (“**ECR**”) shall be calculated as follows:-

$$\text{ECR} = \Sigma(\text{F}_r + (\text{EPU}_r * \text{V}_r * \text{WAPT}_r)) - \Sigma \text{EC} - \text{AUA}$$

where:-

F_r = the total fixed charges levied by the relevant electricity supplier in relation to the supply of electricity to an EcoDeco Plant under the relevant Purchase Agreement in respect of that Contract Year;

EPU_r = the estimated electricity consumption in kilowatt hours (KWhr) per tonne of Contract Waste as determined in accordance with Appendix 8 for the relevant Contract Year;

$WAPT_r$ = the Weighted Average Power Tariff for that Contract Year for that Resource Park, calculated on the basis set out in paragraph 5.5.2 but by reference to the relevant Contract Year (rather than an individual Contract Month);

V_r = the total actual volume (in tonnes) of Contract Waste which is Received by the Contractor at the relevant Resource Park in that Contract Year;

and

$\Sigma(F_r + (EPU_r * V_r * WAPT_r))$ means the aggregate of $(F_r + (EPU_r * V_r * WAPT_r))$ calculated in respect of each Resource Park;

ΣEC = the aggregate of Electricity Costs paid in each Contract Month during the relevant Contract Year; and

AUA = the Annual Utility Adjustment calculated in accordance with paragraph 3 of Appendix 8.

8.5 Landfill Reconciliation

8.5.1 In any Contract Month the Landfill Element is calculated by reference to the actual tonnage of Active Contract Waste which is Landfilled in the Contract Month falling three (3) months prior to that Contract Month. An annual reconciliation shall be carried out to reflect the actual tonnages that are Landfilled in the Contract Year. Subject to paragraph 8.5.3 the Landfill Reconciliation (LR) shall be calculated as follows:-

$$LR = \Sigma(CWLA_r * LT_r) + \Sigma(CWLS_r * LGFA_r) - \Sigma L$$

where:-

$CWLA_r$ = the total amount (in tonnes) of Active Contract Waste which is Landfilled by the Contractor in a Contract Month m;

LT_r = the prevailing rate in Contract Month m of Landfill Tax per tonne for Active Waste; and

$\Sigma(CWLA_r * LT_r)$ = the aggregate of the amount of $CWLA_r * LT_r$ calculated in respect of each Contract Month in the relevant Contract Year;

$CWLS_r$ = the total amount (in tonnes) of Active Contract Waste which is Landfilled by the Contractor at a Landfill Site in that Contract Year; and

LGFA_r = the gate fee per tonne payable in respect of the relevant Landfill Site determined in accordance with paragraph 4.5 above; and

Σ(CWLS_r * LGFA_r) = the aggregate of the amount of **CWLS_r*LGFA_r**, calculated in respect of each Landfill Site

ΣL = the aggregate of all Landfill Elements calculated in respect of each Contract Month in the relevant Contract Year in accordance with paragraph 4.3 above by reference to Contract Month m-3.

- 8.5.2 A deduction shall be applied if the actual tonnages of Active Contract Waste sent to Landfill by the Contractor exceed the Active Waste Standard target tonnages set out in Appendix 1. In each Contract Year, the Landfill Deduction ("**LD**") shall be calculated as follows:-

$$\mathbf{LD = LGD + LTD}$$

where:-

LGD = Landfill Gate Fee Deduction determined in accordance with paragraph 8.6 below; and

LTD = Landfill Tax Deduction determined in accordance with paragraph 8.7 below.

- 8.5.3 In calculating any Landfill Reconciliation in accordance with paragraph 8.5.1, any Landfill Gate Fee Deduction in accordance with paragraph 8.6, any Landfill Tax Deduction in accordance with paragraph 8.7 and/or any Landfill Bonus in accordance with paragraph 8.8, any Contract Month falling within a Delay Period shall be disregarded in such calculation such that:-

- (a) any Contract Waste which is Received and/or Landfilled by the Contractor in any such Contract Month shall be disregarded; and
- (b) the remaining Contract Months in the relevant Contract Year shall be deemed to comprise a full Contract Year.

8.6 **Landfill Gate Fee Deduction**

- 8.6.1 Subject to paragraph 8.5.3 above and paragraph 12 below, the Landfill Gate Fee Deduction in respect of any Contract Year ("**LGD**") shall be calculated as follows:-

$$\mathbf{LGD = ((ACWLA - SCWLA) * WALGF) - HRD}$$

where:-

ACWLA = the total amount (in tonnes) of Active Contract Waste which is Landfilled by the Contractor in the relevant Contract Year or, if lower, the Cumulative Active Waste Threshold calculated in respect of the final Contract Month in the relevant Contract Year;

SCWLA = the Active Waste Standard for the relevant Contract Year;

WALGF = the weighted average of the Landfill Gate Fee per tonne in the relevant Contract Year determined by reference to the proportions of the total amount of Active Contract Waste which are Landfilled by the Contractor in the relevant Contract Year at each Landfill Site and the applicable Landfill Gate Fees as described in paragraph 4.5; and

HRD = Household Waste Recycling Centre Recycling and Composting Deduction determined in accordance with paragraph 8.10 below (if any).

8.6.2 For the avoidance of doubt, if **LGD** is negative **LGD** shall be deemed to be zero.

8.7 Landfill Tax Deduction

8.7.1 Subject to paragraph 8.5.3 above and paragraph 12 below, the Landfill Tax Deduction in respect of any Contract Year ("**LTD**") shall be calculated as follows:-

$$\mathbf{LTD = (ACWLA - SCWLA) * LTA}$$

where:-

ACWLA = the total amount (in tonnes) of Active Contract Waste which is Landfilled by the Contractor in the relevant Contract Year or, if lower, the Cumulative Active Waste Threshold calculated in respect of the final Contract Month in the Contract Year;

SCWLA = the Active Waste Standard for the relevant Contract Year; and

LTA = the prevailing rate as at the commencement of the relevant Contract Year of Landfill Tax per tonne for Active Waste, capped at [REDACTED]. In the event that the prevailing rate changes during the course of a Contract Year, the rate for the purposes of this calculation shall be set on the basis of a mean prevailing rate over the Contract Year, taking account of the number of Months during the Contract Year that the rate was set at different levels, but subject always to a cap of [REDACTED].

8.7.2 For the avoidance of doubt, if **LTD** is negative **LTD** shall be deemed to be zero.

8.8 Landfill Bonus

8.8.1 Subject to paragraph 8.5.3 above and paragraph 8.8.4 below, a bonus will be payable to the Contractor for Landfilling less Active Contract Waste than allowed by the targets in Appendix 1. For each Contract Year, the Landfill Bonus ("**LB**") shall be calculated as follows:-

if:-

$$\mathbf{ACWLS > ACWLA, LB = (BS * LBR1) + (DCLM * LBR2) - HRB}$$

if:-

$$\mathbf{ACWLS < ACWLA, LB = 0}$$

where:-

ACWLS = Active Waste Standard for the relevant Contract Year;

ACWLA = the total amount (in tonnes) of Active Contract Waste which is Landfilled by the Contractor in the relevant Contract Year;

DCLM = the total amount (in tonnes) of stabilised fines produced at the Housed Windrow Stabilisation Facility at the relevant Resource Park and diverted from Landfill;

BS = **ACWLS – (ACWLA + DCLM)** and if **BS** is less than zero, **BS** is deemed to be zero;

LBR1 = the Landfill Bonus Rate calculated in accordance with paragraph 8.8.2 below;

LBR2 = the Landfill Bonus Rate calculated in accordance with paragraph 8.8.3 below; and

HRB = Household Waste Recycling Centre Recycling and Composting Bonus calculated in accordance with paragraph 8.9 (if any),

provided that if LB is less than zero, LB is deemed to be zero.

8.8.2 **LBR1** is calculated as follows:-

$$\mathbf{LBR1 = (LTBR + LGF) * 50\%}$$

where:-

LTBR = the lower of the prevailing rate in the relevant Contract Year of Landfill Tax per tonne for Active Waste and [REDACTED]; and

LGF = the weighted average of the Landfill Gate Fee per tonne for the Landfill Sites for the relevant Contract Year as determined by reference to the proportions of the total amount of Active Contract Waste which are Landfilled by the Contractor in the relevant Contract Year at each Landfill Site and the applicable Landfill Gate Fees, as described in paragraph 4.5 above.

8.8.3 **LBR2** is calculated as follows:-

$$\mathbf{LBR2 = (LTRB + LGF) * 25\%}$$

Where LTBR and LGF have the meanings ascribed to them in paragraph 8.8.2 above.

8.8.4 No Landfill Bonus shall be payable until the Contract Year commencing 1 April 2012.

8.9 **Household Waste Recycling Centre Recycling and Composting Bonus**

8.9.1 Subject to paragraph 8.9.3, a Household Waste Recycling Centre Recycling and Composting Bonus may be payable to the Contractor for exceeding the recycling and composting targets in Appendix 4 across the HWRC Network. The Household Waste Recycling Centre Recycling and Composting Bonus shall

be calculated prior to the Landfill Bonus. For each Contract Year, the Household Waste Recycling Centre Recycling and Composting Bonus (“**HRB**”) shall be calculated as follows:-

$$\mathbf{HRB} = \mathbf{AHWRC} * (\mathbf{AR} - \mathbf{TR}) * \mathbf{BR}$$

where:-

AHWRC = Tonnage of Contract Waste (other than Inactive Waste) which is Received at the HWRC Network in the relevant Contract Year;

AR = Actual HWRC Recycling and Composting Rate in the relevant Contract Year;

TR = HWRC Target Recycling and Composting Rate in the relevant Contract Year;

BR = HWRC recycling and composting bonus rate of [REDACTED] (RPIX Indexed).

8.9.2 If **HRB** is less than zero **HRB** shall be deemed to be zero.

8.9.3 No Household Waste Recycling Centre Recycling and Composting Bonus shall be payable until the Contract Year commencing 1 April 2012.

8.10 Household Waste Recycling Centre Recycling and Composting Deduction

8.10.1 Subject to paragraph 8.10.3, a Household Waste Recycling Centre Recycling and Composting Deduction will be made if the Contractor fails to achieve the recycling and composting targets in Appendix 4 across the HWRC Network. For each Contract Year, the Household Waste Recycling Centre Recycling and Composting Deduction (“**HRD**”) shall be calculated as follows:-

$$\mathbf{HRD} = (\mathbf{AHWRC} * (\mathbf{TR} - \mathbf{AR})) * \mathbf{BD}$$

where:-

AHWRC = Tonnage of Contract Waste (other than Inactive Waste) which is Received at the HWRC Network in the relevant Contract Year;

AR = Actual HWRC Recycling and Composting Rate in the relevant Contract Year;

TR = HWRC Target Recycling and Composting Rate in the relevant Contract Year;

BD = HWRC recycling and composting deduction rate of [REDACTED] (RPIX Indexed).

8.10.2 If **HRD** is less than zero **HRD** shall be deemed to be zero.

8.10.3 For the first three Relevant Years, the calculation of **AHWRC** shall include Inactive Waste within the calculation of tonnage of Contract Waste Received at the HWRC Network.

8.11 **Third Party Income**

8.11.1 In each Contract Year, the Third Party Income (“TPI”) shall be calculated as follows:-

$$\text{TPI} = \text{SR} * 50\%$$

where:-

SR = the amount by which the total revenue received by the Contractor in the relevant Contract Year from the sale of recyclable material derived from Contract Waste (but not, for the avoidance of doubt, Third Party Waste) exceeds [REDACTED] (RPIx Indexed).

8.11.2 The sharing of information regarding Third Party Income shall be done on an open book basis.

8.12 **Performance Deduction Reconciliation**

8.12.1 The level of Performance Deduction incurred in any Contract Month is capped at [REDACTED] of the Tonnage Based Element for that Contract Month. A Performance Deduction Reconciliation is required annually. The Performance Deduction Reconciliation (“PDR”) shall be calculated as follows:-

$$\text{PDR} = \text{AD} - \text{CD}$$

where:-

AD = the aggregate of all Performance Deductions accrued in respect of Performance Failures occurring in the relevant Contract Year, provided that AD shall be capped at an amount equal to [REDACTED] of the aggregate of all Tonnage Based Elements calculated in respect of all Contract Months in that Contract Year; and

CD = the sum of the monthly Performance Deductions calculated pursuant to paragraph 6.1 above (and subject to the cap at paragraph 6.1.2 above) in respect of each Contract Month in that Contract Year.

8.12.2 For the avoidance of doubt, **PDR** shall always be positive or zero.

8.13 **Additional Mileage Deduction Reconciliation**

8.13.1 The Additional Mileage Deduction Reconciliation (“AMDR”) shall be calculated as follows:-

$$\text{AMDR} = \sum \text{AAMD} - \sum \text{MCAMD}$$

where:-

$\sum \text{AAMD}$ = the aggregate of the Additional Mileage Deductions calculated in accordance with paragraph 6.5 above in respect of all Contract Months in the relevant Contract Year (by reference in each case to that Contract Month m and not Contract Month m-3);

Σ **MCAMD** = the aggregate of the Additional Mileage Deductions calculated in accordance with paragraph 6.5 above in respect of all Contract Months in the relevant Contract Year (by reference in each case to Contract Month m-3).

8.13.2 For the avoidance of doubt, **AMDR** can be positive or negative.

9. SECOND ANNUAL RECONCILIATION

9.1 In any Contract Year, within twenty (20) Working Days of the end of a LATS Trading Year, the Contractor shall calculate the Second Annual Reconciliation for the previous Contract Year and submit the Second Annual Recalculation Report and MUC invoice for that Contract Month.

9.2 The Second Annual Reconciliation Payment is calculated as follows:-

$$\mathbf{SAR = BDB + BDD + ABCWD + KTAA}$$

where:-

BDB = BMW Diversion Bonus Payment.

BDD = BMW Diversion Deduction.

ABCWD = Additional Biodegradable Contract Waste Deduction.

KTAA = any Key Target Adjustment Amount pursuant to paragraph 11.5 of this Schedule 5.

For the avoidance of doubt **SAR** may be positive or negative.

9.3 The Authority will be responsible for securing receipt of its allocation of Tradable Permits and for procuring any additional Tradable Permits required during the Contract Period. No responsibilities in relation to Tradable Permits will transfer to the Contractor.

9.4 BMW Diversion Bonus

9.4.1 A BMW Diversion Bonus Payment will be payable to the Contractor for Landfilling less Biodegradable Contract Waste than allowed by the targets in Appendix 5. For each Contract Year, subject to paragraph 9.4.3, the BMW Diversion Bonus ("BDB") shall be calculated as follows:-

if:-

$$\mathbf{BCWBT > BCWA}$$

$$\mathbf{BDB = ((BCWBT - (BCWA + DCLM)) * 50\% * GSLP) + (DCLM * 25\% * GSLP)}$$

$$\mathbf{\text{and if } BCWBT < BCWA, BDB = 0}$$

where:-

BCWBT = Biodegradable Contract Waste Landfill Tonnage Bonus Threshold for the relevant Contract Year;

BCWA = Tonnage of Biodegradable Contract Waste (excluding Specific Waste Items, any Commissioning Waste and Untreated Landfill Waste) which is Landfilled from the Resource Parks by the Contractor in the relevant Contract Year;

DCLM = the total amount (in tonnes) of stabilised fines produced at the Housed Windrow Stabilisation Facility at the relevant Resource Park and diverted from Landfill;

GSLP = Gainshare LATS Price.

9.4.2 If **BDB** is less than zero **BDB** shall be deemed to be zero.

9.4.3 The BMW Diversion Bonus Payment shall only apply from the Second Step-Up Period (as defined in paragraph 3 of this Schedule).

9.5 **BMW Diversion Deduction**

9.5.1 A BMW Diversion Deduction will be made for the Contractor Landfilling more Biodegradable Contract Waste than allowed by the targets in Appendix 5. In each Contract Year, subject to paragraph 9.5.3 and paragraph 12, the BMW Diversion Deduction (“BDD”) shall be calculated as follows:-

$$\mathbf{BDD = (BCWDT - BCWA) * LPP}$$

where:-

BCWDT = Biodegradable Contract Waste Landfill Tonnage Deduction Threshold for the relevant Contract Year;

BCWA = Tonnage of Biodegradable Contract Waste (excluding Specific Waste Items, any Commissioning Waste and Untreated Landfill Waste) which is Landfilled by the Contractor from the Resource Parks in the relevant Contract Year;

LPP = the Average Price of LATS for the relevant Contract Year, capped at (*FIGURE REDACTED*) per tonne.

9.5.2 For the avoidance of doubt, BDD will be negative or deemed to be zero.

9.5.3 The BMW Diversion Deduction shall only apply from the start of the Second Step Up Period (as defined in paragraph 3 of this Schedule).

9.6 **Additional Biodegradable Contract Waste Deduction**

9.6.1 Subject to paragraph 9.6.3 and paragraph 12, if the Authority is required to purchase LATS as a result of the tonnage of Biodegradable Contract Waste (excluding Specific Waste Items, any Commissioning Waste and Untreated Landfill Waste) which is Landfilled by the Contractor in a Contract Year exceeding the Biodegradable Contract Waste Landfill Tonnage Deduction Threshold for that Contract Year, and the price actually paid by the Authority for the purchase of such LATS is more than **LPP**, then (provided the Authority takes all reasonable steps to mitigate the Contractor’s liability under this paragraph 9.6.1) an additional deduction, **ABCWD**, shall apply as follows:-

where:-

$$\mathbf{BCWA > ALT, ABCWD = (ALPP - LPP) * (BCWA - ALT)}$$

where:-

ALPP = Actual LATS purchase price incurred by the Authority in purchasing additional LATS Allowances as a result of the Contractor failing to achieve the Biodegradable Contract Waste Standard, capped at [REDACTED] per tonne;

ALT = either:-

- (a) the Authority's LATS Target for the relevant Contract Year; or
- (b) the Biodegradable Contract Waste Landfill Tonnage Deduction Threshold for the relevant Contract Year;

whichever is the higher; and

LPP and **BCWA** have the meaning ascribed in paragraph 9.5.1 above.

9.6.2 For the avoidance of doubt, **ABCWD** will be negative or deemed to be zero.

9.6.3 Save as provided in paragraph 9.6.4, the Additional Biodegradable Contract Waste Deduction shall only apply from the start of the Second Step Up Period (as defined in paragraph 3 of this Schedule).

9.6.4 If and to the extent that:-

- (a) the tonnage of Biodegradable Contract Waste (excluding Specific Waste Items, any Commissioning Waste and Untreated Landfill Waste) which is Landfilled by the Contractor in a Contract Year exceeds the Biodegradable Contract Waste Landfill Tonnage Deduction Threshold for that Contract Year as a direct result of the Contractor failing to achieve Service Availability in respect of a Resource Park on or before the Target Service Availability Date for that Resource Park; and, as a direct result

- (b) the Authority is required to purchase LATS,

then (provided and to the extent that the Authority takes all reasonable steps to mitigate the Contractor's exposure under this paragraph 9.6) the Contractor shall be responsible for the actual LATS purchase price incurred by the Authority in purchasing additional LATS Allowances as a direct result of such failures, capped at [REDACTED] per tonne and such amount shall be deemed to be an Additional Biodegradable Contract Waste Deduction for the purposes of paragraph 9.1.

10. THIRD ANNUAL RECONCILIATION

- 10.1 Within twenty (20) Working Days of the first Scheduled Calculation Date (as defined in the Loan Agreement) ("Distribution Date") to occur following the completion of the Second Annual Reconciliation, the Contractor shall calculate the Third Annual Reconciliation in respect of the last Contract Year ending prior to that Distribution Date and shall submit the Third Annual Reconciliation Report.
- 10.2 The Third Annual Reconciliation in respect of any Contract Year shall, subject to paragraph 10.6, be an amount equal to the Authority's gross profit share for the relevant Contract Year calculated in accordance with paragraph 10.3 below.
- 10.3 The Authority's gross profit share for any Contract Year is the aggregate of the profit share amounts calculated by multiplying each band of the Excess Profit Amount by the corresponding profit share percentage as set out in Table 6 below.
- 10.4 The Excess Profit Amount is the amount by which the Actual Net Operating Profits ("ANOP") in respect of the relevant Contract Year exceed the Target Net Operating Profits ("TNOP") in respect of that Contract Year, such excess being expressed as a percentage of the Target Net Operating Profits.

TABLE 6	
Band of Excess Profit Amount	Profit Share Percentage
0% - 10% of TNOP	██████████
10% to 25% of TNOP	██████████
25% to 40% of TNOP	██████████
40% to 50% of TNOP	██████████
Above 50% of TNOP	██████████

10.5 By way of example, and for illustrative purposes only, if the Actual Net Operating Profit (ANOP) in a Contract Year is ██████████, and the Target Net Operating Profit (TNOP) for that Contract Year is ██████████,

10.5.1 the Excess Profit Amount would be calculated as:-

██████████, and

10.5.2 the profit share amount for each band, and the Third Annual Reconciliation amount ("TAR"), would be:-

TNOP	██████████,
ANOP	██████████,

Excess Profit [REDACTED],			TAR [REDACTED],	
Lower Band	Upper Band Capped at Excess Profit	Profit Share for Band	Profit Share Percentage	Profit Share Amount
[REDACTED],	[REDACTED],	[REDACTED],	[REDACTED],	-
[REDACTED],	[REDACTED],	[REDACTED],	[REDACTED],	[REDACTED],
[REDACTED],	[REDACTED],	[REDACTED],	[REDACTED],	[REDACTED],
[REDACTED],	-	[REDACTED],	[REDACTED],	[REDACTED],
[REDACTED],	-	[REDACTED],	[REDACTED],	[REDACTED],
			TAR	[REDACTED],

10.6 The Authority's gross profit share (if any) calculated as aforesaid shall only be payable to the Authority as a Third Annual Reconciliation in respect of a Contract Year if the Contractor is permitted, in accordance with the terms of the Senior Financing Agreements, to transfer in respect of the Distribution Date immediately following the end of the Contract Year to the Distribution Account an amount which exceeds the aggregate of all amounts due to the Subordinated Lenders under the Subordinated Financing Agreements in respect of that Distribution Date and in respect of any prior date which remains unpaid,

in which case such amount shall be applied in the following order of priority and the Authority's gross profit share shall only be payable to the extent such amount is sufficient to make the payment in accordance with the following priorities:

10.6.1 firstly, for transfer to the Distribution Account to make payment of all amounts due to the Subordinated Lenders under the Subordinated Financing Agreements in respect of that Distribution Date, and in respect of any prior date which remains unpaid; and

10.6.2 secondly, the balance (after the transfer to the Distribution Account of the amount in accordance with paragraph 10.6.1) shall be applied in payment to the Authority of unpaid Third Annual Reconciliations in respect of previous Distribution Dates and transfer to the Distribution Account of an amount equal to all amounts of the Remaining Profit in respect of those previous Distribution Dates, and where such balance is not sufficient it shall be applied pro rata between the said amounts of unpaid Third Annual Reconciliations and the same amounts of Remaining Profit; and

- 10.6.3 thirdly, the balance after application in full in accordance with paragraph 10.6.2 on a pari passu and pro rata basis, in payment of the Third Annual Reconciliation to the Authority and the transfer of the Remaining Profit to the Distribution Account, in each case in respect of that Distribution Date.
- 10.7 Any amount of the Third Annual Reconciliation which would, but for paragraph 10.6, be payable, but which is unpaid pursuant to paragraph 10.6, shall be carried forward to the Distribution Date in respect of the following Contract Year and (subject to satisfying the conditions of paragraph 10.6 at that time) paid as unpaid amounts of Third Annual Reconciliation under paragraph 10.6.2.

11. ADJUSTMENTS TO KEY TARGETS

- 11.1 Subject to paragraphs 11.3 and 11.6, if and to the extent that the Contractor has:-
- 11.1.1 Landfilled any Active Contract Waste in excess of the Active Waste Standard and/or
 - 11.1.2 Landfilled any Biodegradable Contract Waste in excess of the Biodegradable Contract Waste Landfill Tonnage Deduction Threshold; and/or
 - 11.1.3 failed to achieve the HWRC Target Recycling and Composting Rate,
- (the Active Waste Standard, the Biodegradable Contract Waste Landfill Tonnage Deduction Threshold and the HWRC Target Recycling and Composting Rate collectively being the "Key Targets", and such circumstances collectively being referred to in this paragraph 11 as a "failure to achieve the Key Targets") as a result of an Excusing Cause (other than limb (b) of the Excusing Cause definition), then the affected Key Targets shall each be adjusted so as to ensure that the Contractor is no better and no worse off as a result so that the Contractor is deemed to have met (but not exceeded) such Key Target.
- 11.2 To claim an adjustment under this paragraph 11 the Contractor shall submit to the Authority a notice (an "EC Notice") stating that an Excusing Cause has occurred and that it has adversely affected the Contractor's ability to achieve any of the Key Targets and setting out the resulting adjustment required to these Key Targets.
- 11.3 For relief claimed by the Contractor due to an Excusing Cause under paragraph 11.1 above, the Contractor must submit evidence to the Authority of the impact of the Excusing Cause on the Key Targets within four (4) months of the date on which the Excusing Cause for which relief or an adjustment is claimed occurred.
- 11.4 The Key Targets as adjusted shall be the Key Targets for the purposes of the First Annual Reconciliation and the Second Annual Reconciliation as applicable and for the purpose of determining any Target Failure Default in respect of such Contract Year.
- 11.5 If an EC Notice is only received (or the extent of the adjustment required is only determined) after the First Annual Reconciliation has been carried out, then provided such notice is provided by the Contractor within the timescale set out in paragraph 11.3, the First Annual Reconciliation shall be recalculated on the basis of the adjusted Key Targets and the difference between the two calculations shall be included as a Key Target Adjustment Amount ("KTAA") in the calculation of the Second Annual Reconciliation.
- 11.6 The Contractor shall take all reasonable steps to mitigate the consequences of an Excusing Cause on the Contractor's ability to perform its obligations under this Agreement without incurring material expenditure. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to, and shall not receive, the relief specified in paragraph 11.1.

12. CAP ON DEDUCTIONS DUE TO CWM DEFAULT

12.1 In the event of termination of the Flusco TS Contract for CWM Default, any Deductions incurred by the Contractor in the period following termination of such contract and prior to either:-

12.1.1 transfer station services under a replacement contract for the Flusco TS Contract having commenced with an alternate merchant transfer station provider and a Change being completed to reflect such alternative provision; or

12.1.2 the Contractor (or the Operating Contractor itself) making alternative provision for the storage and transfer of Contract Waste and a Change being completed to reflect such alternative provision,

shall be capped on a cumulative (not monthly) basis at [REDACTED], (RPIx Indexed). The definition of Deductions in this context shall include not only Performance Deductions and Additional Mileage Deductions, but also any adjustments and reconciliations set out in paragraphs 8 and 9 of this Schedule.

12.2 In the event of termination of the Distington TS Contract for CWM Default, any Deductions incurred by the Contractor in the period following termination of such contract and prior to either:-

12.2.1 transfer station services under a replacement contract for the Distington TS Contract having commenced with an alternate merchant transfer station provider and a Change being completed to reflect such alternative provision; or

12.2.2 the Contractor (or the Operating Contractor itself) making alternative provision for the storage and transfer of Contract Waste and a Change being completed to reflect such alternative provision,

shall be capped on a cumulative (not monthly) basis at [REDACTED] (RPIx Indexed). The definition of Deductions in this context shall include not only Performance Deductions and Additional Mileage Deductions, but also any adjustments and reconciliations set out in paragraphs 8 and 9 of this Schedule.

12.3 Any Deductions (and Performance Points) levied in respect of the period following termination of either the Flusco TS Contract or the Distington TS Contract for CWM Default and the commencement of the event described in paragraphs 12.1.1 or 12.1.2, or 12.2.1 or 12.2.2 (as applicable) shall be ignored for the purposes of calculation of the termination thresholds contained in limbs (k) and (l) of the definition of Contractor Default contained in the main body of this Agreement.

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 1 - Active Waste Standard

1. The Active Waste Standard (in tonnes) shall be calculated as:-

$$\mathbf{A + B + C}$$

where:-

A is the "HWRC Landfill Target Tonnage" calculated in accordance with paragraph 2 below;

B is the total amount (in tonnes) of Untreated Landfill Waste which is Received by the Contractor in the relevant Contract Year; and

C is the "ITS Landfill Target Tonnage" calculated in accordance with paragraph 3 below.

- 2.

- 2.1 Subject to paragraphs 2.2 and 2.3 below the HWRC Landfill Target Tonnage ("**HLTT**") is calculated as:-

$$\mathbf{HLTT = AHWRC * (1-TR)}$$

where:-

AHWRC = tonnage of Contract Waste (other than Inactive Waste and Specific Waste Items) which is Received at the HWRC Network in the relevant Contract Year; and

TR = HWRC Target Recycling and Composting Rate for the relevant Contract Year.

- 2.2 For the first three (3) Relevant Years the calculation of AHWRC referred to in paragraph 2.1 above shall include any Inactive Waste Received at the HWRC Network.

- 2.3 For the first five (5) Relevant Years the calculation of AHWRC referred to in paragraph 2.1 above shall include any Specific Waste Items Received at the HWRC Network.

3. The ITS Landfill Target Tonnage ("**ILTT**") is calculated as:-

$$\mathbf{ILTT = ITST * ITSR}$$

where:-

ITST is the total amount (in tonnes) of Contract Waste (excluding Untreated Landfill Waste and Specific Waste Items) which is Received by the Contractor in the relevant Contract Year at the Interface Sites; and

ITSR is the ITS Reduction Factor for the relevant Contract Year, determined by reference to Table 1 below:-

Table 1	
Contract Year	ITS Reduction Factor
1	████████████████████,
2	████████████████████,
3	████████████████████,
4	████████████████████,
5 (onwards)	████████████████████,

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 2 - Specific Waste Items

1. Items listed in column 1 of Table 1 of this Appendix 2 below which are Received by the Contractor shall be Specific Waste Items if they are delivered:-
 - 1.1 by any party, other than an Authority Related Party, to any HWRC; or
 - 1.2 by any Authority Related Party, other than where any such items are Received by the Contractor co-mingled with other Contract Waste.
2. Items listed in column 1 of Table 2 of this Appendix 2 below which are Received by the Contractor, co-mingled with other Contract Waste and delivered by any Authority Related Party, shall be Specific Waste Items.
3. All transport cost is included within a Specific Waste Item Price below, except where expressly stated otherwise.
4. Where a Specific Waste Item Price is described as “cost plus”, this means a cost of gate fee only may be charged and only if any charge is supported by documentary evidence that a cost has been reasonably and properly incurred.
5. Landfill Tax may only be charged to the Authority on those Specific Waste Items that are marked with an asterisk in Table 1 and/or Table 2 below, such Landfill Tax to be added into the calculation of “TSW” pursuant to paragraph 5.3 of this Schedule as part of the Specific Waste Item Price for those Specific Waste Items.

Table 1	
Column 1	Column 2
Specific Waste Item	Specific Waste Item Price
Animal Carcasses – small (<=25kg) Animal Carcasses – medium (>25kg ;<500kg) Animal Carcasses – large (>=500kg)	██████████, per carcass (if rendered) ██████████, per carcass (if rendered) ██████████, per carcass (if rendered) No charge will be made if carcass is Landfilled
Batteries (domestic)	██████████,
Batteries (automotive)	██████████,
Boats*	██████████, per tonne (one (1) tonne minimum charge)
Bonded Asbestos Waste	██████████,
Caravans*	██████████, per tonne (one (1) tonne minimum charge)
Clinical Waste (general)*	██████████, per tonne (if Landfilled) ██████████, (if unable to be Landfilled)
Gypsum	██████████,

Table 1

Column 1	Column 2
Specific Waste Item	Specific Waste Item Price
Hazardous Waste not included in other categories (this includes, but is not limited to:- paints and solvents, household and garden chemicals, laboratory chemicals, fly-tipped hazardous waste)	██████████, (unless delivered to Distington Transfer Station) ██████████
Oily Beach Waste*	██████████, per tonne
Trailers*	██████████, per tonne (one (1) tonne minimum charge)
Tyres with or without rims	██████████, per tyre
Used gas bottles	██████████,
Used Oils	██████████,
Waste arising under WCA and WDA obligations arising from Emergency Planning Legislation	Price on request
WEEE including:- <ul style="list-style-type: none"> • refrigerators and freezers and other household appliances that contain Ozone-Depleting Substances (“ODS”) • televisions and monitors • fluorescent tubes • household appliances, which is categorised also as Bulky Waste • all other WEEE 	██████████,
Fire extinguishers	██████████,
Toner cartridges	██████████,
Radioactive material (excluding smoke alarms)	Price on request
Petrol or other inflammable fuels	██████████,
Fireworks	██████████,
Flares	██████████,
Bombs and unexploded ordnance	Price on request
Dirty, contaminated and man-made wood	██████████,
Clean wood	██████████,

Table 2	
Column 1	Column 2
Specific Waste Item	Specific Waste Item Price
Animal Carcasses – large ($\geq 500\text{kg}$)	██████████, per carcass (if rendered) No charge will be made if carcass is Landfilled
Batteries (automotive) (above six per RCV load)	██████████,
Bonded Asbestos Waste	██████████,
Clinical Waste (general) if in identifiable clinical waste bag or container	██████████, per tonne (if Landfilled) ██████████ (if unable to be Landfilled)
Tyres with or without rims (subject to a de minimis of two per RCV load)	██████████ per tyre
Used gas bottles	██████████,
Waste arising under WCA and WDA obligations arising from Emergency Planning Legislation	Price on request
Refrigerators and freezers and other household appliances that contain Ozone-Depleting Substances (“ODS”) Large household WEEE appliances	██████████,
Fire extinguishers	██████████,
Radioactive material (except smoke alarms)	Price on request
Petrol or other inflammable fuels	██████████,
Fireworks	██████████,
Flares	██████████,
Bombs and unexploded ordnance	Price on request

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 3 - Additional Opening Costs

1. The rates for making available any of the Waste Management Facilities or Interface Sites outside of the Opening Hours for that Waste Management Facility or Interface Site shall be as follows:-

1.1 in respect of a Resource Park:-

1.1.1 for a period of up to four (4) hours, an hourly rate of [REDACTED], plus VAT per hour;

1.1.2 for a period of four (4) or more hours but less than five (5) hours, a half day rate of [REDACTED], plus VAT; and

1.1.3 for a period of five (5) or more hours but less than nine (9) hours, a daily rate of [REDACTED], plus VAT;

1.2 in respect of a HWRC:-

(ALL FIGURES REDACTED),	No. Operatives on site			
	2	3	4	5
1-4 hours extra per hour on site				
4-6 hours extra per hour on site				
Per extra day (up to 10 hours on site)				

1.3 Subject to paragraph 3 below, in respect of a Transfer Station or Landfill Site:-

(ALL FIGURES REDACTED),	No. Operatives on site		
	2	3	4
1-4 hours extra per hour on site			
4-6 hours extra per hour on site			
Per extra day (up to 8 hours on site)			

2. All rates in respect of Resource Parks in this Appendix 3 shall be exclusive of VAT and shall be recalculated on the Commencement Date and on each 1 April thereafter (each an "Indexation Date") by multiplying such rates by the AEI Index calculated as:-

$$AEI \text{ Index} = 1 + \left(\frac{IF_n - IF_b}{IF_b} \right)$$

where:-

IF_n = the index figure for AEI published in respect of the February immediately prior to the Contract Year in which the relevant Indexation Date occurs; and

IF_b = the index figure for AEI published in respect of the Base Date,

provided that if the AEI Index figure is less than the figure calculated for the AEI Index as at the immediately preceding Indexation Date (AEI Index n-1) then AEI Index shall be deemed to be equal to AEI Index n-1.

3. All rates in respect of HWRCs, Transfer Stations and Landfill Sites in this Appendix 3 shall be exclusive of VAT and shall be recalculated on the 1 April 2010 and on each 1 April thereafter (each an "Indexation Date") by multiplying such rates by the AEI Index calculated as:-

$$\text{AEI Index} = 1 + \left(\frac{\text{IF}_n - \text{IF}_b}{\text{IF}_b} \right)$$

where:-

IF_n = the index figure for AEI published in respect of the February immediately prior to the Contract Year in which the relevant Indexation Date occurs; and

IF_b = the index figure for AEI published in respect of February 2009,

provided that if the AEI Index figure is less than the figure calculated for the AEI Index as at the immediately preceding Indexation Date (AEI Index n-1) then AEI Index shall be deemed to be equal to AEI Index n-1.

4. The rates for making available a Landfill Site outside of the Opening Hours for direct delivery by the Authority or an Authority Related Party shall be as set out in paragraph 1.3 above for the first five (5) Relevant Years and thereafter shall be as determined in accordance with the Market Review Exercise or the Market Testing exercise (as the case may be) to be carried out in respect of the Landfill Service pursuant to Clause 27B of this Agreement.

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 4 - HWRC Target Recycling and Composting Rate

Contract Year	HWRC Target Recycling and Composting Rate (%)
1	██████████,
2	██████████,
3 (onwards)	60%

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 5 - Biodegradable Contract Waste Landfill Tonnage Target

1. The Biodegradable Contract Waste Landfill Tonnage Bonus Threshold ("**BCWBT**") for each Contract Year shall be calculated as follows:-

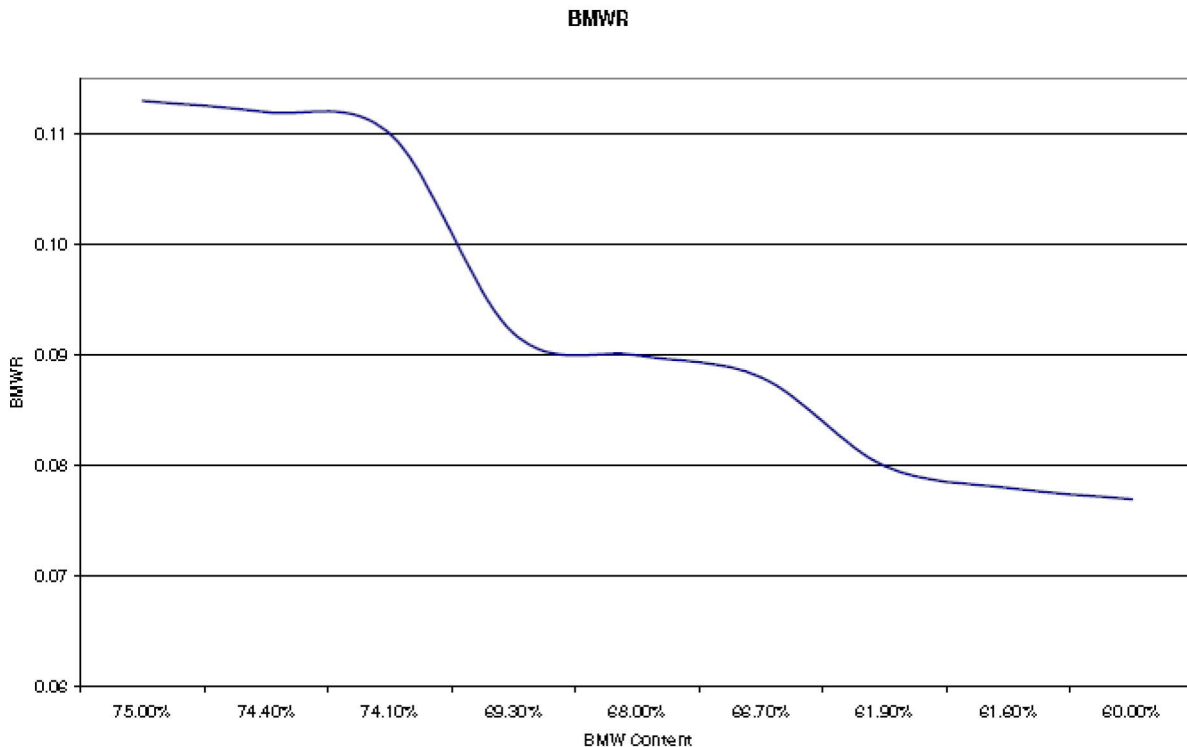
$$\text{BCWBT} = \text{ITST} * \text{BMWIA} * (\text{BMWR} - 0.1)$$

where:-

ITST is the total amount (in tonnes) of Contract Waste (excluding Untreated Landfill Waste, any Commissioning Waste and Specific Waste Items) Received by the Contractor in the relevant Contract Year at an Interface Site;

BMWR is the BMW Reduction Factor for the relevant Contract Year, which shall be:-

- 1.1 for each of the first three (3) Contract Years following the Commencement Date, 0.09; and
- 1.2 for each Contract Year thereafter, determined in accordance with the graph set out below by reference to the applicable BMWIA for that Contract Year; and



BMWIA is the BMW Input Assumption, being the proportion of Contract Waste (excluding Specific Waste Items, any Commissioning Waste and Untreated Landfill Waste) Received at an Interface Site which is deemed to be Biodegradable Contract Waste, which shall for each of the first three (3) Contract Years following the Commencement Date be 0.68 and shall thereafter be determined in accordance with clause 6.5 of this Agreement.

Provided that if BCWBT is a negative number, BCWBT shall be deemed to be zero.

2. The Biodegradable Contract Waste Landfill Tonnage Deduction Threshold ("**BCWDT**") for any Contract Year shall be calculated as follows:-

$$\mathbf{BCWDT = ITST * BMWIA * (BMWR + 0.1)}$$

where ITST, BMWIA and BMWR each have the meaning given in paragraph 1 above.

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 6 – Delay Reconciliation

1. LATE DELIVERY OF A RESOURCE PARK

- 1.1 If the Service Availability Date for a Resource Park (the "Late Resource Park") is not achieved by the end of the Contract Month in which the Target Service Availability Date for that Resource Park occurs ("Target SA Month"), then a reconciliation ("Delay Reconciliation" or "DR") shall be calculated as follows:-

$$\mathbf{DR = MDTR - MDRR - MTE - ETA}$$

where:-

- 1.1.1 **MDTR** is the Monthly Delay Tonnage Reconciliation, calculated in accordance with paragraph 1.2 below;
- 1.1.2 **MDRR** is the Monthly Delay Regime Reconciliation, calculated in accordance with paragraph 1.3 below;
- 1.1.3 **MTE** = the management fee element of "T", calculated in accordance with paragraph 1.5 below; and
- 1.1.4 **ETA** = the excess tax amount, calculated in accordance with paragraph 1.6 below.
- 1.2 **MDTR** shall be undertaken for the sole purpose of reconciling the Tonnage Based Element and the Landfill Element to the Contract Months in the Delay Period and shall be calculated as follows:-

$$\mathbf{MDTR = (\Sigma T_A + \Sigma L_A) - (\Sigma T_D + \Sigma L_D)}$$

where:-

- 1.2.1 **T_A** is the Tonnage Based Element calculated in respect of a Contract Month (a "Delay Month") falling within a Delay Period:-
- (a) in accordance with paragraph 3.3 in respect of any Contract Month:-
 - (i) in respect of which only one Resource Park is a Late Resource Park (the other Resource Park being the "Other Resource Park"); and
 - (ii) which is prior to or is the Target SA Month for the Other Resource Park; and
 - (b) in accordance with paragraph 3.4 in respect of any Contract Month:-
 - (i) in respect of which only one Resource Park is a Late Resource Park; and
 - (ii) which is after the Contract Month in which the Service Availability Date for the Other Resource Park occurs; and

(c) in accordance with paragraph 3.3 in respect of any Contract Month in which both Resource Parks are Late Resource Parks,

but in each case calculated by reference to the tonnages of Contract Waste Received by the Contractor in the relevant Contract Month m and not by reference to the tonnages Received in Contract Month $m-3$; and

1.2.2 ΣT_A is the aggregate of T_A calculated in respect of each Delay Month;

1.2.3 ΣL_A is the aggregate of the Landfill Elements calculated in accordance with paragraph 4.3 (but excluding paragraph 4.7) for each Delay Month, but in each case by reference to the tonnages of Active Contract Waste Landfilled in Contract Month m and not by reference to the tonnages Landfilled in Contract Month $m-3$; and

1.2.4 T_D is the Tonnage Based Element calculated in respect of a Contract Month (a "Delay Month") falling within a Delay Period:-

(a) in accordance with paragraph 3.3 in respect of any Contract Month:-

(i) in respect of which only one Resource Park is a Late Resource Park (the other Resource Park being the "Other Resource Park"); and

(ii) which is prior to or is the Target SA Month for the Other Resource Park; and

(b) in accordance with paragraph 3.4 in respect of any Contract Month:-

(i) in respect of which only one Resource Park is a Late Resource Park; and

(ii) which is after the Contract Month in which the Service Availability Date for the Other Resource Park occurs; and

(c) in accordance with paragraph 3.3 in respect of any Contract Month in which both Resource Parks are Late Resource Parks,

but in each case calculated by reference to the tonnages of Contract Waste Received in Contract Month $m-3$; and

1.2.5 ΣT_D is the aggregate of T_D calculated in respect of each Delay Month;

1.2.6 ΣL_D is the aggregate of the Landfill Elements calculated in accordance with paragraph 4.3 (but excluding paragraph 4.7) for each Delay Month, but in each case by reference to the tonnages of Active Contract Waste Landfilled in Contract Month $m-3$.

1.3 For the purposes of paragraph 1.1 above, **MDRR** shall be calculated as:-

$$\mathbf{MDRR = OR - NR}$$

MDRR is always positive or zero

where:-

$$OR = \sum T_A + \sum L_A - LDA_A + SL$$

where:-

- 1.3.1 T_A is calculated in accordance with paragraphs 1.2.1 and 1.2.2;
- 1.3.2 L_A is calculated in accordance with paragraph 1.2.3;
- 1.3.3 LDA_A is calculated in accordance with paragraph 1.4 below; and
- 1.3.4 SL is the cost incurred by the Authority in Landfilling South Lakeland Waste for the period that the Southern Resource Park is a Late Resource Park;

$$NR = \sum T_P + \sum L_P - LDA_d$$

where:-

- 1.3.5 T_P = the Tonnage Based Element calculated in respect of a Delay Month:-
 - (a) in accordance with paragraph 3.4 in respect of any Contract Month:-
 - (i) in respect of which only one Resource Park is a Late Resource Park; and
 - (ii) which is prior to or is the Target SA Month for the Other Resource Park; and
 - (b) in accordance with paragraph 3.5 in respect of any Contract Month:-
 - (i) in respect of which only one Resource Park is a Late Resource Park; and
 - (ii) which is after the Contract Month in which the Service Availability Date for the Other Resource Park actually occurs; and
 - (c) in accordance with paragraph 3.5 in respect of any Contract Month in which both Resource Parks are actually Late Resource Parks;
 - but in each case calculated under those provisions:-
 - (i) as if Service Availability had actually been achieved in respect of any Late Resource Park(s);
 - (ii) in each case by reference to the tonnages of Contract Waste Received by the Contractor in the relevant Contract Month m , and not by reference to the tonnages Received in Contract Month $m-3$; and
 - (iii) on the basis that South Lakeland Waste is treated as Contract Waste for the period that the Southern Resource Park is a Late Resource Park;
- 1.3.6 $\sum T_P$ = the aggregate of T_P calculated in respect of each Contract Month falling in the relevant Delay Period; and

1.3.7 ΣL_P = the aggregate of the Landfill Elements calculated in accordance with paragraph 4.3 for each Delay Month (but excluding paragraph 4.7), but in each case by reference to the tonnages of Active Contract Waste Landfilled by the Contractor in the relevant Contract Month m , and not by reference to the tonnages Landfilled in Contract Month $m-3$; and

1.3.8 LDA_d is calculated as:-

$$LDA_d = (ACWL_d - TAWS_d) * (LTA + WAGF)$$

where:-

- (a) $ACWL_d$, LTA and $WAGF$ have the same meaning as given in paragraph 1.4 below; and
- (b) $TAWS_d$ is the Active Waste Standard (in tonnes) for the Delay Period calculated in accordance with paragraph 1 of Appendix 1 of this Schedule but:-
 - (i) by reference only to tonnages of Contract Waste (excluding Inactive Waste and Specific Waste Items Received at the HWRC Network and excluding Specific Waste Items and Untreated Landfill Waste Received at the Interface Sites) Received by the Contractor in the Delay Period; and
 - (ii) calculated as if Service Availability had actually been achieved in respect of any Late Resource Park on the Target Service Availability Date for that Resource Park, and in particular for the avoidance of doubt, the ITS Reduction Factor shall be 0.13.

1.4 For the purposes of paragraph 1.3 above, LDA_A shall be calculated as:-

$$LDA_A = (ACWL_d - TAWS_A) * (LTA + WAGF)$$

where:-

- 1.4.1 $ACWL_d$ is the total amount (in tonnes) of Active Contract Waste which is Landfilled by the Contractor in the Delay Period; and
- 1.4.2 $TAWS_A$ is the Active Waste Standard (in tonnes) for the Delay Period calculated in accordance with paragraph 1 of Appendix 1 of this Schedule but by reference only to tonnages of Contract Waste (excluding Inactive Waste and Specific Waste Items Received at the HWRC Network and excluding Specific Waste Items and Untreated Landfill Waste which are Received at the Interface Sites) Received by the Contractor in the Delay Period; and
- 1.4.3 LTA is the prevailing rate in the Contract Month of Landfill Tax per tonne for Active Waste, capped at [REDACTED] per tonne. In the event that the prevailing rate changes during the course of the Delay Period, the rate for the purposes of this calculation shall be set on the basis of a mean prevailing rate over the Delay Period, taking account of the number of Months during the Delay Period that the rate was set at different levels, but subject always to a cap of [REDACTED], per tonne; and

1.4.4 **WAGF** is the weighted average of the Landfill Gate Fees per tonne in the relevant Contract Month determined by reference to the proportions of the total amount of Active Contract Waste which are Landfilled by the Contractor in the Delay Period at each Landfill Site and the applicable Landfill Gate Fees as described in paragraph 4.5 of this Schedule 5,

provided that if LDA_A is negative LDA_A shall be deemed to be zero.

1.5 For the purposes of paragraph 1.1, **MTE** shall be calculated as:-

$$\mathbf{MTE = (ACWL_d - TAWS_d) * \pounds 1.70}$$

where:-

ACWL_d and **TAWS_d** have the meaning given in paragraph 1.3.8 above.

1.6 For the purposes of paragraph 1.1, **ETA** shall be calculated as:-

$$\mathbf{ETA = (ACWL_d - TAWS_d) * ET}$$

where:-

ACWL_d and **TAWS_d** have the meaning given in paragraph 1.3.8 above; and

ET is the amount by which the prevailing rate in the Delay Period of Landfill Tax per tonne for Active Waste exceeds [REDACTED], per tonne, provided that ET shall be capped at:-

1.6.1 between 1 April 2011 and 31 March 2012, [REDACTED], per tonne;

1.6.2 between 1 April 2012 and 31 March 2013, [REDACTED], per tonne;
and

1.6.3 from 1 April 2013, [REDACTED], per tonne,

provided that:-

(a) in the event that the prevailing rate of Landfill Tax changes during the course of the Delay Period, the rate for the purposes of this calculation shall be set on the basis of a mean prevailing rate over the Delay Period, taking account of the number of Months during the Delay Period that the rate was set at different levels; and

(b) if ETA is negative ETA shall be deemed to be zero.

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 7 – Distances in Miles from Interface Site

Normal Disposal Site	Mileage to Normal Disposal Site from Town Hall - A	Contingency Site	Mileage to Contingency Site from WCA Town Hall - B	Mileage from Normal Disposal Site to Contingency Site - C	Planned Closure AMDs	Unplanned Closure AMDs
Distington Landfill/West Cumbria Ts	3.7	Lilyhall Landfill	3.4	-	-	-
Distington Landfill/West Cumbria Ts	3.7	Lilyhall Ts	3.4	-	-	-
Hespinwood Landfill /Northern Resource Park	37.2	Hespin Wood Netted Area	37.2	-	-	-
Hespinwood Landfill /Northern Resource Park	37.2	Flusco Landfill/East Cumbria Ts	24.7	29.6	-	17.1
Bennet Bank Landfill/Southern Resource Park	4.3	Walney Road Ts	3.6	0.7	-	-
Bennet Bank Landfill/Southern Resource Park	4.3	Lilyhall Landfill/West Cumbria Ts	58.6	46.8	108.6	101.1
Bennet Bank Landfill/Southern Resource Park	4.3	Kendal Fell Ts	28.8	29.9	49.0	54.4
Hespinwood Landfill	5.0	Hespin Wood Netted Area	5.0	-	-	-
Hespinwood Landfill	5.0	Flusco Landfill/East Cumbria Ts	24.7	29.6	39.4	49.3
Northern Resource Park	5.0	Hespin Wood Landfill	5.0	-	-	-
Northern Resource Park	5.0	Flusco Landfill/East Cumbria Ts	24.7	29.6	39.4	49.3
Distington Landfill /West Cumbria Ts	5.8	Lilyhall Landfill	5.8	-	-	-
Distington Landfill /West Cumbria Ts	5.8	Lilyhall Ts	5.8	-	-	-
Flusco Landfill	4.8	Hespinwood Landfill	24.7	29.6	39.8	49.5
Flusco Landfill	4.8	Distington Landfill/West Cumbria Ts	39.5	35.2	69.4	69.9
East Cumbria Ts	4.8	Flusco Landfill Netted Area	4.8	-	-	-
East Cumbria Ts	4.8	Hespin Wood/Northern Resource Park	24.7	29.6	39.8	49.5
Kendal Fell Ts	1.8	Flusco Landfill/East Cumbria Ts	36.2	31.0	68.8	65.4
Kendal Fell Ts	1.8	Bennett Bank/Southern Resource Park	28.8	29.9	54.0	56.9
Bennett Bank/Southern Resource Park	28.8	Walney Road Ts	28.8	3.6	-	3.6
Bennett Bank/Southern Resource Park	28.8	Kendal Fell Ts	1.8	29.9	-	2.9

- A - TOWN HALL LOCATION to NORMAL DISPOSAL SITE
- B - TOWN HALL LOCATION to CONTINGENCY SITE
- C - NORMAL DISPOSAL SITE to CONTINGENCY SITE

AMDs are calculated on the basis that:

1. Normal Mileage is $(A * 2)$;
2. For the purposes of calculating "CTM" under paragraph 6.5.4, the distance in miles above the normal distance that would have been travelled will be calculated as:
 - a. in the case of a Planned Closure, $((B-A) * 2)$ miles

- b. in the case of an Unplanned Closure, $((C+B) - A)$ miles with "A", "B" and "C" being the figures determined from the corresponding columns in the table above.
- 3. A Planned Closure for these purposes means that the WCA travelled direct to the contingency site without going to the normal disposal site.
- 4. An Unplanned Closure for these purposes means that the WCA travelled to the normal disposal site prior to being diverted to the contingency site.

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 8 - Estimated Power Consumption

1. The estimated electricity consumption ("EPU") for the purposes of paragraph 5.5.1 of this Schedule 5 shall be:-
 - 1.1 in the period from the Commencement Date until the end of the second Contract Year following the Contract Year in which the Second Acceptance Date occurs (the "Initial Period"), (*FIGURE REDACTED*), kilowatt hours per tonne; and
 - 1.2 in the period following the Initial Period ("the Second Period"), as determined in accordance with paragraph 2 below.

For the avoidance of doubt, the Authority shall not be liable to contribute towards Electricity Costs of an EcoDeco Plant in respect of a Resource Park which has not achieved Service Availability.

2. REBASING OF EPU

- 2.1 Not less than three (3) Contract Months prior to the end of the Initial Period, the Contractor shall submit to the Authority its proposed EPU figures for the Second Period, together with evidence of the calculations on which the new figures are based and logs of actual electricity consumption at the EcoDeco Plant at each Resource Park and actual volumes of Contract Waste processed.
- 2.2 The EPU figures proposed by the Contractor in respect of a Resource Park and verified by the Technical Adviser appointed by the Senior Lender shall be a reasonable determination of the average electricity consumption in respect of the processing of one (1) tonne of Contract Waste at that EcoDeco Plant.
- 2.3 Not more than one (1) Contract Month following receipt by the Authority of the Contractor's proposals for the EPU figures, the Authority shall confirm to the Contractor whether it:-
 - 2.3.1 agrees the Contractor's proposed EPU figures for the Second Period; or
 - 2.3.2 is referring the matter for determination under the Dispute Resolution Procedure under clause 54 (Dispute Resolution) of the Agreement.
- 2.4 If the Authority has not either confirmed to the Contractor that it agrees the Contractor's proposed EPU figures for the Second Period or referred the matter for determination under the Dispute Resolution Procedure within one (1) Contract Month following receipt by the Authority of the Contractor's proposals for the EPU figures, the Authority shall be deemed to have confirmed the Contractor's proposed EPU figures.
- 2.5 The figure proposed by the Contractor and confirmed by the Authority in accordance with paragraph 2.3 above (or deemed confirmed by the Authority in accordance with paragraph 2.4 above), or as determined pursuant to the Dispute Resolution Procedure, shall be the EPU figures for the Second Period.
- 2.6 The Contractor shall be entitled to propose a revised EPU figure ("New EPU Figure") at any time in the Second Period:-

- 2.6.1 in respect of any Contract Year in relation to which either Party reasonably considers that there will be a Contract Waste Shortage in accordance with clause 6.3 of the Agreement; and/or
- 2.6.2 in respect of any Contract Year in which there is a Contract Waste Shortage.
- 2.7 Not more than one (1) Contract Month following receipt by the Authority of the Contractor's proposals for the New EPU Figure, the Authority shall confirm to the Contractor whether it:-
 - 2.7.1 agrees the Contractor's proposed New EPU Figure; or
 - 2.7.2 is referring the matter for determination under the Dispute Resolution Procedure under clause 54 (Dispute Resolution) of the Agreement.
- 2.8 If the Authority has not either confirmed to the Contractor that it agrees the Contractor's proposed New EPU Figure or referred the matter for determination under the Dispute Resolution Procedure within one (1) Contract Month following receipt by the Authority of the Contractor's proposals for the New EPU Figure, the Authority shall be deemed to have confirmed the Contractor's proposed New EPU Figure.
- 2.9 The figure proposed by the Contractor and confirmed by the Authority in accordance with paragraph 2.7 above (or deemed confirmed by the Authority in accordance with paragraph 2.8 above), or as determined pursuant to the Dispute Resolution Procedure, shall be the EPU figure for the Second Period with effect from the start of the Contract Year in respect of which the right to make the adjustment has arisen pursuant to paragraph 2.6 above. Where this is a retrospective adjustment this shall be reflected in the reconciliation to be carried out in accordance with paragraph 8.4.6 of this Schedule 5.

3. ANNUAL UTILITY ADJUSTMENT

Save in respect of the Initial Period:-

- 3.1 in every Contract Year on 1 April, the actual consumption of electricity per tonne of Contract Waste at the EcoDeco Plants over the previous Contract Year ("Actual Consumption Figure") will be calculated by dividing the total units (KWhrs) of electricity consumed (in aggregate) across both EcoDeco Plants in the relevant Contract Year by the total actual volumes (in tonnes) of Contract Waste which is Processed by the Contractor at both Resource Parks in that Contract Year;
- 3.2 where the Actual Consumption Figure in the previous Contract Year is higher than the sum of the EPU figures for both Resource Parks for that Contract Year, the Contractor shall bear all and any costs associated with such extra consumption of electricity;
- 3.3 where the Actual Consumption Figure in the previous Contract Year is less than the sum of the EPU figures for both Resource Parks for that Contract Year, a utility adjustment shall be calculated as:-

$$AUA = \frac{WAPT_s * (EPU_s - Ca) * V_s}{2}$$

where:-

AUA = the Annual Utility Adjustment

WAPT_s = the Weighted Average Power Tariff for that Contract Year, calculated on the basis set out in paragraph 5.5.2 of this Schedule but by reference to the relevant Contract Year (rather than an individual Contract Month) and by reference to both Resource Parks;

EPU_s = the sum of the EPU figures for both Resource Parks for the relevant Contract Year;

Ca = the Actual Consumption Figure for the relevant Contract Year; and

V_r = the total actual volume (in tonnes) of Contract Waste which is Received by the Contractor at both Resource Parks in that Contract Year;

provided that if AUA is negative, AUA shall be deemed to be zero; and

- 3.4 the Annual Utility Adjustment (if any) shall be included within the calculation of the Electricity Costs Reconciliation as set out in paragraph 8.4.6 above.

4. OPERATION OF THE ECODECO PLANT

Throughout the Contract Period, the Contractor shall use all reasonable endeavours to operate the EcoDeco Plant at each Resource Park in an energy efficient manner with a view to minimising the level of electricity use at each Resource Park.

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 9 - Authority's LATS Target

Contract Year	Target (in tonnes)
1	██████████,
2	██████████,
3	██████████,
4	██████████,
5	██████████,
6	██████████,
7	██████████,
8	██████████,
9	██████████,
10	██████████,
11 onwards	██████████,

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 10 - Deemed Calculations

1. FOR THE PURPOSES OF PARAGRAPH 3

- 1.1 For the purposes of calculating **ATR_{m-3}** being the actual tonnage of Contract Waste (excluding any Specific Waste Items) which is Received by the Contractor at the HWRCs in the first three (3) Contract Months following the Commencement Date:-
- 1.1.1 in the first Contract Month following the Commencement Date **ATR_{m-3}** shall be deemed to be [REDACTED], tonnes;
- 1.1.2 in the second Contract Month following the Commencement Date **ATR_{m-3}** shall be deemed to be [REDACTED], tonnes; and
- 1.1.3 in the third Contract Month following the Commencement Date **ATR_{m-3}** shall be deemed to be [REDACTED], tonnes.
- 1.2 For the purposes of calculating **C1_{m-3}** being the tonnage of Commissioning Waste which is Processed at the Northern Resource Park for the first six (6) Contract Months following the PC Date for the Northern Resource Park:-
- 1.2.1 in the first Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED], tonnes;
- 1.2.2 in the second Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED], tonnes; and
- 1.2.3 in the third Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED]; and
- 1.2.4 in the fourth Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED], tonnes; and
- 1.2.5 in the fifth Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED], tonnes; and
- 1.2.6 in the sixth Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED], tonnes.
- 1.3 For the purposes of calculating **C2_{m-3}** being the tonnage of Commissioning Waste which is Processed at the Southern Resource Park for the first six (6) Contract Months m-3 following the PC Date for the Southern Resource Park:-
- 1.3.1 in the first Contract Month following the relevant PC Date **C2_{m-3}** shall be deemed to be [REDACTED], tonnes;
- 1.3.2 in the second Contract Month following the relevant PC Date **C2_{m-3}** shall be deemed to be [REDACTED], tonnes; and
- 1.3.3 in the third Contract Month following the relevant PC Date **C2_{m-3}** shall be deemed to be [REDACTED], tonnes; and

- 1.3.4 in the fourth Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED], tonnes; and
 - 1.3.5 in the fifth Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED], tonnes; and
 - 1.3.6 in the sixth Contract Month following the relevant PC Date **C1_{m-3}** shall be deemed to be [REDACTED], tonnes.
- 1.4 For the purposes of calculating **RPT_{m-3}** being the tonnage of Contract Waste (excluding Untreated Landfill Waste, any Specific Waste Items and any Contract Waste included in the calculation of **EFT_{m-3}** in paragraph 3.4.4 of this Schedule 5) which is Received by the Contractor, in the first three (3) Contract Months m-3 in the Second Step-up Period, the following deemed tonnages shall apply:-
- 1.4.1 in the first Contract Month following the commencement of the Second Step-up Period, **RPT_{m-3}** shall be deemed to be [REDACTED], tonnes;
 - 1.4.2 in the second Contract Month following the commencement of the Second Step-up Period, **RPT_{m-3}** shall be deemed to be [REDACTED], tonnes; and
 - 1.4.3 in the third Contract Month following the commencement of the Second Step-up Period, **RPT_{m-3}** shall be deemed to be [REDACTED], tonnes.
- 1.5 For the purposes of calculating **ATR_{m-3}** being the tonnage of Contract Waste (excluding any Specific Waste Items) which is Received by the Contractor in the first three (3) Contract Months m-3 in the Full Service Period, the following deemed tonnages shall apply:-
- 1.5.1 in the first Contract Month following the commencement of the Full Service Period, **ATR_{m-3}** shall be deemed to be [REDACTED], tonnes;
 - 1.5.2 in the second Contract Month following the commencement of the Full Service Period, **ATR_{m-3}** shall be deemed to be [REDACTED], tonnes; and
 - 1.5.3 in the third Contract Month following the commencement of the Full Service Period, **ATR_{m-3}** shall be deemed to be [REDACTED], tonnes.

2. FOR THE PURPOSES OF PARAGRAPH 4

- 2.1 For the purposes of determining **CWLA_{m-3}** being the tonnage of Active Contract Waste which is Landfilled by the Contractor in the first three (3) Contract Months m-3 following the Commencement Date, the following deemed tonnages shall apply:-
- 2.1.1 in the first Contract Month following the Commencement Date **CWLA_{m-3}** shall be deemed to be [REDACTED], tonnes; and
 - 2.1.2 in the second Contract Month following the Commencement Date **CWLA_{m-3}** shall be deemed to be [REDACTED] tonnes; and
 - 2.1.3 in the third Contract Month following the Commencement Date **CWLA_{m-3}** shall be deemed to be [REDACTED], tonnes.

2.2 For the purposes of calculating **CWLAS_{m-3}** being the tonnage of Active Contract Waste Landfilled at a Landfill Site in the first three (3) Contract Months m-3 following the Commencement Date, **CWLAS_{m-3}** shall be determined by reference to the Table below:-

Contract Month following the Commencement Date	Landfill Site 1 <i>Flusco Penrith Bennett Bank Barrow</i>	Landfill Site 2 Distington Workington	Landfill Site 3 Hespin Wood Carlisle	Landfill Site 4 <i>Bennett Bank Barrow Flusco Penrith</i>
First	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Second	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Third	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

3. FOR THE PURPOSES OF PARAGRAPH 5

3.1 For the purposes of calculating **TSW_{m-3}** being the Specific Waste Element for the first three Contract Months m-3 following the Commencement Date:-

3.1.1 in the first Contract Month following the Commencement Date **TSW_{m-3}** shall be deemed to be [REDACTED], and

3.1.2 in the second Contract Month following the Commencement Date **TSW_{m-3}** shall be deemed to be [REDACTED], and

3.1.3 in the third Contract Month following the Commencement Date **TSW_{m-3}** shall be deemed to be [REDACTED],

3.2 For the purposes of calculating **AOC_{m-3}** being the Additional Opening Costs for the first three (3) Contract Months m-3 following the Commencement Date, it is assumed that for each of those three (3) Contract Months, **CA_{m-3}** shall be deemed to be zero.

3.3 For the purposes of calculating **V_{m-3}** being the volume of Contract Waste Received by the Contractor in the first three (3) Contract Months m-3 following the Service Availability Date for the relevant Resource Park, it is deemed that in each of those three (3) Contract Months:-

3.3.1 in the first Contract Month following such Service Availability Date **V_{m-3}** shall be deemed to be [REDACTED]; and

3.3.2 in the second Contract Month following such Service Availability Date **V_{m-3}** shall be deemed to be [REDACTED], tonnes; and

3.3.3 in the third Contract Month following such Service Availability Date **V_{m-3}** shall be deemed to be [REDACTED], tonnes.

SCHEDULE 5 - PAYMENT MECHANISM

Appendix 11 – Payment Tables