

**SCHEDULE 31**

**Template SRF Offtake Contract**

This is Schedule 31 comprising Template SRF Offtake Contract referred to in the Project Agreement  
for the provision of waste services to Cumbria

between

**CUMBRIA COUNTY COUNCIL**

and

**SHANKS CUMBRIA LIMITED**



**DICKINSON DEES**

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**SCHEDULE 31**

**Template SRF Offtake Contract**

DATED \_\_\_\_\_ 2009

**SHANKS WASTE MANAGEMENT LIMITED**

and

[ ]

**SOLID RECOVERED FUEL SUPPLY AGREEMENT**



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THIS DEED dated

2009 is made BETWEEN:-

- (1) SHANKS WASTE MANAGEMENT LIMITED (CN 02393309) whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU (hereinafter called the "Supplier") of the one part; and
- (2) [ \_\_\_\_\_ ] (CN [ \_\_\_\_\_ ]) whose registered office is at [ \_\_\_\_\_ ] (hereinafter referred to as "Offtaker") of the second part.

BACKGROUND

- (A) The Offtaker requires SRF.
- (B) The Supplier has agreed to provide SRF to the Offtaker in accordance with the terms and conditions set out in this Contract.

IT IS AGREED as follows:-

1. INTERPRETATION

In this Contract except where the context otherwise requires:-

1.1 the following terms shall have the following meanings:-

"Accept"	means:-  (a) in relation to On-Specification SRF, the Offtaker collecting its Collection; and  (b) in relation to Off-Specification SRF, the Offtaker (acting in its absolute discretion) Thermally Treating it, or permitting or arranging its Thermal Treatment;
"Acknowledgement of Assignment"	means the acknowledgement of the notice of assignment of the benefit of this Contract to the Funders;
"Additional Tonnage Level"	means, for each Contract Year, the number of tonnes set out in Schedule 4 (for the avoidance of doubt this amount includes the Committed Tonnage Level);
"Affiliate"	means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and holding company and subsidiary shall have the meanings given to them in section 1159 of the Companies Act 2006;
"Annual Collection Schedule"	has the meaning given to it in Schedule 3;
"Annual Accepted Contract Tonnage"	means the tonnage of SRF Accepted in the relevant Contract Year;
"Annual Value"	means [price per tonne of SRF x Committed Tonnage

	Level] in any Contract Year;
“Authority”	means Cumbria County Council;
“Authority Direct Agreement”	means the direct agreement of even date herewith between, inter alia, the Supplier, the Offtaker and the Authority;
“Business Day”	means Monday to Friday (inclusive) in each week excluding bank holidays and statutory holidays;
“Capital Expenditure”	means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
“Change in Law”	means the coming into effect (or, in the case of (b) or (c), the date of publication or making) after the Effective Date:- <ul style="list-style-type: none"> <li>(a) Legislation;</li> <li>(b) any Guidance; and/or</li> <li>(c) any applicable judgement of a relevant court of law which changes a binding precedent;</li> </ul>
“Collection”	means the collection of SRF from the Collection Point and “Collected” shall be construed accordingly;
“Collection Point”	means that area of each Resource Park designated by the Supplier for the collection of SRF by the Offtaker;
“Collection Vehicle”	means a vehicle provided by the Offtaker for the collection of SRF from the Collection Point at the relevant Resource Park;
“Collection Vehicle Specification”	means the specification set out in Schedule 7;
“Collection Week”	means one minute past midnight on Monday to midnight on Sunday inclusive) in which Collections are made (for the avoidance of doubt, ignoring weeks in which no Collections are made due, inter alia, from the Supplier Site maintenance outages);
“Committed Tonnage Level”	means that tonnage of On-Specification SRF as set out in the first row of Schedule 4 for the relevant Contract Year, or such higher tonnage as the Parties may agree in writing from time to time;
“Confidential Information”	has the meaning given to it in clause 21.1;
“Contract Waste”	has the meaning set out in the Project Agreement;

“Contract Year”	means:-  (a) the First Contract Year;  (b) after the First Contract Year and prior to the Final Contract Year, the period from 1 April to the immediately following 31 March, inclusive; and  (c) in relation to the Final Contract Year, the period from 1 April in the Final Contract Year to the last day of the Final Contract Year, inclusive;
“Default Interest”	means interest becoming payable pursuant to clause 9.10;
“DRP”	means the dispute resolution procedure set out in clause 19;
“Due Date of Payment”	means thirty (30) days from the date of any invoice;
“Effective Date”	means the date of this Contract;
“EP Permit”	means a waste management licence, pollution prevention and control permit, and any environmental permit issued by the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2007;
“Expiry Date”	means [        ];
“Fast Track DRP”	means the process set out in clause 19.7;
“Final Contract Year”	means (as appropriate):-  (a) the period from 1 April immediately preceding the Expiry Date to the Expiry Date inclusive, or  (b) if terminated for whatever reason prior to the Expiry Date, the period from the 1 April immediately prior to the Termination Date to the Termination Date;
“First Contract Year”	means (as appropriate):-  (a) the period from the Services Commencement Date to the date immediately following 31 March inclusive; or  (b) if terminated for whatever reason prior to 31 March as specified in (a) above, the period from the Services Commencement Date to the Termination Date, inclusive;
“Force Majeure Basis”	means on the basis as if the Expiry Date had been brought forward to the date of termination, and without any liability of either Party to the other in relation to obligations that could have been met had the Expiry Date not been

	brought forward;
“Force Majeure Claimant”	has the meaning set out in clause 12.2;
“Force Majeure Event”	means any acts of God, war, flood, fire, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events provided that such event is outside the reasonable control of a Party;
“Funders”	means the relevant providers of debt funding to the Project Company from time to time;
“Funders’ Direct Agreement”	means the direct agreement of even date herewith between, inter alia, the Supplier, the Offtaker and Funders;
“Good Industry Practice”	means that degree of skill, diligence, prudence and foresight and operating practice which would reasonably be expected from a skilled and experienced person engaged as the case may be in the same type of undertaking as that of the Supplier (in relation to obligations undertaken by the Supplier) or the Offtaker (in relation to obligations undertaken by the Offtaker) under the same or similar circumstances;
“Guidance”	means any applicable guidance or directions issued by a Relevant Authority with which the Offtaker and/or the Supplier and/or the Project Company is bound to comply or with which they should reasonably comply as a matter of Good Industry Practice;
“Indexed”	means adjusted in accordance with the provisions of Schedule 2;
“Indirect Loss”	means any consequential or indirect losses of any nature including (without limitation) loss of opportunity, loss of goodwill, loss of profit or revenue except to the extent that such losses comprise the profit element contained within the Price;
“Insolvency Event”	means, in relation to a Party, where:- <ul style="list-style-type: none"> <li>(a) a court makes an order that such Party be wound up or a resolution for a voluntary winding-up of such Party is passed except in the case of:- <ul style="list-style-type: none"> <li>(i) winding up proceedings where such application is contested and withdrawn or struck out within twenty (20) Business Days of commencement; or</li> <li>(ii) a voluntary winding up for the purpose of amalgamation, reconstruction, merger or take-over, and in such manner that the resulting entity from such arrangements</li> </ul> </li> </ul>

validly and effectively agrees to be bound by or assume such Party's obligations under this Contract; or

- (b) any receiver and/or manager or administrative receiver in respect of such Party is appointed which appointment is not set aside within twenty (20) Business Days of the date of appointment; or
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of such Party unless:-
  - (i) previously approved by the other Party; or
  - (ii) the voluntary arrangement or scheme of arrangement is made for the purpose of amalgamation, reconstruction, merger or take-over, and in such manner that the resulting entity from such arrangements validly and effectively agrees to be bound by or assume such Party's obligations under this Contract; or
- (d) an administration order is made in respect of such Party which is not discharged within twenty (20) Business Days of the date of the relevant order;

"Invoice"	means an invoice submitted pursuant to the provisions of clause 9.4;
"Invoiced Amount"	means the amount invoiced by the Offtaker in an Invoice;
"Key Facilities"	shall mean the facilities producing SRF at either of the Supplier Sites;
"Legislation"	means in relation to the United Kingdom:- <ul style="list-style-type: none"><li>(a) any act of Parliament;</li><li>(b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;</li><li>(c) any exercise of the Royal Prerogative; and</li><li>(d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972 in each case in the United Kingdom;</li></ul>
"LIBOR"	means the London Interbank Offered Rate;

“Losses”	means (to the extent reasonably and properly incurred and in relation to which the Party claiming the loss can provide supporting evidence to the reasonable satisfaction of the liable Party) all direct losses, liabilities, claims, costs, actions, proceedings, demands, compensation, legal remedies, awards, charges and expenses, but excluding any Indirect Losses, and “Loss” shall be construed accordingly;
“Month”	means a calendar month within a Contract Year;
“Monthly Collection Schedule”	has the meaning given to it in Schedule 3;
“Monthly Report”	means a detailed explanation of the make up of any Invoice in such form as shall be agreed by the Parties from time to time (acting reasonably);
“Off-Specification”	means SRF which is not On-Specification SRF;
“Offtaker Deficit Tonnage”	means, subject to clause 9.3, the amount calculated in accordance with the formula for “Offtaker Deficit Tonnage” set out in Schedule 6;
“Offtaker Event of Default”	means any of the following:- <ul style="list-style-type: none"> <li>(a) an Insolvency Event occurs in relation to the Offtaker;</li> <li>(b) the Offtaker commits a Prohibited Act in circumstances entitling the Supplier to terminate the Contract pursuant to clause 14.4;</li> <li>(c) disposal of SRF by landfill by the Offtaker in excess of ten thousand (10,000) tonnes in any consecutive period of eight (8) Months provided that any SRF landfilled by the Offtaker as a consequence of an SRF Relief Event shall be discounted for the purposes of this calculation;</li> <li>(d) the liability of the Offtaker to the Supplier in respect of claims the subject of the Offtaker Contract Termination Cap exceeds the Offtaker Contract Termination Cap; or</li> <li>(e) the Offtaker is otherwise in material breach of contract;</li> </ul>
“Offtaker Contract Termination Cap”	has the meaning given to it in clause 15.1.3;
“Offtaker Party”	means any of the Offtaker’s sub-contractors or agents (in each case of any tier but excluding any Supplier Party), or any director, officer or employee of any of the foregoing;



	respect of fraudulent acts; or
	(iii) at common law in respect of fraudulent acts in relation to this Contract or any contract with the Authority; or
	(iv) defrauding or attempting to defraud or conspiring to defraud the Authority;
“Project Agreement”	means the contract dated [ ] between the Authority and the Project Company relating to, inter alia, the construction, operation and maintenance of the Resource Parks;
“Project Company”	means Shanks Cumbria Limited;
“Relevant Authority”	means any court with the relevant jurisdiction and any local, national or supra-national agency, local authority, inspectorate, minister, ministry, official or public or statutory person of the Government of the United Kingdom or of the European Union;
“Relevant Site”	means:-  (a) in relation to the Supplier, each of the Supplier Sites; and  (b) in relation to the Offtaker, the Offtaker Site;
“Resource Park”	means each of the following:-  (a) the resource park to be operated by the Supplier at Hespian Wood, Cumbria; and  (b) the resource park to be operated by the Supplier at Barrow-in-Furness, Cumbria;
“Sampling”	means the sampling undertaken by the Parties pursuant to clause 7;
“Scheduled for Collection”	means shipments of On-Specification SRF Scheduled for Collection by the Offtaker in accordance with a timetable agreed between the Parties pursuant to the operation of the procedure set out in Schedule 3, and “Scheduled Collection” shall be construed accordingly;
“Services”	means the collection and disposal services referred to in clauses 4.2 to 4.6 inclusive;
“Services Commencement Date”	means [ ];
“Shanks Group”	means Shanks Group PLC and its subsidiaries;

- “Specific Change of Law” means any Change in Law which specifically refers to:-
- (a) the provision of services the same as or similar to the Services;
  - (b) the construction, operation and maintenance of premises for the provision of any service the same as or similar to any Service; or
  - (c) persons holding shares in companies whose main business is:-
    - (i) providing services the same as or similar to the Services;
    - (ii) the construction, operation and maintenance of premises for the provision of any service the same as or similar to the Services;

“SRF” means solid fuel prepared by the Supplier from Contract Waste to be utilised for energy recovery;

- “SRF Relief Event” means:-
- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks apparatus or pipes, ionising radiation earthquakes, riot and civil commotion affecting a Supplier Site;
  - (b) a Force Majeure Event to the extent such Force Majeure Event prevents a party from complying with its obligations under this Contract;
  - (c) failure by any statutory undertaker, utility company, local authority (other than the Authority) or other like body to carry out works or provide services to the extent the same affects a Supplier Site;
  - (d) any accidental loss or damage to a Supplier Site or any roads servicing such facility;
  - (e) any failure or shortage of power, fuel or transport (other than an interruption under an interruptible supply arrangement) affecting a Supplier Site;
  - (f) any blockade or embargo which does not constitute a Force Majeure Event affecting a Supplier Site;
  - (g) any other event which relieves or prevents the Offtaker from complying with its obligations in accordance with the terms of this Contract (save to the extent such event comprises a breach of this Contract by the Supplier);

unless any of the events listed in (a) to (g) inclusive arises

(directly or indirectly) as a result of any breach of contract, wilful default or wilful act or omission of the Offtaker or the Supplier;

- “Supplier Termination Cap” has the meaning given to it in clause 15.2.2;
- “Supplier Deficit Tonnage” means, subject to clause 9.2, the amount calculated in accordance with the formula for “Supplier Deficit Tonnage” set out in Schedule 6;
- “Supplier Event of Default” means any of the following:-
- (a) an Insolvency Event occurs in relation to the Supplier;
  - (b) throughout a continuous period of four (4) Collection Weeks, save to the extent attributable to Force Majeure Events, the Supplier provides SRF for Collection which:-
    - (i) Sampling reveals is consistently Off-Specification; or
    - (ii) the Offtaker refuses to Accept (being entitled to do so under the terms of this Contract);
  - (c) the liability of the Supplier to the Offtaker in respect of claims the subject of the Supplier Termination Cap exceeds the Supplier Termination Cap;
  - (d) the Supplier is otherwise in material breach of contract;
- “Supplier Party” means any of the Supplier’s sub-contractors, agents, customers or suppliers (in each case of any tier but excluding any Offtaker Party), or any director, officer or employee of any of the foregoing;
- “Supplier Site” means either Resource Park;
- “Term” means the period commencing on the Effective Date and terminating on the Termination Date;
- “Termination Date” means the earlier to occur of the Expiry Date or the date upon which the contract comes to an end in accordance with its terms;
- “Thermally Treat” means dispose of by incineration or co-incineration, and “Thermal Treatment” shall be construed accordingly;
- “Week” means a seven calendar day period within the Term, commencing at 0:00 on a Monday morning and terminating at 24:00 on the following Sunday night;

- “Weekly Collection Schedule” has the meaning given to it in Schedule 3; and
- “Weighbridge” means any weighbridge at either Supplier Site used to weigh SRF at the Collection Point by the Supplier pursuant to the terms of this Contract;
- 1.2 any words denoting the singular shall include the plural and vice versa;
- 1.3 the masculine includes the feminine and the neuter and vice versa;
- 1.4 the singular includes the plural and vice versa;
- 1.5 a reference in this Contract to any clause, sub-clause or paragraph is (except where it is expressly stated to the contrary) a reference to such clause, sub-clause or paragraph of this Contract;
- 1.6 any reference to this Contract or to any contract, document or other instrument shall include (subject to any relevant consents and any other provision of this Contract expressly concerning such contract, document or other instrument) a reference to that contract, document or other instrument as amended, supplemented, substituted, novated or assigned;
- 1.7 a reference to a person includes firms and corporations and their successors and permitted assignees or transferees;
- 1.8 references to any statute or statutory provision (including any EU Instrument) shall include:-
- 1.8.1 any subordinate legislations made under it;
- 1.8.2 any provision which it has modified or re-enacted (whether with or without modification); and
- 1.8.3 any provision which subsequently supersedes it or re-enacts it (whether with or without modification);
- 1.9 words preceding include, includes, including and included shall be construed without limitation by the words which follow those words unless inconsistent with the context, and the rule of interpretation known as ejusdem generis shall not apply;
- 1.10 the list of contents and the headings to the clauses and parts of this Contract and to the paragraphs of the Schedules are for the ease of reference only and shall not affect the construction of this Contract;
- 1.11 the Schedules to this Contract (including any annexes or appendices thereto) are an integral part of this Contract and reference to this Contract includes a reference thereto and reference to any Schedule includes a reference to any annex or appendix of any such Schedule thereto;
- 1.12 any reference to a public organisation shall be deemed to include a reference to any successor (public or otherwise) or to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;

1.13 the Committed Tonnage Level and the Additional Tonnage Level in respect of the First Contract Year and/or Final Contract Year shall be pro rated in the proportion that the number of calendar days in such Contract Year bears to the number of calendar days that there would have been had the relevant Contract Year continued to complete the relevant twelve (12) Month period, rounded down or up to the nearest multiple of twenty (20) tonnes (with exactly ten (10) tonnes being rounded down).

## **2. COMMENCEMENT AND DURATION**

This Contract and the rights and obligations of the Parties shall take effect on the Effective Date and (subject to the provisions for early termination set out in clause 13.1) shall continue until the Expiry Date.

## **3. PRIMARY OBLIGATIONS OF THE SUPPLIER**

The Supplier shall, subject to the terms of this Contract with effect from the Services Commencement Date:-

- 3.1 make the Committed Tonnage Level of On-Specification SRF available for Collection by the Offtaker at the Collection Point in each Contract Year;
- 3.2 use reasonable endeavours to make additional On-Specification SRF (up to the Additional Tonnage Level) available for Collection by the Offtaker at the Collection Point in each Contract Year (but without liability save where its breach constitutes a Supplier Default);
- 3.3 pay the Price for each tonne of SRF Accepted by the Offtaker;
- 3.4 provide a weighbridge ticket in relation to all SRF Collected by the Offtaker at either Supplier Site; and
- 3.5 at all times act in accordance with applicable Legislation and Good Industry Practice.

## **4. PRIMARY OBLIGATIONS OF THE OFFTAKER**

The Offtaker shall, subject to the terms of this Contract:-

- 4.1 on the Effective Date execute and deliver to the Supplier:-
  - 4.1.1 the Funders' Direct Agreement; and
  - 4.1.2 the Authority Direct Agreement;
- 4.2 Collect On-Specification SRF proffered by the Supplier for Collection at the Collection Point up to the Committed Tonnage Level, and use reasonable commercial endeavours (but without liability save where its breaches constitutes a default pursuant to Offtaker Event of Default (b)) to agree with the Supplier to Accept additional On-Specification SRF subject to the Additional Tonnage Level;
- 4.3 arrange for Thermal Treatment of any On-Specification SRF Collected by the Offtaker. For the avoidance of doubt, the Offtaker shall not be entitled to landfill any SRF without the prior written consent of the Supplier;
- 4.4 provide full records of any:-

- 4.4.1 SRF Collected by the Offtaker from the Supplier; and
- 4.4.2 SRF that is Collected by the Offtaker from the Supplier and thereafter Thermally Treated on behalf of the Offtaker;
- 4.5 at all times act in accordance with applicable Legislation and Good Industry Practice; and
- 4.6 give the Supplier a first option (exercisable within two weeks of notification, or such shorter period as may be reasonable in the circumstances) to increase the Additional Tonnage Level (whether on a permanent or temporary basis) when additional capacity becomes available at the Offtaker Site whether by virtue of the expiry or interruption of other supply contracts to the Offtaker Site or otherwise.

## 5. **CONTRACT TONNAGE**

Whilst the Offtaker has no obligation to Accept any Off-Specification SRF offered by the Supplier, if the Offtaker Accepts any such Off-Specification SRF in a Contract Year the tonnage of Off-Specification SRF Accepted by the Offtaker shall count towards the Supplier's Committed Tonnage Level requirements set out in clauses 3.1 and 3.2 and the Offtaker's obligations pursuant to clause 4.2.

## 6. **PLANNING AND OPERATION**

- 6.1 The Supplier shall make On-Specification SRF available for Collection by the Offtaker at the Collection Point and the Offtaker shall Collect in accordance with the Annual Collection Schedule, the Monthly Collection Schedule and the Weekly Collection Schedule.
- 6.2 All Collection Vehicles used by the Offtaker (or any of its subcontractors) shall meet the Collection Vehicle Specification. The Offtaker (and its subcontractors) shall only use other vehicles with the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 6.3 If the production of On-Specification SRF by the Supplier or the Collection of On-Specification SRF by the Offtaker is affected by a Force Majeure Event, the Parties shall follow the relevant procedure set out in clause 12.
- 6.4 To the extent that the Supplier is unable to perform its obligations as a result of any Force Majeure Event affecting the production of On-Specification SRF the Supplier shall be relieved from its obligation to pay for such SRF.
- 6.5 Upon the resumption of Collections following a Force Majeure Event:-
  - 6.5.1 subject to clause 6.5.2, the Parties shall, in relation to the Committed Tonnage Level only, use reasonable endeavours to make up Collections of tonnages of SRF that should have been Collected pursuant to the Annual Collection Schedule and/or Monthly Collection Schedule and/or Weekly Collection Schedule which were suspended during such Force Majeure Event period in accordance with a revised Annual Collection Schedule and/or Monthly Collection Schedule and/or Weekly Collection Schedule to be agreed between the Parties (acting reasonably); and
  - 6.5.2 where reasonably practicable, the Collection of suspended tonnages shall be distributed evenly over the remaining months of the relevant Contract Year.

6.6 The Supplier agrees that it shall not, without the prior written consent of the Offtaker, knowingly provide Off-Specification SRF for Collection from the Supplier Sites by the Offtaker.

## 7. **SAMPLING AND TRIALLING**

7.1 Subject to the provisions of clause 7.3, all sampling and analysis of the SRF at the Supplier Site shall be carried out by the Supplier at its option and at its own expense.

7.2 Each Party shall supply copies of the results of any tests undertaken by such Party in relation to SRF Collected or intended to be Collected under this Contract to the other as soon as reasonably practicable. Such test results shall comprise Confidential Information for the purposes of clause 21.

7.3 The Parties acknowledge that testing of the SRF will be conducted retrospectively. Should the Supplier discover that any SRF is Off-Specification, the Offtaker may, by giving written notice to the Supplier, require the Supplier to collect and remove any Off-Specification SRF from the Offtaker Site if it has not been Thermally Treated, and to suspend further Collections.

7.4 Once it has been ascertained that Off-Specification SRF has been Collected by the Offtaker otherwise than with its prior knowledge and consent, the Offtaker shall be entitled to refuse to make further Collections until the Supplier can demonstrate to the Offtaker's reasonable satisfaction, that further Collections will be On-Specification SRF.

7.5 Should any Scheduled Collections be suspended pursuant to clause 7.3 the Parties shall each use their respective reasonable endeavours to make up Collections of such suspended quantities so as to ensure that the Parties respective obligations to provide for Collection and Collect the Committed Tonnage Level in a Contract Year are, subject to any Force Majeure Event or termination, achieved in the relevant Contract Year.

## 8. **TITLE AND RISK**

Title to, and responsibility for, SRF shall pass to the Offtaker upon the issue by the Supplier of a weighbridge ticket upon the exit of the SRF from the Supplier Site.

## 9. **PRICE AND PAYMENT**

9.1 The Supplier shall pay the Offtaker the Price for each tonne of SRF Accepted.

9.2 Subject to clause 15.2, if in any Contract Year, the Supplier fails to provide the Committed Tonnage Level for Collection then to the extent that such failure is not attributable to:-

9.2.1 Force Majeure Event(s) affecting the Supplier and/or the Offtaker (in relation to which clause 12 shall apply); and/or

9.2.2 any material breach of Contract by the Offtaker,

the Offtaker shall be entitled to submit an invoice in the final Month of any such Contract Year an amount equal to the Supplier Deficit Tonnage multiplied by the Price and this shall be the Offtaker's only remedy for such breach by the Supplier.

9.3 If, in any Contract Year, the Offtaker fails to Collect the Committed Tonnage Level then to the extent that such failure is not attributable to:-

- 9.3.1 Force Majeure Event(s) affecting the Supplier and/or the Offtaker (in relation to which clause 12 shall apply); and/or
- 9.3.2 any material breach of Contract by the Supplier,
- the Supplier shall be entitled to submit an invoice in the final Month of any Contract Year for an amount equal to the Offtaker Deficit Tonnage multiplied by the Price. Subject to clause 15.1 this shall be the Supplier's only remedy for such breach by the Offtaker.
- 9.4 The Offtaker shall invoice the Supplier for the SRF Accepted in each Month within not more than ten (10) Business Days following the last day of such Month.
- 9.5 A Monthly Report shall accompany each Invoice. The Monthly Report shall detail the tonnages of Accepted SRF which have been Thermally Treated in the previous Month.
- 9.6 If an Invoice is not accompanied by its corresponding Monthly Report, the Supplier shall be under no obligation to pay such Invoice until the Monthly Report is delivered. Subject to clause 9.7, the Supplier shall pay each Invoice within thirty (30) Business Days from the last day of the Month in which the relevant SRF was Accepted or, if the Invoice was not accompanied by its corresponding Monthly Report, within (20) Business Days of receipt of such Monthly Report.
- 9.7 If any Invoice is disputed in good faith by the Supplier, the Supplier shall be entitled to withhold the disputed amount and shall pay that part (if any) of the sum referred to in the Invoice that is undisputed within the period set out in clause 9.6 and any matters in dispute shall be referred for resolution pursuant to the Fast Track DRP.
- 9.8 Should the Supplier exercise its right to withhold payment of all or part of an Invoiced Amount pursuant to clause 9.7, such failure to pay such element of the Invoiced Amount shall not constitute a contractual breach by the Supplier.
- 9.9 Save as set out in clause 9.6, whenever one Party is liable under or in connection with this Contract to pay any sum of money to the other Party, it shall be paid to the Party (to such account as the Party shall have notified to the Party in each notice or demand for payment submitted to the Party) within thirty (30) Business Days of the Party's demand.
- 9.10 If any amount properly owing to a Party is not paid in accordance with clause 9.6 or clause 9.9 (as the case may be), such Party shall be entitled to recover interest on any monies due at the rate of two per cent (2%) above LIBOR from time to time calculated on a daily basis from the due date for payment until the date that payment is received by the Party whether before or after judgement.

## 10. **TAXES AND TRANSPORT COSTS**

The Price is inclusive of value added tax and any transport costs.

## 11. **CHANGE IN LAW**

- 11.1 If a Specific Change of Law occurs or is set to occur, either Party may give notice to the other Party of any relevant changes to this Contract (including a change to the Price) that may be necessary. Each shall provide the other with such information as may reasonably be required by the other Party in order to assess any such request for a change, without limitation, where a notice requesting a change is served by the Offtaker, the Parties shall discuss the ways in which the Offtaker could mitigate the effect of the Specific Change of Law, including:-

- 11.1.1 providing evidence that the Offtaker itself has or will use reasonable endeavours, and has or will oblige its sub-contractors to use reasonable endeavours, to minimise any increase in costs and maximise any reduction in costs;
  - 11.1.2 demonstrating how any additional Capital Expenditure to be incurred or avoided has been estimated on the most cost effective basis, including showing that when such expenditure is incurred or would have been incurred, and that foreseeable Specific Changes of Law have been taken into account by the Offtaker;
  - 11.1.3 where available giving evidence as to how the Specific Change of Law has affected prices charged by any persons delivering services similar to the production, supply and Thermal Treatment of SRF including similar businesses in which the Offtaker or its Affiliates carry on business; and
  - 11.1.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Specific Change of Law concerned, has been taken into account.
- 11.2 No change to this Contract shall be implemented to give effect to a Specific Change in Law unless and until the Supplier has consented to such changes in writing (such consent not to be unreasonably withheld or delayed). The Parties acknowledge that in relevant circumstances the Supplier may need to obtain the consent of the Authority and/or the Project Company prior to agreeing any change to this Contract. The Supplier agrees to diligently seek the consent of the Authority and/or the Project Company where such consents are necessary.
- 11.3 If the Parties cannot agree what changes to the Contract are required to reflect the impact of a Specific Change of Law the Parties shall forthwith meet with each other and (where necessary) the Project Company and/or the Authority and discuss in good faith and seek to agree such changes (to be kept to a minimum) to the Contract as are necessary to allow the Parties to comply with the Specific Change of Law or to make compliance unnecessary.

## 12. **FORCE MAJEURE**

- 12.1 Neither Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party nor incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by the occurrence of that Force Majeure Event.
- 12.2 On the occurrence of a Force Majeure Event, the affected Party (the "Force Majeure Claimant") shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.
- 12.3 As soon as practicable following a notification under clause 12.2 the Parties shall (acting reasonably) agree appropriate relief for each Party from their respective obligations under this Contract in relation to matters arising directly as a result of the Force Majeure Event. If appropriate relief is not agreed within twenty (20) Business Days of the date of the Force Majeure Event, then the matter may be referred by either Party to DRP.

- 12.4 If any Party is unable to comply with all of its material obligations for a period in excess of one hundred and twenty (120) Business Days as a result of a Force Majeure Event, then, subject to clause 12.5 either Party may give thirty (30) days' written notice to terminate this Contract on a Force Majeure Basis.
- 12.5 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 12.6 The Force Majeure Claimant shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Force Majeure Claimant to be unable to comply with its obligations under this Contract. Following such notification the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

### 13. **TERMINATION**

- 13.1 The provisions set out in this clause 13 and clause 14 of this Contract are subject to the terms of the Funders' Direct Agreement and the Authority Direct Agreement.
- 13.2 The Supplier shall be entitled to terminate this Contract upon the occurrence of an Offtaker Event of Default, and the Offtaker shall be entitled to terminate this Contract upon the occurrence of a Supplier Event of Default in each case through the service of a formal written notice from the terminating Party (a "Default Notice"). The Default Notice shall as a minimum specify:-
- 13.2.1 the head of default giving rise to the termination right; and
- 13.2.2 such details in relation to the underlying circumstances giving rise to the default as shall be reasonable in the circumstances.
- 13.3 Each Offtaker Event of Default and Supplier Event of Default shall be capable of remedy as follows:-
- 13.3.1 Offtaker Events of Default (a) and (b) shall not be capable of remedy;
- 13.3.2 Offtaker Event of Default (c) shall, at the discretion of the Supplier, be capable of remedy;
- 13.3.3 Offtaker Event of Default (d) may be capable of remedy by the Offtaker agreeing to increase the Offtaker Contract Termination Cap for the then current Contract Year by an amount equal to fifty per cent (50%) of the then subsisting Offtaker Contract Termination Cap;
- 13.3.4 Offtaker Event of Default (e) may be capable of remedy depending upon the circumstances of the breach in question;
- 13.3.5 Supplier Event of Default (a) shall not be capable of remedy;
- 13.3.6 Supplier Event of Default (b) shall be capable of remedy by making the Committed Tonnage Level (apportioned for a twenty (20) Business Day period) of On-Specification SRF available for Collection over the twenty (20) Business Days following the date of service of the Default Notice;

13.3.7 Supplier Event of Default (c) may be capable of remedy by the Supplier agreeing to increase the Supplier Termination Cap for the then current Contract Year by an amount equal to fifty per cent (50%) of the then subsisting Supplier Termination Cap; and

13.3.8 Supplier Event of Default (d) may be capable of remedy depending upon the circumstances of the breach in question.

Save where a remedy period is set out above, upon receipt of a Default Notice, where the default is capable of remedy, the defaulting Party shall have twenty (20) Business Days in which to effect such remedy, failing which this Contract shall terminate.

13.4 Subject to clauses 13.5 and 15, upon a termination of this Contract each Party shall be relieved from its ongoing obligations. Where this Contract is terminated other than on 31 March in any Contract Year, the Offtaker Deficit Tonnage, the Committed Tonnage Level and the liability of the Offtaker in relation to tonnage of On-Specification SRF it is obliged to Accept shall be adjusted on a pro rata basis by reference to the number of days in that Contract Year prior to the date of termination of the Contract.

13.5 Any expiry or termination of this Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the continuance in force of any provision of this Contract which is expressly or by implication intended to continue in force on or after such termination.

13.6 The Parties shall have no rights to terminate this Contract other than as provided for in this Contract.

#### 14. **CORRUPT GIFTS AND FRAUD**

14.1 The Offtaker shall not, and shall procure that no Offtaker Party shall, commit any Prohibited Act.

14.2 If the Offtaker or any Offtaker Party (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, and the Supplier is served with a notice from the Project Company pursuant to the terms of the Operating Contract that a Prohibited Act has occurred, then the Supplier shall be entitled to act in accordance with clause 14.3 to 14.5 below.

14.3 If the Prohibited Act is committed by the Offtaker or any Offtaker Party or by an employee of the Offtaker or Offtaker Party not acting independently of the Offtaker or Offtaker Party then the Supplier may give notice to the Offtaker of termination and this Contract will terminate, unless within eighteen (18) Business Days of receipt of such notice the Offtaker terminates the relevant Offtaker Party and procures the performance of such part of the Services by another person.

14.4 If the Prohibited Act is committed by any employee of the Offtaker or any Offtaker Party acting independently of the Offtaker or Offtaker Party (as appropriate) then the Supplier may give notice to the Offtaker of termination and this Contract will terminate, unless within eighteen (18) Business Days of receipt of such notice the Offtaker terminates the employee's employment and (if necessary) procure the performance of such part of the Services by another person.

14.5 If the Prohibited Act is committed by any other persons not specified in clauses 14.2 to 14.4 above, then the Supplier may give notice to the Offtaker of termination and this Contract will terminate unless within twenty eight (28) Business Days of receipt of such

notice, the Offtaker procures the termination of such person's employment and of the appointment of their employer (where not employed by the Offtaker or any Offtaker Party) and (if necessary) procures the performance of such part of the Services by another person.

## 15. **INDEMNITIES AND CAPS ON LIABILITY**

15.1 Subject to clauses 15.2.3, 15.5 and 15.6:-

15.1.1 subject to clauses 15.1.2 and 15.1.3, the Offtaker shall indemnify the Supplier for and against all Losses suffered by the Supplier arising as a result of a breach of the terms of this Contract by the Offtaker; and

15.1.2 to the extent permitted by law, the total liability of the Offtaker under or in connection with this Contract in respect of Losses of the Supplier arising from a termination of this Contract (the "Offtaker Contract Termination Cap") shall be limited to two hundred per cent (200%) of the Annual Value of the Contract; and

15.1.3 subject to clause 15.1.2, to the extent permitted by law, the total liability of the Offtaker under or in connection with this Contract in respect of Losses of the Supplier in any Contract Year shall be limited to one hundred per cent (100%) of the then subsisting cap on liability on termination pursuant to clause 15.1.2 above.

15.2 Subject to clauses 15.2.3, 15.5 and 15.6:-

15.2.1 subject to clauses 15.2.2 and 15.2.3, the Supplier shall indemnify the Offtaker for and against all Losses suffered by the Offtaker arising as a result of a breach of the terms of this Contract by the Supplier; and

15.2.2 to the extent permitted by law, the total liability of the Supplier under or in connection with this Contract in respect of Losses of the Offtaker arising from a termination of this Contract (the "Supplier Termination Cap") shall be limited to two hundred per cent (200%) of the Annual Value of the Contract; and

15.2.3 subject to clause 15.2.2, to the extent permitted by law, the total liability of the Supplier under or in connection with this Contract in respect of Losses of the Offtaker in any Contract Year shall be limited to one hundred per cent (100%) of the then subsisting cap on liability on termination pursuant to clause 15.2.2 above.

15.3 Subject to clause 15.5, for so long as both counterparties to this Contract are Affiliates of one another, the Parties' liability to the other shall not be limited by the provisions of this clause 15.

15.4 To the extent permitted by law, the express remedies set out in this Contract shall be the sole remedies of the Parties.

15.5 Neither Party's liability to the other Party for any death or personal injury arising out of its negligence or that of its employees or agents shall be excluded by the provisions of clauses 15.1 or 15.2.

15.6 Upon a termination of the Contract due to an Offtaker Event of Default or Supplier Event of Default, the liability of the defaulting Party in relation to its failure to make available for Collection (in the case of the Supplier) or Accept and procure the Thermal Treatment of

(in the case of the Offtaker) the Committed Tonnage Level shall be limited to its outstanding liability in relation to the Offtaker Deficit Tonnage or Supplier Deficit Tonnage (as appropriate) for the Contract Year in which termination occurred.

## 16. **INSURANCE**

- 16.1 The Supplier undertakes, throughout the Term, to take out and maintain Public Liability insurance in an amount no less than ten million pounds (£10,000,000).
- 16.2 The Offtaker undertakes, throughout the Term, to take out and maintain Public Liability insurance in an amount no less than ten million pounds (£10,000,000).
- 16.3 All insurances shall be taken out with reputable insurers.
- 16.4 Each Party shall provide the other Party with details of the insurance policies taken out by such Party and evidence of the payment of premia in compliance with clause 16.1 or 16.2 (as appropriate) upon request.

## 17. **AUDIT**

- 17.1 The Offtaker acknowledges and agrees that the Authority's auditors may examine such of the Offtaker's documents as such auditors are permitted by law or any contract with the Project Company to demand in the exercise of and in compliance with their statutory powers which are owned, held or otherwise in the control of the Offtaker and may require the Offtaker to produce such oral or written explanation as he considers necessary.
- 17.2 The provisions of this clause 17 and its associated clauses shall survive and remain in force upon and following termination or expiry of this Contract for a period of five (5) years.

## 18. **EQUALITIES LEGISLATION**

The Offtaker shall not, and shall take all reasonable steps to secure that all servants, employees, agent and all sub-contractors employed in the execution of this agreement do not, unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006 or any statutory modification or re-enactment thereof in relation to discrimination in employment or, any future legislation which concerns discrimination in employment.

## 19. **DISPUTES**

- 19.1 Any dispute between the Parties arising out of or in connection with any aspect of this Contract shall be subject to the provisions of this clause 19.

### 19.2 **Resolution through Liaison**

19.2.1 Subject to the right to refer a dispute to adjudication at any time in accordance with this clause 19, if a dispute arises in relation to this Contract the Supplier and the Offtaker shall first consult in good faith in an attempt to resolve the dispute.

19.2.2 If any dispute is resolved by the Supplier and the Offtaker pursuant to clause 19.2.1 within seven (7) Business Days of the commencement of

consultation pursuant to this clause 19.2 a written memorandum (a "Memorandum of Resolution") shall be prepared and signed by or on behalf of the Supplier and the Offtaker. The Memorandum of Resolution shall confirm that the agreed resolution is in full and final settlement of the dispute and shall record all matters in issue and all material factual details of the dispute and the terms of resolution and a copy shall be supplied to both the Supplier and the Offtaker.

19.2.3 If the Supplier and the Offtaker fail to resolve any dispute pursuant to clause 19.2.1 or if the Fast Track DRP applies, either Party (the "Referring Party") may refer the matter to an adjudicator, (the "Adjudication Referral"), appointed in accordance with clause 19.3.

### 19.3 **Resolution through Adjudication**

19.3.1 With the object of securing the appointment of the adjudicator and referral of the dispute to him within seven (7) days of giving notice of intention to refer the matter to adjudication, the Referring Party shall at the same time as it gives notice of its intention to refer (the "Notice of Intention to Refer") the dispute to adjudication to the other Party (the "Responding Party") it shall also give notice to the Responding Party of the identity of a suitable adjudicator and its opinion as to whether the principal nature of the dispute is:-

- (a) operational; or
- (b) civil construction; or
- (c) plant and machinery; or
- (d) legal; or
- (e) financial.

19.3.2 If within one (1) day of the service of the Notice of Intention to Refer on the Responding Party the Parties have not agreed both the identity of the nominated candidate and the principal nature of the dispute, the Referring Party shall request the President of the Law Society (or his nominated deputy) decide the principal nature of the dispute and to direct as appropriate which of the following presidents shall select the adjudicator on the following basis:-

- (a) in relation to disputes which relate primarily to operational matters, the President of the Chartered Institution of Wastes Management;
- (b) in relation to disputes which relate primarily to civil construction matters, the President of the Institution of Civil Engineers;
- (c) in relation to disputes which relate primarily to plant and machinery, the President of the Institute of Mechanical Engineers;
- (d) in relation to disputes which relate primarily to legal matters, the President of the Law Society; and
- (e) in relation to disputes which relate primarily to financial matters the President of the Institute of Chartered Accountants of England and Wales.

- 19.3.3 The Referring Party's notice of request to the President of the Law Society (the "Notice of Request") shall set out, with brief reasons, what the Referring Party considers is the principal nature of the dispute and at the same time as the notice is served on the President of the Law Society a copy shall be provided to the Responding Party who shall be entitled to provide written representations in response to the President of the Law Society and the Referring Party within one day of the service of the Referring Party's Notice of Request to the President of the Law Society.
- 19.3.4 Following the expiry of the time limit for receipt of the Responding Party's written representations, the President of the Law Society shall be invited, within one day of the expiry of the time limit for the Respondent's submissions, to nominate in his absolute discretion the appropriate nominating President and forthwith upon that nomination the Referring Party shall request the nominated President to nominate an adjudicator within one day of the request and invite the nominated person to agree to the appointment within one day of being nominated. If the nominated adjudicator accepts the matter will be deemed referred to him upon his giving notice of his acceptance.
- 19.4 Within seven (7) days of serving the Notice of Intention to Refer the Referring Party shall provide its argument in writing to the adjudicator and the Responding Party at the same time. In making its claim, the claimant shall provide all supporting evidence relating to the dispute. The adjudicator shall, in his absolute discretion, decide whether a hearing is necessary in order to resolve the dispute. The adjudicator shall have control of the adjudication and shall have the power to call for such additional documents and evidence from the Parties, as he shall, in his absolute discretion, require.
- 19.5 In any event, the adjudicator shall provide to both Parties his written decision on the dispute, within twenty eight (28) Days of his receiving the relevant Adjudication Referral. The said period may be extended by the adjudicator by up to fourteen (14) Days with the consent of the claimant, and shall be extended by the adjudicator if both Parties so require. The adjudicator shall state his reasons for his decision.
- 19.6 Unless and until the dispute is finally determined by legal proceedings or by a written agreement between the Parties, the adjudicator's decision shall be binding on both Parties, who shall forthwith give effect to the decision. If either Party does not comply with the adjudicator's decision, the other may bring legal proceedings to secure such compliance.
- 19.7 The adjudicator shall have power to order either Party to pay the whole or any part of the costs (including, for the avoidance of doubt, legal or witness costs or expenses) and in default of any such order, each Party shall bear its own costs.
- 19.8 The adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the Law relating to arbitration shall not apply to the adjudicator or his determination or the procedure by which he reached his determination.
- 19.9 The adjudicator shall:-
- 19.9.1 act impartially and may take the initiative in ascertaining the facts and the law; and

- 19.9.2 have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.
- 19.10 The adjudicator may:-
- 19.10.1 use his own knowledge and experience;
  - 19.10.2 visit the Relevant Site(s);
  - 19.10.3 (acting reasonably) require the Parties to submit any information, or to conduct tests, and the Parties shall do so; and/or
  - 19.10.4 having first notified the Parties as to likely costs (and, where such costs are likely to be significant, having obtained the consent of the Parties, such consent not to be unreasonably withheld or delayed) obtain from other persons information and advice, including information and advice on relevant legal and technical matters.
- 19.11 All information, data or documentation disclosed or delivered by a Party to the adjudicator in consequence of or in connection with his appointment as adjudicator shall be treated as confidential, but may be offered as evidence in any subsequent court proceedings. The adjudicator shall not, save as permitted by clause 21 disclose to any person, (other than the Parties), any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the adjudicator's work. All communications between the adjudicator and a Party shall be copied to the other Party.
- 19.12 The adjudicator shall not be held liable for anything done or omitted in the discharge or purported discharge of his function as adjudicator unless the act or omission is in bad faith. Any employee or agent of the adjudicator shall be similarly protected from liability.
- 19.13 Unless the Parties have agreed in writing that the adjudicator's decision will be final, either Party may, within the time referred to in clause 19.14, issue in the courts of England and serve on the other Party, proceedings in relation to the dispute. In such event, the court shall hear the dispute and shall have power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract, including the adjudicator's decision, but the Parties shall continue to comply with the adjudicator's decision unless and until it is varied or cancelled by a court of competent jurisdiction. Nothing in this Contract shall prevent the admissibility in evidence of the adjudicator's decision.
- 19.14 If the Parties have agreed in writing that the adjudicator's decision will be final, or if neither Party commences proceedings in the courts of England and serves them on the other within twenty eight (28) Business Days after both Parties have received the adjudicator's decision, the adjudicator's decision will be final and binding on both Parties.
- 19.15 The Parties shall continue to comply with their respective obligations in accordance with this Contract without interruption during any adjudication or court proceedings.
- 19.16 The provisions of this clause 19 shall not apply in respect of claims brought by either Party against the other for contribution or indemnity pursuant to the Civil Liability (Contribution) Act 1978 arising out of a claim in tort made in court proceedings brought by a third party against either the Supplier or the Offtaker.

### 19.17 **Fast Track Procedure**

If the Parties have agreed that the Fast Track DRP applies:-

19.17.1 clauses 19.2.1 and 19.2.2 shall not apply;

19.17.2 either Party may immediately refer the matter to an adjudicator appointed pursuant to clause 19.4 in the form required by clause 19.2.3; and

19.17.3 the dispute shall be dealt with pursuant to clause 19.4 to 19.16 (inclusive) provided that the time set out in clause 19.5 shall be amended for the purpose of the fast track resolution of the relevant dispute to ten (10) Business Days,

subject always to the rights of either Party to refer a dispute to adjudication at any time in accordance with this clause 19.

## 20. **ASSIGNMENT AND SUB-CONTRACTING**

20.1 The Offtaker shall not assign or novate its rights or obligations under this Contract to any third party without the consent of the Supplier, such consent not to be unreasonably withheld and/or delayed where the Offtaker intends to assign such rights or novate such rights and obligations to an Affiliate.

20.2 The Supplier acknowledges that certain of the Offtaker's responsibilities and management of this Contract including invoicing, payment collection and Thermal Treatment may be carried out by one or more Affiliates of the Offtaker as a subcontractor to the Offtaker and nothing in this Contract is intended to restrict its ability to do so provided that the Offtaker shall remain liable for the acts of its sub-contractors.

20.3 The Supplier shall be entitled to sub-contract part or whole of the performance of its obligations under this Contract with the consent of the Offtaker, such consent not to be unreasonably withheld and/or delayed.

20.4 The Supplier shall be entitled to charge and/or assign the benefit and/or novate the burden of this Contract in favour of any of:-

20.4.1 the Project Company or its nominee;

20.4.2 the Funders or their nominee in accordance with the terms of the Funders' Direct Agreement;

20.4.3 the Authority or its nominee in accordance with the terms of the Authority Direct Agreement;

20.4.4 any Affiliate of the Supplier;

20.4.5 any replacement operator under the terms of the Operating Contract; or

20.4.6 any other third party with the prior consent of the Offtaker (such consent not to be unreasonably withheld and/or delayed),

from time to time, and the Offtaker agrees upon the request of the Supplier to execute such documents as may reasonably and customarily be required to give effect to such charge, assignment and/or novation (as appropriate).

## 21. **CONFIDENTIALITY**

21.1 Except as permitted by this clause, all information disclosed, whether in writing, orally or by any other means from one Party or its Affiliates to the other (which in the case of a charge or assignment pursuant to clause 20.4 includes disclosure by the Offtaker to any person to whom the Contract has been charged or assigned) either before or after the commencement of this Contract and in respect of the subject matter of this Contract (“Confidential Information”) shall be held confidential during the Term and thereafter, and shall not be divulged in any way to any third party without the prior written approval of the other Party. Except as permitted by this clause each party shall procure that its Affiliates and its and their respective officers, employees, servants and agents shall keep confidential and shall not disclose to any person any of the Confidential Information of the other Party.

21.2 A Party shall be entitled in good faith to divulge any of the other’s Confidential Information without the approval of the other Party in the following circumstances:-

21.2.1 upon the request of Relevant Authority exercising statutory and/or regulatory powers; or

21.2.2 pursuant to a court order,

but only to the extent necessary to enable such Regulatory Authority to exercise its statutory and/or regulatory power or to fulfil the court order and provided that, and to the extent it is permissible by law to do, such disclosing Party shall:-

21.2.3 to the extent it is reasonably practicable, obtain confidentiality undertakings from the Regulatory Authority or those who have the benefit of any court order equivalent to those agreed between the Parties under this Contract;

21.2.4 prior to disclosure inform the other Party of the proposed disclosure and the information it proposes to disclose; and

21.2.5 to the extent it is reasonable, require the Regulatory Authority or those who have the benefit of the court order, to destroy or return the Confidential Information on request of the Party whose Confidential Information has been disclosed.

21.3 Either Party may disclose Confidential Information to:-

21.3.1 any (or any Affiliate’s) officer or servant of the Party in question if disclosure is necessary or expedient to enable the Party in question to perform its obligations under this Contract;

21.3.2 any professional advisors or consultants; or

21.3.3 any lender, security trustee, bank or other financial institution from whom such Party or the Project Company is seeking or obtaining finance.

(the “Disclosee”), provided that the disclosing Party takes all reasonable steps to ensure that the Disclosee keeps such information confidential.

In fulfilling its obligations under this clause each Party shall only be required to use the same degree of care to prevent unauthorised disclosure of the other’s Confidential

Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature which it considers proprietary or confidential.

21.4 No announcement or circular in connection with this Contract or the existence of this Contract shall be made by or on behalf of either Party without the prior approval of the other (such approval not to be unreasonably withheld and/or delayed), save that in the event that either Party is required, by an applicable law or by applicable Legislation or regulatory body including a recognised Stock Exchange, to make any announcement or issue any circular, it may do so to the extent required by the law or regulatory body, after first consulting the other as to the contents thereof. It is acknowledged that the Supplier is subject to certain publicity restrictions in the Operating Contract, and it is agreed that it will be reasonable for the Supplier to withhold its consent to any publicity proposed by the Offtaker under this clause 21.4 if the necessary consents under the Operating Contract cannot be obtained. Upon the request of the Offtaker, the Supplier agrees that it will use reasonable endeavours to seek the necessary consents under the Operating Contract.

21.5 The provisions of this clause 21 and its associated clauses shall survive and remain in force upon and following the termination or expiry of this Contract for a period of five years.

21.6 Information shall not be Confidential Information if:-

21.6.1 a Party can demonstrate that the information in question is already or becomes generally available and in the public domain otherwise than as a result of the breach of this clause 21; or

21.6.2 a Party can demonstrate that the information in question is already or becomes lawfully in the possession of the Party in question,

otherwise than as a result of the breach of this clause 21;

## 22. **WAIVER**

22.1 No waiver by a Party of any default by the other Party of the performance of any of the provisions of this Contract shall operate or be construed as a waiver of any other or further default whether of a like or different character.

22.2 No failure or delay in the exercise or non-exercise by either Party of any of its rights or remedies under or in connection with this Contract nor anything said, done or written by any person, or anything omitted to be said, done or written by any person including any employee, servant and agent of either Party shall in any way affect the rights, or modify, affect, reduce or extinguish the obligations and liabilities, of either Party under this Contract, or be deemed to be a waiver or release of any of the rights or remedies of either Party.

22.3 No single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

22.4 Where in this Contract any obligation of a Party is to be performed in a specified time limit that obligation shall be deemed to continue after that time limit if the Party fails to comply with that obligation within the time limit.

22.5 Any waiver or release of any right or remedy must be specifically granted in writing and shall:-

- 22.5.1 be confined to the specific circumstances in which it is given;
- 22.5.2 not affect any other enforcement of the same or any other right; and
- 22.5.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

## 23. **MISCELLANEOUS**

It is agreed between the Parties that:-

- 23.1 nothing in this Contract shall constitute or be deemed to constitute a partnership, agency or the relationship of employer and employee;
- 23.2 this Contract contains the entire agreement between the Parties and supersedes any previous agreement between the Parties in relation to the subject matter hereof;
- 23.3 neither Party has relied on or been induced to enter into this Contract by a representation other than to the extent expressly set out in this Contract;
- 23.4 any changes and/or amendments to this Contract must be in writing and signed by both Parties;
- 23.5 if any provision of this Contract is or becomes or is declared invalid, unenforceable and/or illegal by the courts of any jurisdiction to which it is subject to or by order of the commission of the European Communities or by order of the Secretary of State, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Contract which shall, for the avoidance of doubt, continue in full force and effect notwithstanding such invalidity, unenforceability or illegality;
- 23.6 each Party shall be responsible for their own costs in the preparation and execution of this Contract;
- 23.7 the Supplier shall accept responsibility for the acts and omissions of all Supplier Parties, and the Offtaker shall accept responsibility for the acts and omissions of all Offtaker Parties, in each case as if such acts and omissions were the acts and omissions of the Supplier or the Offtaker (as the case may be); and
- 23.8 the express remedies set out in this Contract shall be the sole remedies under or in connection with the subject matter hereof.

## 24. **MITIGATION**

- 24.1 Each Party agrees to take all reasonable steps to mitigate any Losses which it may otherwise incur as a result of a breach of this Contract by the other Party, including (where appropriate) waiving or shortening notice periods under Schedule 3 where the Party incurring the Losses can reasonably accommodate a shorter period without incurring Losses as a result of such accommodation.
- 24.2 As soon as reasonably practicable upon becoming aware that it will be unable to provide for Collection or Accept (as appropriate) On-Specification SRF, such Party shall inform the other Party of the circumstances and likely duration of the disruption, in order to afford to the other Party as great an opportunity as possible to mitigate the effects of the disruption on such other Party's business and costs.

## 25. **NOTICES**

25.1 All notices which are required to be given under this Contract shall be in writing and shall be sent:-

25.1.1 in the case of notices sent by hand or by post to the registered office address of the Party to whom it is addressed; and

25.1.2 in the case of notices sent by facsimile, as follows:-

(a) where addressed to the Supplier, the facsimile number shall be [            ];  
and

(b) where addressed to the Offtaker, the facsimile number shall be [            ];

in each case marked for the attention of the Company Secretary.

25.2 Any such notice served in connection with this Contract may be delivered:-

25.2.1 by hand; or

25.2.2 by first-class pre-paid letter; or

25.2.3 facsimile,

and shall be deemed to have been served:-

25.2.4 if by hand, when delivered;

25.2.5 if by first-class post, forty eight (48) hours after posting; and

25.2.6 if by facsimile, upon the entry into the log of the transmitting facsimile machine of a message that the facsimile has been successfully sent in its entirety to the facsimile number of the recipient.

## 26. **JURISDICTION**

This Contract will be governed by and construed in accordance with English law and the Parties agree that the English courts shall have non-exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Contract.

## 27. **THIRD PARTIES**

27.1 No person who is not a Party to this Contract (including any Supplier Party or Offtaker Party) shall have the right to enforce any term of this Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this clause 27.

27.2 Even if a person who is not a Party to this Contract (including any Supplier Party or Offtaker Party) has a right to enforce any term of this Contract by virtue of section 1 of the Contracts (Rights of Third Parties) Act 1999, the Parties may vary or cancel this Contract by agreement between them without requiring the consent of such third party.

IN WITNESS WHEREOF this Deed is hereby entered into by the Parties on day and year first before written.

EXECUTED for and on behalf of SHANKS )  
WASTE MANAGEMENT LIMITED by an )  
authorised signatory pursuant to a power )  
of attorney dated )

Attorney

Witness

Name

Address

EXECUTED AS A DEED by [ \_\_\_\_\_ ] )  
acting by:- )

**SCHEDULE 1**

**Not Used**

**SCHEDULE 2**

**Indexation**

[ ]

## **SCHEDULE 3**

### **Scheduling and Collection**

1. Collections will commence on the Services Commencement Date.
2. Prior to the commencement of:-
  - 1.1 each Contract Year, and no later than the end of fifteen (15) Business Days before the end of each Contract Year, the Parties will agree a collection Schedule for the following Contract Year, taking account of planned and known unplanned outages (an "Annual Collection Schedule");
  - 1.2 by no later than five (5) Business Days prior to the end of each Month, the Parties will agree a collection Schedule for the following Month, taking account of planned and unplanned outages (a "Monthly Collection Schedule"); and
  - 1.3 each Week, and prior to noon on the preceding Friday if possible, the Parties will agree a collection Schedule for each day in the following Week, taking account of planned and unplanned outages (a "Weekly Collection Schedule"), based upon the licensed opening times for the Offtaker's Facility and the number of full loads that the Supplier can reasonably be expected to provide for collection and the Offtaker can reasonably be expected to Collect during such opening hours. The collection of partially full loads shall be restricted as far as reasonably practicable to any balancing collections at the end of the relevant Contract Year.

To the extent reasonably practicable (and subject always to planned and unplanned outages), the Parties shall endeavour to agree Annual Collection Schedules and Monthly Collection Schedules which provide for the Collection and Acceptance of On-Specification SRF evenly throughout the relevant Contract Year.

2. The Offtaker shall:-
  - 2.1 collect SRF from the Collection Point using such vehicles as are fit for such purpose and adequately covered to prevent any escape of such SRF;
  - 2.2 ensure that its drivers shall adhere to the rules of conduct from time to time published by the Supplier and comply with all reasonable and lawful instructions issued to them by the authorised representatives of the Supplier whilst on the Supplier Site;
  - 2.3 comply (at its own cost) with such reasonable directions as to the regulation of the Supplier Site and working practices within the Supplier Site as the Supplier shall from time to time prescribe. The Supplier will give reasonable prior notice in writing of any proposed change to such regulations; and
  - 2.4 be responsible (at its own cost) for Collecting the SRF at the Collection Point, unless otherwise agreed with the Supplier.
3. The Supplier will deliver a consignment note with every consignment for Collection specifying the source of each collection and such other documentary information in relation to each delivery as the Offtaker may reasonably request in order to comply with Environmental Protection Act 1990 and Duty of Care Regulations, and which should be auditable by any Relevant Authority or the Offtaker.

4. The Offtaker warrants that it is a registered carrier for the purposes of the Control of Pollution (Amendment) Act 1989 and The Waste Management Licensing Regulations 1994 and shall continue to be duly registered for so long as this Contract remains in force and shall procure that any subcontractor appointed shall also be duly registered.
5. The Supplier shall:-
  - 5.1 at its cost provide a Collection Point at which the Offtaker can safely load On-Specification SRF to its vehicles;
  - 5.2 at its own cost provide a Weighbridge to be used by the Offtaker's collection vehicles;
  - 5.3 provide free of charge such reasonable assistance to collection vehicles as they may require whilst at the Supplier Site; and
  - 5.4 procure that each vehicle that Collects On-Specification SRF from the Supplier Site is weighed and that proper records of the number and type of vehicles Collecting SRF from the Supplier Site and of the tonnage of SRF Accepted by the Offtaker at the Supplier Site are kept.
6. The Supplier shall be responsible for the maintenance and calibration of the Weighbridge and shall comply with all statutory requirements with respect to the operation, maintenance and calibration thereof, the results of which shall be made available upon reasonable notice for inspection by the Offtaker.
7. The Offtaker may, at its own expense and after giving reasonable notice to the Supplier, carry out such additional tests as the Offtaker reasonably deems necessary to determine the accuracy of the Weighbridge, provided that any such tests shall only be undertaken at times which do not disrupt the operation of the Supplier Site. Should such additional tests identify a material fault in any Weighbridge:-
  - 7.1 the Supplier shall remedy any such fault as soon as is reasonably practicable at its own expense;
  - 7.2 the Supplier shall reimburse the Offtaker the reasonable cost of the tests carried out under this paragraph 7; and
  - 7.3 to the extent that the Weighbridge has been weighing inaccurately so as to result in the Offtaker paying more or less for the SRF than was properly due, the Parties shall reconcile the overcharge or undercharge (as appropriate). The monetary adjustment shall be agreed between the Supplier and the Offtaker or, in the absence of agreement, shall be referred to the DRP for determination.
8. Without prejudice to their respective obligations under this Contract, the Offtaker shall promptly notify the Supplier if it is unable to Accept any Collections and the Supplier shall promptly notify the Offtaker if it is unable to provide SRF Scheduled for Collection. In any such case the Parties' nominated representatives shall meet at the request of either of them to review the situation.

**SCHEDULE 4**

**Contract Tonnage**

<b>Contract Year</b>	18/19	19/20	20/21	21/22	22/23	23/24
<b>Committed Tonnage Level</b>	50,250	50,250	50,250	50,250	50,250	50,250
<b>Additional Tonnage Level</b>	82,500	82,500	82,500	82,500	82,500	82,500

**SCHEDULE 5**

**Price**

(£ per tonne including gate fee and transport)

## **SCHEDULE 6**

### **Deficit Tonnage Calculation**

1. Offtaker Deficit Tonnage is calculated as follows:-

For any relevant Contract Year: (tonnage of SRF to be supplied in accordance with the Annual Collection Schedule LESS tonnage of SRF already Collected by the Offtaker in that Contract Year) If : (tonnage of SRF to be supplied in accordance with the Annual Collection Schedule LESS tonnage of SRF collected by the Offtaker in that Contract Year) is less than zero it will be deemed to be zero.

2. Supplier Deficit Tonnage is calculated as follows:-

For any relevant Contract Year: (tonnage of SRF to be supplied in accordance with the Annual Collection Schedule LESS tonnage of SRF already supplied by Supplier in that Contract Year)

If (tonnage of SRF to be supplied in accordance with the Annual Collection Schedule LESS tonnage of SRF supplied by Supplier in that Contract Year) is less than zero it will be deemed to be zero

## **SCHEDULE 7**

### **Collection Vehicle Specification**

1. All Collection Vehicles must comply with all applicable Legislation.

2. **Trailer specification:**

Must be barn doors to load off the press (although hydraulic backs could be loose loaded)

Dimensions 2.5m x2.5m

Manufacturers STAS, Kraken, Knappen used.