

**CONFORMED COPY**

**Waste Management Contract**

**Dated 12 December 2014**

**North London Waste Authority**

**and**

**LondonWaste Limited**



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**This Deed** made the

12th day of December

2014

### **Parties**

- (1) **North London Waste Authority** whose principal place of business is at Unit 1B, Berol House, 25 Ashley Road, Tottenham Hale, London N17 9LJ (the "**Authority**"); and
- (2) **LondonWaste Limited** a company registered in England and Wales (company number 2732548) whose registered office is at EcoPark, Advent Way, Edmonton, London N18 3AG ("**LWL**").

The parties are hereinafter individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

### **Recitals**

- (A) The Authority is a Waste Disposal Authority under s.10 of the Local Government Act 1985 and s.30(2)(a) of the EPA. The Authority, amongst its other duties and powers, disposes of waste from the Boroughs and from RRCs in its area.
- (B) LWL is a company wholly owned by the Authority. LWL was contracted to provide waste management services to the Authority and the Boroughs in the twenty (20) year period from 16 December 1994 to 15 December 2014.
- (C) The Authority is awarding a further contract to LWL on the basis that such an award is made as an "in-house" award by a contracting authority in compliance with the criteria set out in the judgment of the Court of Justice of the European Union in *C-107/98 Teckal v Comune di Viano and Azienda Gas-Acqua Consorziale di Reggio Emilia* [1999] ECR. The Parties acknowledge that the terms of this Contract are intended to be consistent with the criteria set out in this case and provide a framework for the regulation of day-to-day contract management.
- (D) The Authority requires LWL to provide the Services and LWL shall perform the Services in accordance with the terms of this Contract.
- (E) The Parties acknowledge that they will work together effectively and will cooperate with each other to ensure the delivery of the Services.
- (F) The Parties acknowledge that the Authority will be starting to prepare plans for new waste facilities at the EcoPark and the construction of such facilities together with the later decommissioning of the existing EfW facility, and the Parties agree that they will work together effectively to ensure the Authority's achievement of this.

**It is agreed** as follows:

**1 Definitions and Interpretation**

1.1 In this Contract, except where the context otherwise requires, the following expressions shall have the meanings set out below:

"**1954 Act**" means the Landlord and Tenant Act 1954;

"**Accounting Period**" means the consecutive twelve (12) month period from the beginning of 1 January to the end of 31 December in the same calendar year;

"**Accreditations**" means ISO 14001: 2004, BS OHSAS 18001 2007 and ISO 9001: 2008 together with the Freight Operator Recognition Scheme gold standard accreditation, or any equivalent standard of accreditation, and any replacement or amended accreditations;

"**AD Facility**" means any third party anaerobic digestion treatment facility appropriately licensed for the treatment of Contract Food Waste and that is used by LWL;

"**Authority Financial Year**" means the consecutive twelve (12) month period from the beginning of 1 April of one calendar year to the end of 31 March of the following calendar year;

"**Authority Receptacle**" means any item used for the storage and/or transport of Contract Waste at an RRC Site that is not an Open Container or an RRC Compactor Container, and is not owned by LWL or an LWL Related Party;

"**Authority Related Party**" means any of the following:

- (a) an officer, servant, employee or agent of the Authority acting in that capacity;
- (b) any contractor or sub-contractor of the Authority of any tier and their directors, officers, servants, employees or agents acting in that capacity,

but excluding in any case LWL and any LWL Related Parties;

"**Authority's Representative**" has the meaning given to it in Clause 7.2;

"**Available**" means any Site that is not Unavailable, and "**Availability**" shall be construed accordingly;

"**Availability Criteria**" means the minimum requirements to be met by LWL under this Contract so as to ensure that a Site is Available as set out in Schedule 7, paragraph 2;

"**Best Value Duty**" means a statutory obligation to make arrangements to secure continuous improvement in the way the Authority's functions are

exercised having regard to a combination of economy, efficiency and effectiveness;

"**Borough**" means the Authority's seven (7) constituent London boroughs, being Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest (together, the "**Boroughs**");

"**BS EN ISO 12944**" means the corrosion related standard produced by the British Standards Institution for paints and varnishes and corrosion protection of steel structures by protective paint systems or any subsequent amendments or variations;

"**BSI PAS100:2011**" means the composting standard produced by the British Standards Institution Publicly Available Specification 100:2011 for compost materials or any subsequent amendments or variations;

"**BSI PAS110:2011**" means the anaerobic digestion standard produced by the British Standards Institution Publicly Available Specification 110:2011 for compost materials or any subsequent amendments or variations;

"**Bulking and Transport Service**" means the service set out in Schedule 1, Part 4;

"**Bulking Facilities**" means:

- (a) the Bulky Recycling Centre, EcoPark, Advent Way, Edmonton, London N18 3AG;
- (b) Hornsey Street Waste and Recycling Centre, Hornsey Street, Islington, London N7; or
- (c) in the case of an Emergency, such other facility reasonably directed by LWL;

"**Bulking Fee**" means the fee to handle waste at the Bulking Facilities as set out in Schedule 6;

"**Business Continuity Plan**" means the plan set out in Schedule 4 as may be updated from time to time;

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

"**Business Plan**" means the plan setting out LWL's business operations approved by the Authority at its meeting on 29 September 2014;

"**Capital Expenditure**" has the meaning given to it in Schedule 8;

"**Clinical Waste Receipt and Disposal Service**" means the service set out in Schedule 1, Part 5;

"**Commencement Date**" means 00.01 hours on 16 December 2014;

"**Compost**" means the product conforming to BSI PAS 100:2011 resulting from the handling and processing of the Contract Organic Waste;

"**Composting Alternative Facility**" means any third party composting facility appropriately licensed for Contract Green Waste and/or Mixed Contract Food and Green Waste that is used by LWL;

"**Composting Facility**" means the composting facility at the EcoPark;

"**Confidential Information**" means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information the disclosure of which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how, of either Party and all personal data and sensitive personal data within the meaning of DPA;

"**Contract**" means this deed and all of its Schedules executed by the Parties;

"**Contract Clinical Waste**" means the following categories of waste as defined in the European Waste Catalogue:

- (a) EWC 18 01 01 – sharps – segregated and sent for onward disposal to appropriately licensed clinical waste facilities;
- (b) EWC 18 01 03 – waste whose collection and disposal is subject to special requirements in order to prevent infection, and which is sent for onward disposal to appropriately licensed clinical waste facilities; and
- (c) EWC 18 01 04 – waste whose collection and disposal is not subject to special requirements in order to prevent infection;

"**Contract Food Waste**" means waste that meets the Waste Acceptance Criteria and is delivered to LWL as food waste;

"**Contract Green Waste**" means waste that meets the Waste Acceptance Criteria and is delivered to LWL as green waste;

"**Contract Organic Waste**" means Contract Food Waste, Contract Green Waste, and Mixed Contract Food and Green Waste;

"**Contract Organic Waste Service**" means the service set out in Schedule 1, Part 3;

"**Contract Period**" means the period from the Commencement Date to the earlier of the Expiry Date or the Termination Date;

"**Contract Price**" means the price for the Services as calculated in accordance with Schedule 6;

"**Contract Price Review Date**" means 1 January 2020;

"**Contract Residual Waste**" means all Contract Waste (except for Contract Organic Waste, Recyclables and Contract Clinical Waste) and everything



deposited at RRCs except that which has been separated for re-use or recycling;

**"Contract Residual Waste Treatment Rate"** means the rate set out in Schedule 6, Part 2;

**"Contract RRCs"** means the RRCs as listed in Schedule 3, Part 1 that are operated by LWL;

**"Contract Waste"** means Contract Residual Waste, Contract Clinical Waste, Contract Organic Waste and Recyclables, and any other waste that the Authority:

- (a) has the legal power or duty to dispose of from time to time; and
- (b) directs LWL to dispose of;

**"Contract Year"** means a period of twelve (12) calendar months commencing on 1 January, provided that:

- (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on 31 December 2014; and
- (b) the final Contract Year shall be the period commencing on 1 January immediately preceding the last day of the Contract Period and ending on the last day of the Contract Period;

**"Conviction"** means, other than in relation to minor road-traffic offences, any previous prosecutions, convictions, cautions and binding over orders (excluding any spent convictions as contemplated by s.1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act (Exemption Order) 1975 (SI 1975/1023) or any replacement or amendment to that Order);

**"Customer"** means members of the public and any organisations permitted by the Authority who use the RRCs made available by the Authority pursuant to s.51 of EPA;

**"Deduction"** means a sum of [REDACTED] (indexed from 1 January 2016 with a base date of 1 December 2014) to be recovered from LWL by the Authority as liquidated damages in compensation for LWL's failure to meet the Key Performance Indicators set out in Schedule 7, paragraph 5;

**"Default Notice"** means a notice issued by the Authority to LWL in accordance with Clause 24;

**"Default Points"** has the meaning given to it in Schedule 7;

**"Delivery Point"** means the point of delivery of Contract Waste to LWL as listed in Schedule 3, Part 1;

**"Digestate"** means the product conforming to BSI PAS 110:2011 resulting from the handling and processing of Contract Food Waste;

"**DPA**" means the Data Protection Act 1998;

"**Duty of Care**" means the duty of care as referred to in s.34 of EPA;

"**EA**" means the Environment Agency as required by the Secretary of State for Environment, Food and Rural Affairs;

"**EcoPark**" means LWL's site at Advent Way, Edmonton, London N18 3AG;

"**EfW**" means energy from waste;

"**EIR**" means the Environmental Information Regulations 2004;

"**Emergency**" means a power or equipment failure or breakdown at a Delivery Point, RRC or the Bulking Facilities resulting in an inability to process waste for a period of more than twenty-four (24) hours;

"**Environmental Permit**" means a permit required and issued by the EA pursuant to the Environmental and Permitting (England & Wales) Regulations 2007 in respect of the relevant Site;

"**EPA**" means the Environmental Protection Act 1990;

"**Equipment**" means the equipment necessary to provide the Services, except for RRC Compactor Containers and Authority Receptacles;

"**Excusing Cause**" has the meaning given to it in Schedule 7, paragraph 3;

"**Expenditure**" means Capital Expenditure and/or Revenue Expenditure (as the case may be);

"**Expiry Date**" means 23.59 on 1 December 2025;

"**Facility**" means the current EfW plant at the EcoPark and any replacement EfW plant or new energy recovery centre that may be constructed;

"**FOIA**" means the Freedom of Information Act 2000;

"**Force Majeure Event**" means the occurrence after the date of this Contract of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of LWL or its sub-contractors of any tier except where such actions or breach of LWL constitutes solely the receipt or treatment by LWL or its sub-contractor of Contract Waste (containing nuclear, chemical or biological contamination) in accordance with this Contract; or
- (c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Contract;

**"Good Industry Practice"** means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as LWL);

**"Hazardous Waste"** means waste of the kind or nature described in the Hazardous Waste (England and Wales) Regulations 2012;

**"Health and Safety Legislation"** means the Health and Safety at Work etc Act 1974 and all statutory instruments and codes of practice made thereunder (including any amendment or re-enactment) and all other acts, regulations or guidance notes (derived from all laws, statutes or subordinate legislation) concerning the management, disposal and recovery of waste which pertain to the health, safety or welfare of persons;

**"Health and Safety Policy"** has the meaning given to it in Clause 12.1.3;

**"Hendon Container"** means the one hundred and twenty (120) closed top compactor containers conforming to the relevant CHEM technical standard and transferred by the Authority to LWL;

**"Hendon Delivery Point"** means the Delivery Point at Hendon transfer station as set out in Schedule 3, Part 1;

**"Hendon Disposal Location"** means:

- (a) Calvert Landfill, Brackley Lane, Calvert, Bucks MK18 5NR, from the Commencement Date until 31 March 2016 (inclusive); and
- (b) Greatmoor EfW Facility, Brackley Lane, Calvert, Bucks MK18 5NR, from 1 April 2016 to the end of the Hendon Period (inclusive),

unless otherwise agreed between the Parties;

**"Hendon Lease"** means the lease between the Authority and LWL in respect of the Hendon Delivery Point;

**"Hendon Period"** means the period during which the Hendon Sub-Contract is in force;

**"Hendon Sub-Contract"** means the contract dated 9 December 2014 between LWL and FCC Waste Services (UK) Limited for the transportation of Contract Residual Waste from the Hendon Delivery Point to the Hendon Disposal Location for the subsequent treatment and/or disposal of such waste, and any replacement contract;

**"Hendon Waste"** means all Contract Waste received at the Hendon Delivery Point;

**"Hornsey Street Delivery Point"** means the Delivery Point at Hornsey Street Waste and Recycling Centre as set out in Schedule 3, Part 1;

"**Hornsey Street Lease**" means the lease between the Authority and LWL in respect of the Hornsey Street Delivery Point;

"**Hourly Wage**" means the rate of pay per hour for a particular employee;

"**Information**" has the meaning given to it in s.84 of FOIA;

"**Intellectual Property Rights**" means any and all patents, trademarks, service marks, copyrights, database rights, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by LWL or any LWL Related Party for the purposes of carrying out the Services and/or otherwise for the purposes of this Contract;

"**Key Performance Indicators**" means the indicators of LWL's performance of the Services set out in Schedule 7, paragraph 5;

"**Key Personnel**" are the key personnel listed in Schedule 2;

"**LAGSA**" means the Local Authorities (Goods and Services) Act 1970;

"**Landfill Tax**" means the environmental tax paid on top of normal landfill rates by any company pursuant to s.39 to s.71 of the Finance Act 1996;

"**London Living Wage**" means the living wage rate per hour for London as set by the Living Wage Foundation or any equivalent replacement organisation from time to time;

"**LWL Default**" means:

- (a) a Service Default; or
- (b) a breach by LWL of Clause 6.4;

"**LWL Receptacle**" means any item used for the storage and/or transport of Contract Waste at an RRC Site that is not an Open Container or an RRC Compactor Container, and is owned by LWL or an LWL Related Party;

"**LWL Related Party**" means LWL's agents and sub-contractors and its or their sub-contractors of any tier and its or their directors, officers, employees and agents acting in that capacity in relation to the Services and any person on or at the Sites at the express or implied invitation of LWL (other than the Authority or any Authority Related Party);

"**LWL's Representative**" has the meaning given to it in Clause 7.3;

"**Mixed Contract Food and Green Waste**" means waste that meets the Waste Acceptance Criteria and delivered to LWL as mixed food and green waste;

"**Month**" means a calendar month;

"**MRF**" means any material recovery facility that LWL may reasonably be directed to by the Authority;

"**Non-Contract RRCs**" means the RRCs as listed in Schedule 3, Part 1 that are not operated by LWL;

"**Non-Recyclables**" means materials delivered as Recyclables that contain materials that are not listed in the Waste Acceptance Criteria;

"**Normal Hours**" means the normal operating days/hours for each Site as set out in the Site Data Sheets;

"**Off-Take Contracts**" means:

- (a) any power purchase or heat supply agreements entered into by LWL in relation to the Services; and
- (b) any contracts entered into by LWL in relation to Contract Waste that has been separated for reprocessing or prepared for re-use, recycling, recovery or disposal;

"**Open Book Accounting**" means books of account kept in accordance with best accountancy practices with respect to this Contract, showing in detail:

- (a) administrative overheads;
- (b) payments to sub-contractors;
- (c) capital and revenue expenditure; and
- (d) such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purposes of this Contract;

"**Open Container**" means a high-sided or low-sided open top container conforming to the relevant CHEM technical standard;

"**Performance Framework**" means the framework as set out in Schedule 7;

"**Personal Data**" means personal data as defined in DPA which is supplied to LWL by the Authority or obtained by LWL in the course of performing the Services;

"**Processing Contract**" means the Authority's contract for the processing of Recyclables at the designated MRFs or any subsequent contract for similar services;

"**Public Body**" means any local authority (as defined in LAGSA), any person who is a public body by virtue of s.1(5) LAGSA and, in relation to England and Wales, any parish council, council of a borough included in a rural district and representative body of a rural parish;

"**Quality Assurance Procedure**" is the LWL quality assurance procedure described in Schedule 1, Part 4, Appendix B;

**"Recyclables"** means materials delivered as waste:

- (a) consisting of two (2) or more of the materials specified in the Waste Acceptance Criteria in Schedule 1, Part 4, Appendix A (i); and
- (b) containing no materials other than those specified in the Waste Acceptance Criteria in Schedule 1, Part 4, Appendix A (i); and
- (c) which are to be transported to appropriate MRFs or other facilities for sorting, separation, and/or treatment;

**"Regular Monitoring Meeting"** means meetings held between the Authority's Representative and LWL's Representative in relation to the management, performance and/or development of the Services;

**"Repository"** means Open Containers, Authority Receptacles and LWL Receptacles;

**"Residual Waste Service"** means the service set out in Schedule 1, Part 1;

**"Residue"** means materials which have been separated from the Recyclables as waste by the MRF;

**"Request for Information"** shall have the meaning set out in FOIA or EIR, as relevant;

**"Revenue Expenditure"** has the meaning given to it in Schedule 8;

**"RIDDER"** means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013;

**"RPI"** means the Retail Prices Index in the United Kingdom;

**"RRCs"** means the re-use and recycling centres as listed in Schedule 3, Part 1;

**"RRC Compactor Container"** means a closed top compactor container conforming to the relevant CHEM technical standard, used at Non-Contract RRCs and not owned by the Authority or LWL;

**"RRC Repository"** means Open Containers, Authority Receptacles, LWL Receptacles and RRC Compactor Containers;

**"RRC Service"** means the service set out in Schedule 1, Part 2;

**"RRC Sites"** means Contract RRCs and Non-Contract RRCs, and **"RRC Site"** means any one of them;

**"RRC Site Data Sheets"** means those Site Data Sheets in respect of RRCs as set out in Schedule 3, Part 2;

**"RRC Sites' Defined Areas"** means the areas of the RRC Sites set out in Schedule 3, Part 3;

**"Service Default"** means a failure by LWL to provide a particular Service or any part thereof at any time in accordance with the Specification or the Performance Framework;

**"Services"** means the services set out in Schedule 1 and **"Service"** shall mean any one of them;

**"Site Data Sheets"** means those data sheets listed in Schedule 3, Part 2 as amended from time to time by agreement in writing between the Parties;

**"Sites"** means the Delivery Points and the Contract RRCs;

**"Specification"** means the specification set out in Schedule 1;

**"Termination Date"** means 23:59 on any date of early termination of this Contract in accordance with Clauses 24, 25, 26 or 27;

**"Third Party Borough Organic Waste"** means green waste and/or other organic waste received by LWL through its contracts with any Borough and which is subsequently transferred to the Composting Facility;

**"Third Party Non-Borough Organic Waste"** means green waste and/or other organic waste received by LWL from:

- (a) any customer of the Authority that is a Public Body other than a Borough; and/or
- (b) any customer of LWL (acting in its capacity as the wholly owned subsidiary of the Authority) that is a Public Body other than a Borough,

and which is subsequently transferred to the Composting Facility;

**"Tonne"** means a metric tonne of 1000 kilogrammes;

**"Transport Costs"** means the transport costs to move Contract Waste to or from the relevant Sites as set out in Schedule 6, Part 2;

**"Unavailable"** means any Site which does not meet all applicable Availability Criteria and **"Unavailability"** shall be construed accordingly;

**"Unsuitable Person"** means any person who:

- (a) has any Conviction; or
- (b) in the reasonable opinion of the Authority:
  - (i) will or is likely to cause damage to the reputation of the Authority;
  - (ii) persistently fails or would fail to comply with the health and safety or other material obligations of LWL under this Contract;

- (iii) is not a fit and proper person to be engaged, or employed in or in connection with the provision of the Services;
- (iv) may present an actual or potential risk to the health, safety or welfare of any Authority Related Party or member of the public; or
- (v) is not appropriately trained, qualified, skilled and/or competent to carry out the Services;

**"Waste Acceptance Criteria"** means:

- (a) in relation to Recyclables, the criteria set out in Schedule 1, Part 4, Appendix A (i);
- (b) in relation to Mixed Contract Food and Green Waste, the criteria set out in Schedule 1, Part 4, Appendix A (ii);
- (c) in relation to Contract Green Waste, the criteria set out in Schedule 1, Part 4, Appendix A (iii); and
- (d) in relation to Contract Food Waste, the criteria set out in Schedule 1, Part 4, Appendix A (iv);

**"Waste Hierarchy"** means the established order of preference for actions to reduce and manage waste, being the following actions respectively:

- (a) prevention;
- (b) preparation for re-use;
- (c) recycling, composting and/or anaerobic digestion;
- (d) energy recovery;
- (e) disposal;

**"Waste Management Licence"** means the licence issued by the EA in respect of a Site;

**"Waste Recycling Locations"** means the locations where waste is recycled as notified by the Authority to LWL or by LWL to the Authority (as the case may be) from time to time;

**"WEEE"** means waste electrical and electronic equipment;

**"Week"** means a consecutive period of seven (7) days from Monday to Sunday (inclusive);

**"Working Plan"** means a description of how a Site should be operated as may be required by an Environmental Permit or a Waste Management Licence.



- 1.2 In this Contract, except where the context otherwise requires:
- 1.2.1 the masculine includes the feminine and vice versa;
  - 1.2.2 the singular includes the plural and vice versa;
  - 1.2.3 a reference to any Clause, sub-Clause, paragraph, Schedule, recital or Appendix is, except where expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, Schedule, recital or Appendix of and to this Contract;
  - 1.2.4 save where otherwise provided in this Contract, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to this Contract and/or such other document;
  - 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
  - 1.2.6 references to any documents being 'in the agreed form' means such documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
  - 1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
  - 1.2.8 headings are for convenience of reference only;
  - 1.2.9 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow these words;
  - 1.2.10 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
  - 1.2.11 subject to any express provisions to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense; and
  - 1.2.12 in this Contract, save where otherwise provided, references to amounts expressed to be "indexed" are references to such amounts multiplied by:

Index1  
BaseIndex

where Index1 is the value of RPI most recently published prior to the relevant calculation date and BaseIndex is the value of RPI on the base date specified in respect of that amount. Where a base

date has not been specified, the base date in respect of any amount shall be 1 December 2014.

- 1.3 In the event of any inconsistency between the provisions of this Contract and the Schedules, the main body of this Contract shall take precedence.

**2 Commencement and Duration**

This Contract and the rights and obligations of the Parties shall take effect on the Commencement Date and shall continue until the Expiry Date unless terminated earlier under the terms of this Contract by either Party in whole or in part.

**3 LWL's Obligations**

- 3.1 LWL shall provide the Services in an efficient, cost-effective and reliable manner throughout the Contract Period in accordance with the terms of this Contract, the Specification and the Performance Framework.

- 3.2 LWL shall, in accordance with the Specification:

3.2.1 accept all Contract Waste that is delivered to it by or under the direction of the Authority;

3.2.2 subject to Clause 13.3, arrange appropriate treatment or disposal of all Contract Waste provided that:

(a) to the extent practicable, all Contract Residual Waste should be treated at the Facility unless:

(i) the terms of the Hendon Lease require otherwise;

(ii) the actual tonnage of Contract Residual Waste delivered to LWL exceeds the operational capacity of the Facility;

(iii) and to the extent that the Authority's Representative agrees in writing that capacity at the Facility can be used for the treatment of waste other than Contract Residual Waste; or

(iv) any Contract Residual Waste is prohibited from being incinerated by an Environmental Permit; and

(b) to the extent practicable, Contract Residual Waste delivered to the Hendon Delivery Point is treated in priority to the treatment of Contract Residual Waste delivered to the Hornsey Street Delivery Point;

3.2.3 comply with the relevant Authority policies, applicable laws, statutory guidance and Good Industry Practice in relation to the provision of the Services and its obligations under this Contract;

- 3.2.4 provide all staff, equipment, materials and expertise required for the provision of the Services;
- 3.2.5 ensure its vehicles use only the specified and approved route where the Authority specifies a particular route and use reasonable endeavours to ensure that its vehicles do not travel in a convoy formation but travel in a singular fashion;
- 3.2.6 ensure that all heavy goods vehicles, unless otherwise agreed with the Authority and except for in the case of an Emergency, shall:
  - (a) meet:
    - (i) all prevailing European standards; and
    - (ii) the prevailing London Low Emission Zone requirements, and in all cases as a minimum meet Euro IV standards; and
  - (b) when transporting Open Containers, have a self-sheeting mechanism in order to secure loads without the driver climbing up the Open Containers or the vehicle;
- 3.2.7 where practicable, remove any Contract Waste adhering to the exterior of vehicles before the vehicles leave any Site;
- 3.2.8 ensure that all vehicles used by LWL are kept in a clean and presentable condition and ensure that such vehicles' paintwork is maintained in good condition, to the satisfaction of the Authority's Representative;
- 3.2.9 ensure that any breakdowns of the vehicles at an RRC Site are attended to promptly during the relevant RRC Site's Normal Hours or that the vehicle is towed off the RRC Site on the day of the breakdown and before the end of the relevant RRC Site's Normal Hours, or as soon as reasonably practicable thereafter where the breakdown occurs towards the end of the relevant RRC Site's Normal Hours;
- 3.2.10 provide and maintain at its own cost, sufficient vehicles of suitable type and capacity to provide a prompt, effective and efficient Service, notwithstanding breakdowns, traffic congestion or any other eventuality which might hinder the provision of the Services;
- 3.2.11 ensure that the vehicles used for the Services shall be properly licensed and shall comply with all relevant legislation relating to the construction, maintenance and operation of such vehicles;
- 3.2.12 ensure that all heavy goods vehicles used in providing the Services shall be fitted where practicable with the following equipment or design features:
  - (a) an approved and functional reversing bleeper or alarm;

- (b) an exhaust system that discharges overhead and with any exposed sections capable of contact with any person properly guarded;
  - (c) audible vehicle turning alarms; and
  - (d) cyclist side protection barriers;
- 3.2.13 operate additional or replacement Delivery Points or RRCs as requested by the Authority in accordance with Clause 9;
- 3.2.14 maintain its Accreditations;
- 3.2.15 co-operate and co-ordinate its activities with the Authority and any Authority Related Party in the provision of the Services;
- 3.2.16 provide reasonable assistance to the Authority in the preparation of any waste plans, strategy and consultation in relation to its waste management functions;
- 3.2.17 maintain its own public and customer relations where appropriate and shall provide all reasonable assistance to the Authority in relation to enquiries and requests from the public as requested by the Authority;
- 3.2.18 prepare and implement a suitable complaints procedure which shall be available to the Authority on request, such procedure to have been approved by the Authority before the Commencement Date;
- 3.2.19 meet the Key Performance Indicators;
- 3.2.20 execute all aspects of the Services with the maximum safety and the minimum inconvenience and delay to Customers, the Authority and any Authority Related Party;
- 3.2.21 not carry out any business that is:
- (a) not permitted by the Authority;
  - (b) outside of the Authority's legal powers; and/or
  - (c) outside of LWL's legal powers;
- 3.2.22 operate such performance related pay and employee bonus schemes if any as are necessary to ensure that the remuneration of employees of LWL is aligned to the performance of LWL under this Contract;
- 3.2.23 operate (and provide as appropriate) the Delivery Points, at which the Authority, a Borough and/or a Customer of the Authority shall deliver Contract Waste; and

- 3.2.24 ensure that all vehicles in which Contract Waste is delivered to any Delivery Point are unloaded promptly and that their movement onto, in and out of the Delivery Points is expedited. No vehicle delivering Contract Waste should remain at a Delivery Point for longer than twenty (20) minutes including queuing time prior to entry to the weighbridge, save for those occasions where vehicles are required to be unloaded by hand in which case thirty (30) minutes shall be allowed, and no vehicle shall be required to wait on the public highway prior to driving onto the weighbridge.
- 3.3 LWL shall not carry on any activities that, in the reasonable opinion of the Authority, would have an adverse effect on the performance of the Services or will bring the Authority into disrepute.
- 3.4 LWL shall maintain the security of the Sites at all times. Without prejudice to the foregoing, LWL shall ensure that it complies with the obligations in relation to security contained in each of the Hendon Lease and the Hornsey Street Lease.
- 3.5 LWL shall issue to its personnel (who are authorised to have access to the Authority's premises for the purpose of providing the Services) security passes in such form as the Authority may from time to time determine and issue to LWL, or otherwise that LWL shall issue.
- 3.6 LWL shall procure that the Delivery Points are open to receive Contract Waste during the Normal Hours. The Normal Hours may be varied only by:
- 3.6.1 agreement with or instruction from the Authority's Representative;  
or
- 3.6.2 an event of Emergency in which case the Authority's Representative may require that a Delivery Point shall be opened during such other hours specified by the Authority's Representative and LWL shall (subject to, where necessary, the approval of the EA) comply with such requirements,

and the Authority shall pay for the reasonable additional costs of any variation in the Normal Hours.

#### 4 **Ownership of Waste**

As between LWL and the Authority all Contract Waste received by or in the possession of or accepted by LWL or an LWL Related Party shall thereupon become and be deemed to be acquired by and in the ownership of and at the risk of LWL who shall take full responsibility for it.

#### 5 **LWL's Personnel**

- 5.1 LWL shall employ sufficient numbers of suitable and qualified personnel for the provision of the Services, and shall provide details of the staffing levels to be employed within two (2) Weeks after the Commencement Date.

- 5.2 LWL shall ensure that each person employed by it is properly and sufficiently instructed and supervised with regard to the provision of the Services.
- 5.3 The Authority may, if it has reasonable grounds for believing that any personnel or potential personnel is or would be an Unsuitable Person, serve written notice on LWL requiring LWL to procure (at LWL's own cost and expense) that such Unsuitable Person is not engaged or employed directly or indirectly in, or in connection with, the provision of the Services or any part of the Services. The rights contained in this Clause 5.3 shall be exercised reasonably by the Authority and not arbitrarily, vexatiously or capriciously. For the avoidance of doubt LWL shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been served pursuant to this Clause 5.3.
- 5.4 LWL shall take reasonable steps to avoid changes to Key Personnel involved in the provision of the Services, and any change in Key Personnel shall require the prior written consent of the Authority (acting reasonably).

## 6 **Sites and Equipment**

- 6.1 LWL shall from the Commencement Date:
- 6.1.1 use the Sites and the Equipment;
  - 6.1.2 make available, repair and maintain the Sites in accordance with any relevant lease provisions and Good Industry Practice, and as appropriate and necessary for the continuous and reliable provision of the Services;
  - 6.1.3 provide, repair, replace and maintain the Equipment in accordance with Good Industry Practice and as appropriate and necessary for the continuous and reliable provision of the Services, and shall be responsible for the security of all materials and equipment used by LWL in connection with the provision of the Services;
  - 6.1.4 use reasonable endeavours to ensure that the Sites and the Equipment and related contracts, agreements, guarantees, warranties, bonds and insurances are assignable/novatable to the Authority or any third party who may provide the Services on expiry or termination; and
  - 6.1.5 update its asset registers each Contract Year in the event that any of the Sites and/or Equipment are repaired or replaced, or in the event of any additions to or disposals of Equipment.
- 6.2 The Authority shall transfer ownership of the Hendon Containers to LWL at the Commencement Date, however in doing so the Authority does not make any representation or warranty to LWL that:
- 6.2.1 the Hendon Containers are generally fit for purpose; or

6.2.2 the requirements in relation to the Hendon Containers under the terms of this Contract have been satisfied at the date of transfer of ownership.

6.3 LWL shall transfer to the Authority at the end of the Contract Period the Hendon Containers (or any replacements thereof) in a good working condition (taking into account fair wear and tear).

6.4 The Authority and LWL shall comply with their obligations as landlord and tenant respectively in relation to all leases granted by the Authority to LWL.

## 7 **Contract Management**

7.1 The Parties shall each appoint a representative to act on its behalf for all purposes connected with this Contract.

7.2 The Authority's Representative shall be [REDACTED] Head of Operations, or such other person appointed by the Authority by written notice to LWL.

7.3 LWL's Representative shall be [REDACTED] Head of Business Development, or such other person appointed by LWL by written notice to the Authority.

7.4 LWL shall promptly inform the Authority in writing if the Services, or any part of them, are not being, or may not be, performed.

7.5 Without prejudice to Clause 16, LWL shall supply to the Authority all information in its possession or available to it required by the Authority to allow the Authority to act reasonably, properly and in accordance with its statutory and other obligations in connection with the subject matter of this Contract.

7.6 The Parties shall ensure that Regular Monitoring Meetings and other progress critical meetings are scheduled at least quarterly between the Authority's Representative and LWL's Representative.

7.7 Twelve (12) Months before the Contract Price Review Date, the Parties shall meet to discuss, negotiate and agree any revised terms and prices in respect of this Contract which are to have effect from the Contract Price Review Date.

7.8 If there is no agreement between the Parties at least six (6) Months before the Contract Price Review Date, the procedure set out in Clause 36 shall apply.

7.9 Where there is an agreement between the Parties pursuant to Clause 7.7, such agreement shall be documented in writing and signed by a duly authorised representative of each of the Parties prior to the Contract Price Review Date.

7.10 Within the period of twelve (12) Months before the expiration of the first five (5) year period of the Contract Period, the Authority shall provide to LWL the Authority's best estimates of the anticipated annual tonnages of Contract

Waste which it is likely to be able to direct the Boroughs to bring to the Delivery Points over the next five (5) year period of the Contract.

7.11 As soon as reasonably practicable following any significant variation of this Contract that could affect the tonnages of Contract Waste that the Authority is likely to be able to direct the Boroughs to bring to the Delivery Points, the Authority shall provide to LWL updates to any estimates of such Contract Waste previously provided to LWL.

7.12 The Authority will take reasonable steps to ensure that the Authority's estimates are as accurate as possible and will provide such detailed information in connection with such estimates as LWL may reasonably require but shall not be deemed to either warrant or represent that the best estimates of annual tonnages of Contract Waste will be delivered by the Authority, a Borough or a customer of the Authority.

## **8 Contract Price**

8.1 The Contract Price shall be as stated in Schedule 6.

8.2 The Authority shall pay to LWL the Contract Price in consideration for the performance of the Services in accordance with the terms of this Contract.

8.3 The Contract Price shall include all costs of providing the Services.

8.4 The Contract Price may be varied in accordance with the provisions of Schedule 6.

8.5 The payment procedure in respect of the Contract Price shall be as set out in Schedule 6.

## **9 Variations**

9.1 Either Party shall be entitled to request a variation to this Contract by written notice to the other Party.

9.2 For the avoidance of doubt, either Party shall be entitled to request a variation to the Waste Acceptance Criteria by written notice to the other Party.

9.3 The Authority shall be entitled to issue to LWL instructions in writing requiring LWL to provide additional services or reduce the services provided, as the Authority may reasonably require.

9.4 Each Party shall have the opportunity to comment on the requested variation where such requested variation has a direct impact on its obligations, its ability to comply with its obligations, and its performance under this Contract. Where that Party considers that any variation requires an adjustment to the Contract Price, such adjustment shall be demonstrated on the basis of Open Book Accounting.



9.5 The Parties shall agree any variation to this Contract and execute documents as necessary to effect the variation. If the Parties cannot agree any variation to this Contract, the procedure set out in Clause 36 shall apply.

9.6 If at any time within the Contract Period LWL becomes aware that it will need to incur Expenditure, the provisions of Schedule 8 shall apply.

## 10 **Intellectual Property Rights**

### 10.1 **Intellectual Property Rights owned by or licensed to the Authority**

10.1.1 All Intellectual Property Rights in any materials made available to LWL by the Authority in connection with this Contract shall remain vested in the Authority.

10.1.2 The Authority grants to LWL, or shall procure the grant to LWL, of a perpetual, transferable, non-exclusive, royalty free, irrevocable licence in respect of the Intellectual Property Rights made available to LWL by the Authority arising out of this Contract.

10.1.3 The Authority shall not infringe any Intellectual Property Rights of any third party when receiving the Services and the Authority shall indemnify LWL against all actions, costs, expenses, claims, proceedings and demands which LWL may incur as a result of or in connection with any breach of this Clause 10.1.

### 10.2 **Intellectual Property Rights owned by or licensed to LWL**

10.2.1 All Intellectual Property Rights in any materials made available to the Authority by LWL in connection with this Contract shall remain vested in LWL.

10.2.2 LWL grants to the Authority, or shall procure the grant to the Authority, of a perpetual, transferable, non-exclusive, royalty free, irrevocable licence in respect of the Intellectual Property Rights made available to the Authority by LWL arising out of this Contract.

10.2.3 LWL shall not infringe any Intellectual Property Rights of any third party in supplying the Services and LWL shall indemnify the Authority against all actions, costs, expenses, claims, proceedings and demands which the Authority may incur as a result of or in connection with any breach of this Clause 10.2.

## 11 **Liability, Indemnity and Insurance**

11.1 LWL shall indemnify the Authority against all actions, damage, liabilities, costs, expenses, claims, proceedings and demands including indirect or consequential loss whatsoever which may arise as a result of:

11.1.1 death or personal injury;

11.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible);

11.1.3 third party actions, claims and/or demands brought against the Authority,

which may arise out of, or in consequence of, the performance or non-performance by LWL of its obligations under this Contract or the presence on the Sites or on property which is in the ownership or control of the Authority and adjacent to any of the Sites of LWL.

11.2 For the avoidance of doubt, the Authority's liability for death or personal injury arising as a result of its own negligence is not excluded nor limited.

11.3 LWL shall effect and maintain with a reputable insurance company the insurances set out in Schedule 5 until 31 December 2015.

11.4 For each Contract Year following 31 December 2015:

11.4.1 LWL shall propose, to the Authority by 15 November in the preceding Contract Year, the insurances that LWL proposes to effect and maintain, together with such details as the Authority may reasonably require; and

11.4.2 the Authority shall, by 15 December in that preceding Contract Year, comment on or approve such insurances or, if not approved, the procedure in Clause 36 shall apply.

11.5 LWL shall supply to the Authority immediately upon request copies of all insurance policies referred to in this Clause 11 or a broker's verification of insurance to enable the Authority to satisfy itself that LWL has complied with its insurance obligations under this Clause 11, together with receipts or other evidence of payment of the latest premiums due under those policies.

11.6 If LWL fails to effect or maintain the insurances required under this Clause 11, the Authority may itself insure against any risk in respect of which such default has occurred and may charge the cost of such insurance to LWL.

## 12 **Health & Safety**

12.1 LWL shall insofar as it relates to the Services:

12.1.1 comply with the requirements of the Health and Safety Legislation;

12.1.2 at all times and at its own cost take all such steps and precautions as are necessary to protect the health and safety of:

(a) all persons employed by it;

(b) all persons at the Sites and any third party site; and

(c) members of the public;

- 12.1.3 maintain an up-to-date written health and safety policy (a "**Health and Safety Policy**"), copies of which shall be supplied to the Authority upon signature of this Contract and within seven (7) Business Days of any change to such statements;
- 12.1.4 appoint a person who shall be responsible for co-ordinating health and safety matters as required by the Health and Safety Legislation and confirm the identity of this person and their contact details to the Authority upon signature of this Contract and within seven (7) Business Days of a change to such person;
- 12.1.5 ensure that its employees, and use reasonable endeavours to ensure that its sub-contractors, comply with the Health and Safety Policy;
- 12.1.6 provide such information and documents as the Authority may reasonably require as evidence of compliance with this Clause 12.1 and shall maintain at each Delivery Point copies of all relevant legislation, codes of practice, working rules and safety manuals for the type of work undertaken at that Delivery Point, and shall permit employees and their sub-contractors to use them and refer to them;
- 12.1.7 ensure that all persons engaged in the performance of the Services, including all apprentices, are competent to carry out their tasks with due regard to LWL's obligations under the Health and Safety Legislation;
- 12.1.8 in the interest of protecting the local environment from pollution, provide and maintain:
- (a) adequate dust suppression equipment; and
  - (b) where appropriate, wheel washing equipment to prevent tracking and dropping of mud and debris on approach roads and public highway; and
  - (c) back-up arrangements to all pollution control measures and equipment; and
  - (d) adequate measures to prevent or minimise environmental pollution from noise, odour and pests,
- in accordance with any relevant Environmental Permit or Waste Management Licence;
- 12.1.9 report to the Authority:
- (a) any incident which LWL is required to report to the Health and Safety Executive pursuant to RIDDOR as soon as practicable; and

(b) without prejudice to (a), all accidents and incidents which nearly result in accidents on a quarterly basis;

12.1.10 provide the Services safely and in a manner that is not, and is not likely to be, injurious to health or detrimental to the fabric of the property on or comprising the Sites; and

12.1.11 on or before the Commencement Date, prepare, publish, implement and enforce operational safety guidance documents governing the actions of all persons delivering Contract Waste to any Delivery Point or Contract RRC (the "**OSG Documents**"), in order to ensure a safe working environment for all persons present at the Delivery Points and Contract RRCs and to assist LWL to fulfil its obligations under this Contract.

12.2 During the Contract Period LWL may, acting reasonably, and taking into account the reasonable comments of the Authority, amend and update the OSG Documents. LWL shall not materially amend the OSG Documents without the prior written consent of the Authority.

12.3 The Authority shall take such steps, as it reasonably can, at the request of LWL, to ensure that the OSG Documents are observed.

## 13 **Environment**

13.1 In relation to all Environmental Permits, LWL shall:

13.1.1 operate and manage the Delivery Points in accordance with the conditions of the current applicable Environmental Permits (which shall include any remaining Waste Management Licence or other similar permit and exemption) and in accordance with the conditions of any future permit, licence or exemption required to operate a Delivery Point;

13.1.2 indemnify the Authority in respect of losses, damages or expenses arising out of any breach of an Environmental Permit;

13.1.3 be responsible for rectifying any contravention of the conditions of the Environmental Permit notified by the EA at no cost to the Authority;

13.1.4 provide all details of Contract Waste handled at the Delivery Points and RRCs in operation as required by the Environmental Permits; and

13.1.5 provide to the Authority on an annual basis a copy of any environmental report provided by LWL to the EA containing such information as the EA may require including information on improvement targets, environmental performance and emissions. The Authority shall have the right to publish the whole or part of each environmental report and any observations it may have on the same.

- 13.2 In relation to the Duty of Care and other duties under legislation, LWL shall:
- 13.2.1 comply in full with the duty and any prevailing code of practice issued by the Secretary of State;
  - 13.2.2 obtain and maintain the appropriate registrations under the Controlled Waste (Registration of Carrier and Seizure of Vehicles) Regulations 1991 (SI 1991 No. 1624) or any subsequent legislation concerning vehicles carrying waste (a "**Waste Carrier Registration**") and demonstrate such Waste Carrier Registration to the Authority immediately on request;
  - 13.2.3 ensure that every vehicle used for carrying Contract Waste clearly displays an official numbered copy of the relevant Certificate of Registration as issued by the EA;
  - 13.2.4 inform the Authority in writing of any expiry, loss or refusal by the EA of its Waste Carrier Registration or the Waste Carrier Registration of any sub-contractor;
  - 13.2.5 immediately:
    - (a) cease to transport all Contract Waste if at any stage during the Contract Period LWL has its Waste Carrier Registration cancelled, revoked or its registration expires; or
    - (b) cease to use a sub-contractor if at any stage during the Contract Period that sub-contractor has its Waste Carrier Registration cancelled, revoked or that sub-contractor's Waste Carrier Registration expires, in which case, LWL shall within 48 hours of the cancellation, revocation or expiration of any such Waste Carrier Registration, employ a sub-contractor (or sub-contractors) that has a current Waste Carrier Registration and is approved by the Authority's Representative, in order to resume and continue the transportation of Contract Waste for the purposes of this Contract and LWL shall bear the entire cost of such arrangement;
  - 13.2.6 advise the Authority of any suggested or actual enforcement by the EA or other regulatory body against LWL or any person employed or engaged by LWL as soon as reasonably practicable of becoming aware of such circumstances. Such notification shall be in a manner determined by the Authority's Representative. LWL must provide the Authority's Representative with a copy of any monitoring report form issued by the EA or other regulatory body as soon as reasonably practicable after the report is issued and in a manner determined by the Authority's Representative. Any contravention of the Environmental Permit or other requirement notified by the EA or other regulatory body must be rectified by LWL in accordance with the requirements of the relevant body, or in the absence of such requirements, on the day of notification or

within a reasonable time limit, such time limit to be determined by the Authority's Representative;

13.2.7 keep records of all inspection visits by the EA and other regulatory bodies, and shall make these available to the Authority without delay at all reasonable times; and

13.2.8 give all reasonable assistance to the Authority in the investigation of any concerns or complaints relating to the Services.

13.3 In relation to the Waste Hierarchy, LWL shall:

13.3.1 follow the Waste Hierarchy whenever it is safe, lawful and is technically, economically and environmentally practicable to do so, and to the extent permitted by prevailing lease conditions;

13.3.2 seek ways to re-use, recycle and recover materials from Contract Waste delivered to LWL and where viable implement such re-use, recycling and recovery projects; and

13.3.3 continue (and where viable expand) the operation of those re-use and recycling schemes in existence prior to the Commencement Date.

13.4 LWL shall comply with the environment and quality policy statement (MSD 055) (the "**Statement**") that LWL is required to produce as part of its Accreditations, and shall review, update and reissue the Statement to the Authority within twenty (20) Business Days of the Commencement Date and annually thereafter. The Authority shall have the right to publish the whole or part of the Statement and any observations it may have on the Statement.

## 14 **Consent, Permits and Planning**

14.1 LWL shall:

14.1.1 obtain and maintain all planning permissions and Environmental Permits required in relation to the provision of the Services;

14.1.2 comply with and discharge any required planning and/or permitting conditions to the extent that they relate to the Services and/or obligations under this Contract;

14.1.3 hold the consent and permits required for the Sites and operate them in accordance with such consent and permits; and

14.1.4 co-operate fully and promptly whenever the Authority requests LWL to transfer any consents, permits or similar to a successor contractor or the Authority.

## 15 **London Living Wage**

15.1 LWL shall ensure that none of its staff working primarily in London are paid an Hourly Wage (or equivalent of an Hourly Wage) that is less than the then prevailing London Living Wage.

15.2 LWL shall use its reasonable endeavours to ensure that its sub-contractors' employees engaged in the provision of the Services and working primarily in London are paid an Hourly Wage (or equivalent of an Hourly Wage) that is not less than the prevailing London Living Wage.

15.3 LWL shall co-operate with and provide all reasonable assistance to the Authority in monitoring the London Living Wage and its impact on the quality of the Services provided under this Contract.

## 16 **Audit and Inspection**

16.1 LWL shall:

16.1.1 maintain appropriate contract records, and make those records available for inspection by the Authority or the Authority's appointed auditors and provide copies of any records where requested by the Authority;

16.1.2 provide all reasonable facilities and allow full access on reasonable notice to the Authority, the Authority's representative or its appointed auditors of:

(a) all offices and premises of LWL for the purpose of inspecting work being performed pursuant to the provision of the Services;

(b) all offices and premises of LWL for the purpose of inspecting records and documents in the possession, custody or control of LWL in connection with the provision of the Services; and

(c) all technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Services;

16.1.3 allow the Authority, on reasonable notice and at reasonable times of the day, to inspect:

(a) any Sites and Equipment; and

(b) asset registers;

16.1.4 allow the Authority, on reasonable notice and at reasonable times of the day, to interview any member of LWL's staff in connection with the carrying out of all or part of the Services; and

16.1.5 secure a similar right of access for the Authority's Representative in any authorised sub-contract.

## 17 **Authority Step In**

17.1 Without prejudice to any other right of the Authority under this Contract or otherwise, if the Authority reasonably believes that it needs to take action in connection with the Services:

- 17.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; or
- 17.1.2 to discharge a statutory duty; or
- 17.1.3 due to a serious breach by LWL of its obligations under this Contract,

then the Authority shall be entitled to take action in accordance with Clause 17.2.

17.2 If Clause 17.1 applies and the Authority wishes to take action, the Authority shall notify LWL in writing of the following:

- 17.2.1 the action it wishes to take (the "**Required Action**");
- 17.2.2 the reason for such action;
- 17.2.3 the date it wishes to commence such action;
- 17.2.4 the time period which it believes will be necessary for such action; and
- 17.2.5 to the extent practicable, the effect on LWL and its obligation to provide the Services during the period such action is being taken.

17.3 Following service of such notice, the Authority shall take the Required Action and LWL shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide LWL with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

17.4 For so long as and to the extent that the Required Action is taken, and this prevents LWL from providing any part of the Services, LWL shall be relieved from its obligations to provide such part of the Services and the Authority shall be relieved from its obligation to pay for such part of the Services.

## 18 **Equal Opportunities**

18.1 LWL shall adopt a policy to comply, and in providing the Services shall comply, with its statutory obligations under the Equality Act 2010 ("**EqA**") in so far as it is reasonably practicable. LWL shall seek the elimination of unlawful discrimination in its employment practices and promote equality of opportunity, ensuring that in the management and provision of the Services no person is discriminated against whether directly or indirectly or by way of victimisation or harassment in relation to any of the protected characteristics under EqA.

18.2 LWL shall take all reasonable steps to ensure that all of its employees or agents and all of its sub-contractors employed in the provision of the Services comply with the policy adopted under Clause 18.1.



18.3 If during the Contract Period any finding of unlawful discrimination is made against LWL by any court or tribunal, or an adverse finding is made in any formal investigation, LWL shall immediately inform the Authority and take appropriate steps to prevent repetition of the unlawful discrimination or practices that led to the adverse finding.

19 **Best Value & Efficiency**

19.1 LWL acknowledges that the Authority is subject to the Best Value Duty and shall assist the Authority in discharging its Best Value Duty (as may be amended from time to time) in relation to the Services.

19.2 LWL shall use its best endeavours throughout the Contract Period to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

19.3 LWL shall, within four (4) Weeks after the start of each Contract Year, from the Contract Year starting 1 January 2016, and, without prejudice to its other reporting obligations under this Contract, provide to the Authority a written report (the "**Annual Services Report**") setting out what, if any, steps may be taken to make the provision, performance or delivery of the Services (or any part) more effective, efficient and economic.

19.4 LWL may, at any other time in any Contract Year that does not fall within the first four (4) Weeks of that Contract Year, provide to the Authority an additional written report (a "**Supplemental Services Report**") setting out what, if any, steps may be taken to make the provision, performance or delivery of the Services (or any part) more effective, efficient and economic, if the Parties have agreed that such steps need to be taken.

19.5 As soon as practicable after the Authority receives either the Annual Services Report or a Supplemental Services Report, the Parties shall discuss and agree the issues set out in the relevant report and shall use their reasonable endeavours to agree any changes to the Services, in accordance with the following principles, provided that any change to the provision, performance or delivery of the Services should not materially adversely affect LWL's ability to perform the Services.

19.6 LWL shall, within four (4) Weeks after the start of each Contract Year, from the Contract Year starting January 2016, provide to the Authority a written report (reconciled against the most recent Annual Services Report or Supplemental Services Report, as the case may be) setting out the amount of any net savings realised in the last Contract Year (to be demonstrated on the basis of Open Book Accounting) and LWL shall pay to the Authority XXXXXXXXXX of that net saving within thirty (30) Business Days of provision of the written report.

19.7 The Parties shall execute such documents as are necessary to effect changes to the Services agreed pursuant to this Clause 19.

19.8 Where the Authority does not agree with the Annual Services Report or Supplemental Services Report (as the case may be), the provisions of Clause 36 shall apply.

20 **Agency or Partnership**

20.1 Nothing in this Contract shall be construed as constituting a partnership between the Parties.

20.2 Neither LWL nor its employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Authority, otherwise than in circumstances expressly permitted by this Contract.

20.3 Neither LWL nor its employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Authority or in any other way bind the Authority to the performance, variation, release or discharge of any of its obligations under this Contract otherwise than in circumstances expressly permitted by the Authority under this Contract.

21 **Disclosure of Information**

21.1 LWL acknowledges that the Authority is subject to the requirements of FOIA and EIR and shall facilitate the Authority's compliance with its Information disclosure requirements under FOIA and EIR.

21.2 Where the Authority receives a Request for Information in relation to Information that LWL is holding on its behalf and which the Authority does not hold itself, the Authority shall refer to LWL such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information, and LWL shall:

21.2.1 provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

21.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in s.10 of FOIA or Regulation 5 of EIR.

21.3 Following notification under Clause 21.2, and up until such time as LWL has provided the Authority with all the Information specified in Clause 21.2.1, LWL may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further Information should reasonably be provided in order to identify and locate the Information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

21.3.1 whether Information is exempt from disclosure under FOIA and EIR; and

21.3.2 whether Information is to be disclosed in response to a Request for Information; and

in no event shall LWL respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.

21.4 LWL shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.

21.5 LWL shall transfer to the Authority any Request for Information received by LWL as soon as practicable and in any event within two (2) Business Days of receiving it.

21.6 LWL acknowledges that any lists provided by it listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of FOIA and EIR.

21.7 In the event of a request from the Authority pursuant to Clause 21.2, LWL shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of LWL's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under s.12(1) of FOIA and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "**Fees Regulations**"). Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in s.12(1) of FOIA and as set out in the Fees Regulations, the Authority shall inform LWL in writing whether or not it still requires LWL to comply with the request and where it does require LWL to comply with the request, the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under s.10 of FOIA. In such case, the Authority shall notify LWL of such additional days as soon as practicable after becoming aware of them and shall reimburse LWL for such costs as LWL incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority's own FOIA policy from time to time.

21.8 LWL acknowledges that (notwithstanding the provisions of this Clause 21) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of FOIA (the "**Code**"), or a ruling by the Information Commissioner, be obliged under FOIA or EIR to disclose Information concerning LWL or the Services:

21.8.1 in certain circumstances without consulting LWL;

21.8.2 following consultation with LWL and having taken their views into account,

provided always that where Clause 21.8.1 applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of LWL prior to any disclosure.

21.9 The Authority acknowledges that LWL may be required to provide Information and must always consult with the Authority in doing so.

21.10 The Parties agree that neither Party shall be liable to the other for any loss suffered as a result of a bona fide disclosure of Information under FOIA or EIR.

## 22 **Data Protection**

22.1 In relation to all Personal Data, LWL shall at all times comply with the provisions of DPA as a data controller if necessary, including maintaining a valid and up-to-date registration or notification under DPA covering the data processing to be performed in connection with the Services.

22.2 LWL and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

22.3 LWL shall not disclose Personal Data to any third parties other than:

22.3.1 to employees and sub-contractors to whom such disclosure is reasonably necessary in order for LWL to carry out the Services; or

22.3.2 to the extent required under a court order or as otherwise required by law, or where disclosure is required for the prevention or detection of crime, or the capture or prosecution of offenders,

provided that disclosure under Clause 22.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 22.3 and that LWL shall give notice in writing to the Authority of any disclosure of Personal Data which either LWL or a sub-contractor is required to make under Clause 22.3.2 immediately upon becoming aware of such a requirement.

22.4 LWL shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

22.5 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by LWL or the sub-contractors referred to in Clause 22.4. Within twenty (20) Business Days of such a request, LWL shall supply or procure the supply of written particulars of all such measures detailed to a reasonable level such that the Authority

can determine whether or not, in connection with the Personal Data, it is compliant with DPA.

- 22.6 The Parties shall indemnify each other against all actions, costs, expenses, claims, proceedings and demands which may arise as a result of the other Party breaching a statutory duty under DPA which arise from the use, disclosure or transfer of Personal Data by the indemnifying Party, its servants, its agents or its representatives.

## 23 **Confidentiality**

- 23.1 LWL shall not, without the written consent of the Authority, disclose during the Contract Period or at any time after, or make use of for its own purposes, or disclose to any person except as required by law, any Confidential Information provided to LWL by the Authority pursuant to this Contract or prepared or obtained by LWL pursuant to this Contract.

- 23.2 LWL shall neither dispose nor part with possession of any Confidential Information provided to LWL by the Authority pursuant to this Contract or prepared by LWL pursuant to this Contract, other than in accordance with the express written instructions of the Authority.

- 23.3 LWL shall not and shall ensure that its employees, sub-contractors and potential sub-contractors shall not divulge to any third party any Confidential Information which comes into its or their possession in the course of providing the Services and that such employees, sub-contractors and potential sub-contractors will be subject to the same obligations of confidentiality as LWL under this Contract in the event that they do divulge Confidential Information to a third party.

- 23.4 Without prejudice to Clause 21, the Authority may not disclose information about this Contract, unless otherwise agreed in writing between the Parties.

- 23.5 LWL shall not make any press release or other significant communication in connection with its provision of the Services without the prior written approval of the Authority.

- 23.6 LWL shall indemnify the Authority against all actions, costs, expenses, claims, proceedings and demands which may arise as a result of any breach by LWL of this Clause 23.

## 24 **LWL Default**

- 24.1 If there is a LWL Default, the Authority may issue a Default Notice specifying the type and nature of the LWL Default that has occurred giving reasonable details.

- 24.2 If a Default Notice is served on LWL and the specified LWL Default is capable of being remedied, then LWL shall either:

- 24.2.1 rectify the LWL Default within the time period reasonably specified by the Authority's Representative in the Default Notice; or

24.2.2 put forward an acceptable rectification programme within the time period reasonably specified by the Authority's Representative in the Default Notice and LWL shall implement such programme in accordance with its terms and rectify the LWL Default in accordance with the programme and to the satisfaction of the Authority.

**25 Authority Voluntary Termination**

25.1 The Authority shall be entitled to terminate this Contract by written notice having immediate effect or upon such notice as it considers appropriate.

25.2 The Authority shall ensure that, when exercising its rights under Clause 25.1, LWL is able to meet the consequences of termination which may include any claims arising from any sub-contract or Off-Take Contract and the impact on personnel.

**26 Termination by LWL**

LWL shall be entitled to terminate this Contract on thirty (30) Business Days' written notice where the Authority fails to make payment of any amount of money exceeding one Month's payment that is due and payable by the Authority under this Contract within twenty (20) Business Days of service of a formal written demand by LWL, where that amount fell due and payable two (2) (or more) Months prior to the date of service of the written demand.

**27 Termination by the Authority**

27.1 The Authority shall be entitled to terminate this Contract by written notice having immediate effect, or having effect after such period as the Authority may specify, in the following circumstances:

27.1.1 where LWL or any of its personnel shall have been convicted of any offence under the Bribery Act 2010 or given any fee or reward, the receipt of which is an offence under s.117(2) of the Local Government Act 1972;

27.1.2 where LWL ceases to carry on business;

27.1.3 where a receiver, manager, administrator or provisional liquidator is appointed or a proposal for a voluntary arrangement is approved in accordance with the Insolvency Act 1986 or where LWL is the subject of a resolution or an order for winding up;

27.1.4 where LWL has:

(a) committed an irremediable LWL Default; or

(b) failed to remedy a LWL Default within the time period reasonably specified by the Authority's Representative in the Default Notice in respect of that LWL Default; or

(c) put forward an acceptable rectification programme within the time period reasonably specified by the Authority's Representative in the Default Notice in respect of a LWL Default but has failed to rectify the LWL Default in accordance with the terms of the accepted rectification programme;

27.1.5 where LWL repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

27.1.6 where LWL fails to make suitable arrangements as set out in Clause 13.2.5 within seven (7) Business Days of cancellation, revocation or expiration of registration;

27.1.7 where the EA informs LWL that it is considering prosecution against LWL or the suspension and/or revocation of an Environmental Permit or Waste Management Licence as a result of LWL's failure to comply with the provisions of Clause 13.1 in relation to Environmental Permits; or

27.1.8 where LWL breaches paragraph 5.1 or paragraph 5.2 of Part 2 of the Specification.

## 28 **Lease Termination**

If the Authority's lease in respect of the Hendon Delivery Point or the Hornsey Street Delivery Point, or at any Contract RRCs, is terminated, the Authority is entitled to request a variation to this Contract in accordance with Clause 9.

## 29 **Partial Termination**

29.1 The Authority may terminate a particular Service or part of a Service where a Service Default has occurred.

29.2 Where a Service Default occurs and the Authority wishes to terminate a Service or part of a Service, the Authority must serve a Service termination notice (a "**Service Termination Notice**") on LWL and such notice must specify:

29.2.1 the type and nature of the Service Default that has occurred, giving reasonable details;

29.2.2 the Service or part of a Service that will (subject to Clause 29.2.3) terminate; and

29.2.3 that the Service or part thereof will terminate within the time period reasonably specified by the Authority's Representative in the Service Termination Notice, unless (for Service Defaults that are capable of rectification) LWL puts forward an acceptable rectification programme within the time period reasonably

specified by the Authority's Representative in the Service Termination Notice and implements such programme in accordance with its terms and rectifies the Service Default in accordance with the programme (contained within the Service Termination Notice) and to the satisfaction of the Authority.

- 29.3 If LWL implements the accepted rectification programme in accordance with its terms, the Service Termination Notice will be deemed to be revoked and the provisions of this Contract that relate to the Service or part of a Service shall continue in full force and effect.
- 29.4 If no acceptable rectification programme has been put forward pursuant to Clause 29.2 and LWL fails to rectify the Service Default within the time period specified in the Service Termination Notice, the Authority may give notice stating that the Service will terminate on the date falling ten (10) Business Days after the receipt of such notice.
- 29.5 If LWL fails to implement any rectification programme in accordance with its terms, the Service or the part of the Service will terminate on the date falling ten (10) Business Days after the date of notification to LWL.

### **30 Consequences of Partial Termination of Service or part of Service**

- 30.1 Upon termination of a particular Service or part of Service in accordance with Clause 29, LWL shall cease to perform that particular Service or part of Service and the Authority shall cease to be under any obligation to make payment to LWL for that particular Service or part thereof.
- 30.2 The Authority shall be at liberty to have that Service provided by any persons as the Authority shall in its entire discretion see fit.
- 30.3 LWL shall co-operate fully with the transfer of responsibility for that Service (or any part of that Service) and all necessary licences and/or permits or similar held by LWL to the Authority or any new contractor nominated by the Authority.

### **31 Consequences of Termination**

- 31.1 Upon termination of this Contract or the expiry of notice to that effect, LWL shall cease to perform the Services and the Authority shall cease to be under any obligation to make payment for further services to LWL.
- 31.2 The Authority shall be at liberty to have the Services or any part of the Services provided by any persons as the Authority shall in its entire discretion see fit.
- 31.3 LWL shall co-operate fully with the transfer of responsibility for the Services (or any part of the Services) and all necessary licences and/or permits or similar held by LWL to the Authority or any new contractor nominated by the Authority.



32      **Compensation on Termination**

Without prejudice to Clause 25.2, the Authority shall not be liable to pay compensation for termination nor shall the Authority be liable to pay for any loss of profit or indirect or consequential loss to LWL.

33      **TUPE**

33.1    In this Clause 33, except where the context otherwise requires, the following expressions shall have the meanings set out below:

**"Data Protection Legislation"** means DPA (as defined previously), the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

**"Effective Date"** means the date on which the Services (or any part of the Services), transfer from LWL to any Replacement Contractor or sub-contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Replacement Contractor or Sub-Contractor;

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

- (a)      the identity and age of the employee;
- (b)      the employee's written statement of employment particulars (as required under s.1 of the Employment Rights Act 1996);
- (c)      information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d)      information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against LWL arising out of the employee's employment with the transferor; and
- (e)      information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE;

**"Employment Liabilities"** means all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair,

wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;

**"LWL's Final Staff List"** means the list of all LWL's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;

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

**"Relevant Employees"** means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Contractor by virtue of the application of TUPE;

**"Relevant Transfer"** means a relevant transfer for the purposes of TUPE;

**"Replacement Services"** means any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Authority internally or by any Replacement Contractor;

**"Replacement Contractor"** means any third party supplier of Replacement Services appointed by the Authority from time to time;

**"Service Transfer Date"** means the date on which the Services (or any part of the Services), transfer from LWL or a Sub-Contractor to the Authority or any Replacement Contractor;

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

**"Sub-Contractor"** means the contractors or service providers engaged by LWL to provide goods, services or works to, for or on behalf of LWL for the purposes of providing the Services to the Authority;

"**TUPE**" means Transfer of Undertakings (Protection Of Employment) Regulations 2006 as Amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) Regulations 2014.

### **Employee Exit Provisions**

- 33.2 This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract or otherwise) resulting in a transfer of the Services in whole or in part ("**Subsequent Transfer**"). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Contractor will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 33.3 LWL shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by LWL or any Sub-Contractor in the provision of the Services, LWL's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. LWL shall notify the Authority of any material changes to this information as and when they occur.
- 33.4 At least twenty-eight (28) Business Days prior to the Service Transfer Date, LWL shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Contractor, LWL's Final Staff List, which shall be complete and accurate in all material respects. LWL's Final Staff List shall identify which of LWL's and Sub-Contractor's personnel named are Relevant Employees.
- 33.5 The Authority shall be permitted to use and disclose LWL's Provisional Staff List, LWL's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services that are substantially the same type of services as (or any part of) the Services.
- 33.6 LWL warrants to the Authority and the Replacement Contractor that LWL's Provisional Staff List, LWL's Final Staff List and the Staffing Information ("**TUPE Information**") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on LWL's Final Staff List.
- 33.7 LWL shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
- 33.8 The Authority regards compliance with Clauses 33.2 to 33.14 as fundamental to this Contract. In particular, failure to comply with Clauses 33.2 and 33.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Authority to suspend payment of the Contract Price until such information is provided, and LWL shall use its best endeavours to obtain the information as reasonably required by the

Authority. The maximum sum that may be retained under this Clause 33.8 shall not exceed an amount equivalent to the Contract Price that would be payable in [REDACTED] following LWL's failure to comply with Clause 33.2 or 33.3, as the case may be.

- 33.9 Any change to the TUPE Information which would increase the total employment costs of the staff in six (6) Months prior to termination of this Contract shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. LWL shall and shall procure that any Sub-Contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.
- 33.10 As soon as LWL is informed of termination of this Contract, LWL shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on LWL's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.
- 33.11 LWL shall indemnify and keep indemnified in full the Authority and at the Authority's request each and every Replacement Contractor against all Employment Liabilities relating to:
- 33.11.1 any person who is or has been employed or engaged by LWL or any Sub-Contractor in connection with the provision of any of the Services; or
  - 33.11.2 any trade union or staff association or employee representative, arising from or connected with any failure by LWL and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive 77/187 or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 33.12 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 33.13 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to Clauses 33.10 to 33.12, to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by LWL or the Authority in its own right under s.1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 33.14 Without prejudice to Clause 33.13, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

34       **Expiry**

In the period leading up to the expiry of this Contract, LWL shall co-operate fully with the transfer of responsibility for the Services (or any part of the Services) and all necessary licences and/or permits similarly held by LWL to the Authority or any new contractor nominated by the Authority.

35       **Recovery of Sums Due to the Authority**

Whenever under this Contract any sum of money shall be recoverable from or payable by LWL to the Authority, the same may be deducted from any sum due to LWL under this Contract or any other contract between LWL and the Authority.

36       **Dispute Resolution**

36.1      If any dispute or problem arises in relation to this Contract it shall first be discussed at a Regular Monitoring Meeting.

36.2      If no satisfactory resolution is reached at such Regular Monitoring Meeting, the dispute shall be referred for determination to a sufficiently senior officer or director of each Party to resolve the dispute.

36.3      In the event of no agreement being reached, the matter shall be referred to the Clerk of the Authority for final resolution.

37       **Conflicts of Interest**

37.1      LWL shall take appropriate steps to ensure that:

37.1.1    LWL is not placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or other interests of LWL and the duties owed to the Authority under the provisions of this Contract; and

37.1.2    LWL's employees are not placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or other interests of that employee and the duties owed by LWL to the Authority under the provisions of this Contract.

37.2      LWL will disclose to the Authority full particulars of any such conflict of interest which may arise.

37.3      The Authority reserves the right to take such steps as it deems necessary or require LWL to take such steps as the Authority deems necessary to avoid or address such actual or potential conflict.

38       **Force Majeure Event**

38.1      Neither Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or 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 obligations by that Force Majeure Event.

38.2 For the avoidance of doubt, the Authority shall not be entitled to terminate this Contract for a LWL Default if such LWL Default arises from a Force Majeure Event, subject to Clause 38.4.

38.3 Payment for the Services affected by a Force Majeure Event will be reduced or waived by a reasonable amount to be agreed between the Parties to reflect the extent and standard to which the affected Services are being provided.

38.4 If the Force Majeure Event continues for more than three (3) Months the Authority may terminate this Contract in whole or in part at the Authority's discretion by giving thirty (30) Business Days' written notice to LWL.

38.5 Termination as a result of a Force Majeure Event shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring prior to such termination.

#### 39 **Business Continuity Plan**

39.1 LWL shall comply at all times with the Business Continuity Plan.

39.2 LWL shall update the Business Continuity Plan at such intervals to comply with LWL's Accreditations, and provide a copy of any updated Business Continuity Plan to the Authority within twenty (20) Business Days of such update being implemented.

#### 40 **Assignment and Sub-Contracting**

40.1 The Authority shall be entitled to assign the benefit of this Contract or any part of it and shall give written notice of any assignment to LWL.

40.2 LWL shall not transfer, assign, charge or otherwise dispose of this Contract or any part of it without the prior written consent of the Authority.

40.3 LWL shall comply with the Public Contracts Regulations 2006 and any other applicable law when sub-contracting its obligations under this Contract.

40.4 LWL shall not sub-contract this Contract or any part of it except:

40.4.1 where sub-contracted to:

(a) FCC Waste Services (UK) Limited pursuant to a contract with LWL for the rail transfer and treatment of waste from the Hendon Rail Transfer Station, dated 9 December 2014; or

(b) TEG Environmental Ltd pursuant to a contract with LWL for the provision of organic waste treatment capacity and associated transport, dated 1 April 2011; or

40.4.2 where the expected value of the sub-contract is up to £150,000 in value per annum,

without the prior written consent of the Authority.

40.5 In the event that LWL sub-contracts or instructs a third party to act on its behalf pursuant to this Contract, LWL shall be fully liable for the actions of its sub-contractors and/or instructed third parties as if LWL had performed them, and shall indemnify the Authority against any claims, costs, damages or expenses that may result from any actions performed by that sub-contractor or third party. Any obligation on LWL shall be construed as an obligation on LWL to procure that its sub-contractors shall comply with that same obligation.

40.6 Subject to the consent of the other Party (such consent not to be unreasonably withheld or delayed) any approved sub-contract may be extended in accordance with the terms of that sub-contract at the written request of either Party provided that the requesting Party gives written notice to the other Party of such extension at least two (2) Weeks prior to the minimum notice period required in the sub-contract. LWL shall give the Authority eight (8) Weeks' notice of the final dates for serving such notices under all sub-contracts.

40.7 Where the duration of any sub-contract (where that sub-contractor has a sub-lease of any RRC or Delivery Point) has been extended in accordance with Clause 40.6, LWL shall enter into a new lease for any relevant premises for the period of the extension (upon the same terms as the prevailing lease) for the duration of the sub-contract, subject to the Authority obtaining all necessary consents so to do, and any such new leases entered into by LWL shall be contracted out of the 1954 Act.

#### 41 **Entire Agreement**

41.1 Except where expressly provided for in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

41.2 Each of the Parties acknowledges that:

41.2.1 it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

41.2.2 this Clause 41 shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which were induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

42 **Counterparts**

This Contract may be executed in counterparts, which when taken together shall constitute one and the same instrument.

43 **Third Party Rights (excluded except in relation to TUPE)**

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Contract save for Clause 33.

44 **Waiver**

Failure by the Authority at any time to enforce the provisions of this Contract or to require performance by LWL of any of the provisions of this Contract shall not be construed as a waiver of any such provision and shall not affect the validity of this Contract or any part thereof or the right of the Authority to enforce any provision in accordance with its terms.

45 **Severability**

If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions or of any other documents referred to in this Contract.

46 **Notices**

46.1 All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post to, or leaving the same at:

46.1.1 Company Secretary, LondonWaste Limited, EcoPark, Advent Way, Edmonton, London N18 3AG; and

46.1.2 Head of Operations, North London Waste Authority, Unit 1B, Berol House, 25 Ashley Road, Tottenham Hale, London N17 9LJ and also to the London Borough of Camden marked "Andrew Maughan, Legal Adviser, North London Waste Authority (Waste Management Contract)" to 2nd Floor, Camden Town Hall, Judd Street, London WC1H 9JE.

46.2 Either Party, and either the Authority's Representative or LWL's Representative, may change its nominated address by prior notice to the other Party.



47        **Assistance in Proceedings**

47.1      The Parties shall assist each other where either Party is engaged in any litigation proceedings to which the other Party is not a defendant party.

47.2      The requesting Party shall pay to the assisting Party its reasonable costs incurred in providing such assistance in such litigation proceedings.

48        **Late Payment of Debts (Interest) Act 1998**

The provisions of the Late Payment of Debts (Interest) Act 1998 shall apply to this Contract.

49        **Rights and Remedies**

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

50        **Costs and Expenses**

Except where expressed otherwise, each Party shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation, execution and completion of this Contract and any ancillary documents.

51        **Good faith**

51.1      The Parties will act in good faith towards each other in relation to all matters arising under this Contract and in particular:

51.1.1    LWL will inform the Authority as soon as possible of any circumstances which might prejudice LWL's ability to provide the Services whether temporarily or permanently;

51.1.2    each Party shall inform the other fully and as soon as possible of any circumstance which might lead to any substantial change in the nature, composition or amount of the Contract Waste or any other circumstance which may alter the burden of the obligations of either Party under this Contract;

51.1.3    the Authority shall be given all information and other facilities it may reasonably require to ensure that LWL is fulfilling its obligations under this Contract;

51.1.4    without prejudice to the Parties' respective rights under this Contract, the Authority's Representative and LWL's Representative shall hold regular meetings to review the working of this Contract, to identify any way in which either Party might be, or become, in breach of its obligations, and any necessary remedial action, and to resolve informally any problem which either has arisen in relation to this Contract or which is perceived by either Party to be likely to arise in connection with this Contract.

52        **Law and jurisdiction**

52.1       This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of England.

52.2       The Parties submit to the exclusive jurisdiction of the Courts of England and Wales.

53        **Continuing Obligations**

53.1       Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any compensation on termination pursuant to this Contract:

53.1.1     termination or expiry of this Contract shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date or the Expiry Date; and

53.1.2     termination or expiry of this Contract shall not affect the continuing rights and obligations of LWL and the Authority under Clause 8 (Contract Price), Clause 10 (Intellectual Property Rights), Clause 21 (Disclosure of Information), Clause 22 (Data Protection), Clause 23 (Confidentiality), Clause 33 (TUPE), Clause 46 (Notices), Clause 48 (Late Payment of Debts (Interest) Act 1998), Clause 49 (Rights and Remedies) and Clause 52 (Law and Jurisdiction), or under any other provision of this Contract which is expressed to survive termination or expiry or which is required to give effect to such termination or expiry, or the consequence of such termination or expiry.

In witness whereof this document has been duly executed as a deed and has been delivered on the date which appears first on page 1

**Execution by Authority**

**Executed as a deed and sealed on behalf of North London Waste Authority by a duly authorised officer:**

David Beadle

.....  
print name

.....  
signature

Authorised  
Officer

.....  
Managing Director

position

**Execution by LWL**

**Executed as a deed by LondonWaste Limited acting by a director in the presence of:**

David Sargent

.....  
Name

signature  
of witness .....

name .....

print name of witness

address