CONFORMED COPY

OF THE PRINCIPAL CONTRACT DATED 31ST MARCH 2003
AND THE AMENDMENTS TO THE PRINCIPAL CONTRACT
PURSUANT TO THE DEED OF AMENDMENT DATED 28TH MAY 2003

SCHEDULE 12

PAYMENT AND PERFORMANCE

Part 1

PAYMENT MECHANISM

“Phase” means either Phase 1, Phase 2, Phase 3 or Phase 4

“Phase 1” means the period from the Effective Date until the Completion Date for the last of the Minor Facilities

“Phase 2” means the period from the Completion Date for the last of the Minor Facilities until the date of the issue of the Certificate of Completion of the Functional Tests for the Newhaven ERP

(Original definition of “Phase 2” deleted and replaced as set out in Schedule 3 of Deed of Variation dated 8 August 2004 below)

“Phase 2” means the period from the Completion Date for the last of the Minor Facilities until the commencement of Phase 3.

“Phase 3” means the period from the date of the issue of the Certificate of Completion of the Functional Tests until the Completion Date for the New Technology

(Original definition of “Phase 3” deleted and replaced as set out in Schedule 3 of Deed of Variation dated 8 August 2004 below)
“Phase 3” means the period from the date of the issue of the Completion Certificate for Newhaven ERP until the Completion Date for the New Technology backdated to the commencement of the successfully completed Reliability Tests in relation to the Newhaven ERP.

Provided that:-

if the Completion Certificate for the Newhaven ERP, having been issued in accordance with clause 18.2.6.1, is thereafter revoked in accordance with clause 18.2.15, then Phase 3 shall be deemed not to have commenced (“Phase 3 Failure”). In the event of a Phase 3 Failure, Phase 3 shall be deemed to have commenced when the Completion Certificate for the Newhaven ERP has been issued provided that the Take Over Certificate (as defined in the Construction Contract) has been issued by the Anticipated Take Over Date (as defined in the Construction Contract) subject to any extension granted by the Authority pursuant to clause 18.2.14 or determined pursuant to clause 18.2.15 or by such longer period as the Lead Authority may in its absolute discretion permit. If the Contractor fails to satisfy such requirements, Phase 3 shall be deemed not to have commenced, however the Contractor shall not be required to reimburse any Phase 3 payments made during the above period.

“Phase 4” means the period from the Completion Date for the New Technology until the end of the Contract Period.

“Weight Band Price” in respect of the relevant Phase and the relevant Weight Band means the price for the relevant Weight Band as set out at table 1 of Schedule 6.
1. TERMINOLOGY

1.1 The following terminology has been applied throughout this Schedule 12 and Schedule 8 (Calculation of the Recovery Rate and Recycling Rate):

A The Refrigerator Payment (if any)
B The applicable Baseline Payment
C Councils’ share of net income from sale of Recyclable Materials as calculated in Paragraph 13 of this Part 1 of Schedule 12.
D the sum of the Unavailability Deductions as stated in paragraph 1.7 (Calculation of Unavailability Deductions) of Part 2 (Unavailability Deductions) of this Schedule 12 which the Councils shall be entitled to deduct for the relevant Month or part Month in respect of any Unavailability of each or any or all of the Waste Management Facilities
E the Energy Recovery Supplement
F such Reconciliation Payments as may be payable or deductible for the relevant period in calculating the Unitary Charge pursuant to Part 1 of this Schedule 12
G a sum being the Councils’ share of any excess profit from time to time calculated in accordance with paragraph 12 (Excess Profit) of Part 1 of this Schedule 12
H the Household Waste Recycling Site Payment
I the Interim Service Supplement payable only during the Interim Service Period
K Councils’ share of additional income derived from transfer of NFFO Contract as calculated in Paragraph 14.3 of this Part 1 of Schedule 12
J the Run Out Service Supplement payable only during
the Run Out Service Period

L the Landfill Tax Liability as calculated in Paragraph 7.1 of this Part 1 of Schedule 12

M Councils’ share of Packaging Recycling Notes as calculated in Paragraph 15.2 of this Part 1 of Schedule 12

N the Beneficial Use Payment as calculated in Paragraph 4A.2.7 of this Part 1 of Schedule 12

P the sum of the Performance Deductions calculated by reference to the specified Performance Criteria determined in accordance with paragraph 2.3 of Part 2 (Calculation of Performance Deductions) of this Schedule 12 which the Councils shall be entitled to deduct for the relevant Month or part Month in respect of any performance failure

R the Recycling Payment

S the WCA Diversion Compensation Payment calculated in accordance with Paragraphs 10.2 and 10.3 of Part 2 of Schedule 12

T the WCA Non-Separation Compensation Payment calculated in accordance with Paragraphs 10.4 of Part 2 of Schedule 12

U the Unitary Charge;

V the amount (if any) payable by or reimbursable to the Councils in respect of each item referred to in ‘V’ of Other Elements of the Unitary Payment where there is no fixed sum as set out in Part 1 of Schedule 6.

W Councils’ share of Contract Debtor Structure as calculated in Paragraph 16.1 of this Part 1 of Schedule 12
2. UNITARY CHARGE

2.1 Calculation of Unitary Charge

The Contractor shall be paid a Unitary Charge for the provision of the Services in accordance with the terms of clause 26 (The Unitary Charge). The Unitary Charge will be determined in accordance with the following formula:

\[ U = A + B + E + R + L + H + N + S + T + I + J + D - P - G \pm F \pm V - C - K - M - W \]

2.1.1 Overarching principle regarding forecasts, payments on actuals and first and second reconciliations

With regard to any payment made under Schedule 12 Part 1 the Parties agree that it is their joint intention to operate this payment mechanism band upon actual performance tonnages and Landfill Tax liabilities and not by reference to forecasts and reconciliations as soon as is reasonably practicable and with their joint written prior consent. The Councils undertake not to unreasonably withhold their consent to any change in the operation of Schedule 12 Part 1 whether involving any forecast, interim or final reconciliation or the introduction of additional interim reconciliations provided that the Councils may withhold their consent where the Contractor shall have failed to demonstrate to the Councils’ reasonable satisfaction:

2.1.1.1 that such change will not prejudice the accuracy of any calculations underlying any payments of any element of the Unitary Payment; and

2.1.1.2 that any requirement to evidence any sum or other matter will where required to be evidenced by means of a Defined Audit Trail continue to be so evidence to the same extent and accuracy as is required under Schedule 12 Part 1 on the Execution Date; and

2.1.1.3 the Contractor shall have failed to give at least 3 Months notice in writing to the Lead Authority of a request to change any element of calculation involving any forecast and reconciliation; and
2.1.1.4 such change would not come into effect sooner than one Month after the giving of written consent by the Councils.

2.1.2 Any change agreed under this paragraph 2.1 shall not vary the terms of clause 28 (Report and Invoicing).

2.2 Payment of Unitary Charge

The Contractor shall be entitled to receive the Unitary Charge in accordance with the provisions set out below and in accordance with the provisions of clause 26 (Unitary Charge), clause 28 (Report and Invoicing) and clause 32 (Performance Monitoring).

3. BASELINE PAYMENT

3.1 Contractor’s Right to the Baseline Payment

The Contractor shall be entitled to receive the applicable Baseline Price for the relevant Contract Year for each tonne of Contract Waste, excluding any Contract Waste that attracts the Refrigerator Payment demonstrated by the Contractor to the reasonable satisfaction of the Project Director through a Defined Audit Trail to have been received by it.

3.2 Payment of Baseline Payment for Contract Waste within Weight Bands 1 to 5

3.2.1 Subject to paragraph 3.5 (Baseline Price for Reduced Contract Waste and Excess Contract Waste), paragraph 3.6 (Payment of Baseline Payment for Reduced Contract Waste and Excess Contract Waste) and subject to reconciliation in accordance with paragraph 3.4 (Baseline Payment Reconciliation) the Baseline Payment payable to the Contractor each Month shall be the average applicable Baseline Price per tonne due on the forecast annual weight of Contract Waste as set out in the forecast agreed under paragraph 3.2.4 (Duty of the Contractor and the Project Director to seek to agree the Baseline Payment Forecast) or determined under paragraph 3.2.5 (Deemed Baseline Payment in default of agreement or in default of delivery by the Contractor of its Baseline Payment Forecast).

3.2.2 Duty to make a draft forecast of weight of Contract Waste and applicable Phase.
The Contractor shall prepare a draft forecast within 5 Business Days after but calculated or determined as the case may be as at the end of Month 10 of each Contract year of:

3.2.2.1 the weight of Contract Waste in tonnes likely to be received by it during the immediately following Contract Year; and

3.2.2.2 the duration of the Phase or Phases of the Project which are likely to pertain during the immediately following Contract Year

In each case calculated or determined on objective grounds having regard to all relevant considerations.

3.2.3 Duty to deliver the draft forecast of weight of Contract Waste to the Project Director

As soon as reasonably practicable and in any event within 10 Business Days after the last day of Month 10 the Contractor shall deliver to the Project Director each of the draft forecasts together with all workings and supporting information as would be reasonably required by a competent person to satisfy himself that each forecast was fair and objective.

3.2.4 Duty of the Contractor and the Project Director to seek to agree the Baseline Payment Forecast

The Contractor and the Project Director shall seek to agree the forecast annual weight of Contract Waste and the average applicable Baseline Price for the next Contract Year.

3.2.5 Deemed Baseline Payment in default of agreement or in default of delivery by the Contractor of its draft Baseline Payment Forecast

If the Project Director and the Contractor shall have failed to agree under paragraph 3.2.4 (Duty of the Contractor and the Project Director to seek to agree the Baseline Payment Forecast) or if the Contractor shall have failed to deliver to the Project Director its draft forecast under paragraph 3.2.3 (Duty to deliver the draft forecast of weight of Contract Waste to the Project Director) then either the Contractor or the Project Director may
request that an appropriate forecast annual weight of Contract Waste and average applicable Baseline Price be determined in accordance with clause 70 (Dispute Resolution) and until such determination the forecast annual weight of Contract Waste and the average applicable Baseline Price used to derive the Baseline Payment per tonne shall be deemed to be the same as the forecast annual weight of Contract Waste and average applicable Baseline Price per tonne used in Month 12 of that Contract Year.

3.2.6 Baseline Payment Forecast in the first Contract Year

The Baseline Payment Forecast in the first Contract Year shall be that set out for the first Contract Year in the Base Financial Model.

3.2.7 Baseline Price Reduction for the third, fourth, fifth, sixth and seventh Contract Years

The applicable Baseline Prices for the third, fourth, fifth, sixth and seventh Contract Years shall be subject to the relevant Baseline Price Reductions (BR) set out in Schedule 6 Part 1 Table 1.14 such that the relevant Baseline Payment shall be calculated based on Baseline Prices adjusted by the relevant Baseline Price Reduction for the relevant Contract Year.

Reduced Baseline Price = BP – BR

Where

BP = the relevant Baseline Price for the relevant Contract Year and

BR = the relevant Baseline Price Reduction for the relevant Contract Year

3.2.8 Duty to make a draft Forecast of weight of Contract Waste to be delivered to the Contractor by each WCA

The Contractor shall prepare a draft forecast within 5 Business Days after but calculated as at the end of Month 10 of each Contract Year of the weight of Contract Waste in tonnes which it considers on objective grounds having regard to all relevant considerations is reasonably likely to be delivered to it during the immediately following Contract Year by each WCA being:
3.2.8.1 FCHWEBC for Eastbourne Borough Council; and
FCHWHBC for Hastings Borough Council; and
FCHWLDC for Lewes District Council; and
FCHWRDC for Rother District Council; and
FCHWWDC for Wealden District Council.
FCHWBH for B&HCC in respect of their collected Household Waste.

3.2.9 Duty to deliver the draft Forecast of weight of Contract Waste to the Project Director

As soon as reasonably practicable and in any event with 10 Business Days after the last day of Month 10 the Contractor shall deliver to the Project Director each of the draft forecasts together with all workings and supporting information as would be reasonably required by a competent person to satisfy himself that each forecast was fair and objective.

3.2.10 Duty of the Contractor and the Project Director to seek to agree the forecast of the weight of Contract Waste to be delivered to the Contractor by each WCA

The Contractor and the Project Director shall seek to agree:

3.2.10.1 the forecast of the weight of Contract Waste to be delivered to the Contractor by each WCA

3.2.11 Deemed forecast of the weight of Contract Waste to be delivered to the Contractor by each WCA in default of agreement or in default of delivery by the Contractor of its draft forecast

3.2.12 If the Project Director and the Contractor shall have failed to agree under paragraph 3.2.10 (Duty of the Contractor and the Project Director to seek to agree the forecast of the weight of Contract Waste to be delivered to the Contractor by each WCA) or if the Contractor shall have failed to deliver to the Project Director its draft forecast under paragraph 3.2.9 (Duty to deliver
the draft Forecast of weight of Contract Waste to the Project Director by each WCA) then either the Contractor or the Project Director may request that an appropriate forecast annual weight of Contract Waste be determined in accordance with clause 70 (Dispute Resolution) and until such determination the forecast shall be deemed to be the same as the forecast used in the previous Contract Year.

3.3 **Formula for the calculation of the Baseline Payment:**

Subject to paragraph 3.5 (Baseline Price for Reduced Contract Waste) and subject to paragraph 3.6 (Baseline Price for Excess Contract Waste) which shall be used to calculate the Baseline Price applying in the relevant Contract Year in circumstances where the tonnage of Contract Waste for such Contract year is forecast to fall below 300,000 tonnes and the Baseline Payment for each Month during each Contract Year referred to below as “MB” shall be calculated as:

\[
MB = \frac{ABP \times FW}{12}
\]

Where:

FW = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor in the relevant Contract Year up to and including 550,000 tonnes; and

\[
ABP = \frac{(BP1 \times FWB1 + BP2 \times FWB2 + BP3 \times FWB3 + BP4 \times FWB4 + BP5 \times FWB5)}{FW}
\]

Where:

BP1 = the forecast Weight Band 1 Baseline Price for the applicable Phase and Contract Year

BP2 = the forecast Weight Band 2 Baseline Price for the applicable Phase

BP3 = the forecast Weight Band 3 Baseline Price for the applicable Phase

BP4 = the forecast Weight Band 4 Baseline Price for the applicable Phase

BP5 = the forecast Weight Band 5 Baseline Price for the applicable Phase
FWB1 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor in the relevant Contract Year within Weight Band 1 during the applicable Phase

FWB2 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor in the relevant Contract Year within Weight Band 2 during the applicable Phase

FWB3 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor in the relevant Contract Year within Weight Band 3 during the applicable Phase

FWB4 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor in the relevant Contract Year within Weight Band 4 during the applicable Phase

FWB5 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor in the relevant Contract Year within Weight Band 5 during the applicable Phase

provided that:

3.3.1 there shall be no double counting of Contract Waste; and

3.3.2 no tonne of Contract Waste shall be counted in more than one Weight Band.

3.4 Baseline Payment Reconciliation

3.4.1 Baseline Payment reconciliation calculation

Within 10 Business Days after the Second Reconciliation Date of each Contract Year the Contractor shall provide to the Project Director using a Defined Audit Trail all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate in all material respects:

3.4.1.1 details of all payments of the Baseline Payment in the immediately preceding Contract Year; and
subject to paragraph 3.2.7 (Baseline Price in the first and second Contract Years) a calculation in accordance with the formula set out below which shall set out for the immediately preceding Contract Year the applicable Baseline Payment for the applicable Phase in accordance with each of the Weight Bands and Phases actually applying and the amount by which the actual payments of Baseline Payment based on the Baseline Payment Forecast (whether deemed agreed or determined) have over or under compensated the Contractor (the “Baseline Payment Reconciliation Payment”) referred to below as “RB”:

\[
RB = (BP_1 \times AWB_1 + BP_2 \times AWB_2 + BP_3 \times AWB_3 + BP_4 \times AWB_4 + BP_5 \times AWB_5) - 12MB
\]

Where:

\[
BP_1 = \text{the actual Weight Band 1 Baseline Price for the applicable Phase and Contract Year}
\]

\[
BP_2 = \text{the actual Weight Band 2 Baseline Price for the applicable Phase}
\]

\[
BP_3 = \text{the actual Weight Band 3 Baseline Price for the applicable Phase}
\]

\[
BP_4 = \text{the actual Weight Band 4 Baseline Price for the applicable Phase}
\]

\[
BP_5 = \text{the actual Weight Band 5 Baseline Price for the applicable Phase}
\]

In calculating RB the actual tonnes of Contract Waste shall be paid at the actual applicable Baseline Price for the relevant Phase.

\[
AWB_1 = \text{the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 1}
\]
AWB2 = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 2

AWB3 = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 3

AWB4 = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 4

AWB5 = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 5

RB = Baseline Payment Reconciliation Payment which, if positive represents an amount payable to the Contractor, and if negative represents an amount repayable to the Councils

3.4.2 Settlement of the Baseline Payment Reconciliation Payment

The Baseline Payment Reconciliation Payment shall be added to or deducted from the Unitary Charge payable in respect of the Month of the Contract Year in which the Baseline Payment Reconciliation Payment is agreed or determined.

3.5 Baseline Price for Reduced Contract Waste and Excess Contract Waste

3.5.1 Paragraphs 3.5A to 3.8A cover Excess Contract Waste.

3.5.2 Paragraphs 3.5B to 3.8B cover Reduced Contract Waste.

3.5A Baseline Price for Excess Contract Waste
If any Baseline Payment Forecast agreed under paragraph 3.2.4 (Duty of the Contractor and the Project Director to seek to agree the Baseline Payment Forecast) of Part 1 of Schedule 12 (Payment and Performance) or deemed or determined under paragraph 3.2.5 (Deemed Baseline Payment in default of agreement or in default of delivery by the Contractor of its Baseline Payment Forecast) of Part 1 of Schedule 12 (Payment and Performance) shows that the forecast weight of Contract Waste for the following Contract Year exceeds 550,000 tonnes such excess above 550,000 tonnes being referred to as the “Excess Contract Waste” the Contractor shall deliver to the Project Director within 30 Business Days:

3.5A.1.1 a written proposal setting out in all material detail together with all supporting information as would be reasonably required by a competent person to understand and validate the Contractor’s proposals for the management and disposal of any Excess Contract Waste including any impact on the Recovery Target and the Recycling Target; and

3.5A.1.2 the proposed price for the management and disposal as the case may be of any Excess Contract Waste being referred to as the “Excess Contract Waste Baseline Price” on the assumption that:

(a) such price would be indexed and

(b) the Recovery Supplement and the Recycling Supplement would be paid in accordance with paragraphs 4 and 5

3.5A.1.3 the Contractor’s actual cost per tonne for the management and disposal of the Excess Contract Waste as the case may be;

3.5A.1.4 all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the proposed price is the minimum economically practicable and has been calculated so as to:

(a) secure the most economically advantageous price for the Councils including evidence that the Contractor has used reasonable endeavours including (where practicable) the use of competitive quotations to minimise any increase in
costs and maximise any reduction in costs and a demonstration of how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner including showing when such expenditure is incurred and that foreseeable Changes in Law at that time have been taken into account by the Contractor;

(b) minimise any breakage cancellation or unwinding costs; and

(c) minimise any increase in and maximise any decrease in the cost of performing the Contractor’s obligations hereunder including in the case of Excess Contract Waste the Contractor’s obligation to achieve the Recovery Target and the Recycling Target including without limitation costs of renewal and maintenance insurance the cost of obtaining any necessary consents professional fees and any overheads calculated in accordance with the Change Protocol in Schedule 24A

3.5A.2 If the Contractor is not able to secure the most economically advantageous price for the Councils to manage and dispose of any Excess Contract Waste without a Change in the Works or Services the Contractor shall serve a Contractor Notice of Change on the Project Director in accordance with clause 27 (Change to the Works or Services).

3.5A.3 On receipt of the Contractor’s proposals the Project Director shall within 60 Business Days;

3.5A.3.1 inform the Contractor in writing of which if any of the Contractor’s proposals is acceptable to the Councils and if none are so inform the Contractor; and

3.5A.3.2 inform the Contractor whether or not the Councils will continue to deliver the Excess Contract Waste to the Contractor.

3.5A.4 If the Councils accept the Contractor’s proposals or shall have failed to reject them within 60 Business Days then the Councils shall:
3.5A.4.1 continue to deliver Contract Waste in accordance with clause 79.1 (Councils’ Duties to Deliver Contract Waste and Priority of Contract Waste);

3.5A.4.2 in the case of Excess Contract Waste pay the Contractor in accordance with paragraph 3.6A.2.

3.5A.5 If the Councils reject the Contractor’s proposals then the Councils may refer the matter to clause 70 (Dispute Resolution) with a request that a Excess Contract Waste Baseline Price be determined in accordance with the assumptions set out in paragraph 3.5A.1.2 and the principles set out in paragraph 3.5A.1.4. Subject to the Councils informing the Contractor that the Councils will continue to deliver Excess Contract Waste to the Contractor until the Excess Contract Waste Baseline Price has been determined the applicable Baseline Price used to derive the Baseline Payment per tonne shall be deemed to be the Weight Band 5 Baseline Price for the applicable Phase. Once the Excess Contract Waste Baseline Price has been determined if the Councils decide to deliver any waste being in excess of 550,000 tonnes of Contract Waste for that Contract Year otherwise than to the Contractor the Councils shall have no liability to the Contractor on any grounds for such waste under this Contract or otherwise.

3.5A.6 If the Councils choose under paragraph 3.5A.5 to deliver Excess Contract Waste otherwise than to the Contractor the Councils shall divert such weight of waste as shall represent a pro-rata amount of the forecast Excess Contract Waste for the remainder of the Contract Year from the date of such acceptance and may vary such amount acting reasonably from time to time having regard to the actual weight of waste arising but shall give written notice of any such variation as soon as reasonably practicable to the Contractor.

3.6A Payment of Baseline Payment for Excess Contract Waste

3.6A.1 Subject to reconciliation in accordance with paragraph 3.7A (Baseline Payment for Excess Contract Waste Reconciliation) the Baseline Payment payable to the Contractor each Month for Excess Contract Waste that the Councils choose to deliver to the Contractor in accordance with paragraph 3.5A.5 be the average applicable Baseline Price per tonne due on the
forecast annual weight of Contract Waste as set out in the forecast agreed under paragraph 3.2.4 (Duty of the Contractor and the Project Director to seek to agree the Baseline Payment Forecast) or determined under paragraph 3.2.5 (Deemed Baseline Payment in default of agreement or in default of delivery by the Contractor of its Baseline Payment Forecast).

3.6A.2 Formula for the calculation of the Baseline Payment for Excess Contract Waste

The Baseline Payment for Excess Contract Waste for each Month during each Contract Year referred to as “MB” below shall be calculated as:

\[
MB = \frac{AEBP \times FEW}{12}
\]

Where:

\( FEW = \) the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor in the relevant Contract Year including the forecast Excess Contract Waste; and

\( AEBP = \) the forecast average applicable baseline price per tonne calculated as follows.

\[
AEBP = \frac{(BP1 \times FWB1 + BP2 \times FWB2 + BP3 \times FWB3 + BP4 \times FWB4 + BP5 \times FWB5 + BPE \times FWBE)}{FEW}
\]

Where:

\( BP1 = \) the forecast Weight Band 1 Baseline Price for the applicable Phase and Contract Year

\( BP2 = \) the forecast Weight Band 2 Baseline Price for the applicable Phase

\( BP3 = \) the forecast Weight Band 3 Baseline Price for the applicable Phase

\( BP4 = \) the forecast Weight Band 4 Baseline Price for the applicable Phase

\( BP5 = \) the forecast Weight Band 5 Baseline Price for the applicable Phase

\( BPE = \) the forecast Excess Contract Waste Baseline Price for the applicable Contract Year
FWB1 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 1

FWB2 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 2

FWB3 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 3

FWB4 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 4

FWB5 = the number of tonnes of Contract Waste forecast deemed or determined to be delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 5

FWBE = the number of tonnes of Excess Contract Waste forecast deemed or determined to be delivered to the Contractor during the relevant Phase in the relevant Contract Year.

3.7A Calculation of Baseline Payment for a Contract Year after a Contract Year when Excess Contract Waste Baseline Payment is made

In each Contract Year in which the Baseline Payment is calculated under paragraph 3.6A (Payment of Baseline Payment for Excess Contract Waste) and the forecast delivered under paragraph 3.2.3 (Duty to deliver the draft forecast of weight of Contract Waste to the Project Director) or determined under paragraph 3.2.5 (Deemed Baseline Payment in default of agreement or in default of delivery by the Contractor of its draft Baseline Payment Forecast) shows:

3.7A.1 Continuing Excess Contract Waste

that the weight in tonnes of Contract Waste for the next Contract Year shall exceed 550,000 tonnes then the applicable Excess Contract Waste Baseline Price shall be indexed in accordance with paragraph 2 of Schedule 6
(Annual Contract Price Review) and shall apply as the Excess Contract Waste Baseline Price for the immediately following Contract Year; or

3.7A.2 **Contract Waste Weight within Weight Bands 1 to 5 inclusive**

that the weight in tonnes of Contract Waste for the next Contract Year shall exceed 300,000 tonnes and not exceed 550,000 tonnes the Baseline Payment shall be calculated in accordance with paragraph 3.2 (Payment of Baseline Payment); or

3.7A.3 **Excess Contract Waste followed by Reduced Contract Waste**

that the weight in tonnes of Contract Waste for the next Contract Year shall not exceed 300,000 tonnes the provisions of paragraph 3.5 (Baseline Price for Reduced Contract Waste and Excess Contract Waste) shall apply.

3.8 **Baseline Payment for Excess Contract Waste Reconciliation**

3.8A.1 **Baseline Payment for Excess Contract Waste reconciliation calculation**

Within 10 Business Days after the Second Reconciliation Date of each Contract Year the Contractor shall provide to the Project Director using a Defined Audit Trail all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate in all material respects:

3.8A.1.1 details of all payments of the Baseline Payment in the immediately preceding Contract Year; and

3.8A.1.2 a calculation in accordance with the formula set out below which shall set out for the immediately preceding Contract Year the applicable Baseline Payment in accordance with each of the Weight Bands and the Excess Contract Waste actually achieved and the amount by which the actual payments of Baseline Payment based on the Baseline Payment Forecast (whether deemed agreed or determined) have over or under compensated the Contractor (the “Baseline Payment for Excess Contract Waste Reconciliation Payment”):
\[ RB = (BP_1 \times AWB_1 + BP_2 \times AWB_2 + BP_3 \times AWB_3 + BP_4 \times AWB_4 + BP_5 \times AWB_5 + BPE \times AWB_E) - 12MB \]

Where:

- \( BP_1 \) = the actual Weight Band 1 Baseline Price for the applicable Phase and Contract Year
- \( BP_2 \) = the actual Weight Band 2 Baseline Price for the applicable Phase
- \( BP_3 \) = the actual Weight Band 3 Baseline Price for the applicable Phase
- \( BP_4 \) = the actual Weight Band 4 Baseline Price for the applicable Phase
- \( BP_5 \) = the actual Weight Band 5 Baseline Price for the applicable Phase
- \( BPE \) = the actual Excess Contract Waste Baseline Price for the applicable Contract Year
- \( AWB_1 \) = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 1
- \( AWB_2 \) = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 2
- \( AWB_3 \) = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 3
- \( AWB_4 \) = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 4
AWB5 = the actual number of tonnes of Contract Waste delivered to the Contractor during the relevant Phase in the relevant Contract Year within Weight Band 5

AWBE = the actual number of tonnes of Excess Contract Waste delivered to the Contractor in the relevant Contract Year

RB = Baseline Payment Reconciliation Payment which, if positive represents an amount payable to the Contractor, and if negative represents an amount repayable to the Councils

3.5B  **Baseline Price for Reduced Contract Waste**

This paragraph 3.5B shall only apply from 00.01 hours on 1 April 2008.

3.5B.1 If any Baseline Payment Forecast agreed under paragraph 3.2.4 (Duty of the Contractor and the Project Director to seek to agree the Baseline Payment Forecast) of Part 1 of Schedule 12 (Payment and Performance) or deemed or determined under paragraph 3.2.5 (Deemed Baseline Payment in default of agreement or in default of delivery by the Contractor of its Baseline Payment Forecast) of Part 1 of Schedule 12 (Payment and Performance) shows that the forecast weight of Contract Waste for the following Contract Year is below 300,000 tonnes the whole of such weight being referred to as the Reduced Contract Waste the Contractor shall deliver to the Project Director within 30 Business Days a written proposal setting out in all material detail together with all supporting information as would be reasonably required by a competent person to understand and validate the Contractor’s proposals for the management and disposal of any Reduced Contract Waste including any impact on the Recovery Target and the Recycling Target.

3.6B  **Payment of Baseline Payment for Reduced Contract Waste**

3.6B.1 **Payment of Baseline Payment for Reduced Contract Waste**

Subject to reconciliation in accordance with paragraph 3.8B (Baseline Payment for Reduced Contract Waste) the Baseline Payment payable to the Contractor each Month shall be the Weight Band 1 Baseline Price for the applicable Phase adjusted by the Reduced Contract Waste Reduction being
the sum so referred in Schedule 6 due on the forecast annual weight of Contract Waste as set out in the forecast agreed under paragraph 3.2.4 (Duty of the Contractor and the Project Director to seek to agree the Baseline Payment Forecast) or determined under paragraph 3.2.5 (Deemed Baseline Payment in default of agreement or in default of delivery by the Contractor of its Baseline Payment Forecast).

3.6B.2 Formula for the Calculation of the Baseline Payment for Reduced Contract Waste

The Baseline Payment for Reduced Contract Waste for each Month during each relevant Contract Year (referred to as “MB” below) shall be calculated as:

\[
MB = \frac{BP1 \times 300,000 - ((300,000 - FRCW) \times RCWR)}{12}
\]

Where:

RCWR = the Reduced Contract Waste Reduction.

FRCW = the number of tonnes of Reduced Contract Waste forecast deemed or determined to be delivered to the Contractor in the relevant Contract Year up to a maximum of 300,000 tonnes.

BPI is defined in paragraph 3.3 (Formula for calculation of the Baseline Payment)

3.7B Calculation of Baseline Payment for a Contract Year after a Contract Year when Reduced Contract Waste Baseline Payment is made

In each Contract Year in which the Baseline Payment is calculated under paragraph 3.6B (Payment of Baseline Payment for Reduced Contract Waste and Excess Contract Waste) and the forecast delivered under paragraph 3.2.3 (Duty to deliver the draft forecast of weight of Contract Waste to the Project Director) or determined under paragraph 3.2.5 (Deemed Baseline Payment in default of agreement or in default of delivery by the Contractor of its draft Baseline Payment Forecast) shows:
3.7B.1 Continuing Reduced Contract Waste

that the weight in tonnes of Contract Waste for the next Contract Year shall not exceed 300,000 tonnes then paragraph 3.5B (Baseline Price for Reduced Contract Waste shall apply.

3.7B.2 Contract Waste Weight within Weight Bands 1 to 5 inclusive

that the weight in tonnes of Contract Waste for the next Contract Year shall exceed 300,000 tonnes and not exceed 550,000 tonnes the Baseline Payment shall be calculated in accordance with paragraph 3.2 (Payment of Baseline Payment); or

3.7B.3 Reduced Contract Waste followed by Excess Contract Waste

that the weight in tonnes of Contract Waste for the next Contract Year shall exceed 550,000 tonnes the provisions of paragraph 3.5A (Baseline Price for Excess Contract Waste) shall apply.

3.8B Baseline Payment for Reduced Contract Waste Reconciliation

3.8B.1 Reconciliation Calculation for Baseline Payment for Reduced Contract Waste

Within 10 Business Days after the Second Reconciliation Date of each Contract Year the Contractor shall provide to the Project Director using a Defined Audit Trail all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate in all material respects:

3.8B.1.1 details of all payments of the Baseline Payment for Reduced Contract Waste in the immediately preceding Contract Year; and

3.8B.1.2 a calculation in accordance with the formula set out below which shall set out for the immediately preceding Contract Year the applicable Baseline Payment in accordance with the actual Reduced Contract Waste received and the amount by which the actual payments of Baseline Payment based on the Baseline Payment Forecast (whether deemed agreed or determined) have
over or under compensated the Contractor (the “Baseline Payment for Reduced Contract Waste Reconciliation Payment”)

$$RB = BP1 \times 300,000 - (300,000 - ARCW) \times RCWR - 12MB$$

where:

- $RB$ = Baseline Payment Reconciliation Payment which, if positive represents an amount payable to the Contractor, and if negative represents an amount repayable to the Councils
- $RCWR$ = the Reduced Contract Waste Reduction
- $ARCW$ = the actual number of tonnes of Reduced Contract Waste delivered to the Contractor in the relevant Contract Year.

3.8B.2 Settlement of the Baseline Payment Reconciliation Payment

The Baseline Payment Reconciliation Payment shall be added to or deducted from the Unitary Charge payable in respect of the Month of the Contract Year in which the Baseline Payment Reconciliation Payment is agreed or determined.

4. ENERGY RECOVERY SUPPLEMENT

4.1 The Energy Recovery Supplement due per Energy Recovery Tonne

4.1.1 The Energy Recovery Supplement is payable at the applicable Energy Recovery Supplement per tonne on such tonnes of Contract Waste as the Contractor demonstrates to the reasonable satisfaction of the Project Director through a Defined Audit Trail represents for the relevant period the difference between

- 4.1.1.1 the tonnes of Contract Waste that are subjected to Energy Recovery at an Energy Recovery Plant or any third party energy recovery plant; and
- 4.1.1.2 the resulting Process Waste Residue
being the “Energy Recovery Tonnes” subject to reconciliation in accordance with paragraph 4.3.1 (Energy Recovery Supplement Reconciliation).

4.2 Payment of the Energy Recovery Supplement

4.2.1 Payment on Contract Waste from which energy shall be Recovered

Subject to reconciliation in accordance with paragraph 4.3 (Energy Recovery Supplement Reconciliation) the Energy Recovery Supplement payable to the Contractor each Month shall be the average applicable Energy Recovery Supplement per tonne due on the Contract Waste forecast by the Contractor under paragraph 4.2.2 to have had Energy Recovered from it by the Contractor under paragraph 4.2.2 (Duty to make draft forecast of weight of Contract Waste from which energy shall be Recovered.)

4.2.2 Duty to make draft forecast of weight of the Energy Recovery Tonnes

The Contractor shall provide a draft forecast within 5 Business Days after but as at the end of Month 10 of each Contract Year of the Energy Recovery Tonnes which it considers on objective grounds having regard to all relevant considerations is reasonably likely to be the Energy Recovery Tonnes in the following Contract Year.

4.2.3 Duty to deliver the draft forecast of the Energy Recovery Tonnes to the Project Director

As soon as reasonably practicable and in any event within 10 Business Days after the last day of Month 10 the Contractor shall deliver to the Project Director the draft forecast together with all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the forecast was fair and objective

4.2.4 Duty of the Contractor and the Project Director to seek to agree the Energy Recovery Tonnes forecast and average Energy Recovery Supplement

The Contractor and the Project Director shall seek to agree the forecast the Energy Recovery Tonnes and the average Energy Recovery Supplement to
be paid on each Energy Recovery Tonne for the next Contract Year on or before the Annual Contract Price Review Date in each Contract Year.

4.2.5 Deemed average Energy Recovery Supplement in default of agreement or in default of delivery by the Contractor of its draft average Energy Recovery Supplement forecast

If the Project Director and the Contractor shall have failed to agree under paragraph 4.2.4 (Duty of the Contractor and the Project Director to seek to agree the Energy Recovery Tonnes forecast and average Energy Recovery Supplement) or if the Contractor shall have failed to deliver to the Project Director its draft forecast under paragraph 4.2.3 (Duty to deliver the draft forecast of the Energy Recovery Tonnes to the Project Director) then either the Contractor or the Project Director may request that an appropriate forecast of the Energy Recovery Tonnes be determined in accordance with clause 70 (Dispute Resolution) and until such determination the forecast Energy Recovery Tonnes and the average applicable Energy Recovery Supplement to be paid for each Energy Recovery Tonne shall be deemed to be the same as the forecast Energy Recovery Tonnes and average applicable Energy Recovery Supplement to be paid for each Energy Recovery Tonne used in Month 12 of that Contract Year.

4.2.6 Formula for the calculation of the Energy Recovery Supplement

The Energy Recovery Supplement for each Month during each Contract Year shall be calculated as:

\[ E = \frac{AE \times FWE}{12} \]

Where:

\( E \) = the Energy Recovery Supplement payable for the relevant Contract Month

\( FWE \) = the number of Energy Recovery Tonnes forecast deemed or determined in the relevant Contract Year;
AE = the average Energy Recovery Supplement payable per Energy Recovery Tonne forecast deemed or determined is calculated as follows

AE = (E1 * FWE1 + E2 * FWE2 + E3 * FWE3)/FWE

Where:

E1 = the Band 1 Energy Recovery Supplement

E2 = the Band 2 Energy Recovery Supplement

E3 = the Band 3 Energy Recovery Supplement

FWE1 = the number of Energy Recovery Tonnes forecast deemed or determined in the relevant Contract Year attracting the Band 1 Energy Recovery Supplement

FWE2 = the number of Energy Recovery Tonnes forecast deemed or determined in the relevant Contract Year attracting the Band 2 Energy Recovery Supplement

FWE3 = the number of Energy Recovery Tonnes forecast deemed or determined in the relevant Contract Year attracting the Band 3 Energy Recovery Supplement

4.3 Energy Recovery Supplement Reconciliation

4.3.1 Energy Recovery Supplement Reconciliation Information

Within 10 Business Days after each Reconciliation Date the Contractor shall demonstrate to the Project Director using a Defined Audit Trail and including all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate in all material respects:

4.3.1.1 the Energy Recovery Tonnes for the six Months ending on such Reconciliation Date; and

4.3.1.2 details of all payments of all Energy Recovery Supplements paid during the immediately preceding six Months in the case of a First Energy Recovery Supplement Reconciliation and all
Energy Recovery Supplements paid during the immediately preceding twelve Months in the case of a Second Energy Recovery Supplement Reconciliation.

4.4 Calculation of each First Energy Recovery Supplement Reconciliation Payment

On each First Reconciliation Date a reconciliation payment (the “First Energy Recovery Supplement Reconciliation Payment”) shall be calculated as follows:

\[ \text{REF} = \text{EAF} - 6E \]

Where

\( \text{REF} \) = the reconciliation payment in respect of the Energy Recovery Supplement payable for the first six month period of the relevant Contract Year which, if positive represents an amount payable to the Contractor, and if negative represents an amount repayable to the Councils

\( \text{EAF} = \text{E}1 \times \text{AWEF}1 + \text{E}2 \times \text{AWEF}2 + \text{E}3 \times \text{AWEF}3 \)

\( \text{AWEF}1 = \) the actual Energy Recovery Tonnes for the first six Months of the relevant Contract Year forecast to attract the Band 1 Energy Recovery Supplement such that

\( \frac{\text{AWEF}1}{\text{AWEF}1 + \text{AWEF}2 + \text{AWEF}3} = \frac{\text{FWE}1}{\text{FWE}} \)

and

\( \text{AWEF}1 = \text{FWE}1 \times \frac{\text{AWEF}1 + \text{AWEF}2 + \text{AWEF}3}{\text{FWE}} \)

\( \text{AWEF}2 = \) the actual Energy Recovery Tonnes for the first six Months of the relevant Contract Year forecast to attract the Band 2 Energy Recovery Supplement such that

\( \frac{\text{AWEF}2}{\text{AWEF}1 + \text{AWEF}2 + \text{AWEF}3} = \frac{\text{FWE}2}{\text{FWE}} \)

and

\( \text{AWEF}2 = \text{FWE}2 \times \frac{\text{AWEF}1 + \text{AWEF}2 + \text{AWEF}3}{\text{FWE}} \)
AWEF3 = the actual Energy Recovery Tonnes for the first six Months of the relevant Contract Year forecast to attract the Band 3 Energy Recovery Supplement such that

\[ \frac{AWEF3}{(AWEF1+AWEF2+AWEF3)} = \frac{FWE3}{FWE} \]

and

\[ AWEF3 = FWE3 \times \frac{(AWEF1+AWEF2+AWEF3)}{FWE} \]

where

AWEF1+AWEF2+AWEF3 = the total actual Energy Recovery Tonnes for the first six Months of the relevant Contract Year.

### 4.5 Calculation of each Second Energy Recovery Supplement Reconciliation Payment

On each Second Reconciliation Date a reconciliation payment (the “Second Energy Recovery Supplement Reconciliation Payment”) shall be calculated as follows:

\[ RE = (E1 \times AWE1 + E2 \times AWE2 + E3 \times AWE3) - (EAF + 6E) \]

where

RE = the reconciliation payment in respect of the Energy Recovery Supplement payable for the relevant Contract Year which, if positive represents an amount payable to the Contractor, and if negative represents an amount repayable to the Councils

AWE1 = the actual Energy Recovery Tonnes in the relevant Contract Year attracting the Band 1 Energy Recovery Supplement

AWE2 = the actual Energy Recovery Tonnes in the relevant Contract Year attracting the Band 2 Energy Recovery Supplement

AWE3 = the actual Energy Recovery Tonnes in the relevant Contract Year attracting the Band 3 Energy Recovery Supplement
4A. **BENEFICIAL USE SUPPLEMENT**

4A.1 The Beneficial Use Supplement due per tonne of Contract Waste and Process Waste Residue derived from Contract Waste that has been put to Beneficial Use.

4A.1.1 The Beneficial Use Supplement is payable at the lowest priced Energy Recovery Supplement applying at the relevant time per tonne on each tonne of Contract Waste and on each tonne of Process Waste Residue derived from Contract Waste that is put to Beneficial Use subject to reconciliation in accordance with paragraph 4A.3 (Beneficial Use Supplement Reconciliation) which the Contractor demonstrates to the reasonable satisfaction of the Project Director through a Defined Audit Trail to have been put to Beneficial Use by the Contractor solely from Contract Waste delivered to the Contractor or Process Waste Residue derived from Contract Waste delivered to the Contractor.

4A.2 **Payment of Beneficial Use Supplement**

4A.2.1 **Payment on Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use**

Subject to reconciliation in accordance with paragraph 4A.3 (Beneficial Use Supplement Reconciliation) the Beneficial Use Supplement payable to the Contractor each Month shall be the lowest priced Energy Recovery Supplement applying at the relevant time per tonne due on the Contract Waste and Process Waste Residue derived from Contract Waste forecast to be put to Beneficial Use by the Contractor under paragraph 4A.2.2 (Duty to make draft forecast of weight of Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use).

4A.2.2 **Duty to make draft forecast of weight of Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use**

The Contractor shall provide a draft forecast within 5 Business Days after but as at the end of Month 10 of each Contract Year of the weight of Contract Waste and the weight of Process Waste Residue derived from Contract Waste which it considers on objective grounds having regard to all relevant considerations is reasonably likely to be put to Beneficial Use by it in the following Contract Year.
4A.2.3  Duty to deliver the draft forecast of weight of Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use to the Project Director

As soon as reasonably practicable and in any event within 10 Business Days after the last day of Month 10 the Contractor shall deliver to the Project Director the draft forecast together with all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the forecast was fair and objective.

4A.2.4  Duty of the Contractor and the Project Director to seek to agree the Beneficial Use Supplement forecast

The Contractor and the Project Director shall seek to agree the forecast annual weight of Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use in the next Contract Year on or before the Annual Contract Price Review Date in each Contract Year.

4A.2.5  Deemed Beneficial Use Supplement in default of agreement or in default of delivery by the Contractor of its draft Beneficial Use Supplement forecast

If the Project Director and the Contractor shall have failed to agree under paragraph 4A.2.4 (Duty of the Contractor and the Project Director to seek to agree the draft Beneficial Use Supplement forecast) or if the Contractor shall have failed to deliver to the Project Director its draft forecast under paragraph 4A.2.3 (Duty to deliver the draft forecast of weight of Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use to the Project Director) then either the Contractor or the Project Director may request that an appropriate forecast of weight of Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use in the following Contract Year be determined in accordance with clause 70 (Dispute Resolution) and until such determination the forecast of weight of Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use shall be deemed to be the same as the forecast of weight of Contract Waste and Process Waste Residue derived from Contract Waste to be put to Beneficial Use used in Month 12 of that Contract Year.
4A.2.6 Forecast Beneficial Use Supplement in the First Contract Year

The forecast Beneficial Use Supplement per tonne to be paid in the first Contract Year shall be the price per tonne set out in the Base Financial Model for the first Contract Year.

4A.2.7 Formula for the calculation of the Beneficial Use Payment

The Beneficial Use Payment for each Month during each Contract Year shall be calculated as:

\[ MN = EL \times \frac{FWBU}{12} \]

Where:

FWBU = the number of tonnes forecast deemed or determined of Contract Waste and Process Waste Residue in aggregate derived from Contract Waste to be put to Beneficial Use by the Contractor in the relevant Contract Year;

EL = Beneficial Use Supplement being either E1 E2 E3 or E4

4A.3 Beneficial Use Supplement Reconciliation

4A.3.1 Beneficial Use Supplement Reconciliation Information

Within 10 Business Days after each Second Reconciliation Date the Contractor shall demonstrate to the Project Director using a Defined Audit Trail and including all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate in all material respects:

4A.3.1.1 the aggregate weight of Contract Waste and Process Waste Residue derived from Contract Waste put to Beneficial Use in each case by the Contractor during the twelve Months ending on such Reconciliation Date; and

4A.3.1.2 details of all payments of all Beneficial Use Supplements paid during the immediately preceding twelve Months.
4A.4  **Calculation of each Beneficial Use Supplement Reconciliation Payment**

On each Second Reconciliation Date a reconciliation payment (the “Beneficial Use Supplement Reconciliation Payment”) shall be calculated as follows:

\[ RN = EL \times AWBU - 12MN \]

Where

RN = the Beneficial Use Supplement Reconciliation Payment payable for the relevant Contract Year which, if positive represents an amount payable to the Contractor, and if negative represents an amount repayable to the Councils.

AWBU = the actual aggregate number of tonnes of Contract Waste and Process Waste Residue derived from Contract Waste put to Beneficial Use by the Contractor in the relevant Contract Year.

4A.5  **Settlement of the Beneficial Use Supplement Reconciliation Payment**

The Beneficial Use Supplement Reconciliation Payment calculated on the Reconciliation Date shall be added to or deducted from the Unitary Charge payable for the Month in which the Reconciliation Date fell.

4B.  **REFRIGERATOR PAYMENT**

4B.1  The Refrigerator Unit Price due per Refrigerator

4B.1.1 The Refrigerator Unit Price is payable on each Refrigerator being Contract Waste which the Contractor demonstrates to the reasonable satisfaction of the Project Director through a Defined Audit Trail to have been processed and disposed of by the Contractor. The Refrigerator Unit Price shall be the sole payment in respect of the processing and disposal of each Refrigerator.

4B.2  Payment of Refrigerator Payment

4B.2.1 Payment for the Processing and disposal of Refrigerators derived from Contract Waste

Subject to reconciliation in accordance with paragraph 4B.3 (Refrigerator Payment Reconciliation) the Refrigerator Payment payable to the
Contractor each Month shall be agreed or determined under paragraph 4B.2.2 or 4B.2.5 as the case may be.

4B.2.2 Duty to make draft forecast of number of Refrigerators derived from Contract Waste to be Processed and disposed of by the Contractor

The Contractor shall provide a draft forecast within 5 Business Days after but as at the end of Month 10 of each Contract Year of number of Refrigerators being Contract Waste which it considers on objective grounds having regard to all relevant considerations is reasonably likely to be Processed and disposed of by it in the following Contract Year.

4B.2.3 Duty to deliver the draft forecast of number of Refrigerators derived from Contract Waste to be Processed and disposed of to the Project Director

As soon as reasonably practicable and in any event within 10 Business Days after the last day of Month 10 the Contractor shall deliver to the Project Director the draft forecast together with all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the forecast was fair and objective.

4B.2.4 Duty of the Contractor and the Project Director to seek to agree the Refrigerator Payment forecast

The Contractor and the Project Director shall seek to agree the forecast annual number of Refrigerators derived from Contract Waste to be treated and disposed of in the next Contract Year on or before the Annual Contract Price Review Date in each Contract Year.

4B.2.5 Deemed Refrigerator Payment in default of agreement or in default of delivery by the Contractor of this draft Refrigerator Payment forecast

If the Project Director and the Contractor shall have failed to agree under paragraph 4B.2.5 (Duty of the Contractor and the Project Director to seek to agree the draft Refrigerator Payment forecast) or if the Contractor shall have failed to deliver to the Project Director its draft forecast under paragraph 4B.2.3 (Duty to deliver the draft forecast of number of Refrigerators derived from Contract Waste to be processed and disposed of to the Project Director) then either the Contractor or the Project Director
may request that an appropriate forecast of number of Refrigerators derived from Contract Waste to be Processed and disposed of in the following Contract Year be determined in accordance with clause 70 (Dispute Resolution) and until such determination the forecast number of Refrigerators derived from Contract Waste to be Processed and disposed of shall be deemed to be the same as the forecast number of Refrigerators derived from Contract Waste Processed and disposed of used in Month 12 of that Contract Year.

4B.2.6 Forecast Refrigerator Payment in the first Contract Year

The forecast Refrigerator Payment to be paid in each Month of the first Contract Year shall be as set out in the Base Financial Model for the first Contract Year.

4B.2.7 Formula for the Calculation of the Refrigeration Payment

The Refrigerator Payment for each Month during each Contract Year shall be calculated as:

\[ \text{RP} = \text{RUP} \times \text{FNR} / 12 \]

Where:

\( \text{RUP} = \text{Refrigerator Unit Price} \)

\( \text{FNR} = \text{the number of Refrigerators forecast deemed or determined being from Contract Waste to be Processed and disposed of by the Contractor in the relevant Contract Year} \)

4B.3 Refrigerator Payment Reconciliation

4B.3.1 Refrigerator Payment Reconciliation Information

Within 10 Business Days after each Second Reconciliation Date the Contractor shall demonstrate to the Project Director using a Defined Audit Trail and including all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate in all material respects:
4B.3.1.1 the number of Refrigerators being Contract Waste Processed and disposed of by the Contractor during the twelve Months ending on such Reconciliation Date; and

4B.3.1.2 details of all payments of Refrigerator Payments paid during the immediately preceding twelve Months.

4B.4 Calculation of each Refrigerator Payment Reconciliation Payment

On each Second Reconciliation Date a reconciliation payment (the “Refrigerator Payment Reconciliation Payment”) shall be calculated as follows:

\[ RA = RUP \times ANR - 12RP \]

Where:

RA = the Refrigerator Payment Reconciliation Payment payable for the relevant Contract Year which, if positive represents an amount payable to the Contractor, and if negative represents an amount repayable to the Councils.

ANR = the actual number of Refrigerators being Contract Waste Processed and disposed of by the Contractor in the relevant Contract Year.

4B.5 Settlement of the Refrigerator Payment Reconciliation Payment

4B.5.1 The Refrigerator Supplement Reconciliation Payment calculated on the Reconciliation Date shall be added to or deducted from the Unitary Charge payable for the Month in which the Reconciliation Date fell.

5. RECYCLING SUPPLEMENT

5.1 Recycling Supplement due per tonne of Contract Waste Recycled

5.1.1 The Recycling Supplement is payable per tonne of Contract Waste Recycled, subject to reconciliation in accordance with paragraph 5.3 (Recycling Supplement Reconciliation) which the Contractor demonstrates to the reasonable satisfaction of the Project Director through a Defined Audit Trail to have been Recycled by the Contractor solely from Contract Waste.
5.1.2 **Household Waste Recycling Site Recycling until 15 May 2003**

Any waste Recycled at any Household Waste Recycling Site before 15 May 2003 shall not be eligible for a Recycling Supplement unless such waste shall be delivered to the Contractor as Contract Waste and Recycled by the Contractor.

5.2 **Payment of Recycling Supplement**

5.2.1 Subject to reconciliation in accordance with paragraph 5.3 (Recycling Supplement Reconciliation) the Recycling Supplement shall be payable to the Contractor each Month at the applicable rate based on the forecast annual amount in tonnes of Contract Waste to be Recycled for each Contract Year as set out in the forecast agreed under paragraph 5.2.4 (Duty of the Contractor and the Project Director to seek to agree the Recycling Supplement forecast and average Recycling Supplement) or deemed or determined under paragraph 5.2.5 (Deemed Recycling Supplement in default of agreement or in default of delivery by the Contractor of the draft Recycling Supplement forecast).

5.2.2 **Duty to make a draft forecast of the weight of Contract Waste to be Recycled**

The Contractor shall provide a draft forecast within 5 Business Days after but as at the end of Month 10 of each Contract Year of the weight of Contract Waste received by the Contractor which it considers on objective grounds having regard to all relevant considerations is reasonably likely to be Recycled by it during the immediately following Contract Year.

5.2.3 **Duty to deliver the draft forecast of the weight of Contract Waste to be Recycled to the Project Director**

As soon as reasonably practicable and in any event within 10 Business Days after the last day of Month 10 the Contractor shall deliver to the Project Director the draft forecast together with all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the forecast was fair and objective.
5.2.4 **Duty of the Contractor and the Project Director to seek to agree the Recycling Supplement forecast and average Recycling Supplement**

The Contractor and the Project Director shall seek to agree the Recycling Supplement forecast and the average Recycling Supplement per tonne of Contract Waste Recycled for the next Contract Year on or before the last Business Day of Month 11 in each Contract Year.

5.2.5 **Deemed Recycling Supplement in default of agreement or in default of delivery by the Contractor of the draft Recycling Supplement forecast**

If the Project Director and the Contractor shall have failed to agree under **paragraph 5.2.4** (Duty of the Contractor and the Project Director to seek to agree the Recycling Supplement forecast and Average Recycling Supplement) or if the Contractor shall have failed to deliver to the Project Director its draft forecast under **paragraph 5.2.3** (Duty to deliver the draft forecast of the weight of Contract Waste to be Recycled to the Project Director) then either the Contractor or the Project Director may request that the annual weight of Contract Waste to be Recycled in the following Contract Year and or the applicable average Recycling Supplement be determined in accordance with **Clause 70** (Dispute Resolution) and until such determination the forecast annual weight of Contract Waste to be Recycled and the applicable average Recycling Supplement per tonne shall be deemed to be the same as the forecast annual weight and average Recycling Supplement per tonne used in Month 12 of that Contract Year.

5.2.6 **Forecast average Recycling Supplement in the First Contract Year**

The average Recycling Supplement payable to the Contractor in each Month of the first Contract Year shall be as set out in the Base Financial Model for the first Contract Year and shall be subject to reconciliation in accordance with **paragraph 5.3** (Recycling Supplement Reconciliation).

5.2.7 **Formula for the Calculation of the Recycling Supplement**

The Recycling Supplement for each Month during each Contract Year shall be calculated as:

\[ R = AR \times FWR / 12 \]
Where:

R = the Recycling Supplement payable for the relevant Contract Month

FWR = the number of tonnes forecast deemed or determined of Contract Waste to be Recycled by the Contractor in the relevant Contract Year;

AR = the average Recycling Supplement payable per tonne of Contract Waste that is forecast deemed or determined to be Recycled calculated as follows.

\[
AR = \frac{(R1 \times FWR1 + R2 \times FWR2 + R3 \times FWR3)}{FWR}
\]

Where:

R1 = the Recycling Supplement Band 1 Recycling Supplement as set out in Table 1.11 of Schedule 6

R2 = the Recycling Supplement Band 2 Recycling Supplement as set out in Table 1.11 of Schedule 6

R3 = the Recycling Supplement Band 3 Recycling Supplement as set out in Table 1.11 of Schedule 6

FWR1 = the number of tonnes forecast deemed or determined of Contract Waste to be Recycled by the Contractor in the relevant Contract Year within Recycling Supplement Band 1

FWR2 = the number of tonnes forecast deemed or determined of Contract Waste to be Recycled by the Contractor in the relevant Contract Year within Recycling Supplement Band 2

FWR3 = the number of tonnes forecast deemed or determined of Contract Waste to be Recycled by the Contractor in the relevant Contract Year within Recycling Supplement Band 3

5.3 Recycling Supplement Reconciliation

5.3.1 Recycling Supplement Reconciliation Statement Calculations
Within 10 Business Days after each Reconciliation Date, the Contractor shall demonstrate to the Project Director (subject to paragraph 5.1.2 (Household Waste Recycling Site Recycling until 15 May 2003)) by use of the Defined Audit Trail and including all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate in all material respects:

5.3.1.1 for the period of six Months ending on such Reconciliation Date the weight of Contract Waste Recycled by the Contractor; and

5.3.1.2 details of all payments of all Recycling Supplements paid during the immediately preceding six Months in the case of a First Recycling Supplement Reconciliation and all Recycling Supplements paid during the immediately preceding twelve Months in the case of a Second Recycling Supplement Reconciliation.

5.3.2 Calculation of each First Recycling Reconciliation Payment

5.3.2.1 A reconciliation payment (the “First Recycling Reconciliation Payment”) shall be made in respect of the first six Months of each Contract Year calculated as follows:

\[ RF = RAF - 6R \]

Where

\[ RF = the \ reconciliation \ payment \ in \ respect \ of \ the \ Recycling \ Supplement \ payable \ for \ the \ first \ six \ Month \ period \ of \ the \ relevant \ Contract \ Year \ which, \ if \ positive \ represents \ an \ amount \ payable \ to \ the \ Contractor, \ and \ if \ negative \ represents \ an \ amount \ repayable \ to \ the \ Councils. \]

\[ RAF = R1*AWRF1 + R2*AWRF2 + R3*AWRF3 \]

\[ AWRF1 = the \ actual \ number \ of \ tonnes \ of \ Contract \ Waste \ Recycled \ by \ the \ Contractor \ in \ the \ first \ six \ Month \ period \ of \ the \]
relevant Contract Year forecast to be within Recycling Supplement Band 1 such that

$$\frac{AWRF_1}{AWRF_1 + AWRF_2 + AWRF_3} = \frac{FWR_1}{FWR}$$

and

$$AWRF_1 = \frac{FWR_1 \times (AWRF_1 + AWRF_2 + AWRF_3)}{FWR}$$

$AWRF_2 = \text{the actual number of tonnes of Contract Waste Recycled by the Contractor in the first six Month period of the relevant Contract Year forecast to be within Recycling Supplement Band 2 such that}$

$$\frac{AWRF_2}{AWRF_1 + AWRF_2 + AWRF_3} = \frac{FWR_2}{FWR}$$

and

$$AWRF_2 = \frac{FWR_2 \times (AWRF_1 + AWRF_2 + AWRF_3)}{FWR}$$

$AWRF_3 = \text{the actual number of tonnes of Contract Waste Recycled by the Contractor in the first six Month period of the relevant Contract Year forecast to be within Recycling Supplement Band 3 such that}$

$$\frac{AWRF_3}{AWRF_1 + AWRF_2 + AWRF_3} = \frac{FWR_3}{FWR}$$

and

$$AWRF_3 = \frac{FWR_3 \times (AWRF_1 + AWRF_2 + AWRF_3)}{FWR}$$

where

$$AWRF_1 + AWRF_2 + AWRF_3 = \text{the actual number of tonnes of Contract Waste Recycled by the Contractor in the first six Month period of the relevant Contract Year}$$

5.3.3 Calculation of each Second Recycling Supplement Reconciliation Payment

Save as provided for in paragraph 5.3.4 below:
5.3.3.1 a reconciliation payment (the “Second Recycling Supplement Reconciliation Payment”) shall be calculated as follows:

\[
RR = (R1 \times AWR1 + R2 \times AWR2 + R3 \times AWR3) - (RAF + 6R)
\]

Where

RR = the reconciliation payment in respect of the Recycling Supplement payable for the relevant Contract Year which, if positive represents an amount payable to the Contractor, and if negative represents an amount repayable to the Councils.

AWR1 = the actual number of tonnes of Contract Waste Recycled by the Contractor in the relevant Contract Year within Recycling Supplement Band 1

AWR2 = the actual number of tonnes of Contract Waste Recycled by the Contractor in the relevant Contract Year within Recycling Supplement Band 2

AWR3 = the actual number of tonnes of Contract Waste Recycled by the Contractor in the relevant Contract Year within Recycling Supplement Band 3

5.3.4 At the end of the Contract Period whether on expiry or through early termination a Second Recycling Reconciliation Payment shall be made calculated for the period from the last Reconciliation Date prior to the Termination Date until the Termination Date.

5.3.5 Settlement of each First Recycling Reconciliation Payment and each Second Recycling Reconciliation Payment

Each First Recycling Reconciliation Payment and Second Recycling Reconciliation Payment calculated on any Reconciliation Date shall be added to or deducted from the Unitary Charge payable for the Month in which such Reconciliation Date fell.

6. HOUSEHOLD WASTE RECYCLING SITE PAYMENT

6.1 Calculation of Household Waste Recycling Site Payment
The Household Waste Recycling Site Payment shall be payable from 15 May 2003 and calculated as follows:

\[ H = \frac{H_1 + H_2 + H_3 + H_4 + H_5 + H_6 + H_7 + H_8 + H_9 + H_{10} + H_{11} + H_{12} + H_{13} + H_{14}}{12} \]

where

\( H_1 \) to \( H_{14} \) = the applicable Household Waste Recycling Site Payment for each of the Household Waste Recycling Sites respectively and provided that Payment \( H_7 \) shall cease to be payable on 19 December 2008 Payment \( H_9 \) shall cease to be payable on 15 May 2009 Payment \( H_{11} \) shall cease to be payable on 30 September 2005 and Payment \( H_{12} \) shall cease to be payable on 4 December 2010 save where relevant ESCC has renewed or replaced the planning permission or lease or otherwise made available the site to the Contractor on terms acceptable to the Contractor such acceptance not to be unreasonably withheld or delayed in which case the relevant payment shall continue to be payable in accordance with the terms of the Contract.

Provided that the Household Waste Recycling Site Payment due for the period from and including 15 May to 31 May 2003 inclusive shall be adjusted on a pro-rata time basis and if the final Month of the Contract shall be a part Month the instalment payable for such part Month shall also be adjusted on a pro-rata time basis.

6.2 In respect of any new Household Waste Recycling Site where Completion has been certified in accordance with clause 18.4 then the applicable Household Waste Recycling Site Payment as set out in Schedule 6 (Table 4) shall be payable from the date of such Completion.

6.3 In respect of the Crowborough HWRS, \( H_3 \) Household Waste Recycling Service Site Payment shall, subject to paragraph 6.4, be increased to the amount set out in the second column of table 1.6a of Part 1 of Schedule 6 for the Crowborough HWRS and shall be due and payable from the Crowborough Service Commencement Date.

6.4 Following the completion of the Crowborough Works in accordance with clause 91, if and to the extent that the aggregate of:

(a) the Property Acquisition Payment

(b) the Construction Payments
together “Crowborough Costs”

is either in excess of or below the Crowborough Amount then the Household Waste Recycling Site Payment for the Crowborough HWRS applicable following the Crowborough Service Commencement Date will be adjusted (upwards or downwards) on a pro rata basis by £784.88 (indexed) for every £10,000 that the Crowborough Cost is either in excess or below (as the case may be) the Crowborough Amount.

6.5 Should such Completion take place part way through a Contract Year then the relevant Household Waste Recycling Site Payment shall be adjusted on a pro-rata basis.

7. LANDFILL TAX

7.1 Calculation of Landfill Tax Payment

Subject to:

(i) Paragraph 5.1.7 of Part 2 of Schedule 12; and

(ii) paragraph 9 (Landfill Tax Reconciliation) throughout the Contract Period, there shall be included in the calculation of the Unitary Charge a reimbursement (the Landfill Tax Payment) in respect of the Landfill Tax forecast deemed or determined to be payable by the Contractor.

The Landfill Tax Payment shall be calculated as follows.

\[ L = \frac{LA \times FCAL}{12} + \frac{LI \times FCIL}{12} \]

Where:

FCAL = the number of tonnes of Active Waste that is Contract Waste or Contract Waste Process Waste Residue excluding Process Waste Residue from the Newhaven ERP forecast deemed or determined to be Landfilled by the Contractor in the relevant Contract Year less the number of tonnes of Active Waste that is Contract Waste forecast deemed or determined to be Landfilled by the Contractor as
a consequence of the failure of the Contractor to achieve the Recovery Target for the relevant Contract Year; and

FCIL = the number of tonnes of Inactive Waste that is Contract Waste or Contract Waste Process Waste Residue excluding Process Waste Residue from the Newhaven ERP forecast deemed or determined to be Landfilled by the Contractor in the relevant Contract Year less the number of tonnes of Inactive Waste that is Contract Waste forecast deemed or determined to be Landfilled by the Contractor as a consequence of the failure of the Contractor to achieve the Recovery Target for the relevant Contract Year

LA = the applicable rate per tonne of Landfill Tax for Active Waste

LI = the applicable rate per tonne of Landfill Tax for Inactive Waste.

8. **CONTRACTOR’S LIABILITY TO PAY LANDFILL TAX**

8.1 The Contractor shall be responsible for and pay all Landfill Tax at the prevailing rates.

9. **LANDFILL TAX PAYMENT RECONCILIATION**

9.1 Within 10 Business Days after each Second Reconciliation Date the Contractor shall demonstrate to the Project Director using a Defined Audit Trail and including all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate:

9.1.1 the number of tonnes of Contract Waste and Contract Waste Process Waste Residue excluding Process Waste Residue from the Newhaven ERP that has been Landfilled and in respect of which Landfill Tax has been paid; and

9.1.2 details of all payments of sums representing the Landfill Tax Payment made by the Councils to the Contractor during the immediately preceding twelve Months.

9.2 **Calculation of First Landfill Tax Reconciliation Payment for each Contract Year**
Within 10 Business Days after 31 March in each Contract Year a reconciliation payment (the “First Landfill Tax Reconciliation Payment”) shall be calculated as follows:

\[ RL_1 = (LA \times ACAL) + (LI \times ACIL) - 12L \]

Where

\( RL_1 \) = the first Landfill Tax reconciliation payment which, if positive represents an amount payable to the Contractor and if negative represents an amount repayable to the Councils.

ACAL = the actual number of tonnes of Active Waste that is Contract Waste or Contract Waste Process Waste Residue excluding Process Waste Residue from the Newhaven ERP Landfilled by the Contractor in the relevant Contract Year less the number of tonnes of Active Waste that is Contract Waste forecast deemed or determined to be Landfilled by the Contractor as a consequence of the failure of the Contractor to achieve the Recovery Target for the relevant Contract Year; and

ACIL = the actual number of tonnes of Inactive Waste that is Contract Waste or Contract Waste Process Waste Residue excluding Process Waste Residue from the Newhaven ERP Landfilled by the Contractor in the relevant Contract Year less the number of tonnes of Inactive Waste that is Contract Waste forecast deemed or determined to be Landfilled by the Contractor as a consequence of the failure of the Contractor to achieve the Recovery Target for the relevant Contract Year.

9.3 Calculation of the Second Landfill Tax Reconciliation Payment for Contract Years Ending Prior to 1 April 2015

9.3.1 On or before the last Business Day of the three Month period after the end of each Contract Year prior to 1 April 2015 the Councils shall provide to the Contractor such details as they have, having made reasonable enquiry of any third party in respect of any third party Recycling or Energy Recovery of Household Waste and or Municipal Waste by any such third parties for such relevant Contract Year.

9.3.2 A reconciliation payment (the “Second Landfill Tax Reconciliation Payment”) shall be calculated as follows.
Where:

MER = Recovery Target

AER = actual Recovery Rate achieved by the Contractor calculated in accordance with Schedule 8

MWA = the actual number of tonnes of Municipal Waste arising in the relevant Contract Year

MRR = Recycling Target

ARR = actual Recycling Rate achieved by the Contractor calculated in accordance with Schedule 8

HWA = the actual number of tonnes of Household Waste arising in the Contract Year

RL2 = for Contract Years ending prior to 1 April 2015 the second reconciliation payment made in respect of the Landfill Tax Liability and represents an amount payable to the Councils

if:

MER-AER ≤ 0 and

MRR-ARR ≤ 0 then

RL2 = 0

if:

MER-AER ≤ 0 and

MRR – ARR > 0 then

RL2 = ((LA * (MRR-ARR) * ACAL/(ACAL+ACIL))

+ (LI * (MRR-ARR) * ACIL/(ACAL+ACIL))) * HWA/100
MER-AER > 0 and
MRR-ARR ≤ 0 then

\[ RL2 = \left( (LA \times (MER-AER) \times ACAL/(ACAL+ACIL)) + (LI \times (MER-AER) \times ACIL/(ACAL+ACIL)) \right) \times MWA/100 \]

a) if:

MER-AER > 0 and
MRR-ARR > 0 and

\[(MER-AER) \times MWA/100 \geq (MRR-ARR) \times HWA/100\]

then

\[ RL2 = \left( (LA \times (MER-AER) \times ACAL/(ACAL+ACIL)) + (LI \times (MER-AER) \times ACIL/(ACAL+ACIL)) \right) \times MWA/100 \]

b) if

MER-AER > 0 and
MRR-ARR > 0 and

\[(MER-AER) \times MWA/100 < (MRR-ARR) \times HWA/100\]

then

\[ RL2 = \left( (LA \times (MRR-ARR) \times ACAL/(ACAL+ACIL)) + (LI \times (MRR-ARR) \times ACIL/(ACAL+ACIL)) \right) \times HWA/100 \]

9.4 **Calculation of the Second Landfill Tax Reconciliation Payment for Contract Years Ending after 1 April 2015**

9.4.1 On or before the last Business Day of the three Month period after the end of each Contract Year after 1 April 2015 the Councils shall provide to the Contractor such details as they have, having made reasonable enquiry of any third party in respect of any third party Recycling or Energy Recovery
of Household Waste by any such third parties for such relevant Contract Year.

9.4.2 A reconciliation payment (the “Second Landfill Tax Reconciliation Payment”) shall be calculated as follows:

Where:

MER = Recovery Target

AER = actual Recovery Rate achieved by the Contractor calculated in accordance with Schedule 8

MWA = the actual number of tonnes of Municipal Waste arising in the relevant Contract Year

MRR = Recycling Target

ARR = actual Recycling Rate achieved by the Contractor calculated in accordance with Schedule 8

HWA = the actual number of tonnes of Household Waste arising in the Contract Year

RL2 = for Contract Years ending after 1 April 2015 the second reconciliation payment made in respect of the Landfill Tax Liability and represents an amount payable to the Councils

if:

MER - AER ≤ 0 and

MRR - ARR ≤ 0 then

RL2 = 0

if:

MER - AER ≤ 0 and

MRR - ARR > 0 then
\[ RL2 = \left( (LA \times (MRR-ARR) \times ACAL/(ACAL+ACIL)) \right. \\
\quad \left. + (LI \times (MRR-ARR) \times ACIL/(ACAL+ACIL)) \right) \times HWA/100 \]

if:

MER-AER > 0 and

MRR-ARR \leq 0 then

\[ RL2 = \left( (LA \times (MER-AER) \times ACAL/(ACAL+ACIL)) \right. \\
\quad \left. + (LI \times (MER-AER) \times ACIL/(ACAL+ACIL)) \right) \times HWA/100 \]

a) if:

MER-AER > 0 and

MRR-ARR > 0 and

(MER-AER) \times HWA/100 \geq (MRR-ARR) \times HWA/100

then

\[ RL2 = \left( (LA \times (MER-AER) \times ACAL/(ACAL+ACIL)) \right. \\
\quad \left. + (LI \times (MER-AER) \times ACIL/(ACAL+ACIL)) \right) \times HWA/100 \]

b) if

MER-AER > 0 and

MRR-ARR > 0 and

(MER-AER) \times HWA/100 < (MRR-ARR) \times HWA/100

then

\[ RL2 = \left( (LA \times (MRR-ARR) \times ACAL/(ACAL+ACIL)) \right. \\
\quad \left. + (LI \times (MRR-ARR) \times ACIL/(ACAL+ACIL)) \right) \times HWA/100 \]
9.5 At the end of the Contract Period, a Second Landfill Tax Reconciliation Payment will be made calculated pursuant to paragraph 9.5 for the period following the last Reconciliation Date prior to the Termination Date until the Termination Date.

9.6 Every Landfill Tax Reconciliation Payment will be added to or deducted from (as appropriate) the Unitary Charge payable for the Month in which such Reconciliation Date fell.

10. WCA COMPENSATION PAYMENTS

10.1. Introduction and Tables

10.1.1 Where WCAs divert from the Contractor Recyclable Materials in excess of the diversion levels set out in Table 10.1A and/or fail to deliver Recyclable Materials to the Contractor in accordance with the delivery levels set out in tables 10.1B and 10.1C respectively, compensation shall be payable to the Contractor as detailed below.

Table 10.1A: Level of Diversion by Each WCA of Recyclable Materials from the Contractor (being Recyclable Materials expressed as a percentage of Household Waste collected by the relevant WCA)

<table>
<thead>
<tr>
<th>WCA</th>
<th>Diversion Level</th>
<th>For the Contract Year commencing 1 April 2003</th>
<th>For the Contract Year commencing 1 April 2004</th>
<th>For the Contract Year commencing 1 April 2005 and for each Contract Year thereafter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastbourne BC</td>
<td>12</td>
<td>14</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Hastings BC</td>
<td>12</td>
<td>14</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Lewes DC</td>
<td>18</td>
<td>22</td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>Rother DC</td>
<td>16</td>
<td>20</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Wealden DC</td>
<td>30</td>
<td>30</td>
<td>33</td>
<td></td>
</tr>
</tbody>
</table>
Table 10.1B: Level of delivery by each WCA of Recyclable Materials to the Contractor (being Recyclable Materials expressed as a percentage of Household Waste collected by the relevant WCA)

<table>
<thead>
<tr>
<th>WCA</th>
<th>Delivery Level</th>
<th>Delivery Level</th>
<th>Delivery Level</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>For the Contract Year commencing 1 April 2005 up to and including the Contract Year ending 31 March 2010</td>
<td>For the Contract Year commencing 1 April 2010 up to and including the Contract Year ending 31 March 2015</td>
<td>For the Contract Year commencing 1 April 2015 and for each Contract Year thereafter</td>
</tr>
<tr>
<td>Eastbourne BC</td>
<td>0</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Hastings BC</td>
<td>0</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Lewes DC</td>
<td>0</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Rother DC</td>
<td>4</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td>Wealden DC</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Table 10.1C: Level of delivery by B&HCC as a WCA of Recyclable Materials to the Contractor (being Recyclable Materials expressed as a percentage of Household Waste collected by B&HCC)

<table>
<thead>
<tr>
<th>Delivery Level For B&amp;HCC as a WCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the Contract Year Commencing 1 April 2003</td>
</tr>
<tr>
<td>For the Contract Year Commencing 1 April 2004</td>
</tr>
<tr>
<td>For the Contract Year Commencing 1 April 2005</td>
</tr>
<tr>
<td>For the Contract Year Commencing 1 April 2006 up to and including the Contract Year ending 31 March 2015</td>
</tr>
<tr>
<td>For the Contract Year Commencing 1 April 2015 and for each Contract Year thereafter</td>
</tr>
</tbody>
</table>
Table 10.1D: Base Case Tonnages Applicable to the Compensation Agreement

<table>
<thead>
<tr>
<th>Year commencing 1 April</th>
<th>Base Case Forecast Tonnes of Contract Waste A</th>
<th>Base Case Forecast Tonnes of HWRS waste Recycled B</th>
<th>Base Case Forecast Tonnes of Recyclable Materials delivered to Contractor C</th>
<th>Base Case Forecast Percentages of HWRS waste Recycled D</th>
</tr>
</thead>
<tbody>
<tr>
<td>BCW</td>
<td>BWR</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2003</td>
<td>274,923</td>
<td>22,846</td>
<td>13,983</td>
<td>25%</td>
</tr>
<tr>
<td>2004</td>
<td>283,635</td>
<td>25,342</td>
<td>19,464</td>
<td>27%</td>
</tr>
<tr>
<td>2005</td>
<td>286,735</td>
<td>35,424</td>
<td>26,533</td>
<td>36%</td>
</tr>
<tr>
<td>2006</td>
<td>294,021</td>
<td>36,132</td>
<td>31,153</td>
<td>36%</td>
</tr>
<tr>
<td>2007</td>
<td>358,836</td>
<td>38,795</td>
<td>31,775</td>
<td>38%</td>
</tr>
<tr>
<td>2008</td>
<td>385,628</td>
<td>39,571</td>
<td>32,410</td>
<td>38%</td>
</tr>
<tr>
<td>2009</td>
<td>393,357</td>
<td>40,362</td>
<td>33,059</td>
<td>38%</td>
</tr>
<tr>
<td>2010</td>
<td>399,271</td>
<td>40,967</td>
<td>44,568</td>
<td>38%</td>
</tr>
<tr>
<td>2011</td>
<td>405,272</td>
<td>41,582</td>
<td>45,235</td>
<td>38%</td>
</tr>
<tr>
<td>2012</td>
<td>411,365</td>
<td>42,206</td>
<td>45915</td>
<td>38%</td>
</tr>
<tr>
<td>2013</td>
<td>415,586</td>
<td>42,628</td>
<td>46,374</td>
<td>38%</td>
</tr>
<tr>
<td>2014</td>
<td>419,749</td>
<td>43,054</td>
<td>46,836</td>
<td>38%</td>
</tr>
<tr>
<td>2015</td>
<td>423,955</td>
<td>43,485</td>
<td>55,683</td>
<td>38%</td>
</tr>
<tr>
<td>Year commencing 1 April</td>
<td>Base Case Forecast Tonnes of Contract Waste</td>
<td>Base Case Forecast Tonnes of HWRS waste Recycled</td>
<td>Base Case Forecast Tonnes of Recyclable Materials delivered to Contractor</td>
<td>Base Case Forecast Percentages of HWRS waste Recycled</td>
</tr>
<tr>
<td>------------------------</td>
<td>--------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>2016</td>
<td>428,201</td>
<td>43,919</td>
<td>56,239</td>
<td>38%</td>
</tr>
<tr>
<td>2017</td>
<td>431,519</td>
<td>44,249</td>
<td>56,662</td>
<td>38%</td>
</tr>
<tr>
<td>2018</td>
<td>434,761</td>
<td>44,581</td>
<td>57,087</td>
<td>38%</td>
</tr>
<tr>
<td>2019</td>
<td>438,126</td>
<td>44,915</td>
<td>57,515</td>
<td>38%</td>
</tr>
<tr>
<td>2020</td>
<td>441,417</td>
<td>45,252</td>
<td>57,945</td>
<td>38%</td>
</tr>
<tr>
<td>2021</td>
<td>444,831</td>
<td>45,591</td>
<td>58,380</td>
<td>38%</td>
</tr>
<tr>
<td>2022</td>
<td>448,170</td>
<td>45,933</td>
<td>58,817</td>
<td>38%</td>
</tr>
<tr>
<td>2023</td>
<td>451,604</td>
<td>46,278</td>
<td>59,261</td>
<td>38%</td>
</tr>
<tr>
<td>2024</td>
<td>454,994</td>
<td>46,625</td>
<td>59,706</td>
<td>38%</td>
</tr>
<tr>
<td>2025</td>
<td>458,507</td>
<td>46,974</td>
<td>60,152</td>
<td>38%</td>
</tr>
<tr>
<td>2026</td>
<td>461,949</td>
<td>47,327</td>
<td>60,603</td>
<td>38%</td>
</tr>
<tr>
<td>2027</td>
<td>465,416</td>
<td>47,682</td>
<td>61,056</td>
<td>38%</td>
</tr>
</tbody>
</table>
Table 10.1E: Definitions used in the Formulae Below

<table>
<thead>
<tr>
<th>Definition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFRME</td>
<td>Annual forecast tonnes of diverted Recyclable Materials Recycled by Eastbourne Borough Council in the relevant Contract Year</td>
</tr>
<tr>
<td>AFRMH</td>
<td>Annual forecast tonnes of diverted Recyclable Materials Recycled by Hastings Borough Council in the relevant Contract Year</td>
</tr>
<tr>
<td>AFRML</td>
<td>Annual forecast tonnes of diverted Recyclable Materials Recycled by Lewes District Council in the relevant Contract Year</td>
</tr>
<tr>
<td>AFRMR</td>
<td>Annual forecast tonnes of diverted Recyclable Materials Recycled by Rother District Council in the relevant Contract Year</td>
</tr>
<tr>
<td>AFRMW</td>
<td>Annual forecast tonnes of diverted Recyclable Materials Recycled by Wealden District Council in the relevant Contract Year</td>
</tr>
<tr>
<td>BRME</td>
<td>Annual forecast tonnes of collected Household Waste from Eastbourne Borough Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1A</td>
</tr>
<tr>
<td>BRMH</td>
<td>Annual forecast tonnes of collected Household Waste from Hastings Borough Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1A</td>
</tr>
<tr>
<td>BRML</td>
<td>Annual forecast tonnes of collected Household Waste from Lewes District Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1A</td>
</tr>
<tr>
<td>BRMR</td>
<td>Annual forecast tonnes of collected Household Waste from Rother District Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1A</td>
</tr>
<tr>
<td>BRMW</td>
<td>Annual forecast tonnes of collected Household Waste from Wealden District Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1A</td>
</tr>
<tr>
<td>AFWRE</td>
<td>Annual forecast tonnes of Recyclable Materials delivered to the Contractor by Eastbourne Borough Council in the relevant Contract Year</td>
</tr>
<tr>
<td>Equation</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
</tr>
<tr>
<td>AFWRH =</td>
<td>Annual forecast tonnes of Recyclable Materials delivered to the Contractor by Hastings Borough Council in the relevant Contract Year</td>
</tr>
<tr>
<td>AFWRL =</td>
<td>Annual forecast tonnes of Recyclable Materials delivered to the Contractor by Lewes District Council in the relevant Contract Year</td>
</tr>
<tr>
<td>AFWRR =</td>
<td>Annual forecast tonnes of Recyclable Materials delivered to the Contractor by Rother District Council in the relevant Contract Year</td>
</tr>
<tr>
<td>AFWRW =</td>
<td>Annual forecast tonnes of Recyclable Materials delivered to the Contractor by Wealden District Council in the relevant Contract Year</td>
</tr>
<tr>
<td>AFWRB =</td>
<td>Annual forecast tonnes of Recyclable Materials delivered to the Contractor by B&amp;HCC in the relevant Contract Year</td>
</tr>
<tr>
<td>BRMDE =</td>
<td>Annual forecast tonnes of collected Household Waste from Eastbourne Borough Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1B</td>
</tr>
<tr>
<td>BRMDL =</td>
<td>Annual forecast tonnes of collected Household Waste from Lewes District Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1B</td>
</tr>
<tr>
<td>BRMDH =</td>
<td>Annual forecast tonnes of collected Household Waste from Hastings District Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1B</td>
</tr>
<tr>
<td>BRMDR =</td>
<td>Annual forecast tonnes of collected Household Waste from Rother District Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1B</td>
</tr>
<tr>
<td>BRMDW =</td>
<td>Annual forecast tonnes of collected Household Waste from Wealden District Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1B</td>
</tr>
<tr>
<td>BRMDB =</td>
<td>Annual forecast tonnes of collected Household Waste from Brighton and Hove City Council in the relevant Contract Year multiplied by the appropriate factor from table 10.1C</td>
</tr>
</tbody>
</table>
Throughout this section the annual forecasts are those provided each year for the following Contract Year in accordance with this Schedule 12.

10.2. **WCA Diversion Compensation Calculation – Baseline Payment**

10.2.1. Where the annual forecast number of tonnes of Contract Waste to be delivered to the Contractor in the relevant Contract Year equals or exceeds the number of tonnes of Contract Waste to be delivered to the Contractor in accordance with the base case shown in table 10.1D Col A in that Contract Year then there shall be no compensation payment in respect of Baseline Payment.

\[ T_1 = 0 \text{ where } FCW \geq BCW \]

\[ FCW = FWB1 + FWB2 + FWB3 + FWB4 + FWB5 \]

\[ BCW = \text{see table 10.1D Col A} \]

\[ T_1 = \text{the number of tonnes eligible for the Diversion Compensation Baseline Payment} \]

10.2.2. Where the annual forecast number of tonnes of Recyclable Materials diverted from Contract Waste by the WCAs in the relevant Contract Year is less than or equals the aggregate of the applicable diversion level of Recyclable Materials set out in, table 10.1A, multiplied by the annual forecast tonnes of collected Household Waste to be collected by or on behalf of each WCA in that Contract Year then there shall be no compensation payment in respect of Baseline Payment.

\[ T_1 = 0 \text{ where } AFRM \leq BRM \]

\[ AFRM = AFRME + AFRMH + AFRML + AFRMR + AFRMW \]

\[ BRM = BRME + BRMH + BRML + BRMR + BRMW \]

10.2.3. Where: \( BCW > AFCW \) and \( BRM < AFRM \)
then the number of tonnes of Recyclable Materials in respect of which a compensation payment for loss of Baseline Payment shall be made, shall be the lowest of:

(a) the difference between the base case number of tonnes of Contract Waste to be delivered to the Contractor in the relevant Contract Year and the annual forecast number of tonnes of Contract Waste delivered to the Contractor in the relevant Contract Year

\[ T_1 = BCW - AFCW \]

and

(b) the difference between the annual forecast number of tonnes of Recyclable Materials to be diverted from Contract Waste by the WCAs in the relevant Contract Year and the aggregate of the applicable diversion level of Recyclable Materials set out in table 10.1A multiplied by the annual forecast tonnes of collected Household Waste for each WCA in that Contract Year

\[ T_1 = AFRM - BRM \]

10.2.4. The compensation payment in respect of \( T_1 \) shall be calculated as follows:

\[ S_1 = (BP - X_1) * T_1 \]

Where

\( S_1 \) = the value of the compensation payment payable as diversion compensation, for the Baseline Payment

\( BP \) = the applicable Baseline Price for the relevant Weight Band or Weight Bands if more than one would apply as if \( T_1 \) are tonnes of Contract Waste forecast to be delivered to the Contractor in addition to the Contract Waste forecast to be delivered to the Contractor for the relevant Contract Year

\( X_1 \) = the net operating cost savings per tonne of Recyclable Materials diverted from Contract Waste as set out in table 1.12 of Part 1 of Schedule 6.
10.2.5. Payment and Reconciliation

Any forecast payments resulting from the above will be paid in twelve equal monthly instalments. Within 10 Business Days of the end of the relevant Contract Year the actual tonnes of Contract Waste and of diverted Recyclable Materials will be calculated. The formulae set out in paragraphs 10.2.1, 10.2.2, 10.2.3 and 10.2.4 shall be applied to such actual tonnes for the purpose of calculating reconciliation payments. Any such reconciliation payments shall either be added to or deducted from the next Monthly Report to be submitted to the Councils.

10.3. WCA Diversion Compensation Calculation – Recycling Supplement

10.3.1. Where the annual forecast number of tonnes of Recyclable Materials to be delivered to the Contractor in the relevant Contract Year equals or exceeds the number of tonnes of Recyclable Materials to be delivered to the Contractor, in accordance with the base case shown in table 10.1D column C, in that Contract Year then there shall be no compensation payment in respect of Recycling Supplement.

\[ T_2 = 0 \text{ where } AFWR \geq BWR \]

\[ T_2 = \text{the number of tonnes eligible for the Diversion Compensation Recycling Supplement} \]

\[ AFWR = AFWRE + AFWRH + AFWRL +AFWRR + AFWRW + AFWRB \]

10.3.2. Where the annual forecast number of tonnes of Recyclable Materials to be diverted from Contract Waste by the WCAs in the relevant Contract Year is less than or equals the aggregate of the applicable diversion level of Recyclable Materials set out in, table 10.1A, multiplied by the annual forecast tonnes of collected Household Waste to be collected by or on behalf of each WCA in that Contract Year then there shall be no compensation payment in respect of Recycling Supplement.

\[ T_2 = 0 \text{ where } AFRM \leq BRM \]
10.3.3. Where: BWR > AFWR and BRM < AFRM

then the number of tonnes of Recyclable Materials in respect of which a compensation payment for loss of Recycling Supplement shall be made, shall be the lowest of:

(a) the difference between the base case number of tonnes of Recyclable Materials to be delivered to the Contractor in the relevant Contract Year shown in table 10.1D column C and the annual forecast number of tonnes of Recyclable Materials to be delivered to the Contractor in the relevant Contract Year

\[ T_2 = BWR - AFWR \]

and

(b) the difference between the annual forecast number of tonnes of Recyclable Materials to be diverted from Contract Waste by the WCAs in the relevant Contract Year and the aggregate of the applicable diversion level of Recyclable Materials set out in table 10.1A multiplied by the annual forecast.

\[ T_2 = AFRM - BRM \]

10.3.4. The compensation payment in respect of \( T_2 \) shall be calculated as follows:

\[ S_2 = (R - X_2) \times (T_2 - H) \]

Where

\( S_2 \) = the value of the compensation payment payable as diversion compensation for the Recycling Supplement

\( R \) = the applicable Recycling Supplement for the relevant Recycling Supplement Band or Recycling Supplement Bands if more than one would apply as if \( T_2 \) are tonnes of Recyclable Materials to be delivered to the Contractor in addition to the Recyclable Materials to be delivered to the Contractor for the relevant Contract Year
\[ X_2 = \text{the net Recycling operating cost savings per tonne of Recyclable Materials diverted from Contract Waste, less the Net Recycling Income Loss as set out in tables 1.12 and 1.15 of Part 1 of Schedule 6 (Price Schedule and Annual Contract Price Review). If the Net Recycling Income Loss set out in table 1.15 of Schedule 6 becomes consistently unrepresentative of actual net income the Contract Manager and Project Director may agree in writing a substitute figure.} \]

\[ H = \text{Additional tonnes of Recyclable Materials delivered to the HWRS and where } H \text{ is greater than zero it shall be} \]

(a) the difference between the annual forecast of tonnes of Recyclable Materials from HWRS in the relevant Contract Year and the base case number of tonnes of Recyclable Materials from HWRS in the relevant Contract Year set out in table 10.1D column B to be delivered to the Contractor

and

(b) the difference between the annual forecast of tonnes of Recyclable Materials from the HWRS in the relevant Contract Year and the annual forecast of tonnes of Household Waste to be delivered to the HWRS multiplied by the base case forecast of the percentage of Household Waste to be delivered to the HWRS that is Recyclable Materials set out in table 10.1D column D, for the relevant Contract Year.

10.3.5. No compensation payment shall be payable in respect of the loss of Recycling Supplement:

10.3.5.1. until the Materials Recycling Facility has been Completed; and

10.3.5.2. in respect of Recyclable Materials delivered or proffered for delivery to the Contractor during periods when the Materials Recycling Facility is Unavailable.
10.3.6. Payment and Reconciliation

10.3.6.1 Any forecast payments resulting from the above will be paid in twelve equal monthly instalments. Within 10 Business Days of the end of the relevant Contract Year the actual tonnes of Contract Waste and of diverted Recyclable Materials will be calculated. The formulae set out in paragraphs 10.3.1, 10.3.2, 10.3.3 and 10.3.4 shall be applied to such actual tonnes for the purpose of calculating reconciliation payments. Any such reconciliation payments shall either be added to or deducted from the next Monthly Report to be submitted to the Councils.

10.3.6.2 After the end of the Contract Year the average net price received for collected Recyclable Materials will be calculated and the Contractor’s share substituted for the figure for net recycling income loss used to calculate $X_2$

10.4. WCA Non-Separation Compensation Calculation – Recycling Supplement

10.4.1 Where the annual forecast number of tonnes of Recyclable Materials to be delivered to the Contractor in the relevant Contract Year plus the tonnes in respect of which compensation is payable under paragraph 10.3 ($T_2$) equals or exceeds the number of tonnes of Recyclable Materials to be delivered to the Contractor in accordance with the base case shown in table 10.1D column C, in that Contract Year then there shall be no compensation payment in respect of Recycling Supplement.

$$T_3 = 0 \text{ where } (AFWR + T_2) \geq BWR$$

where

$T_3 = \text{the number of tonnes eligible for the WCA Non-Separation Compensation Recycling Supplement}$

10.4.2 Where the annual forecast number of tonnes of Recyclable Materials to be delivered to the Contractor by the WCAs in the relevant Contract Year plus the tonnes in respect of which compensation is payable under paragraph 10.3 ($T_2$) exceeds or equals the aggregate of the applicable delivery level of Recyclable Materials, set out in tables 10.1B and 10.1C, multiplied by the annual forecast tonnes of collected Household Waste to be collected by or on behalf of each
WCA in that Contract Year then there shall be no compensation payment in respect of Recycling Supplement.

\[ T_3 = 0 \text{ where } (AFWR + T_2) \geq BRMD \]

\[ BRMD = \text{BRMDE} + \text{BRMDH} + \text{BRMDL} + \text{BRMDR} + \text{BRMDW} + \text{BRMDB} \]

**10.4.3.** Where BWR > (AFWR + T₂) and BRMD > (AFWR + T₂) then the number of tonnes of Recyclable Materials in respect of which a compensation payment for loss of Recycling Supplement shall be the lowest of:

(a) the difference between the base case number of tonnes of Recyclable Materials to be delivered to the Contractor in the relevant Contract Year shown in table 10.1D column C and the annual forecast number of tonnes of Recyclable Materials to be delivered to the Contractor in the relevant Contract Year plus T₂.

\[ T_3 = BWR - AFWR - T_2 \]

and

(b) the difference between the aggregate of the applicable delivery level of Recyclable Materials set out in tables 10.1B and 10.1C multiplied by the annual forecast tonnes of collected Household Waste to be collected by or on behalf of each WCA in that Contract Year and the annual forecast number of tonnes of Recyclable Materials to be delivered to the Contractor by the WCAs in the relevant Contract Year plus T₂.

\[ T_3 = \text{BRMD} - AFWR - T_2 \]

**10.4.4.** The compensation payment in respect of T₃ shall be calculated as follows:

\[ S_3 = (R - X_3) \times (T_3 - H) \]

where
S₃ = the value of the compensation payment payable as non-separation compensation for the Recycling Supplement.

R = the applicable Recycling Supplement for the relevant Recycling Supplement Band or Recycling Supplement Bands if more than one would apply as if T₃ are tonnes of Recyclable Materials delivered to the Contractor in addition to the Recyclable Materials to be delivered to the Contractor for the relevant Contract Year

X₃ = the net Recycling operating cost savings per tonne of Recyclable Materials not separated for delivery to the Contractor less the Net Recycling Income Loss as set out in tables 1.12 and 1.15 of Part 1 of Schedule 6 (Price Schedule and Annual Contract Price Review). If the Net Recycling Income Loss set out in table 1.15 of Schedule 6 becomes consistently unrepresentative of actual net income the contract Manager and Project Director may agree in writing a substitute figure.

10.4.5. No compensation payment shall be payable in respect of the loss of Recycling Supplement:

10.4.5.1. until the Materials Recycling Facility has been Completed; and

10.4.5.2. in respect of Recyclable Materials delivered or proffered for delivery to the Contractor during periods when the Materials Recycling Facility is Unavailable.

10.4.6. Payment and Reconciliation

10.4.6.1 Any forecast payments resulting from the above will be paid in twelve equal monthly instalments. Within 10 Business Days of the end of the relevant Contract Year the actual tonnes of Contract Waste and actual delivery of Recyclable Materials will be calculated. The formulae set out in paragraphs 10.4.1, 10.4.2, 10.4.3 and 10.4.4 shall be applied to such actual tonnes for the purpose of calculating reconciliation payments. Any such reconsolidation payments shall either be added to or deducted from the next Monthly Report to be submitted to the Councils.
After the end of the Contract Year the average net price received for collected Recyclable Materials will be calculated and the Contractor’s share substituted for the figure for net recycling income loss used to calculate $X_3$.

10.4.7. Landfill Tax

10.4.7.1 The Contractor shall be reimbursed for any additional Landfill Tax incurred due to Landfilling of Contract Waste in excess of that forecast to be Landfilled but only in respect of the number of tonnes by which the contractor shall demonstrate based on the principles of paragraphs 10.2, 10.3 and 10.4 above that additional Landfill Tax has been incurred as a consequence of the WCAs delivering less Recyclable Materials to the Contractor than forecast to be delivered.

11. INTERIM SERVICE PAYMENT, INTERIM PEBSHAM SERVICE PAYMENT AND THE RUN OUT SERVICE PAYMENT

11.1 Interim Service Payment

Each Month (or part thereof) during the Interim Service Period (if any) the Councils shall pay to the Contractor the Interim Service Payment which shall be calculated as follows:

$I = A \times B$

Where:

$A =$ the Interim Service Supplement

$B =$ the Interim Service Amount in tonnes being the lower of the number of tonnes of Contract Waste forecast to be Processed at the Newhaven ERP and the number of tonnes of Contract Waste Landfilled in accordance with the Interim Service Plan

(“Interim Service Payment”).
11.2 **Interim Pebsham Service Payment**

Each Month (or part thereof) during the Interim Pebsham Service Period (if any) the Councils shall pay to the Contractor the Interim Pebsham Service Payment which shall be calculated as follows:

\[ I = A \times B \]

Where:

\[ A = \text{the Interim Service Supplement} \]

\[ B = \text{the number of tonnes of Contract Waste forecast to be Processed at the Pebsham NTP} \]

(“Interim Service Payment”).

11.3 **Run Out Service Payment**

Each Month (or part thereof) during the Run Out Service Period (if any) the Councils shall pay to the Contractor the Run Out Service Payment, which shall be calculated as follows:

\[ J = A \times B \]

Where:

\[ A = \text{the Run Out Service Supplement} \]

\[ B = \text{the Run Out Service Amount in tonnes being the lower of the number of tonnes of Contract Waste forecast to be Processed at the Newhaven ERP and the number of tonnes of Contract Waste Landfilled than in accordance with the Interim Service Plan} \]

(“Run Out Service Payment”).

12. **EXCESS PROFIT**

12.1 In respect of paragraph 12 of this Schedule:
12.1.1 “AP” shall mean the Profits as shown by the Annual Accounts being the audited annual accounts of the Contractor as filed at Companies House (stated or adjusted as necessary in accordance with paragraph 12.2);

12.1.2 “TP” means:

12.1.2.1 in respect of the First Contract Year 75% of the net operating profit before interest forecast in row 18 in Worksheet “Finance – P & L ” in the Base Case;

12.1.2.2 in respect of all Contract Years other than the First Contract Year and the Last Contract Year the aggregate of:

(a) 75% of the net operating profit before interest forecast in row 18 in Worksheet “Finance – P & L ” in the Base Case for the Relevant Year; and

(b) 25% of the net operating profit before interest forecast in row 18 in Worksheet “Finance – P & L ” in the Base Case for the year preceding the Relevant Year;

12.1.2.3 in respect of the Last Contract Year 25% of the net operating profit before interest forecast in row 18 in Worksheet “Finance – P & L ” in the Base Case.

For the purposes of this paragraph 12.1.2 “Relevant Year” means the Contract Year commencing in the year covered by the Annual Accounts.

12.1.3 AP and TP shall be calculated on a consistent basis and therefore the impact on AP of any changes to accounting principles or policies from those applied to arrive at Target Profit must be disregarded;

12.1.4 “EPP” means the Excess Profit Payment to be made by the Contractor to the Councils in respect of Actual Profits made during that Contract Year calculated in accordance with the provisions of paragraph 12 of Part 1 of this Schedule 12 (Payment and Performance);

12.1.5 “CSP” means the Cumulative Shortfall in Profits which is lower of the cumulative difference between AP and TP for all previous Contract Years, to the extent not already deducted from AP, and zero.
12.1.6 In any Contract Year:

12.1.6.1 if AP – CSP is equal to or less than 1.5 x TP, then EPP = 0;

12.1.6.2 if AP – CSP is greater than 1.5 x TP but equal to or less than 2.0 x TP, then EPP = 0.3 x (AP – CSP – 1.5TP);

12.1.6.3 if AP – CSP is greater than 2.0 x TP but equal to or less than 2.5 x TP, then EPP = 0.15 TP + 0.4 x (AP – CSP – 2TP); and

12.1.6.4 if AP – CSP is greater than 2.5 TP, then EPP = 0.35 TP + 0.5 (AP – CSP – 2.5TP).

12.2 Meaning of Profits

For the purpose of Schedule 12 the profits shall be calculated in accordance with accounting principles generally accepted and applied in the United Kingdom, adjusted so far as necessary to take account of the following matters:

12.2.1 any interest charged and taxation on profits shall not be deducted;

12.2.2 subject to paragraph 12.2.3 of this Part 1 of Schedule 12, profits and losses shall be calculated before Exceptional Items;

12.2.3 all profits or losses on the disposal of any fixed assets (calculated by reference to historic cost) must be included in the calculation of Actual Profits;

12.2.4 all revaluations or write downs of any fixed assets and the impact on the depreciation charge shall be excluded;

12.2.5 any management, administration or like charge made by the Contractor, save for such charges as have been agreed in writing between the Contractor and the Project Director shall not be deducted (and in this paragraph 12.2.4 “Contractor” shall where the context permits be deemed to include any holding company from time to time of the Contractor and/or any subsidiary from time to time of the Contractor or of any such holding company);
12.2.6 any costs or expenses incurred in complying with any financial reporting or other similar requirements of the Contractor, to the extent such reporting or other similar requirements are more onerous than those to which a company of the nature and size of and carrying on a business similar in all material respects to the Contractor would normally adhere shall not be deducted;

12.2.7 the fees, remuneration and pension contributions of any director of officer of the Contractor, not being a full-time employee, shall not be deducted unless such payment is properly related to and a fair and reasonable sum in respect of services provided by such director or officer;

12.2.8 any other adjustment as may be agreed in writing between the Project Director and the Contractor shall be made;

12.2.9 any action taken by the Contractor to artificially lower the Actual Profits so as to reduce or avoid the Excess Profit Payment shall be disregarded;

12.2.10 in respect of any transaction between the Contractor and any Affiliate (excluding the Management Charge as set out in the Base Case at row 64 in Worksheet “Inputs – Overheads”) there shall be substituted terms which are at arm’s length and “transaction” shall include without limitation:

12.2.10.1 the lending or borrowing of money, and/or being party to any bank netting arrangement for the purposes of calculating interest;

12.2.10.2 the payment of remuneration or fees to any person who does not work full-time on the affairs of the Contractor; and

12.2.10.3 the granting of assistance and facilities, including the secondment of employees and the sharing or leasing of premises.

12.2.10.4 any expenses for which any Affiliate other than the Contractor is liable but which are gratuitously met by the Contractor shall be deducted;
12.2.10.5 any other adjustment as may be agreed in writing between the Project Director and the Contractor; and

12.2.10.6 there shall be deducted in the Annual Accounts prior to calculating Actual Profits a sum equal to the aggregate of profits for the relevant Contract Year attributable to the Contractor’s share of NFFO Additional Income and sale of recyclate.

12.3 The Contractor shall procure that:

12.3.1 as soon as reasonably practicable following the end of each Contract Year and not later than 3 Months after the end of each Contract Year the Auditors will prepare and deliver to the Lead Authority and the Contractor the Annual Accounts and a calculation of that year’s Actual Profits and Excess Profit Payment in all cases with sufficient information to demonstrate the accuracy of the calculations and the application of the provisions of this Part 1 of Schedule 12 (Payment and Performance). The Lead Authority and the Contractor shall then endeavour to agree in writing the amount of that year’s Actual Profits and Excess Profit Payment. In the absence of agreement between the Lead Authority and the Contractor as aforesaid within 20 Business Days after the Auditors’ delivery of each such calculation, either the Lead Authority or the Contractor may by notice in writing to the other require that year’s Actual Profits and Excess Profit Payment to be certified by a single independent chartered accountant or an independent firm of chartered accountants to be agreed upon between them or (in default of such agreement) to be selected (at the instance of either of them) by the President for the time being of the Institute of Chartered Accountants in England and Wales, and any such chartered accountant or firm of chartered accountants (whose costs shall be paid by the Lead Authority and the Contractor in equal shares) shall act as expert (and not as arbitrator) in connection with the giving of such certificate, which shall be binding on the parties;

12.3.2 the Lead Authority and its professional advisers shall have such access to the books and accounts of the Contractor and each Affiliate and such other relevant information as shall be reasonably requested by the Lead Authority to enable them to assess the calculations referred to in paragraph 12.3.1
12.3.3 The Excess Profit Payment in respect of each year’s Actual Profits shall in each case be paid in cleared funds to the Lead Authority within twenty Days of the determination of the amount of the Excess Profit Payment in accordance with the foregoing provisions of this Schedule 12 (Payment and Performance). In the event that such payment is not made by the date being 30 Days of receipt of the Annual Accounts the Contractor shall pay interest on the relevant amount from the such date to the date of actual payment at the rate of two per cent above the base lending rate from time to time of HSBC Bank.

12.3.4 In the event that the amount of the Excess Profit Payment in respect of any Contract Year is not agreed between the Lead Authority and the Contractor and is required by either party to be certified by an independent accountant or an independent firm of accountants, the Lead Authority may by written notice to the Contractor require that (notwithstanding any other provision of this Agreement) a payment on account of such Excess Profit Payment be made on the following basis:

12.3.4.1 the amount to be paid shall be such Excess Profit Payment as would be payable if the relevant calculation made by the Auditors were correct, and shall be paid within 20 Days after the giving of such written notice by the Lead Authority;

12.3.4.2 within 20 Days after the amount of such Excess Profit Payment has been certified the appropriate adjustment shall be made by cash payment by the Contractor to the Lead Authority or (as the case may be) by the Councils to the Contractor, together in either case with interest on the amount of such cash payment at the rate specified in paragraph 11.4 from the date of the payment in accordance with paragraph 11.5.1, to the date of actual payment.

12.3.5 In the event that the Auditors fail to prepare and deliver to the Lead Authority the Actual Accounts and a calculation of the relevant year’s Actual Profits and Excess Profit Payment within the period specified in paragraph 11.4 the Lead Authority may appoint an independent firm of chartered accountants to prepare such Annual Accounts and calculate the Actual Profits and Excess Profit Payment deriving therefrom. The
Contractor shall provide such accountant with all books, accounts and information necessary to complete this task. The Annual Accounts, Actual Profits and Excess Profit Payment calculated by such accountant (whose costs shall be paid by the Contractor) shall be binding on the parties.

12.3.6 The Contractor and the Lead Authority have agreed that, subject to the Lead Authority’s consent in writing being given at the time, no adjustment to the VAT originally charged under this contract will be made in respect of any Excess Profit Payment paid under this paragraph 12.

13. COUNCILS’ SHARE OF NET INCOME FROM SALE OF RECYCLABLE MATERIALS TO AN END MARKET

13.1 Within 10 Business Days after the last Business Day or each Month the Contractor shall provide to the Project Director using a Defined Audit Trail all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate:

13.1.1 details of all payments received by the Contractor of Recyclable Materials in the immediately preceding Month; and

13.1.2 a calculation in accordance with the formula set out below which shall set out for the immediately preceding Month the applicable Net Income Share:

for the period from Completion of the MRF

\[ 0.5 \times (A-B) = \text{Net Income Share} \]

for the period from Execution Date until Completion of the MRF

\[ 1 \times (A-B) = \text{Net Income Share} \]

where

\[ A = \text{the aggregate payment excluding VAT received by the Contractor from all End Markets for delivery of Recyclable Materials during the relevant Month;} \]
B = the aggregate total cost excluding VAT of transporting Recyclable Materials to an End Market incurred by or paid by the Contractor in so transporting Recyclable Materials during the relevant Month provided that:

13.1.2.1 if the Contractor shall have used vehicles owned by it or leased to it to transport such Recyclable Materials the cost of such transport shall be a fair and reasonable cost which shall be pro rata to the total cost of owning or leasing as the case may be and running such vehicles and employing the driver;

13.1.2.2 the Contractor outsources the transport of the Recyclable Materials the cost shall be the actual cost incurred which cost the Contractor shall seek to minimise.

provided that for the purposes of this paragraph Recyclable Materials shall not include those Recyclable Materials arising at any Household Waste Recycling Site.

14. **OBLIGATION TO SEEK TO TRANSFER A NFFO CONTRACT TO THE BENEFIT OF THE PROJECT AND SHARING OF RESULTANT NFFO ADDITIONAL INCOME**

14.1 **Contractor to use All Reasonable Endeavours to transfer benefit of a NFFO to the Project**

The Contractor shall use all reasonable endeavours to transfer or procure the transfer of the Ardwick NFFO Contract in accordance with its terms and Legislation to the benefit of the Project and thereafter seek to maximise the resultant benefit accruing to the Project. In so doing the Contractor shall:

14.1.1 keep the Lead Authority informed as to progress in implementing such transfer and the benefits projected to result therefrom including all workings and other evidence as the Lead Authority reasonably requests provided that such obligation shall not cause the Contractor or any member of the Onyx Group to breach any duty of confidentiality imposed by any NFFO Contract;

14.1.2 take such action and procure the relevant member of the Onyx Group to execute and deliver deeds and agreements to effect the said transfer; and
14.1.3 notify the Lead Authority as soon as reasonably practicable after such transfer and provide full copy documentation evidencing such transfer and the terms of the transferred NFFO Contract.

14.2 Contractor to report additional income

Immediately upon transfer of the NFFO Contract the Contractor shall accurately record and supply to the Lead Authority with each Monthly Report submitted thereafter including all workings and supporting information as would be reasonably required by a competent person to satisfy himself that the following was true and accurate income arising in favour of any member of the Onyx Group but only since the last Monthly Report in which any such NFFO Additional Income was declared but in respect of the first Monthly Report when no NFFO Additional Income has been previously declared all such previously arising NFFO Additional Income which would not have arisen but for the NFFO Contract’s application to the Project (“NFFO Additional Income”).

14.3 Contractor to share NFFO Additional Income

The Contractor shall deduct from the relevant Unitary Payment half of any NFFO Additional Income which should have been properly recorded in the relevant Monthly Report.

15. Packaging Recycling Notes

15.1 The Contractor shall use reasonable endeavours to secure for the benefit of the Project income arising from Packaging Recycling Notes (and any scheme replacing the Packaging Recycling Notes Scheme)

15.2 Each Month the Contractor shall account to the Councils for one half of such income (“PRN share”) as shall be received by the Contractor during that Month through compliance with 15.1 above. The PRN Share (if any) for the relevant month shall be deducted from the Unitary Payment for such Month.

16. Contract Debtor Structure

16.1 If at any time the financial structure of the Project shall be amended to that of the “Contract Debtor Tax Structure” details of which are set out in the document dated October 2002 and titled “Contract Debtor Tax Structure” being produced by 4Ps and
initialled on behalf of the Parties for the purpose of identification the Contractor
shall account to the Councils for one half of the financial benefit arising therefrom
and such payment shall be in accordance with the applicable Change Protocol.
SCHEDULE 12

PAYMENT AND PERFORMANCE

Part 2

UNAVAILABILITY AND PERFORMANCE DEDUCTIONS

DEFINITIONS

“New Household Waste Recycling Sites” means the Household Waste Recycling Sites to be constructed by the Contractor at Pebsham and Uckfield and to be constructed by ESCC at Crowborough

“Original Household Waste Recycling Sites” means the Household Waste Recycling Sites taken over by the Contractor on 15 May 2003

“Rectification Period”

(A) in relation to Unavailability of any Household Waste Recycling Site or WCA Facing Waste Management Facility, there shall be no Rectification Period; and

(B) in relation to non performance has the applicable meaning set out in Tables 3A, 3B and 3C as the case may be

“Special Day” Saturday, Sunday, Bank Holidays and Public Holidays excluding Christmas Day, Boxing Day and New Year’s Day

“Standard Unavailability Deduction Rate” means £100

“Unavailable” has the meaning given in paragraph 1.6 of Part 3 of this Schedule 12

“Unavailability Notice” has the meaning given in paragraph 1.2.2 of Part 3 of this Schedule 12

“WCA Facing Waste Management Facility” means any of the Newhaven ERP, the New Technology, the MRF, the Transfer Stations and the Composting Plant
“Weighting Factor”

(A) in relation to a Household Waste Recycling Site on any day other than a Special Day means a weighting factor of 1; and

(B) in relation to a Household Waste Recycling Site on any Special Days means a weighting factor of 2; and

(C) in relation to any WCA Facing Waste Management Facility (other than a Household Waste Recycling Site) means a weighting factor of 6
1. UNAVAILABILITY DEDUCTIONS

1.1.1 Application of Unavailability Deductions

Unavailability Deductions shall, subject to the provisions of this Schedule, apply to each Waste Management Facility.

1.1.2 Not a Penalty

The Parties acknowledge that the Standard Unavailability Deduction Rate and the application of the relevant Weighting Factor are fair and reasonable and are a reasonable pre-estimate of the losses created by the relevant defaults.

1.2 Notification of Unavailability

1.2.1 The Contractor shall monitor and accurately record at all times the Unavailability of each Waste Management Facility and upon reasonable notice make available to the Project Director such records. The Contractor shall as soon as reasonably practicable notify the Project Director, providing reasonable detail, of any Unavailability whether or not continuing beyond the applicable Rectification Period (if any). If Unavailability shall have occurred and continued beyond the applicable Rectification Period (if any) there shall be allotted against the Contractor an Unavailability Deduction calculated in accordance with paragraph 1.7 below.

1.2.2 The Project Director shall, upon becoming aware of any Unavailability promptly serve upon the Contractor a written notice (the "Unavailability Notice") providing the Contractor with reasonable detail of the time, place and category of the alleged Unavailability. If such an Unavailability shall have occurred and continued beyond the applicable Rectification Period (if any) there shall be allotted against the Contractor an Unavailability Deduction in the same manner and to the same extent as if that Unavailability had been monitored and recorded in accordance with paragraph 1.2.1.

1.2.3 The applicable Rectification Period shall run from the time of commencement of the Unavailability ("Commencement of Unavailability").
1.2.4 The Contractor shall notify the Project Director in the relevant Monthly Report of the total amount of Unavailability Deductions (“D”) accrued by the Contractor in the previous Month.

1.3 **End of Unavailability**

The Contractor shall notify the Project Director as soon as reasonably practicable when the relevant Waste Management Facility is no longer Unavailable ("End of Unavailabilityolleying

1.4 **Non-Application of Unavailability Deductions**

There shall be no Unavailability Deductions for:

1.4.1 unavailability of any Waste Management Facility (other than the Original Household Waste Recycling Sites) until its Planned Waste Management Facility Operation Date save in the case of:

1.4.1.1 Uckfield Household Waste Recycling Site; and

1.4.1.2 Pebsham Household Waste Recycling Site;

when in each case such facility shall not be unavailable until the relevant Waste Management Facility has been completed. The provisions of clause 94 Agreed Non-Completion Damages shall apply to the circumstances where any of such facilities shall not have been completed by the applicable Planned Waste Management Facility Operation Date as set out in the Project Plan in force on the Execution Date.

1.4.2 Unavailability of any Original Household Waste Recycling Site prior to 15 May 2003.

1.4.3 Unavailability of any Waste Management Facility:

1.4.3.1 which is closed for Planned Maintenance; or

1.4.3.2 which has been closed by written agreement between the Contractor and the Project Director and as part of that agreement no Unavailability Deductions shall be made; or

1.4.3.3 as a result of the implementation of any change in accordance with clause 24 (Change in Works and Services) or any change in accordance with clause 25 (Change in Law); or
1.4.3.4 as a result of a breach by either of the Councils of their obligations under the Contract or any other neglect, default, or omission of either of the Councils or any of their agents or employees in the course of their duties or any other person within the control of the Councils or for whom the Councils are responsible; and

1.4.3.5 Unavailability during the Works at the Household Waste Recycling Site provided that the period of Unavailability shall be the minimum reasonably necessary to complete the Works in accordance with the programme set out within the relevant Works Delivery Plan.

1.4.3.6 As a result of the carrying out of any Remediation Works but only in so far as they relate to pre-existing contamination on any Existing Site

1.4.4 Unavailability of a Household Waste Recycling Site where such Unavailability arises as a result of a health and safety requirement save to the extent that such health and safety requirement arises from a breach by the Contractor of its obligations under the Contract.

1.4.5 Unavailability of Landfill Sites the subject of any of the Landfill Contracts.

1.5 **Procedure for Making Unavailability Deductions**

Subject to paragraph 1.4 (Non-Application of Unavailability Deductions) where any Waste Management Facility is Unavailable, the Councils shall be entitled to make Unavailability Deductions in accordance with the provisions set out in paragraph 1.7 (Calculation of Unavailability Deductions).

1.6 **Definition of Unavailable**

1.6.1 Subject to paragraph 1.4.1.2 for the purpose of this Schedule 12 Part 2 paragraph "Unavailable" and "Unavailability" shall comprise the situation where:

1.6.1.1 the Waste Management Facility in question other than any Mobile Household Waste Recycling Site is closed or is open in contravention of any Necessary Consent or any Law during the relevant opening hours specified in the Service Delivery Plan; or
1.6.1.2 the Waste Management Facility in question other than any Mobile Household Waste Recycling Site is open during the relevant opening hours specified in the Service Delivery Plan, but is unable to receive Contract Waste.

1.6.2 Unavailable in respect of any Mobile Household Waste Recycling Site shall comprise the situation where:

1.6.2.1 the facility is not provided in accordance with the applicable Service Delivery Plan;

1.6.2.2 the facility having failed to arrive on time is not available for use by members of the public; and

1.6.2.3 the facility having left early is not available for use by members of the public.

1.7 Calculation of Unavailability Deductions for WCA Facing Facility

For each incident where any WCA Facing Waste Management Facility other than any Household Waste Recycling Site is Unavailable the Councils shall be entitled to make an Unavailability Deduction in accordance with the following formula:

\[ D = df \left( n_1 m_1 + n_2 m_2 + n_3 m_3 \right) \]

Where:

\( D \) = the applicable Unavailability Deduction

\( d \) = the Standard Unavailability Deduction Rate

\( f \) = the relevant Weighting Factor

\( r = 1 \) hour

\( n_1 \) = the period of Unavailability (in hours) from the Commencement of Unavailability rounded up to the next whole hour, up to a maximum of \( 2r \)

\( m_1 = 1 \)

\( n_2 \) = the period of Unavailability (in hours) from \( 2r \) after the Commencement of Unavailability rounded up to the next whole hour up to a maximum of \( 4r \)

\( m_2 = 1.5 \)
n₃ = the period of Unavailability (in hours) from 4r after Commencement of Unavailability rounded up to the next whole hour, without limit.

m₃ = 2

1.8 Calculation of Unavailability Deductions for HWRS

For each incident where any Household Waste Recycling Site is Unavailable the Councils shall be entitled to make an Unavailability Deduction in accordance with the following formula:

\[ D = df \left( n_1 m_1 + n_2 m_2 + n_3 m_3 \right) \]

Where:

D = the applicable Unavailability Deduction

d = the Standard Unavailability Deduction Rate

f = the relevant Weighting Factor

r = 0.5 hours

n₁ = the period of Unavailability (in hours) from the Commencement of Unavailability rounded up to the next whole hour, up to a maximum of 10r

m₁ = 1

n₂ = the period of Unavailability (in hours) from 10r after the Commencement of Unavailability rounded up to the next whole hour, up to a maximum of 20r

m₂ = 2

n₃ = the period of Unavailability (in hours) from 20r after the Commencement of Unavailability rounded up to the next whole hour, without limit.

m₃ = 3

1.9 Calculation of Unavailability Deductions for Mobile Household Waste Recycling Site

For each incident where any Mobile Household Waste Recycling Site is Unavailable each such incident shall be rounded up to the next whole hour and the Councils shall be entitled to withhold from the applicable Household Waste Recycling Site Payment as set out in Schedule 6, Part 1 (H3 and H14) the appropriate proportion of such payment calculated on a time basis.
2. PERFORMANCE CRITERIA

2.1 Application of Performance Deductions

2.1.1 Performance Deductions shall be applied in accordance with the provisions of this Schedule.

2.2 Notification of default under Performance Criteria

2.2.1 The Contractor shall monitor and accurately record at all times its own performance of the Services and of compliance with or default under the Performance Criteria. The Contractor shall notify the Project Director weekly of any defaults under any of the Performance Criteria set out in Table 3 (Performance Criteria) specifying the time, place and category of the default. In respect of a Month if such a default shall have occurred there shall be allotted against the Contractor for that Month the applicable Performance Deductions.

2.2.2 The Project Director shall promptly, upon becoming aware of any default under any of the Performance Criteria, serve upon the Contractor a written notice (the "Performance Default Notice") providing the Contractor with reasonable detail of the time, place and category of the alleged default. If such a default shall have occurred there shall be allotted against the Contractor the applicable Performance Deduction.

2.2.3 The applicable Rectification Period shall run from the earlier of the time that the Contractor is aware of the occurrence of the default under the Performance Criteria and the time of the Performance Default Notice.

2.2.4 The Contractor shall, as soon as reasonably practicable notify the Project Director:

2.2.4.1 of any accident involving personal injury to any person at any Waste Management Facility or any material damage to the property of any member of the public or any WCA or any contractor to any WCA at any Waste Management Facility; or

2.2.4.2 of any notification received from the Environment Agency stating that the Contractor or the Operating Contractor is in respect of any Waste Management Facility in breach of either its Waste Management Licence or its PPC Permit (as the case may be); or
2.2.4.3 of any notification received from the planning officer of the relevant Council stating that a Waste Management Facility is failing to be operated in accordance with its planning permission or any conditions attaching thereto; or

2.2.4.4 of any notification received from the Health & Safety Executive stating that any Waste Management Facility is failing to be operated in accordance with Health & Safety Legislation such that there is a serious danger to persons at such a Waste Management Facility.

2.3 Calculation of Performance Deductions

2.3.1 Where a default has not been remedied within the applicable Rectification Period as set out in Table 3 the Contractor will incur the applicable Performance Deduction as set out in Table 2 (Performance Deductions).

2.3.2 Where the default in question has no Rectification Period then the applicable Performance Deduction shall accrue immediately.

Table 2: Performance Deductions

<table>
<thead>
<tr>
<th>Deduction Category</th>
<th>Performance Deduction (£) (Indexed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>1000</td>
</tr>
<tr>
<td>B</td>
<td>500</td>
</tr>
<tr>
<td>C</td>
<td>400</td>
</tr>
<tr>
<td>D</td>
<td>300</td>
</tr>
<tr>
<td>E</td>
<td>200</td>
</tr>
<tr>
<td>F</td>
<td>1500</td>
</tr>
<tr>
<td>G</td>
<td>3000</td>
</tr>
</tbody>
</table>
**Table 3A : Performance Criteria**

For the purposes of this Table 3A, in the Rectification Period or ‘Frequency of Application’ reference to Day or Days means a period of 24 hours from the time at which the Contractor became aware of the default.

<table>
<thead>
<tr>
<th>Performance Criteria</th>
<th>Deduction Category</th>
<th>Rectification Period</th>
<th>Frequency of Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Each failure to provide to the Lead Authority with the Monthly Report the complete and correct record of all weighing events in accordance with Schedule 21 Part 2</td>
<td>B</td>
<td>N/A</td>
<td>Each instance of an incomplete Monthly Report</td>
</tr>
<tr>
<td>1.2 Each failure to record waste and green waste delivered to on farm compost facilities in accordance with EWC (European Waste Classification).</td>
<td>B</td>
<td>N/A</td>
<td>Each instance of an incomplete Monthly Report</td>
</tr>
<tr>
<td>2.1 Each failure to implement any of the measures set out in the Service Delivery Plans for the prevention of tipping of non Contract Waste at any of the Household Waste Recycling Sites (other than as may be authorised under the Service Delivery Plan).</td>
<td>A</td>
<td>N/A</td>
<td>Each instance</td>
</tr>
<tr>
<td>2.2 Each acceptance (where such acceptance is knowingly undertaken by the Contractor) of Non Contract Waste at any Waste Management Facility (other than as may be authorised under the Service Delivery Plan), but only where such</td>
<td>A</td>
<td>N/A</td>
<td>Each instance</td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>Deduction Category</td>
<td>Rectification Period</td>
<td>Frequency of Application</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------------</td>
<td>--------------------</td>
<td>----------------------</td>
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</tr>
<tr>
<td>breach of Performance Criteria cannot be identified as being a deduction made for, a breach of the Performance Criteria in 2.1 above.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Each failure to observe any Legislation relating to any health and safety requirement.</td>
<td>C</td>
<td>N/A</td>
<td>Each instance</td>
</tr>
<tr>
<td>4. Each failure from the date being 6 months after the Commencement Date to maintain requisite corporate livery markings in a style to be agreed, in a clearly visible condition on any waste transportation vehicle and their related containers utilised in the provision of the Services save where the vehicle has been provided to the Contractor by a third party for use in providing the Services under a hire or lease contract of less than 3 Months in duration.</td>
<td>C</td>
<td>28 Days</td>
<td>On expiry of the rectification period and thereafter every 28 Days</td>
</tr>
<tr>
<td>5. Each failure from the date being 6 Months after the Commencement Date to maintain waste transportation vehicles and or containers utilised in the provision of the Services in accordance with the requirements set out at paragraph 3.20 of the</td>
<td>B</td>
<td>7 Days</td>
<td>On expiry of the Rectification Period and thereafter every 7 Days</td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>Deduction Category</td>
<td>Rectification Period</td>
<td>Frequency of Application</td>
</tr>
<tr>
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</tr>
<tr>
<td>Specification (Schedule 39).</td>
<td></td>
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</tr>
<tr>
<td>6. Each instance of failure to supply or serve any of the following:</td>
<td>A</td>
<td>28 Days</td>
<td>On expiry of the Rectification Period and thereafter every 28 Days</td>
</tr>
<tr>
<td>• the updated relevant Service Delivery Plan in accordance with clause 24 (Change in the Works or Services) or clause 25 (Change in Law) as the case may be;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• the Annual Environmental Report in accordance with Schedule 11 (Annual Environmental Report);</td>
<td></td>
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<tr>
<td>• two copies of documents as required under clause 11.3.1;</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• drawings in accordance with clause 20.1 (Deposit of and Access to As Built Drawings);</td>
<td></td>
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</tr>
<tr>
<td>• the appropriate report of an incident to the Project Director under clause 36.4 (Health &amp; Safety);</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>• any of the notices required to be served under clause 13.1 (Contractor as Client);</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• any of the Detailed Maintenance Plans and any amendment thereto in accordance with clause 22.3 (Planned Maintenance)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• a summary of the results of the annual Customer A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>Deduction Category</td>
<td>Rectification Period</td>
<td>Frequency of Application</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------</td>
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<td>----------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Satisfaction Survey in accordance with clause 31.2.5 (Duty to Deliver Survey Results); the Annual Service Report in accordance with clause 31.3.1; supporting information in accordance with clause 31.3.2; complete executed copies of any of the Ancillary Documents, (but only those to which the Councils are not party) the Construction Contract, the Operating Contract in accordance with clause 10.3 and any of the Minor Facilities Contracts in accordance with clause 10.4; equipment lists in accordance with clause 87 (Obligation to Supply and Annually Update Equipment List).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.1 Each failure to respond appropriately to written correspondence, email, telephone call or personal contact from a Council Officer or Council Member or member of the public in the case of written or electronic correspondence delivered to the Contractor’s</td>
<td>E</td>
<td>5 Business Days</td>
<td>On expiry of the Rectification Period and thereafter every 2 Business Days</td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>Deduction Category</td>
<td>Rectification Period</td>
<td>Frequency of Application</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------</td>
<td>----------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>relevant address and in the case of telephone or personal contact made to any member of staff at any Waste Management Facility with an acknowledgement of the contact within 5 Business Days and a full reply within 15 Business Days of receipt save where such failure on the part of the Contractor is due solely to a delay by either Council.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.2 Each failure to provide and manage the hotline in accordance with the Service Delivery Plan.</td>
<td>E</td>
<td>1 Business Day</td>
<td>On expiry of the Rectification Period and thereafter daily</td>
</tr>
<tr>
<td>7.3 Each failure to provide to the Councils the details of complaints received and logged under the telephone hotline for a Day by 1600 hours on the next Business Day.</td>
<td>E</td>
<td>N/A</td>
<td>Daily</td>
</tr>
<tr>
<td>8. Failure to take the appropriate corrective action as agreed between the Contractor and the Project Director such agreement not to be unreasonably withheld or delayed (having regard to the Contractor’s obligations under the Contract) within the agreed timescale following the receipt of a complaint save where the</td>
<td>A</td>
<td>1 Day</td>
<td>Daily</td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>Deduction Category</td>
<td>Rectification Period</td>
<td>Frequency of Application</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------</td>
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<td>----------------------</td>
<td>------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>breach results solely from a delay by either Council.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Each failure by the Contractor to notify the Project Director of those matters referred to in paragraph 2.2.4 of this part of this Schedule 12.</td>
<td>A</td>
<td>None</td>
<td>Daily</td>
</tr>
<tr>
<td>10. Each failure to manage and operate any Waste Management Facility in accordance with the relevant planning permission and the conditions attaching thereto provided that where works are required to be carried out to comply with the relevant planning permission and the conditions attaching thereto the failure to carry out such works within the timescale agreed with the Councils.</td>
<td>A</td>
<td>1 Day</td>
<td>On expiry of the Rectification Period and thereafter Daily</td>
</tr>
<tr>
<td>11. Each failure to comply with the strategy for public awareness and education set out in the Service Delivery Plan.</td>
<td>B</td>
<td>14 Days</td>
<td>On expiry of the rectification period and thereafter every 14 Days.</td>
</tr>
<tr>
<td>12. Each failure to clear away waste fly tipped within 5 metres of any Waste Management Facility.</td>
<td>E</td>
<td>1 Day</td>
<td>Each Instance</td>
</tr>
<tr>
<td>13. Each failure to comply with the requirements of paragraph 3.21 of the Specification Onyx Aurora and the Councils to agree the</td>
<td>D</td>
<td>5 Days</td>
<td>On expiry of the rectification period and thereafter every 10 Days thereafter.</td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>Deduction Category</td>
<td>Rectification Period</td>
<td>Frequency of Application</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------------</td>
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</tr>
<tr>
<td>style and number of signs.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Table 3B : Performance CriteriaHousehold Waste Recycling Sites**

<table>
<thead>
<tr>
<th>Performance Criteria</th>
<th>Deduction Category</th>
<th>Rectification Period</th>
<th>Frequency of Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Each failure to manage and operate the Household Waste Recycling Sites in accordance with the applicable Waste Management Licence provided that where any works are required to comply with the Waste Management Licence the failure to carry out such works in accordance with the timescale agreed with the Councils.</td>
<td>A</td>
<td>1 Day</td>
<td>On expiry of the rectification period and thereafter every Day.</td>
</tr>
<tr>
<td>2. Each failure on the part of any member of Staff to behave towards any member of the public and members and officers of the Councils in a courteous manner</td>
<td>D</td>
<td>None</td>
<td>Each instance</td>
</tr>
<tr>
<td>3. Each failure to provide the means for the separation of any of the types of waste as detailed in the Service Delivery Plan for each Household Waste Recycling Site.</td>
<td>B</td>
<td>7 Days</td>
<td>On expiry of the rectification period and thereafter every 7 days.</td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>Deduction Category</td>
<td>Rectification Period</td>
<td>Frequency of Application</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------------</td>
<td>----------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>4. Each failure to provide any of the containers required for the separation of Waste, as set out in paragraph 3 above, in a clean and serviceable condition and capable of receiving waste.</td>
<td>E</td>
<td>None</td>
<td>Daily</td>
</tr>
<tr>
<td>5. Each failure to use all reasonable endeavours to maintain continuity of traffic flow within any Household Waste Recycling Site excepting traffic restrictions existing at HWRSs on the Household Waste Recycling Site Service Commencement Date, in accordance with the Service Delivery Plans for each HWRS.</td>
<td>B</td>
<td>None</td>
<td>Each day</td>
</tr>
</tbody>
</table>

Table 3C : Performance Criteria

<table>
<thead>
<tr>
<th>Performance Criteria</th>
<th>Deduction Category</th>
<th>Rectification Period</th>
<th>Frequency of Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Each failure to manage and operate an Energy Recovery Plant in accordance with the applicable Pollution Prevention and Control Permit provided that where any works are required to comply with the Pollution Prevention and Control Permit the failure to carry out such works in accordance with the timescale agreed with the Councils.</td>
<td>G</td>
<td>1 Day</td>
<td>Daily</td>
</tr>
<tr>
<td>Performance Criteria</td>
<td>Deduction Category</td>
<td>Rectification Period</td>
<td>Frequency of Application</td>
</tr>
<tr>
<td>----------------------</td>
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<td>----------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>2. Each failure to manage and operate any Waste Management Facility (other than an Energy Recovery Plant) in accordance with the applicable Waste Management Licence provided that where any works are required to comply with the Waste Management Licence the failure to carry out such works in accordance with the timescale agreed with the Councils.</td>
<td>F</td>
<td>1 Day</td>
<td>Daily</td>
</tr>
<tr>
<td>3. Each failure to achieve Turnaround Time of 30 minutes for any vehicle delivering or proffering for delivery Contract Waste to any WCA Facing Waste Management Facility in accordance with paragraph 3.26 of the Specification.</td>
<td>E</td>
<td>None</td>
<td>Each instance</td>
</tr>
</tbody>
</table>

2.4 **Non Application of Performance Deductions**

2.4.1 Where:

2.4.1.1 the breach of the Performance criteria arise as a result of the implementation of a Notice of Change but only to the extent that such defaults were documented within the revised Service Delivery Plan;

2.4.1.2 the Councils are entitled to make an Unavailability Deduction for the same event;

2.4.1.3 the breach of the Performance Criteria arises as a direct result of any default or omission of either of the Councils in their
capacity as Waste Disposal Authorities or of any person for whom the Councils are responsible;

2.4.1.4 the breach of the Performance Criteria arises as a direct result of an instruction from the Project Director;

2.4.1.5 the breach of the Performance Criteria arises solely due to the terms and conditions of Landfill Contracts in the form novated to the Contractor rendering a breach of the Performance Criteria unavoidable there shall be no application of Performance Deductions; or

2.4.1.6 the breach of the Performance Criteria arises due to the carrying out of any Remediation Works but only in so far as they relate to pre-existing contamination upon any Existing Site.

### 2.5 Cap on Unavailability and Performance Deductions

The aggregate amount of any Unavailability Deductions and Performance Deductions shall not exceed £500,000 during 12 consecutive Months. This cap of £500,000 shall be applied on a rolling 12 Month basis and shall be calculated as at the last Business Day of each Month.

2.6 Without prejudice to the Contractor’s obligations under paragraph 2.2 (Notification of Default under Performance Criteria) the Contractor shall notify the Project Director in the relevant Monthly Report of the total amount of Performance Deductions accrued by the Contractor in the previous Month and the previous 12 Months.

### 3. SERVICE OF A WARNING NOTICE

3.1 Where:

3.1.1 the Contractor suffers Performance Deductions in excess of £30,000 during any period consisting of 6 consecutive Months; or

3.1.2 the Contractor suffers Unavailability Deductions in excess of £30,000 during any period consisting of 6 consecutive Months;

3.1.3 the Contractor fails to achieve either the Recycling Target and or the Recovery Target at Months 6, 9 and 12 of each Contract Year; or
3.1.4 the Contractor incurs 15 or more instances of Unavailability whether or not they incur financial deductions during any period consisting of 6 consecutive Months; or

3.1.5 the Contractor breaches on 30 or more instances the Performance Criteria, whether or not they incur financial deductions during any period consisting of 6 consecutive Months.

the Project Director may issue the Contractor with a Warning Notice detailing which of the failure or failures listed above in paragraphs 3.1.1 to 3.1.5 inclusive is or are applicable.

4. **SERVICE OF A DEFAULT NOTICE**

4.1 Where:

4.1.1 the Contractor suffers Performance Deductions in excess of £100,000 during any period consisting of 12 consecutive Months; or

4.1.2 the Contractor suffers Unavailability Deductions in excess of £100,000 during any period consisting of 12 consecutive Months;

the Project Director may issue the Contractor with a Default Notice, detailing which of the failure or failures listed above in paragraphs 4.1.1 and 4.1.2 is applicable.

5. **RECYCLING AND RECOVERY PERFORMANCE**

5.1.1 Within 10 Business Days after the last day of Month 10 in each Contract Year the Contractor shall deliver to the Project Director a draft forecast of the “Contractor Recycling Forecast” and “Contractor Recovery Forecast” to be achieved by the Contractor in the following Contract Year.

5.1.1.1 Calculation of Contractor Recycling Forecast

The Contractor Recycling Forecast for the following Contract Year shall be:

Recycling Target – FDP WCA - RDFQ

where

FDPWCA

\(((FDPE+FDPH+FDPL+FDPR+FDPW) / FHWT) * 100\)
RDFQ = (2000/FHWT)*100

Provide that for the Contract Year commencing 1 April 2007 to 15 June 2007

RDFQ = (2000 x 2.5/12/FHWT)*100

From 15 June 2007 RDFQ shall be zero for all subsequent Contract Years.

FDPE = the applicable Diversion Level divided by 100 for Eastbourne Borough Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste forecast to be collected by such WCA within such WCA’s administrative area during the following Contract Year.

FDPH = the applicable Diversion Level divided by 100 of Hasting Borough Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste forecast to be collected by such WCA within such WCA’s administrative area during the following Contract Year.

FDPL = the applicable Diversion Level divided by 100 of Lewes District Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste forecast to be collected by such WCA within such WCA’s administrative area during the following Contract Year.

FDPR = the applicable Diversion Level divided by 100 of Rother District Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste forecast to be collected by such WCA within such WCA’s administrative area during the following Contract Year.

FDPW = the applicable Diversion Level divided by 100 of Wealden District Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste forecast to be collected by such WCA within such WCA’s administrative area during the following Contract Year.
FHWT = Total weight in tonnes of Household Waste forecast to arise in the Councils’ area in the following Contract Year.

5.1.1.2 Calculation of forecast Contractor Recovery Target

(a) The forecast Contractor Recovery Target for each Contract Year up to and including the Contract Year ending 31 March 2015 shall be:

Recovery Target – ((FDTWCA)/FMWT) * 100 - RDFP

where

FDTWCA = FDPE + FDPH + FDPL + FDRP + FDPW

FMWT is the total weight in tonnes of Municipal Waste forecast to arise in the Councils’ area in the following Contract Year

RDFP is the deemed performance of the Refuse Derived Fuel Plant at Pebsham until 15 June 2007

where

RDFP = ((75,000 * 35/100)/FMWT) * 100

Provided that for the Contract Year commencing 1 April 2007

RDFP = ((75,000 * 35/100 x 2.5/12)/FMWT) * 100

(b) The forecast Contractor Recovery Target for the Contract Year commencing 1 April 2015 and for each Contract Year thereafter shall be:

Recovery Target - FDPWCA

5.1.1.3 Calculation of Contractor Recycling

The Contractor Recycling Target shall be:

Recycling Target – DP WCA - RDFQ

where

DPWCA = ((DPE + DPH + DPL + DPR + DPW)/HWT) * 100
DPE = the applicable Diversion Level divided by 100 for Eastbourne Borough Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.

DPH = the applicable Diversion Level divided by 100 for Hasting Borough Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.

DPL = the applicable Diversion Level divided by 100 for Lewes District Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.

DPR = the applicable Diversion Level divided by 100 for Rother District Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste collected by such WCA within such WCA’s area during the relevant Contract Year.

DPW = the applicable Diversion Level divided by 100 for Wealden District Council (Table 10.1 Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.

HWT = Total weight in tonnes of Household Waste arising in the Councils’ area in the relevant Contract Year

5.1.1.4 Calculation of Contractor Recovery

(a) The Contractor Recovery Target for each Contract Year up to and including the Contract Year ending 31 March 2015 shall be:

\[ \text{Recovery Target} = \left( \frac{\text{DTWCA}}{\text{MWT}} \right) \times 100 - \text{RDFP} \]
where

\[
\text{DTWCA} = \text{DPE} + \text{DPH} + \text{DPL} + \text{DRP} + \text{DPWMWT}
\]

is the total weight in tonnes of Municipal Waste arising in the Councils’ area in the relevant Contract Year

(b) The Contractor Recovery Target for the Contract Year commencing 1 April 2015 and for each Contract Year thereafter shall be:

Recovery Target - DPWCA

5.1.2 The Contractor shall deliver with the forecast all workings and supporting information as would be reasonably required by a competent person to satisfy themselves that the forecast was fair and objective.

5.1.3 The Contractor and the Project Director shall seek to agree the forecast on or before the start of each Contract Year.

5.1.4 The Contractor Recycling Rate and Contractor Recovery Rate shall be calculated in accordance with the calculation set out in paragraph 5.1.1.3 and 5.1.1.4 for each period of 3, 6, 9 and 12 Months in each Contract Year.

5.1.4.1 The Contractor Recycling Rate shall mean the percentage of Household Waste that is Contract Waste that is Recycled by the Contractor.

5.1.4.2 The Contractor Recovery Rate shall mean:

(i) for each Contract Year up to and including the Contract Year ending 31 March 2015 the percentage of Municipal Waste that is Contract Waste that is Recovered by the Contractor.

(ii) for each subsequent Contract Year the percentage of Household Waste that is Contract Waste that is Recovered by the Contractor.

5.1.4.3 If it is not possible to reasonably calculate the Contractor Recycling Rate and or the Contractor Recovery Rate at Months 6, 9 and 12 because of the late supply of information from the WCAs then the Contractor Recycling Rate and the Contractor Recovery Rate shall be calculated based on the forecast performance of one or more of the WCAs as necessary.
5.1.5 **Warning Notice**

5.1.5.1 If in any Contract Year at Months 6 and 9 either:

(a) the Contractor’s Recycling Rate; or

(b) the Contractor’s Recovery Rate

shall in either case fall below 2% percentage points below the applicable Contractor’s Recycling Target or the applicable Contractor’s Recovery Target as the case may be then a Warning Notice may be served on the Contractor.

5.1.5.2 If the Contractor Recycling Rate is less than the Contractor Recycling Target at Month 12 in any Contract Year a Warning Notice may be served upon the Contractor.

5.1.5.3 If the Contractor Recovery Rate is less than the Contractor Recovery Target measured over 12 Months in any of the following Contract Years being:

1 April 2005 to 31 March 2006

1 April 2006 to 31 March 2007

1 April 2007 to 31 March 2008

1 April 2008 to 31 March 2009

1 April 2009 to 31 March 2010

and the Recovery Rate (calculated in accordance with Schedule 8) falls below 33% the Project Director may serve a Warning Notice upon the Contractor.

5.1.5.4 If the Contractor Recovery Rate is less than the Contractor Recovery Target measured over 12 Months in the Contract Year commencing 1 April 2010 and each subsequent Contract Year the Project Director may serve upon the Contractor a Warning Notice.

5.1.6 **Default Notice**
5.1.6.1 Within 10 Business Days after 1 July in each Contract Year the Contractor and the Lead Authority shall seek to agree the Recycling Rate (as calculated in Schedule 8) for the immediately preceding Contract Year. Where unable to reach agreement the matter may be referred for determination under clause 70 (Dispute Resolution).

5.1.6.2 If the Recycling Rate so agreed or determined falls below the Recycling Target for such Contract Year the Project Director may serve upon the Contractor a Default Notice.

5.1.6.3 Within 10 Business Days after 1 July in each Contract Year for the following Contract Years:

- 1 April 2005 to 31 March 2006
- 1 April 2006 to 31 March 2007
- 1 April 2007 to 31 March 2008
- 1 April 2008 to 31 March 2009
- 1 April 2009 to 31 March 2010

the Contractor and the Lead Authority shall seek to agree the Recovery Rate (as calculated in Schedule 8) for the immediately preceding Contract Year. Where unable to reach agreement the matter may be referred for determination under clause 70 (Dispute Resolution).

5.1.6.4 If the Recovery Rate so agreed or determined falls below the Recovery Target for such Contract Year and below a Recovery Rate of 33% the Project Director may serve upon the Contractor a Default Notice.

5.1.6.5 Within 10 Business Days after 1 July in the Contract Year commencing 1 April 2010 and each subsequent Contract Year the Contractor and the Lead Authority shall seek to agree the Recovery Rate (as calculated in Schedule 8) for the immediately proceeding Contract Year. (Where unable to reach agreement the matter may be referred for determination under clause 70 (Dispute Resolution).
5.1.6.6 If the Recovery Rate so agreed or determined falls below the Recovery Target for such Contract Year the Project Director may serve upon the Contractor a Default Notice.

5.1.7 Non reimbursement of Landfill Tax due to the Contractor’s failure to achieve the Recovery Target.

5.1.7.1 In circumstances where in accordance with paragraphs 5.1.5.3 and 5.1.6.3 of this part 2 of Schedule 12 the Project Director may only serve a Warning Notice or a Default Notice upon the Contractor where the Recovery Rate falls below 33% then the Contractor shall not be reimbursed for any additional Landfill Tax incurred as a consequence of the Recovery Rate being less than:

(i) 40% for each Contract Year commencing 1 April 2005 up to and including the Contract Year commencing 1 April 2007; and

(ii) 45% for the Contract Years commencing 1 April 2008 and 1 April 2009.

5.1.8 The Project Director shall not be entitled to serve upon the Contractor a Default Notice if the failure by the Contractor to achieve the Recycling Target or the Recovery Target or both was less than the amount by which:

5.1.8.1 in the case of failure by the Contractor to meet the Recovery Target for the relevant Contract Year the actual performance of the Pebsham RDF shall have fallen below the Pebsham RDF deemed performance (RDFP);

5.1.8.2 in the case of any failure by the Contractor to meet the recycling Target and/or the Recovery Target for the relevant Contract Year where DWCA > ADWCA

(a) Deemed WCA tonnage in aggregate of Recycling.

\[
DWCA = DDPE + DDPH + DDPL + DDPR + DDPW + DPBH
\]

where

\[
DDPE = \text{the combined applicable Diversion Level and Delivery Level divided by 100 for Eastbourne Borough Council (Tables 10.1 and 10.4A,}
\]
Schedule 12 Part 1) multiplied by the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.

\[ \text{DDPH} = \frac{\text{the combined applicable Diversion Level and Delivery Level divided by 100 for Hastings Borough Council (Tables 10.1 and 10.4A, Schedule 12 Part 1)}}{100} \times \text{the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.} \]

\[ \text{DDPL} = \frac{\text{the combined applicable Diversion Level and Delivery Level divided by 100 for Lewes District Council (Tables 10.1 and 10.4A, Schedule 12 Part 1)}}{100} \times \text{the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.} \]

\[ \text{DDPR} = \frac{\text{the combined applicable Diversion Level and Delivery Level divided by 100 for Rother District Council (Tables 10.1 and 10.4A, Schedule 12 Part 1)}}{100} \times \text{the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.} \]

\[ \text{DDPW} = \frac{\text{the combined applicable Diversion Level and Delivery Level divided by 100 for Wealden District Council (Tables 10.1 and 10.4A, Schedule 12 Part 1)}}{100} \times \text{the weight in tonnes of Household Waste collected by such WCA within such WCA’s administrative area during the relevant Contract Year.} \]

\[ \text{DPBH} = \frac{\text{the applicable Delivery Level divided by 100 for Brighton & Hove City Council as WCA (Table 10.4B, Schedule 12 Part 1)}}{100} \times \text{the weight in tonnes of Household Waste collected by such WCA within such WCA administrative area during the relevant Contract Year.} \]
area during the relevant Contract Year.

(b) Actual WCA tonnage in aggregate of Recycling.

\[ ADWCA = ADPE + ADPH + ADPL + ADPR + ADPW + ADBH \]

where

\[ ADPE = \text{the weight in tonnes of Recycled Household Waste collected by Eastbourne Borough Council within Eastbourne Borough in the relevant Contract Year and diverted from and or delivered to the Contractor} \]

\[ ADPH = \text{the weight in tonnes of Recycled Household Waste collected by Hastings Borough Council within Hastings Borough in the relevant Contract Year and diverted from and or delivered to the Contractor} \]

\[ ADPL = \text{the weight in tonnes of Recycled Household Waste collected by Lewes District Council within Lewes District in the relevant Contract Year and diverted from and or delivered to the Contractor} \]

\[ ADPR = \text{the weight in tonnes of Recycled Household Waste collected by Rother District Council within Rother District in the relevant Contract Year and diverted from and or delivered to the Contractor} \]

\[ ADPW = \text{the weight in tonnes of Recycled Household Waste collected by Wealden District Council within Wealden District in the relevant Contract Year and diverted from and or delivered to the Contractor} \]

\[ ADBH = \text{the weight in tonnes of Recycled Household Waste collected by Brighton & Hove City Council within Brighton & Hove in the relevant Contract Year and diverted from and or delivered to the Contractor} \]
6. **PROCEDURE FOLLOWING ISSUE OF A WARNING NOTICE**

6.1 Following the issue of a Warning Notice the Contractor shall, within 10 Business Days of the date of the Warning Notice, submit to the Project Director a Warning Remedy Plan. This will set out all material details of every specific measurable action the Contractor proposes to take to avoid any repetition of the relevant failures in all cases in sufficient detail to allow the Project Director to form a clear and informed view on objective grounds of the suitability of the Warning Remedy Plan, in rectifying where possible the relevant failures and in all cases in avoiding any repetition of the relevant failures. The Warning Remedy Plan shall specify the period of time in Days in which the Contractor shall complete each of the actions and the overall period of time for rectification ("the Remedy Period"), such Remedy Period being the minimum reasonably practicable given the nature of the relevant failures.

6.2 On receipt of the Warning Remedy Plan the Project Director shall review such plan and the Contractor and the Project Director shall within 10 Business Days (or such other period as the Parties shall agree) meet (as often as necessary) to agree the contents of the Warning Remedy Plan and if the parties cannot agree the contents of the Warning Remedy Plan within 60 days the matter shall be referred to the Dispute Resolution Procedure with a request that an appropriate Warning Remedy Plan be determined.

6.3 Where the Project Director accepts the Warning Remedy Plan or where the Warning Remedy Plan has been determined by the Dispute Resolution Procedure, the Contractor shall complete each action set out therein within the individual timings set out therein and the Warning Remedy Plan as a whole within the Remedy Period specified therein.

6.4 For the purpose of this paragraph 6 a Warning Remedy Plan shall have been properly completed if:

6.4.1 the matter or matters giving rise to and the effects of the event or events leading to the issue of the Warning Notice have been duly corrected; and

6.4.2 all steps set out therein have been taken to prevent a recurrence of the event or events leading to the issue of the Warning Notice; and

6.4.3 all actions referred to in the Warning Remedy Plan shall have been taken properly in accordance therewith.
7. **PROCEDURE FOLLOWING ISSUE OF A DEFAULT NOTICE**

7.1 Following the issue of a Default Notice the Contractor shall, within 10 Business Days of the date of the Default Notice, submit to the Project Director a Remedy Plan. This will set out all material details of every specific measurable action the Contractor proposes to take to avoid any repetition of the default in all cases in sufficient detail to allow a competent expert in the relevant field to form a clear and informed view on objective grounds of the suitability of the Remedy Plan. The Remedy Plan shall specify the period of time in Days (the “Remedy Period”) in which the Contractor shall complete each of the actions and the overall Remedy Period, such Remedy Period being the minimum reasonably practicable given the nature of the default in question.

7.2 On receipt of the Remedy Plan the Project Director shall review such plan and the Contractor and Project Director shall, within 10 Business Days (or such other period as the Parties shall agree) meet (as often as necessary to agree the contents of the Remedy Plan and if the parties cannot agree the Remedy Plan within 60 days the matter shall be referred to the Dispute Resolution Procedure with a request that an appropriate Remedy Plan be determined.

7.3 Where the Project Director accepts the Remedy Plan or where the Remedy Plan has been determined by the Dispute Resolution Procedure, the Contractor shall complete each action set out therein within the individual timings set out therein and the Remedy Plan as a whole within the Remedy Period specified therein.

7.4 If:

7.4.1 at any time during the Remedy Period the Contractor and the Councils agree that the Contractor will not be able to complete the Remedy Plan within the Period; or

7.4.2 the Contractor shall fail to complete any material activity under the Remedy Plan within the applicable time limit; or

7.4.3 the Councils having requested such determination under the Dispute Resolution Procedure at any time it shall be determined pursuant to the Dispute Resolution Procedure that the Contractor will on a balance of probabilities be unable to complete the Remedy Plan within the Period; or

7.4.4 at the end of the Remedy Period the Contractor shall have failed to complete the Remedy Plan
the Councils may terminate the Contract in accordance with clause 52 (Termination of Contract on Insolvency Default or Contractor Default) 

7.5 For the purpose of this paragraph 7 a Remedy Plan shall have been properly completed if:

7.5.1 the matter or matters giving rise to and the effects of the default have been duly corrected; and

7.5.2 all steps set out therein have been taken to prevent a recurrence of the default; and

7.5.3 all actions referred to in the Remedy Plan shall have been taken properly in accordance therewith.