

CONTRACT A

Schedule 44 (Compensation on Termination)

1. COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT

The following provisions of this paragraph 1 shall, apply on termination of the Contract pursuant to Clause 80 (Termination for Contractor Default) and any compensation payable by the Authority to the Contractor shall be determined accordingly:

Retendering Election

1.1. **Subject to paragraph 1.2, the Authority shall be entitled either to:-**

1.1.1. **retender the provision of the Project in accordance with paragraph 1.3 (Retendering Procedure); or**

1.1.2. **require an expert determination in accordance with paragraph 1.4 (No Retendering Procedure).**

1.2. **The Authority shall be entitled to retender the provision of the Project in accordance with paragraph 1.3 (Retendering Procedure) if:**

1.2.1. **the Authority notifies the Contractor on or before the date falling 20 Business Days after the Termination Date; and**

1.2.2. **there is a Liquid Market;**

but otherwise the Authority shall not be entitled to re-tender the provision of the Services and paragraph 1.4 (No Retendering) shall apply.

Retendering Procedure

1.3. **If the Authority elects to retender the provision of the Project under paragraph 1.1 (Retendering Election), then the following provisions shall apply:**

1.3.1. **The objective of the retendering procedure shall be to establish and pay to the Contractor the Highest Compliant Tender Price, as a result of the**

Tender Process.

- 1.3.2. The Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.**
- 1.3.3. The Authority shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms.**
- 1.3.4. The Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under Clause 123 (Freedom of Information and Confidentiality) that is reasonably required as part of the Tender Process.**
- 1.3.5. The Contractor may, at its own cost, appoint a person (the “Tender Process Monitor”) to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor on the Authority’s compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price.**
- 1.3.6. The Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such**

representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 116 (Dispute Resolution).

1.3.7. For all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:

1.3.7.1. the Post Termination Service Amount for that month, on or before the date falling 10 Business Days after the end of that month; and

1.3.7.2. the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling 20 Business Days after the Compensation Date.

1.3.8. If any Post Termination Service Amount is less than zero, then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price.

1.3.9. The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into and on the basis that the Contractor's right to Handle Non Contract Waste at the MRF pursuant to Clause 57 (Non Contract Waste) and the Payment Mechanism shall (when taken together with Contract Waste Handled at the MRF in that Contract Year) be capped in any Contract Year at the Design Capacity of the MRF ('Non Contract Waste Compensation Cap').

1.3.10. As soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify

the Contractor of the Adjusted Highest Compliant Tender Price.

- 1.3.11.** If the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 116 (Dispute Resolution) the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling 20 Business Days after it has been determined under Clause 116 (Dispute Resolution) and the Authority shall pay interest to the Contractor at the Corporate Debt Rate on any amount of Adjusted Highest Compliant Tender Price which had been withheld from the date specified in paragraph 1.3.13 below until the date specified in this paragraph 1.3.12. For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in paragraph 1.3.13 below with the disputed amount being dealt with in accordance with this paragraph 1.3.12.
- 1.3.12.** Subject to paragraphs 1.3.12 and 1.3.16 the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling 20 Business Days after the date of the New Contract.
- 1.3.13.** The discharge by the Authority of its payment obligation in paragraphs 1.3.12 and/or 1.3.13 above shall be in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of the Contract and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the Termination Date that has not already been taken into account in the Adjusted Highest Compliant Tender Price.
- 1.3.14.** Subject to paragraphs 1.3.16 and 1.3.19 below, if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two years after the Termination Date then the following

provisions of this paragraph shall not apply to that termination and the provisions of paragraph 1.4 (No Retendering Procedure) shall apply instead.

- 1.3.15. If the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Contract and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.**
- 1.3.16. If the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract.**
- 1.3.17. The Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under paragraph 1.4 (No Retendering Procedure) by notifying the Contractor that this election has been made.**
- 1.3.18. If the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within 20 Business Days of such notification.**

No Retendering Procedure

- 1.4. If either the Authority is not entitled to retender the provision of the Project under paragraph 1.3 (Retendering Election Procedure), or the Authority elects to require an expert determination in accordance with this paragraph 1.4 (No Retendering Procedure), then the following procedure shall apply:**

- 1.4.1. Subject to paragraph 1.4.2 below, the Contractor shall not be entitled to receive any Post Termination Service Amount.**
- 1.4.2. If the Authority elects to require an expert determination in accordance with this paragraph 1.4 (No Retendering Procedure) after it has elected to follow the procedure under paragraph 1.3 (Retendering Procedure) then the Authority shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 1.3 (Retendering Procedure).**
- 1.4.3. In agreeing or determining the Estimated Fair Value of the Contract, the parties shall be obliged to follow the principles set out below:**
- 1.4.3.1. all forecast amounts (including subject to the Non Contract Waste Compensation Cap, Third Party Income) shall be calculated in nominal terms at current prices, recognising the adjustment for Indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Contract;**
 - 1.4.3.2. the total of all future payments of the full Unitary Charge (without deductions) and subject to the Non Contract Waste Compensation Cap, Third Party Income forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;**
 - 1.4.3.3. the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to paragraph 1.4.3.2 above, such**

costs to include (without double counting):

- 1.4.3.3.1. a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;**
- 1.4.3.3.2. the costs of the service forecast to be incurred by the Authority in providing the Project to the standard required;**
- 1.4.3.3.3. all costs (and depreciation and other charges) in generating any Third Party Income forecast to be incurred such as to reduce the level of Third Party Income to the net income from that Third Part Income which the Contractor would actually have received had the Contract not been terminated; and**
- 1.4.3.3.4. any Rectification Costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Authority to complete construction or development work and additional operating costs required to restore operating services standards),**

in each case such costs to be forecast at a level that will deliver the full Unitary Charge referred to in paragraph 1.4.3.2 above.

1.4.4. If the parties cannot agree on the Adjusted

Estimated Fair Value of the Contract on or before the date falling 20 Business Days after the date on which the Authority elected to require an expert determination in accordance with this paragraph 1.4 (No Retendering Procedure) then the Estimated Fair Value of this Contract shall be determined in accordance with Clause 116 (Dispute Resolution).

1.4.5. The Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling 60 days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this paragraph 1.4 (No Retendering Procedure).

1.4.6. The discharge by the Authority of its obligation in paragraph 1.4.5 is in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract or other Project Document whether in contract, tort, restitution or otherwise save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.

1.4.7. To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Contractor to the Authority on the Compensation Date.

2. COMPENSATION ON VOLUNTARY TERMINATION/AUTHORITY DEFAULT

2.1. On termination of the Contract pursuant to Clause 82 (Voluntary Termination) or pursuant to Clause 84 (Authority Default) or in the event that Schedule 43 (Relevant Discharge Terms) applies, the Authority shall pay to the Contractor the Authority Default Termination Sum as defined in this paragraph 2 (Compensation on Voluntary Termination/Authority Default).

2.2. The Authority Default Termination Sum shall be an amount equal to the aggregate of:

2.2.1. the aggregate amount for which the share capital of the Contractor could have been sold on an open

market basis based on the Relevant Assumptions and the further assumption that the Contractor shall be valued for its enterprise value on the basis that the Contractor is debt free (whether in respect of the Initial Financing Agreements or otherwise)) and on the basis that the Contractor's right to Handle Non Contract Waste at the MRF pursuant to Clause 57 (Non Contract Waste) and the Payment Mechanism shall (when taken together with the Contract Waste Handled at the MRF in that Contract Year) be capped in any Contract Year at the Design Capacity of the MRF ('Non Contract Waste Compensation Cap');

plus

2.2.2. redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract;

plus

2.2.3. Sub-Contractor Breakage Costs.

3. COMPENSATION ON TERMINATION FOR FORCE MAJEURE

3.1. On termination of the Contract pursuant to Clause 89 (Force Majeure), the Authority shall pay to the Contractor the Force Majeure Termination Sum in accordance with this paragraph 3 (Compensation on Termination for Force Majeure):

3.2. Subject to paragraph 3.3 below, the Force Majeure Termination Sum shall be the amount equal to the aggregate of:-

3.2.1. Base Case capital costs as set out in the Base Case Financial Model;

minus

3.2.2. recoveries of capital to the Termination Date as calculated (in nominal cash terms) from:

3.2.2.1. total Unitary Charges paid to date:

less

3.2.2.2. operating costs and capital expenditures incurred to date as shown in the Base Case (where operating costs include

the provision for corporate overhead costs to be made in the Base Case);

plus

3.2.3. redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract;

plus

3.2.4. **Sub-Contractor Breakage Costs.**

3.3. If the calculation referred to at paragraphs 3.2.1 and 3.2.2 above produces an amount which is less than zero, then for the purposes of the calculation in paragraph 3.2 that amount shall be deemed to be zero.

4. **COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD**

4.1. On termination of the Contract pursuant to Clause 91 (Termination for Corrupt Gifts and Fraud), then the Contractor shall not be entitled to any compensation payment.