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COMPANIES FORM No. 395 RBS £10 - 015687

# 395

## Particulars of a mortgage or charge

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write in  
this margin

Pursuant to section 395 of the Companies Act 1985

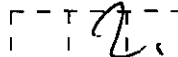
To the Registrar of Companies  
(Address overleaf)

For official use

Company number

Please complete  
legibly, preferably  
in black type, or  
bold block lettering

Name of company



3497105

\* insert full name  
of company

\* Kirklees Waste Services Limited (the "Chargor")

Date of creation of the charge

21st September 2000

Description of the instrument (if any) creating or evidencing the charge (note 2)

Debenture (the "Charge")

Amount secured by the mortgage or charge

All present and future obligations and liabilities of the Chargor to the Security Trustee and the Finance Parties (or any of them) under the Charge and under the Facility Agreement and any Finance Document to which it is a party and/or any deed or document supplemental thereto, whether actual, contingent, sole, joint and/or several or otherwise, including without limitation, all obligations to indemnify the Security Trustee and the Finance Parties (the "Secured Liabilities").

Names and addresses of the mortgagees or persons entitled to the charge

Dexia Public Finance Bank S.A., London Branch, whose address is 55 Tufton Street, London  
for itself as agent for the Banks (the "Agent") and security trustee for and on behalf of the  
Finance Parties (the "Security Trustee")

Postcode

SW1P 3QF

Presentor's name address and  
reference (if any):

Dundas & Wilson CS  
Saltire Court  
20 Castle Terrace  
Edinburgh EH1 2EN  
NLR/TW/MPS/CLF001.0001

For official Use  
Mortgage Section



Time critical reference

Short particulars of all the property mortgaged or charged

See Paper Apart 1

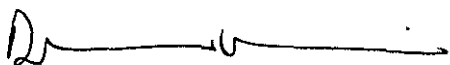
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legibly, preferably  
in black type or  
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Particulars as to commission allowance or discount

Nil

Signed



Date

28/9/2000

On behalf of ~~company~~ [chargee]\*

\*  
delete as  
appropriate

The address of the Registrar of Companies is: -

Companies House, Crown Way, Cardiff CF4 3UZ

This is Paper Apart 1 referred to in the foregoing Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

## LEGAL MORTGAGE AND FIXED CHARGE

The Chargor with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, as security for the payment of all Secured Liabilities, charges in favour of the Security Trustee (as agent and security trustee as aforesaid):-

(a) by way of first legal mortgage:-

- (i) all the property (if any) specified in Schedule 1 of the Charge together with all buildings and Fixtures thereon, the proceeds of sale of all or any part thereof and the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor and any moneys paid or payable in respect of such covenants subject, in the case of any leasehold properties (other than those leasehold properties specified in Schedule 1 of the Charge) to any necessary third party's consent to such legal mortgage being obtained; and
- (ii) all estates or interests in any freehold or leasehold property (other than that specified in Clause 3.1(a)(i) of the Charge) wheresoever situate now belonging to it other than any such situated in Scotland and all buildings and Fixtures thereon, the proceeds of sale of all or any part thereof and the benefits of any covenants for title given or entered into by any predecessor in title of the Chargor and any moneys paid or payable in respect of such covenants subject, in the case of any leasehold properties (other than those leasehold properties specified in Schedule 1 of the Charge) to any necessary third party's consent to such legal mortgage being obtained; and

(b) by way of first fixed charge:-

- (i) (to the extent the same are not the subject of an effective mortgage under Clause 3.1(a) of the Charge) all present and future estates or interests in any freehold or leasehold property belonging to it other than any such situated in Scotland and all buildings and Fixtures thereon and all proceeds of sale thereof and the benefit of any covenants for title given or entered into by any predecessor in title of the Chargor and any moneys paid or payable in respect of such covenants subject, in the case of any leasehold properties (other than those leasehold properties specified in Schedule 1 of the Charge) to any necessary third party's consent to such fixed charge being obtained;
- (ii) all plant, machinery, vehicles and equipment (including office equipment) now or in the future owned by the Chargor and, subject to any necessary third party's consent to such legal charge being obtained, its interest in any such plant, machinery, vehicles or equipment (including office equipment) in its possession;

- (iii) its present and future interest in the Securities and all other stocks, shares, debentures, bonds and other securities held by it from time to time and all rights relative thereto;
- (iv) all sums now or hereafter standing to the credit of any account (including, without limitation, each Bank Account other than the Distribution Account, the Treasury Account and the Treasury Reserve Account) held by or for the benefit of the Chargor, and the debts represented thereby and all interest and other accruals thereon (the "Account Monies") and all rights, titles, benefit and interest of the Chargor whatsoever present and future therein PROVIDED THAT without prejudice to the provisions of Clause 3.1 of the Charge any Account Monies paid out of the Bank Accounts in accordance with the Finance Documents and which are not paid into any other account held by the Chargor, shall be released from the fixed charge effected by Clause 3.1 of the Charge upon the date such Account Monies are so paid;
- (v) all benefits in respect of Insurances, all claims in respect thereof and return of premises;
- (vi) (to the extent that the same do not fall within any other sub-paragraph of this paragraph (b)) all book and other debts and other moneys due, owing, payable or incurred to it now or at any time and the benefit of all rights, securities and guarantees of any nature whatsoever now or at any time enjoyed or held by it in relation thereto PROVIDED THAT without prejudice to the provisions of Clause 3.1 of the Charge any Account Monies paid out of the Bank Accounts in accordance with the Finance Documents and which are not paid into any other account held by the Chargor, shall be released from the fixed charge effected by this Clause 3.1 upon the date such Account Monies are so paid;
- (vii) its present and future goodwill;
- (viii) the benefit of all present and future licences, permissions, consents and authorisations (statutory or otherwise) held in connection with its business or the use of any of the Secured Assets the subject of the security pursuant to sub-clause (a) above and the right to recover and receive all compensation which may at any time become payable to it in respect thereof;
- (ix) all knowhow licences and patents (including applications and rights to apply therefor), copyrights, rights in trademarks, service marks whether registered or not, and rights in confidential information now or at any time belonging to it; and
- (x) the rights, titles, benefits and interests of the Chargor whatsoever present and future whether proprietary, contractual or otherwise under or arising out of or evidenced by each Hedging Agreement;

provided that any property or assets situated in Scotland and any property or assets the rights in and to which are governed by the laws of Scotland shall be excluded from the mortgages and charges effected by paragraphs (a) and (b) above.

The Chargor will obtain title indemnity insurance in form and substance to the satisfaction of the Security Trustee within 14 days of receipt of disclosure by H. M. Land Registry that registration of title with title absolute will not be forthcoming in relation to any of the properties specified in Schedule 1 of the Charge.

## ASSIGNMENT

As security for the payment of all Secured Liabilities, the Chargor with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 hereby assigns and agrees to assign to the Security Trustee (as agent and security trustee aforesaid) absolutely (but subject always to the Chargor's right of redemption):

- (a) all its right, title and interest in and to the Insurances (certified copies of which shall be delivered to the Security Trustee on the signing hereof and from time to time thereafter when required by the Security Trustee in accordance with the Facility Agreement) and all rights of the Chargor to make recovery under any of the Insurances and all proceeds of the Insurances receivable by the Chargor; and
- (b) all the rights, titles, benefits and interests of the Chargor whatsoever present and future whether proprietary, contractual or otherwise under or arising out of or evidenced by:-
  - (i) the Share Sale Agreement;
  - (ii) the Subordinated Loan Agreement when entered into;
  - (iii) the Subscription and Subordination Agreement;
  - (iv) those of the Project Documents specified in Schedule 2 of the Charge (provided that the Chargor is a party to or has the benefit of such Project Documents); and
  - (v) all other contracts, deeds, undertakings, agreements, rights, warranties, securities, covenants, guarantees, bonds and indemnities of any nature now or at any time enjoyed by the Chargor and relating to the Project;

as the same are from time to time entered into and as from time to time varied, extended or replaced, with the full benefit of all negotiable or non-negotiable instruments, guarantees, indemnities, debentures, mortgages, charges, liens, collateral warranties and other security in respect of the same (being collectively the "Assigned Documents" which expression includes each and every of the same) including but not limited to all claims for damages or other remedies in respect of any breach thereof, reservation of proprietary rights, right of tracing, rights in the nature of security and all other rights and remedies of whatsoever nature now or hereafter held by the Chargor in respect of all or any of the foregoing and all moneys from time to time becoming due or owing thereunder or in connection therewith but so that the Security Trustee shall not in any circumstances incur any liability whatsoever in respect of any of the foregoing;

**Re-assignment** Upon final discharge by the Chargor of all the Secured Liabilities the Security Trustee shall upon request by the Chargor promptly re-assign to the Chargor all the

rights, titles, benefits and interests assigned to the Security Trustee under Clause 4.1 of the Charge subject to the Chargor indemnifying the Security Trustee against all costs and expenses in relation to such assignments, and subject to the Chargor being satisfied that sums received cannot be reclaimed.

## FLOATING CHARGE

As security for the payment of all Secured Liabilities, the Chargor with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994 charges in favour of the Security Trustee (as agent and security trustee as aforesaid) by way of floating charge all its undertakings and all its property, assets and rights whatsoever and wheresoever both present and future not otherwise effectively charged or assigned pursuant to Clauses 3 and 4 of the Charge.

The Chargor shall not otherwise than as permitted by the Facility Agreement:-

- (a) create or permit to subsist any Encumbrance over all or any part of the Secured Assets;
- (b) part with, sell, transfer or otherwise dispose of or agree to part with, sell, transfer or otherwise dispose of all or any part of the Secured Assets.

The Security Trustee may at any time by notice to the Chargor convert the floating charge hereby created into a specific charge as regards any assets specified in the notice which the Security Trustee shall consider to be in danger of being seized or sold under any form of distress attachment, execution or other legal process or to be otherwise in jeopardy.

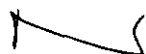
## ACCOUNTS

At any time whilst this security is enforceable, the Security Trustee may immediately or at any time thereafter, without prior notice to the Chargor :-

- (a) set-off all or any part of the Secured Liabilities against the liabilities of the Senior Creditors in respect of any account (including, without limitation, any Bank Account) of the Chargor (whether sole or joint) with the Security Trustee (or any Bank) at any of its offices anywhere; or
- (b) debit any account (including, without limitation, any Bank Account and any account opened specifically for that purpose) with all or any part of the Secured Liabilities from time to time; or
- (c) combine or consolidate any account (including, without limitation, any Bank Account) in any currency at any of its offices anywhere with any other accounts; or
- (d) apply or appropriate the sums standing to the credit of any account (including, without limitation, any Bank Account) in or towards the payment or discharge of the Secured Liabilities in accordance with Clause 16 of the Charge.

For the purposes of Clause 6.1 of the Charge the Security Trustee shall be entitled:-

- (a) to make any currency conversions or effect any transaction in currencies which it thinks fit, and to do so at such times as it thinks proper and at market rates;
- (b) to break or determine any deposit in whole or in part (and any costs reasonably incurred in connection with such breaking or determination shall form part of the Secured Liabilities); and
- (c) to effect any transfers between, or entries on, any of the Chargor's accounts which the Security Trustee considers proper.



Definitions relative to the foregoing Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

## Definitions

"**Account Bank**" means National Westminster Bank plc or any other person with whom the Bank Accounts are maintained under Clause 8 of the Facility Agreement;

"**Account Bank Agreement**" means an agreement between the Borrower, the Agent and the Account Bank in the Required Form;

"**Additional Land Documents**" means each of the Project Documents referred to in paragraphs 13 to 22 inclusive of Schedule 9 of the Facility Agreement and any documents which may replace such Project Documents pursuant to the Services Contract;

"**Affiliate**" means in relation to any person, (i) an entity from time to time of which that person has direct or indirect control, or owns directly or indirectly more than fifty per cent (50%) of the share capital or similar rights of ownership and (ii) an entity from time to time which has direct or indirect control, or owns directly or indirectly more than fifty per cent (50%) of the share capital or similar right of ownership in relation to that person;

"**Approved Hedging Programme**" means the hedging, by the entering into of fixed interest rate arrangements, of not less than 50% of the projected interest liability in respect of all loans outstanding and projected to be outstanding under the Term Facility and the Standby Facility for the period from Financial Close up until the Final Repayment Date;

"**Bank Accounts**" means each of the Proceeds Account, the Debt Service Reserve Account, the Maintenance Reserve Account, the Insurance Account, the Compensation Account, the Treasury Account, the Treasury Reserve Account and the Distribution Account;

"**Banks**" means each of the banks specified in Schedule 1 of the Facility Agreement and each other bank or financial institution which becomes a New Bank under Clause 28 of the Facility Agreement;

"**Borrower**" means the Chargor;

"**Commitment**" means, in relation to any Bank and to any Facility:

- (a) if the Bank is a Bank on 21st September 2000, the amount in Sterling set opposite the Bank's name against such Facility in Schedule 1 of the Facility Agreement and the amount of any other Bank's Commitment in respect of that Facility acquired by that Bank under Clause 28 of the Facility Agreement; and
- (b) if the Bank becomes a Bank after 21st September 2000, the amount of any other Bank's Commitment in respect of that Facility acquired by it under Clause 28 of the Facility Agreement;

in each case to the extent not cancelled, transferred or reduced under this Agreement;



**"Compensation Account"** means an account opened by the Borrower pursuant to Clause 8.4 of the Facility Agreement the details of which shall be notified to the Agent in accordance with Clause 3.1 of the Facility Agreement;

**"Construction Contract"** means the construction contract referred to as such in Schedule 9 of the Facility Agreement, pursuant to which the Plant is to be designed and built by the Constructor;

**"Constructor"** means Lurgi (UK) Limited, registered in England & Wales, registered number 798958 whose registered office is at Duke's Court, Duke Street, Woking, Surrey GU21 5BH;

**"Council"** means the council of the borough of Kirklees, of the Town Hall, Ramsden Street, Huddersfield HD1 2TA;

**"Debt Service Reserve Account"** means a deposit account opened by the Borrower pursuant to Clause 8.2 of the Facility Agreement the details of which shall be notified to the Agent in accordance with Clause 3.1 of the Facility Agreement;

**"Direct Agreements"** means each of:

- (a) a direct agreement dated 21st September 2000 between the Council, the Agent, the Security Trustee and the Borrower in relation to the Services Contract (the **"Lenders' Direct Agreement"**); and
- (b) a direct agreement dated 21st September 2000 between the Constructor, the Agent, the Security Trustee and the Borrower in relation to the Construction Contract (the **"Construction Direct Agreement"**),
- (c) a direct agreement dated 21st September 2000 between the Parent, the Agent, the Security Trustee and the Borrower in relation to the Technical Support Agreement (the **"Technical Support Direct Agreement"**);
- (d) a direct agreement dated 21st September 2000 between Européenne de Services SA, the Agent, the Security Trustee and the Borrower in relation to the Project Management Services Agreement (the **"Project Management Services Direct Agreement"**);

and any other agreement designated as such by the Agent and the Borrower in writing;

**"Distribution Account"** means an account opened by the Borrower pursuant to Clause 8.6 of the Facility Agreement the details of which shall be notified to the Agent in accordance with Clause 3.1 of the Facility Agreement;

**"Electricity Sales Contract"** means the power purchase agreement referred to as such in Schedule 9 of the Facility Agreement pursuant to which the Non-Fossil Purchasing Agency Limited agrees (subject to the provisions thereof) to purchase from United Waste Limited electricity produced from the Plant, as assigned to the Borrower pursuant to the Deed of Assignment of the Electricity Sales Contract, and includes (a) any derogation therefrom granted pursuant to Clause 19.9.5(b) of the Facility Agreement and (b) any Replacement Agreement (as defined in Clause 32 of the Facility Agreement) or other agreed power purchase contract replacing the same entered into by the Borrower in accordance with Clause 32 of the Facility Agreement;

**"Encumbrance"** includes any mortgage, pledge, lien, charge (whether fixed or floating), encumbrance, hypothecation, security interest, title retention or other preferential right having the effect of creating security;

**"Equity Provider"** means Groupe Fabricom S.A. or any Affiliate as equity provider pursuant to the Subscription and Subordination Agreement;

**"Existing Bank"** is as defined in Clause 28.5 of the Facility Agreement;

**"Facility"** means each of:

- (a) the Term Facility;
- (b) the Standby Facility;
- (c) the Working Capital and VAT Facility; and

in each case subject to the provisions of this Agreement;

**"Facility Agreement"** means the facility agreement dated 21st September 2000 between the Chargor, the Banks, the Agent and Security Trustee;

**"Fee Letters"** means each of the letters referred to in Clauses 24.2 and 24.3 of the Facility Agreement;

**"Final Repayment Date"** means 31st March 2020;

**"Finance Documents"** means the Facility Agreement, the Security Documents, the Account Bank Agreement, the Subscription and Subordination Agreement, the Direct Agreements, the Parent Comfort Letter, the Fee Letters, the Original Hedging Agreements, the Insurance Programme and any other document designated as such by the Agent and the Borrower;

**"Finance Party"** means each of the Agent, the Security Trustee, each Bank and the Hedging Counterparty;

**"Financial Close"** means the date on which the Agent confirms in writing to the Borrower and the Banks that all the conditions precedent specified in Clause 3.1 of the Facility Agreement have been fulfilled or waived;

**"Fixtures"** means in relation to any freehold or leasehold property charged by or pursuant to the Charge all fixtures and fittings (including trade fixtures and fittings) and fixed plant and machinery from time to time thereon, the property wherein is vested in the Chargor;

**"Hedging Agreement"** means any fixed interest rate hedging agreement made between the Borrower and any bank or financial institution pursuant to the Approved Hedging Programme;

**"Hedging Counterparty"** means the person in its capacity as hedging counterparty with whom the Borrower enters into a Hedging Agreement pursuant to the Approved Hedging Programme;

**"Insurance Account"** means an account opened by the Borrower pursuant to Clause 8.4 of the Facility Agreement the details of which shall be notified to the Agent in accordance with Clause 3.1 of the Facility Agreement;

**"Insurance Programme"** means the programme of insurances required from time to time in accordance with Schedule 10 of the Facility Agreement;

**"Insurances"** means all contracts and policies of insurance or indemnities which are from time to time taken out by or on behalf of the Chargor or (to the extent of such interest) in which the Chargor has an interest;

**"Loan"** means the principal amount of each Utilisation of:

- (a) the Term Facility;
- (b) the Standby Facility; and
- (c) the Working Capital and VAT Facility,

or, as the context requires, the principal amount thereof from time to time outstanding;

**"Majority Banks"** means, at any time, Banks whose Relevant Amounts then exceed 66<sup>2</sup>/3 per cent of the Total Relevant Amounts at that time;

**"Maintenance Reserve Account"** means a deposit account opened by the Borrower pursuant to Clause 8.3 of the Facility Agreement the details of which shall be notified to the Agent in accordance with Clause 3.1 of the Facility Agreement;

**"New Bank"** means a bank or other financial institution to which an Existing Bank seeks to transfer all or part of its rights and obligations hereunder in accordance with Clause 28 of the Facility Agreement;

**"Original Hedging Agreements"** means (a) the ISDA Master Agreements (including the schedules and confirmations evidencing transactions entered into by the Borrower and governed by such ISDA Master Agreements) between the Borrower and the Hedging Counterparty entered into in the Required Form on or prior to Financial Close and (b) any agreement in the Required Form whereby the Borrower is granted an option to enter into any such ISDA Master Agreement or any transaction thereunder;

**"Parent"** means Groupe Fabricom S.A., a company incorporated and registered in Belgium (Company Registration: Bruxelles 196.281) whose registered office is at Rue Gatti de Gamond 254, 1180 Brussels, Belgium;

**"Parent Comfort Letter"** means a non-legally binding letter of comfort dated 21st September 2000 given by the Parent in favour of the Agent and the Banks in relation to its holding of shares in UWSL;

**"Plant"** means (together) the materials recycling facility and waste-to-energy facility to be constructed and/or installed under or pursuant to various contracts, including pursuant to the Construction Contract, and all ancillary parts and equipment;

**"Proceeds Account"** means an account opened by the Borrower pursuant to Clause 8.1 of the Facility Agreement the details of which shall be notified to the Agent in accordance with Clause 3.1 of the Facility Agreement;

**"Project"** means the project consisting of the construction and operation at the Sites of:

- (a) the Plant;
- (b) the North Kirklees waste management complex;
- (c) the household waste recycling centres;
- (d) the composting facilities at North Kirklees and Emerald Street, Huddersfield;
- (e) the district heating scheme;
- (f) the landfill sites;
- (g) the office/visitor centre building at Diamond Street, Huddersfield; and

the sale of electricity and heat pursuant to the Electricity Sales Contract and the provision of any other Services pursuant to the Services Contract;

**"Project Documents"** means the documents referred to as Project Documents in Schedule 9 of the Facility Agreement and includes the Additional Land Documents as may be replaced pursuant to and in accordance with the terms of the Services Contract to enable the Borrower to provide the Services under the Services Contract;

**"Project Management Services Agreement"** means the agreement referred to as such in Schedule 9 of the Facility Agreement pursuant to which Européenne de Services S.A. has agreed to provide project management services to the Borrower in relation to the construction of the Plant;

**"Relevant Amounts"** means, in relation to a Bank, at any time the aggregate of its Commitment at that time or, if there are then any Loans then outstanding thereunder, the amount of the Loans attributable to it at that time (together the **"Total Relevant Amounts"**);

**"Required Form"** means, in relation to any document, as required in respect of both the form and substance thereof by the Agent (acting reasonably);

**"Secured Assets"** means all assets, rights and property of the Chargor the subject of any security created by the Charge;

**"Securities"** means all stocks, shares, bonds and securities of any kind whatsoever whether marketable or otherwise and all other interest (including but not limited to loan capital) of the Chargor both present and future in any person and includes allotments, rights, benefits and advantages whatsoever at any time accruing, offered or arising in respect of or incidental to the same and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect thereof;

**"Security Documents"** means:

- (a) the Charge; and
- (b) a fixed and floating charge over UWSL's interest in the issued share capital of the Borrower entered into between UWSL and the Security Trustee (the **"Mortgage of Shares"**);

all in the Required Form;

**"Services"** has the meaning given to it in the Services Contract;

**"Services Contract"** means the waste disposal services contract dated 2nd April, 1998 referred to as such in Schedule 9 of the Facility Agreement as in force as at 21st September 2000 (as amended from time to time by either the Council or by the Borrower (with the consent of the Council and the Majority Banks, in the case of amendments to the Services Contract permitted to be made by the Borrower) pursuant to which the Council procures the Services from the Borrower;

**"Share Sale Agreement"** means the sale agreement dated 2nd April, 1998 referred to as such in Schedule 9 of the Facility Agreement pursuant to which the Shareholders (inter alia) agree terms for a joint venture between them through the medium of the Borrower;

**"Shareholders"** means UWSL and the Council as holders of issued share capital in the Borrower and voting shares in respect of the Borrower, respectively, and any other shareholders of the Borrower from time to time permitted by the provisions of the Facility Agreement;

**"Sites"** means each of the sites at which the Services are to be provided by the Borrower pursuant to the Services Contract, all as specified in Schedule 9 of the Facility Agreement;

**"Standby Facility"** means the standby facility to be made available under Clause 5 of the Facility Agreement;

**"Sterling"** and **"£"** means the lawful currency for the time being of the United Kingdom;

**"Subordinated Loan Agreement"** means the form of subordinated loan agreement between the Borrower and the Equity Provider providing for subordinated loans to the Borrower as such form is attached as Schedule 2 to the Subscription and Subordination Agreement;

**"Subscription and Subordination Agreement"** means the subscription and subordination agreement dated 21st September 2000 and made between the Borrower, the Equity Provider and the Agent and includes all accessions pursuant thereto;

**"Technical Support Agreement"** means the technical support agreement dated 21st September 2000 made between the Parent and the Borrower;

**"Term Facility"** means the term facility to be made available under Clause 4 of the Facility Agreement;

**"Transfer Certificate"** means certificate substantially in the form set out in Schedule 11 executed (inter alia) by an Existing Bank and a New Bank whereby:

- (a) such Existing Bank seeks to assign to such New Bank all or part of such transferor's rights and obligations hereunder subject to and upon the terms and conditions set out in Clause 28; and
- (b) such New Bank undertakes to perform those obligations it will assume as a result of delivery of such Agreement to the Agent as contemplated in Clause 28;

**"Treasury Account"** means an overdraft account opened by the Borrower pursuant to Clause 8.5 of the Facility Agreement, the details of which shall be notified to the Agent in accordance with Clause 3.1 of the Facility Agreement;

**"Treasury Reserve Account"** means an account opened by the Borrower pursuant to Clause 8.5 of the Facility Agreement, the details of which shall be notified to the Agent in accordance with Clause 3.1 of the Facility Agreement;

**"Utilisation"** means the drawing of a Loan under the Facility;

**"UWSL"** means United Waste Services Limited, a company incorporated in England (Registered Number 3283501) whose registered office is at Lancashire House, 24 Winckley Square, Preston, PR1 3JJ;

**"Working Capital and VAT Facility"** means the working capital and VAT facility to be made available under Clause 6 of the Facility Agreement.



**In the foregoing Form 395 relating to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A., unless the context or any express provision otherwise requires, a reference to:-**

- (a) "assets" includes properties, revenues and rights (including, without limitation, any present and future goodwill, intellectual property, stocks, shares, debentures, bonds or other securities and investments owned by the Chargor from time to time) of every description;
- (b) a "month" is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month except that, if there is no numerically corresponding day in the month in the next calendar month, that period shall end on the last day in that calendar month;
- (c) the terms of the documents under which the Secured Liabilities arise and of any side letters between the parties hereto in relation thereto are incorporated herein to the extent required for any purported disposition of the Secured Assets contained herein to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;
- (d) the expressions the "Chargor", the "Borrower", the "Agent", the "Security Trustee", the "Banks" and the "Finance Parties" shall include the successors, assigns and transferees of the Chargor, the Borrower, the Agent, the Security Trustee, the Banks and the Finance Parties; and, in the case of the Security Trustee shall include any person for the time being the Agent under the Facility Agreement;
- (e) any reference herein to any statute or any section of any statute shall be deemed to include a reference to any statutory modification or re-enactment thereof for the time being in force;
- (f) the singular includes the plural and vice versa. Clause headings are for convenience of reference only;
- (g) a document of any kind whatsoever (including this Charge) is to that document as amended or varied or supplemented or novated or substituted from time to time; and
- (h) the Facility Agreement, includes a reference to all Transfer Certificates to be received by the Agent under the provisions thereof.



This is an extract of Clause 3 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

3. **CONDITIONS PRECEDENT**

3.1 **Initial Conditions** The obligations of the Agent and each Bank hereunder are subject to the condition that the Agent shall receive prior to the issue of the first Drawdown Notice all of the documents and evidence referred to in Schedule 2.

3.2 **Specific Conditions** The obligations of the Agent and each Bank hereunder in respect of each Utilisation are subject to the further conditions precedent that:

3.2.1 (in the case of the Term Facility) the Agent (acting in good faith) is satisfied:

- (a) with the terms of the certificates given under Clauses 4.3 and 4.4, and all Verification Certificates required from the Bank Technical Consultant pursuant to Clause 4.5 have been received in form and substance satisfactory to the Agent;
- (b) that the Borrower has confirmed to it in writing that as at the proposed Drawdown Date there is no Funding Shortfall;
- (c) (in the case of the first Term Loan) with the details given to it of all indebtedness outstanding under the Existing Facility, which is to be refinanced pursuant to such first Term Loan; and
- (d) (in the case of each Term Loan) that Clause 2.3 is being complied with by the Borrower;

3.2.2 (in the case of the Standby Facility) the Agent (acting in good faith) is satisfied:

- (a) with the terms of the certificates given under Clauses 5.3 and 5.4 and all Verification Certificates required from the Bank Technical Consultant pursuant to Clause 5.5 have been received in form and substance satisfactory to the Agent;
- (b) that the evidence that the agreed milestones in connection with the relevant Modifications or Works in relation to the relevant Significant Event have been achieved to the extent required to be achieved by the proposed Drawdown Date; and
- (c) that the Borrower has confirmed to it in writing that as at the proposed Drawdown Date there is no Funding Shortfall.

3.3 **General Conditions** The obligations of the Agent and each Bank hereunder in respect of each Utilisation are subject to the further conditions precedent that both at the time of the request for Utilisation and on the Drawdown Date:



- 3.3.1 the matters represented and warranted in Clause 17.1 (other than Clauses 17.1.4, 17.1.6, 17.1.9, 17.1.11.2, 17.1.12, 17.1.14, 17.1.18 and 17.1.22) are correct on and as of such times as if made at each such time and would be so correct immediately after such Utilisation; and
- 3.3.2 no Event of Default has occurred and is continuing or would result from such Utilisation.
- 3.4 **Certified Copies** Each of the copy documents to be delivered under Clause 3.1 shall be certified by a competent senior official of the Borrower as being correct, complete and up to date.
- 3.5 **Waiver** Each of the conditions specified in Clauses 3.1, 3.2 and 3.3 is for the benefit of the Agent and the Banks and may be waived in writing on their behalf by the Agent acting on the instructions of the Majority Banks, on such terms and to such extent as the Majority Banks may decide.



This is an extract of Clause 4 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

#### 4. TERM FACILITY

4.1 **Term Loans** Subject to the terms of this Agreement, Term Loans will be made to the Borrower by the Banks under the Term Facility at any time during the applicable Drawdown Period when requested by the Borrower provided that any Term Loan shall only be available to the Borrower to the extent that the Relevant Funding Proportion of the amounts in respect of which the Term Loan is requested is not exceeded at any time. Any amount of the Term Facility Commitment not utilised on expiry of the applicable Drawdown Period shall automatically be cancelled at close of business in London on such date.

4.2 **Drawdown** Subject to the terms and conditions of this Agreement and upon the fulfilment of the applicable conditions set out in Clause 3, each Term Loan other than the first shall be made to the Borrower, in minimum amounts of either (a) if two Drawdown Notices are served in a calendar month, one amount must be more than £1,000,000 with a higher whole multiple of £100,000 and the other amount must be more than £350,000 with a higher whole multiple of £50,000 or (b) £350,000 or a higher whole multiple of £50,000 or (c) the undrawn balance of the Term Facility Commitment, following receipt by the Agent from the Borrower not later than 10.00 am (London time) on the third Business Day before the date on which the Term Loan is intended to be made of a Drawdown Notice together with:

4.2.1 in the case of Capital Costs, a certificate of the Project Technical Consultant in the form specified in Clause 4.3 together with a Verification Certificate;

4.2.2 in the case of all Project Costs (other than Capital Costs), a certificate of the Borrower in the form specified in Clause 4.4.

The first Term Loan shall be in the amount required to repay and discharge all indebtedness under the Existing Facility, and the Drawdown Notice shall be accompanied by a certificate of the Borrower disclosing full details of all such indebtedness. A Drawdown Notice shall be effective on actual receipt by the Agent and, once given, shall (subject to the provisions of this Agreement) be irrevocable. Only two Drawdown Notices may be served in each calendar month in relation to the Term Facility. The Agent shall, promptly after receipt by it of a duly completed Drawdown Notice, notify each Bank of the details thereof and of the proportionate amount of the Term Loan to be made available by such Bank.

4.3 **Project Technical Consultant Certificates** Each certificate of the Project Technical Consultant which accompanies a Drawdown Notice:

4.3.1 shall specify in reasonable detail the Capital Costs in relation to which the Term Loan is requested; and

4.3.2 shall confirm that no Project Milestones have been missed or failed since the date of the then latest progress report, or, if such is the case, specifying the Project Milestone missed.

- 4.4 **Borrower Certificates** Each certificate of the Borrower which accompanies a Drawdown Notice shall specify in reasonable detail:
- 4.4.1 the Project Costs (excluding any Capital Costs) or other amounts in relation to which the Term Loan is requested; and
  - 4.4.2 evidence that the item of expenditure has been paid for or is due and payable together with copy invoices, if relevant.
- 4.5 **Verification Certificates** Each verification certificate of the Bank Technical Consultant which accompanies a Drawdown Notice shall be substantially in the form of Schedule 5, duly completed, and shall verify the information and confirm the opinions, if any, contained in the relevant certificate of the Project Technical Consultant, such verification and confirmation not to be unreasonably withheld, and shall contain a forecast of the occurrence of Project Taking Over.
- 4.6 **Participation** Subject to the terms of this Agreement, each Bank shall on the date specified in the Drawdown Notice make available to the Agent for the account of the Borrower the amount of its participation in the Term Loan concerned in the proportion which its Term Facility Commitment bears to all the Term Facility Commitments.
- 4.7 **Availability** The proceeds of each Term Loan shall be made available to the Borrower by the Agent which shall promptly transfer such proceeds to the Proceeds Account.

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This is an extract of Clause 5 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

5. **STANDBY FACILITY**

5.1 **Standby Loans** Subject to the terms of this Agreement, Standby Loans will be made to the Borrower by the Banks under the Standby Facility at any time during the applicable Drawdown Period when requested by the Borrower. Any amount of the Standby Facility Commitment not utilised on expiry of the applicable Drawdown Period shall automatically be cancelled at close of business in London on such date.

5.2 **Drawdown** Subject to the terms and conditions of this Agreement and upon the fulfilment of the applicable conditions set out in Clause 3, each Standby Loan shall be made to the Borrower, in minimum amounts of £250,000 or a higher whole multiple of £50,000 if the relevant Standby Loan is drawn down on the same day as the drawdown of a Term Loan (or in minimum amounts of £500,000 or a higher whole multiple of £100,000, if it is not) or the undrawn balance of the Standby Facility Commitment, following receipt by the Agent from the Borrower not later than 10 am (London time) on the third Business Day before the date on which the Standby Loan is intended to be made of a Drawdown Notice together with:

5.2.1 in the case of Modifications or Significant Events, a certificate of the Borrower in the form specified in Clause 5.4 verifying the nature and cost thereof together with a Verification Certificate; and

5.2.2 in the case of construction costs overruns, a certificate of the Project Technical Consultant in the form specified in Clause 5.3 together with a Verification Certificate.

A Drawdown Notice shall (subject to the provisions of this Agreement) be irrevocable. The Agent shall, promptly after receipt by it of a duly completed Drawdown Notice, notify each Bank of the details thereof and of the proportionate amount of the Standby Loan to be made available by such Bank.

5.3 **Project Technical Consultant Certificates** Each certificate of the Project Technical Consultant which accompanies a Drawdown Notice:

5.3.1 shall specify in reasonable detail the costs in relation to which the Standby Loan is requested; and

5.3.2 shall confirm that no Project Milestones or agreed milestones have been missed or failed since the date of the then latest progress report or, if such is the case, specifying the Project Milestones or agreed milestones missed.

5.4 **Borrower Certificates** Each certificate of the Borrower which accompanies a Drawdown Notice shall specify in reasonable detail:

5.4.1 the costs or other amounts in relation to which the Standby Loan is requested; and

- 5.4.2 evidence that the item of expenditure has been paid for or is due and payable together with copy invoices, if relevant.
- 5.5 **Verification Certificates** Each verification certificate of the Bank Technical Consultant which accompanies a Drawdown Notice shall be substantially in the form of Schedule 5, duly completed, and shall verify the information and confirm the opinions, if any, contained in the relevant certificate of the Project Technical Consultant, such verification and confirmation not to be unreasonably withheld.
- 5.6 **Participation** Subject to the terms of this Agreement, each Bank shall on the date specified in the Drawdown Notice make available to the Agent for the account of the Borrower the amount of its participation in the Standby Loan concerned in the proportion which its Standby Facility Commitment bears to all the Standby Facility Commitments.
- 5.7 **Availability** The proceeds of each Standby Loan shall be made available to the Borrower by the Agent which shall promptly transfer such proceeds to the Proceeds Account.

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This is an extract of Clause 6 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

6. **WORKING CAPITAL AND VAT FACILITY**

- 6.1 **Working Capital Loans** Subject to the terms of this Agreement, Working Capital Loans will be made to the Borrower by the Banks under the Working Capital and VAT Facility at any time during the applicable Drawdown Period when requested by the Borrower. Any amount of the Working Capital and VAT Facility Commitment not utilised on expiry of the applicable Drawdown Period shall automatically be cancelled at close of business in London on such date.
- 6.2 **Drawdown** Subject to the terms and conditions of this Agreement and upon the fulfilment of the applicable conditions set out in Clause 3, each Working Capital Loan shall be made to the Borrower in minimum amounts of £100,000, or the undrawn balance of the Working Capital and VAT Facility Commitment, following receipt by the Agent from the Borrower not later than 10 am London time on the Business Day before the date on which the Working Capital Loan is intended to be made of a Drawdown Notice. A Drawdown Notice shall (subject to the provisions of this Agreement) be irrevocable. The Agent shall, promptly after receipt by it of a duly completed Drawdown Notice, notify the Banks of the amount of Working Capital Loan to be made available by it.
- 6.3 **Participation** Subject to the terms of this Agreement, the Banks shall on the date specified in the Drawdown Notice make available to the Agent for the account of the Borrower the amount of the Working Capital Loan concerned.
- 6.4 **Availability** The proceeds of each Working Capital Loan shall be made available to the Borrower by the Agent which shall promptly transfer such proceeds to the Proceeds Account.

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This is an extract of Clause 8 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

## **8. BANK ACCOUNTS**

**8.1 Proceeds Account** The Borrower undertakes with each of the Finance Parties that, from the date of this Agreement and so long as any moneys are actually or contingently owing under this Agreement, it will ensure that at all times all Gross Revenues, including all Damages, any Subordinated Loans and interest earned on Bank Accounts, but excluding Insurance Proceeds (which will be credited to the Insurance Account, other than Insurance Proceeds relating to delay in start up or business interruption Insurances which will be credited to the Proceeds Account) and Compensation (which will be credited to the Compensation Account) are directly received in or (if received in cash or by cheque) promptly paid to the Proceeds Account. The Proceeds Account shall be operated in the following manner:

8.1.1 subject to the provisions of this Agreement, and in particular (without limitation) to the provisions of Clause 8.1.2, payments may be made from the Proceeds Account in order to meet Permitted Payments; and

8.1.2 on any date after payment of amounts due and payable and referred to in Clause 8.1.1, payments may only be made from the Proceeds Account in order to finance, in the following order of priority:

8.1.2.1 accrued interest and other amounts in respect of fees and expenses (other than principal) due and payable under this Agreement and any Hedging Agreement, to the extent not already paid as a Permitted Payment;

8.1.2.2 principal amounts due and payable under this Agreement and any Hedging Agreement;

8.1.2.3 sums required to be paid to the Debt Service Reserve Account in accordance with Clause 8.2;

8.1.2.4 sums required to be paid to the Maintenance Reserve Account in accordance with Clause 8.3; and

8.1.2.5 (subject to Clauses 8.7.6 and 18.7) sums permitted to be paid to the Distribution Account in accordance with Clause 8.6.

**8.2 Debt Service Reserve Account** The Borrower undertakes with each of the Finance Parties that the Debt Service Reserve Account shall be operated in the following manner:

8.2.1 the Borrower shall on each Repayment Date (and may at any other time) transfer funds into the Debt Service Reserve Account from the following sources (and in the following order of priority):

8.2.1.1 from the balance of the Proceeds Account, after payment of the Permitted Payments referred to in Clause 8.1.1 and of the amounts referred to in Clauses 8.1.2.1 and 8.1.2.2 and subject to the Proceeds Account containing on any such transfer date sufficient funds, in the opinion of the Borrower (acting reasonably and after taking into account any relevant anticipated revenues) to pay Permitted Payments forecast to be due and payable in the following 30 days; and

8.2.1.2 from any drawdown of a Term Loan if requested by the Borrower to be for such purpose pursuant to Clause 2.2.3;

all to the intent that the balance on the Debt Service Reserve Account shall not at any time be less than the Cushion; and

8.2.2 no withdrawals may be made by the Borrower from the Debt Service Reserve Account if, immediately after such withdrawal, the credit balance thereon would be less than the Cushion unless such withdrawal is applied in the payment of any amounts immediately due and payable under the Finance Documents to the Finance Parties and at such time there was no credit balance on the Proceeds Account. Any permitted withdrawal which is not to meet amounts immediately due and payable under the Finance Documents shall be paid into the Proceeds Account.

8.3 **Maintenance Reserve Account** The Borrower undertakes with each of the Finance Parties that the Maintenance Reserve Account shall be operated in the following manner:

8.3.1 the Borrower shall on each Repayment Date (and may at any other time) transfer funds into the Maintenance Reserve Account from the balance of the Proceeds Account, after payment of the Permitted Payments referred to in Clause 8.1.1 and of the amounts referred to in Clauses 8.1.2.1 to 8.1.2.3 inclusive and subject to the Proceeds Account containing on such transfer date sufficient funds, in the opinion of the Borrower (acting reasonably and after taking into account any relevant anticipated revenues) to pay Permitted Payments forecast to be due and payable in the following 30 days, all to the intent that the balance on the Maintenance Reserve Account shall not at any time be less than the Required Maintenance Reserve Balance;

8.3.2 the Borrower may withdraw funds from the Maintenance Reserve Account if and to the extent that:

8.3.2.1 such withdrawal is required to finance expenditure incurred in accordance with the Operation and Maintenance Programme as set out in the Updated Base Case at such time; or

8.3.2.2 immediately after such withdrawal the credit balance on the Maintenance Reserve Account is not less than the then applicable Required Maintenance Reserve Balance.

Any permitted withdrawal shall be paid into the Proceeds Account.



**8.4 Insurance and Compensation Accounts** The Insurance Account and Compensation Account shall be operated in the following manner:

8.4.1 the Borrower shall procure that all Insurance Proceeds (other than Insurance Proceeds relating to delay in start up or business interruption Insurances) are immediately paid into the Insurance Account. The Borrower may withdraw amounts from the Insurance Account at any time:

8.4.1.1 where such Insurance Proceeds relate to physical damage insurances in order to reinstate that part of the Project Facilities in respect of which they were received, subject to (where the Borrower is not required to so re-instate by the terms of the relevant policy) the prior written consent of the Majority Banks if at that time a Default shall have occurred and be continuing; or

8.4.1.2 in order to comply with its obligations under Clause 10.1.1; or

8.4.1.3 to pay any third party who is actually entitled to receive those Insurance Proceeds or, if such third party has already been paid from the Proceeds Account, to pay an amount equal to those Insurance Proceeds to the Proceeds Account;

8.4.1.4 for any other purpose with the consent of the Majority Banks (such consent not to be unreasonably withheld);

8.4.2 the Borrower shall procure that all Compensation is promptly paid into the Compensation Account. The Agent may withdraw amounts from the Compensation Account at any time:

8.4.2.1 in order to permit the Borrower to comply with its obligations under Clause 10.1.2; or

8.4.2.2 if the Agent is reasonably satisfied that the same should be applied in remedying or making good any loss or deprivation in respect of which the same was paid, for transfer, on such dates as the Agent may approve, to the Proceeds Account.

**8.5 Treasury Account and Treasury Reserve Account** The Borrower may at any time instruct the Account Bank to operate an overdraft on the Treasury Account in accordance with Clause 3.5(a) of the Account Bank Agreement and/or to operate the Treasury Reserve Account in accordance with Clause 3.5(b) of the Account Bank Agreement.

**8.6 Distribution Account**

8.6.1 The Borrower may pay into the Distribution Account from time to time amounts permitted to be paid thereto in accordance with Clauses 8.1.2 and 18.7.

8.6.2 The Borrower may withdraw amounts standing to the credit of the Distribution Account at any time for any purpose. However, if at any time a

review by the Agent of any bank statement in relation to the Distribution Account reveals that the Borrower has made a payment into the Distribution Account of an amount more than £1,000 in excess of the amount permitted to be so paid by the provisions of this Agreement, then the Agent may notify the Borrower thereof and the Borrower shall promptly thereupon amend its bank mandate with the Account Bank in respect of the Distribution Account and notify the Account Bank pursuant to Clause 3.3 of the Account Bank Agreement to the effect that any instruction to withdraw amounts from the Distribution Account shall thereafter only be valid if counter-signed by the Agent.

8.7 **The Bank Accounts** Each of the Bank Accounts shall be operated in accordance with the Account Bank Agreement and the Bank Mandates referred to therein and in accordance with the following provisions:

- 8.7.1 the Borrower shall maintain the Bank Accounts at all times during the continuance in force of this Agreement at a branch of the Account Bank approved by the Agent, acting reasonably. The initial Account Bank is National Westminster Bank plc, Huddersfield, Sort Code 53-61-07;
- 8.7.2 the Account Bank may be changed to another bank or financial institution designated by the Agent if the Agent or the Borrower, acting reasonably, so requests;
- 8.7.3 a change in the identity of the Account Bank shall only become effective upon the proposed new Account Bank agreeing with the Agent and the Borrower, in a manner satisfactory to the Agent and the Borrower, in each case, acting reasonably, to fulfil the role of the Account Bank under this Agreement and under an account bank agreement;
- 8.7.4 in the event of a change of Account Bank, the amount (if any) standing to the credit of the Bank Accounts maintained with the former Account Bank shall be transferred to the corresponding Bank Accounts maintained with the new Account Bank forthwith upon the appointment taking effect. The Borrower shall take any action which the Agent may reasonably require to facilitate a change of Account Bank and any transfer of credit balances (including the execution of appropriate bank mandate forms on terms not materially more onerous than those applicable in respect of the former Account Bank and the execution of a new account bank agreement);
- 8.7.5 the Bank Accounts (other than the Treasury Account) may not go into overdraft and (in all cases) shall be maintained in Sterling. Receipts in a currency other than Sterling shall promptly be converted into Sterling by the Borrower. Amounts standing to the credit of the Bank Accounts shall bear interest at such rate(s) as may be agreed from time to time in writing between the Account Bank and the Borrower;
- 8.7.6 amounts may only be withdrawn or transferred from the Bank Accounts in accordance with the provisions of this Agreement or the Account Bank Agreement or on an enforcement of the Security Documents. Notwithstanding any provision of this Agreement or any Security Document

to the contrary, no amounts may be withdrawn by or transferred to the Borrower whilst there is a Default subsisting other than amounts applied by the Borrower in remedying a subsisting Default, in making Permitted Payments or payments to the Finance Parties or where the Majority Banks otherwise consent to such withdrawal provided that if an Event of Default occurs and continues unremedied and the Agent gives notice to the Account Bank withdrawing its consent to further withdrawals no amounts may be withdrawn by or transferred to the Borrower other than payments to the Finance Parties or where the Majority Banks otherwise consent to such withdrawal;

- 8.7.7 the Borrower shall not open or maintain any bank, deposit, savings or other account except for the Bank Accounts;
- 8.7.8 none of the restrictions contained in this Clause 8 on the withdrawal of funds from the Bank Accounts shall affect the obligations of the Borrower to make all payments required to be made to the Banks or any of them on the due date for payment thereof in accordance with the Finance Documents;
- 8.7.9 all signatories (in respect of the Bank Accounts where the Borrower's signature is required) must be persons duly and properly authorised by a director of the Borrower, except as otherwise agreed by the Account Bank;
- 8.7.10 on the date of each withdrawal made by the Borrower from a Bank Account, other than the Distribution Account, the Borrower shall be deemed to represent and warrant to the Agent and the Banks that:
  - (a) no Default is outstanding and no Default would occur as a result of the withdrawal or, if such a Default is outstanding or would result from the withdrawal, such withdrawal is permitted under Clause 8.7.6; and
  - (b) in the case of a proposed withdrawal from the Proceeds Account to meet Project Costs, that such Project Costs have been paid for or have become due and payable or shall have become due and payable on or before the date of the withdrawal.

## **8.8 Access/Audit Rights**

- 8.8.1 Without prejudice to Clause 31, the Borrower irrevocably grants the Banks or any of their appointed representatives reasonable access to review the books and records of the Bank Accounts and irrevocably waives any right of confidentiality in respect of any resulting disclosure to a Finance Party that may exist in respect of such books and records. The Borrower authorises, and shall authorise, the Account Bank to give each Bank unrestricted access on reasonable prior notice to review such books and records held by the Account Bank;
- 8.8.2 Nothing in this Clause 8.8 shall require the Account Bank to disclose to any person any books, records or other information which the Account Bank would not be required to disclose to the Borrower.

- 8.9 **Saving of Security Documents** Nothing in this Agreement shall prejudice the rights, powers and discretions of the Security Trustee under the Security Documents.

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**This is an extract of Clause 19.9.5(b) of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.**

- 19.9.5 (b) obtain in form and substance reasonably satisfactory to the Agent a derogation from the Non-Fossil Purchasing Agency Limited in relation to the non-conformity of the waste-to-energy facility comprised in the Plant with the particulars set out in Schedule 3 of the Electricity Sales Contract;

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This is an extract of Clause 24 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

24. FEES

- 24.1 **Commitment Fee** The Borrower will pay to the Agent for distribution amongst the Banks pro rata to their Commitments a commitment fee in Sterling computed at the rate of 0.4 per cent per annum on the daily uncanceled undrawn amount of the Commitment relative to each Facility during the applicable Drawdown Period. Accrued commitment fee shall be payable quarterly in arrears and in any case on Project Taking Over and on full drawing of the Commitment, commencing with a payment three months after the date hereof. Commitment fee shall accrue from day to day and be calculated on the basis of a year of 365 days for the actual number of days elapsed and be payable together with any value added tax thereon.
- 24.2 **Front End Fee** The Borrower agrees to pay to the Agent for distribution amongst the Banks as agreed between them a front end fee as agreed in a letter between the Borrower and the Agent of even date herewith.
- 24.3 **Agency Fee** The Borrower agrees to pay to the Agent for its own account an agency fee as agreed in a letter between the Borrower and the Agent of even date herewith.

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This is an extract of Clause 28 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

**28. ASSIGNMENT AND TRANSFER**

- 28.1 Benefit of Agreement** This Agreement shall be binding upon and inure to the benefit of the Borrower, the Bank and their respective successors and permitted assignees and transferees.
- 28.2 Assignment by Borrower** The Borrower may not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of all the Banks.
- 28.3 Assignment by Banks** Provided that any transfer would not result in there being more than six Banks party to this Agreement at any time, any Bank (an "Existing Bank") may with the prior written consent of the Borrower (such consent not to be unreasonably withheld or delayed, except if such transfer or assignment would result at the time of such transfer or assignment in the Borrower being obliged to pay an increased amount under Clause 14.2, Clause 15 or Clause 16, in which case the Borrower may refuse such transfer or assignment, at its' total discretion) assign or transfer all or any part of its rights, benefits and obligations hereunder to another bank (a "New Bank") which is a Qualifying Bank. This sub-clause shall not, for the avoidance of doubt, apply to a sub-participation of all or any part of the rights and benefits of any Bank hereunder, or to the assignment by any Bank of any of its rights, benefits and obligations to any subsidiary or to its holding company, which is a Qualifying Bank or to any subsidiary of its holding company which is a Qualifying Bank which may be effected from time to time at the absolute discretion of any such Bank.
- 28.4 Novation** A transfer of obligations shall only be effective if the New Bank has confirmed to the Borrower, prior to the transfer taking effect, that it undertakes to be bound by the terms of this Agreement as a Bank in form and substance satisfactory to the Borrower; on any such transfer being made, the Existing Bank shall be relieved of its obligations to the extent that they are transferred to the New Bank. A proportion of the Existing Bank's rights under the Security Documents equal to the proportion of the Existing Bank's rights under this Agreement being transferred or assigned, shall automatically be assigned or transferred, as appropriate, to the assignee at the same time as the rights under this Agreement. Such transfer shall take effect by way of novation.
- 28.5 Transfer Certificates** Any permitted transfer of all or any part of an Existing Bank's rights, benefits and obligations hereunder may, as an alternative to Clauses 28.3 and 28.4 and subject to the provisions of Clause 28.6 and to compliance with all legal requirements, be effected by way of a transfer by the delivery to the Agent of a duly completed and duly executed Transfer Certificate.
- 28.6 Effect of Transfer Certificates** On the date specified in the Transfer Certificate referred to in Clause 28.5, to the extent that in such Transfer Certificate that Existing Bank seeks to transfer its rights, benefits and obligations hereunder to the New Bank:

28.6.1 the Borrower and such Existing Bank shall each be released from further obligations to the other hereunder and their respective rights against each other (except for any such rights as may have accrued prior to the date of delivery of such Transfer Certificate to the Agent) shall be cancelled (such rights, benefits and obligations being referred to in this Clause 28.6 as "**discharged rights**", "**benefits**" and "**obligations**");

28.6.2 the Borrower, and the New Bank party thereto, shall each assume obligations towards each other and acquire rights and benefits against each other which differ from the discharged rights, benefits and obligations only insofar as the Borrower and such New Bank have assumed and/or acquired the same in place of the Borrower and that Existing Bank;

28.6.3 the Agent, the New Bank and the other Banks shall acquire the same rights and benefits and assume the same obligations between themselves as they would have acquired and assumed had such New Bank been an original party hereto as a Bank with the rights, benefits and obligations acquired and/or assumed by it as a result of such transfer (and, to that extent, the Agent, the Existing Bank and the other Banks shall each be released from further obligations to each other hereunder); and

28.6.4 there shall be transferred to and assumed by the New Bank that percentage specified in the Transfer Certificate of that Existing Bank's Commitment in respect of the Facility and that Existing Bank's Commitment in respect of the Facility shall be reduced accordingly,

and, on the date on which the transfer takes place, the New Bank shall pay to the Agent for its own account a transfer fee of £1,000.

28.7 **Notification** The Agent shall promptly notify the Borrower and the other Banks for the time being of the receipt of a Transfer Certificate and shall deliver a copy of such Transfer Certificate to the Borrower.

28.8 **Agent** Each of the parties hereto other than the Existing Bank and the New Bank hereby irrevocably authorises the Banks to deliver and the Agent to receive each Transfer Certificate in accordance with the foregoing provisions of this Clause and hereby irrevocably authorises the Agent to execute any duly completed Transfer Certificate on its behalf. The Borrower confirms that its obligations hereunder and under the other Finance Documents shall remain in full force and effect notwithstanding any Transfer Certificate becoming effective.

28.9 **Information** An Existing Bank may subject to this Clause 28 and to Clause 31 disclose to a potential New Bank or sub-participant such information about the Borrower as it may possess, subject further to imposing a requirement on such New Bank or sub-participant to keep the information supplied to it confidential.

28.10 **Facility Office** A Bank may change its lending office hereunder from time to time by not less than five Business Days' prior notice to the Agent and the Borrower.



28.11 **Syndication** The Borrower shall, at the request of the Agent (acting on behalf of the Banks) provide all reasonable assistance to the Banks (acting through the Agent) in effecting syndication of the Facility ("**Syndication**") including by:

28.11.1 providing such information available to it as may be required by the Banks (acting reasonably) in connection with Syndication (including, without limitation, in connection with the preparation, revision and approval of the Information Memorandum for potential lending institutions); and

28.11.2 making management and members of staff of the Borrower available at reasonable times and on reasonable notice for the purposes of making presentations to potential lending institutions, and otherwise assisting the Banks, to the extent reasonably necessary to achieve Syndication;

save that the Borrower shall not be required to provide any such assistance if its internal costs (as certified by the Borrower) exceed £30,000 or Syndication continues for a period in excess of 6 months.

The Borrower shall give the following representation and warranty to each bank or financial institution which enters into a Transfer Certificate in connection with Syndication at the time it does so:

- (i) the factual information contained in the Information Memorandum and supplied by the Borrower or UWSL was true in all material respects as at its date and was not misleading in any material respect;
- (ii) nothing has occurred since the date of the Information Memorandum (other than as disclosed in writing by the Borrower to the Agent) which renders the information contained in it which was supplied by the Borrower or UWSL inaccurate or misleading in any material respect and which, if disclosed, could reasonably be expected to adversely affect the decision of a person considering whether to enter into this Agreement;
- (iii) all estimates, forecasts, and statements of opinion or belief attributed to the Borrower or UWSL in the Information Memorandum, and the assumptions on which they were based, were made in good faith and were arrived at by the Borrower after careful consideration and enquiry;
- (iv) the Borrower has reviewed the information in the Information Memorandum which was not supplied by the Borrower or UWSL and in relation to such information the Borrower does not disagree with any factual information, statements of opinion or belief or forecast contained therein (except as notified by the Borrower in writing to the Agent) in a manner which would, in the reasonable opinion of the Borrower, adversely effect the decision of a person considering whether to enter into this Agreement,

and for the purposes of the above, "**Information Memorandum**" means the information memorandum prepared in connection with Syndication, including all schedules, exhibits, attachments and annexures to it which shall be in form and substance satisfactory to the Banks and approved by the Borrower (acting reasonably).

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This is an extract of Clause 32 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

32. TERMINATION OF THE ELECTRICITY SALES CONTRACT

Notwithstanding any other provision of the Finance Documents, each of the Finance Parties agrees that the Electricity Sales Contract may be terminated, or amended and restated, by the Borrower provided that, on or before such termination or amendment and restatement becoming effective, the Borrower has:

- (a) either (i) executed a replacement agreement for the sale of electricity or an amended and restated agreement, being the replacement or amended and restated agreement provided by the Non-Fossil Purchasing Agency Limited in respect of the Electricity Sales Contract pursuant to the arrangements contemplated in section 67(1) of the Utilities Act 2000 and the order made under that section in respect of Renewables NFFO 4 Contracts or (ii) in the case of a termination only agreed in writing with the Agent (acting on the instructions of the Majority Banks) the terms and provisions of a replacement power purchase contract with a purchaser other than the Non-Fossil Purchasing Agency Limited (the agreement referred to in (i) or the contract referred to in (ii), which shall be in form and substance reasonably satisfactory to the Agent, being the "**Replacement Agreement**");
- (b) produced a Bank's Base Case (following the procedures set out in Clause 7 mutatis mutandis), assuming revenues will be received pursuant to the Replacement Agreement rather than the Electricity Sales Contract, which discloses a Loan Life Cover Ratio up to the Final Repayment Date of not less than 1.25:1 and a Projected Annual Debt Service Cover Ratio (calculated on the basis that the Relevant Calculation Date is the date of the Bank's Base Case and the Relevant Future Calculation Date are each Calculation Dates occurring on or after the first anniversary of Project Taking Over until the Final Repayment Date) of not less than 1.2:1;
- (c) such Replacement Agreement has been designated a Project Document by the Borrower; and
- (d) agreed with the Agent those changes to Section (3) of Schedule 12 as the Agent may reasonably consider necessary in order to give the Agent equivalent rights in relation to the Replacement Agreement as those conferred in relation to the Electricity Sales Contract in its original form.

Any termination of the Electricity Sales Contract and execution of the Replacement Agreement in accordance with this Clause 32 shall not be a Default pursuant to any provision of the Finance Documents.

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This is an extract of Schedule 2 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

## SCHEDULE 2

### Initial Conditions Precedent

1. The following documents, in their original duly signed form (or, where the Agent agrees (or where expressly stated otherwise) a certified copy thereof):
  - (a) the Guarantees;
  - (b) the Security Documents and each of the documents and all of the evidence required to be delivered thereunder;
  - (c) the Shareholder Documents;
  - (d) the Account Bank Agreement;
  - (e) the Fee Letters;
  - (f) the Original Hedging Agreements;
  - (g) a certified copy of each Licence;
  - (h) a certified copy of each of the Project Documents referred to in paragraphs 1 to 22 inclusive in Schedule 9 (each in the Required Form) and the Clarified Operational Plan;
  - (i) the Direct Agreements;
  - (j) the Initial Base Case, disclosing a Loan Life Cover Ratio on each Calculation Date occurring after projected Project Taking Over, until the Final Repayment Date of not less than 1.25:1 and an Annual Debt Service Cover Ratio on each Calculation Date occurring after projected Project Taking Over, until the Final Repayment Date of not less than 1.2:1, and the report of the Model Auditors thereon;
  - (k) a proforma balance sheet of the Borrower as at Financial Close;
  - (l) details of the account numbers for the Bank Accounts and a copy of all required bank mandates, in the Required Form;
  - (m) the final technical review of, incorporating the due diligence by the Bank Technical Consultant on, the Project (in a form and substance satisfactory to the Agent) together with a letter of appointment of the Bank Technical Consultant in respect of the period from Financial Close to Project Taking Over;

- (n) a report on the Insurance Programme from the Bank Insurance Consultant (in a form and substance satisfactory to the Agent) together with a letter substantially in the form set out in Appendix 5 of the Insurance Programme in form and substance satisfactory to the Agent and evidence from the Borrower's Insurance Consultants that the insurances specified in the Insurance Programme for the construction phase are or will be in effect;
  - (o) the Environmental Report;
  - (p) a due diligence report on the Project from the Agent's legal advisers addressed to and in form and substance satisfactory to the Agent;
  - (q) a certificate of title to the Sites listed at 1-2 and 4-8 in the list of Sites in Schedule 9 provided by the Borrower's legal advisers addressed to and in form and substance satisfactory to the Agent;
  - (r) the audited accounts of the Borrower, UWSL and the Parent for their financial year most recently ended.
2. Copies, certified as true, complete and up-to-date copies by an officer of the Borrower, UWSL and the Parent respectively, of the following:
- (a) its Certificate of Incorporation, Memorandum and Articles of Association (or equivalent constitutional documents);
  - (b) Resolutions of its Board of Directors (or equivalent decision making body) evidencing approval of the Transaction Documents to which it is a party and authorising their appropriate officers to execute and deliver the same, and to give all notices and to take all other action required of them under the same including a statement from the Board of Directors that no further consents, authorisations, licences and approvals are required at Financial Close by the Borrower, UWSL and the Parent (respectively) in connection with the execution, delivery, validity, enforceability and admissibility in evidence of the Transaction Documents to which it is a party and the performance of their obligations under each of the same.
3. A certificate of an authorised officer of each of the Borrower and UWSL substantially in the form of Schedule 3.
4. A certified copy of:
- (a) the Register of Shareholders of the Borrower evidencing that UWSL has been registered as holder of all the issued non voting ordinary share capital of the Borrower and 81 "B" shares in the share capital of the Borrower, together with the delivery to the Security Trustee of:
    - (i) share certificates in respect of all the shares of the Borrower held by UWSL;
    - (ii) signed, undated share transfers, with the name of the transferee shown in blank; and

- (iii) evidence that the Directors of the Borrower have unconditionally resolved to register such transfers;
  - (b) the Register of Shareholders of UWSL evidencing that the Parent has been registered as holder of 80% of the issued share capital of UWSL; and
  - (c) each of the Shareholder Documents.
- 5. A certificate of the Chief Executive of the Council in the Required Form together with a certified copy of:
  - (a) a letter addressed to the Council from the Department of the Environment, Transport and the Regions confirming the amount of revenue support for the Project;
  - (b) a legal opinion in relation to the Council and the Transaction Documents to which it is a party from the Council's Solicitor and attached to it the resolutions, full and sub-committee, of the Council approving the Project, the Services Contract, the Lenders' Direct Agreement and all other documents entered into or to be entered into by it in connection with the Project, together with copies of all supporting papers referred to in the minutes of the relevant meetings,and a signed original of a certificate of the Council under the Local Government (Contracts) Act 1997 in relation to the Lenders' Direct Agreement, all in the Required Form.
- 6. Legal Opinions from:
  - (a) the Agent's solicitors in the United Kingdom in relation to the Finance Documents; and
  - (b) the Borrower's legal advisers in England in relation to the Project Documents;
  - (c) the Parent's in-house counsel in Belgium in relation to the Parent and the Transaction Documents to which it is, or is to be, a party.
- 7. Evidence of the occurrence of the following events:
  - (a) the grant of planning permission number 99/62/91882 WO in relation to the Plant on terms satisfactory to the Bank Technical Consultant, the satisfaction of the conditions attached to that planning permission capable of being satisfied by Financial Close (together with evidence satisfactory to the Agent that the outstanding conditions are considered capable of being satisfied by the time required in order to enable the Plant to be completed and operated in accordance with the provisions of the Finance Documents) and evidence of progress satisfactory to the Banks on the obtaining of the integrated pollution control authorisation from the Environment Agency in respect of the Plant;

- (b) compliance with paragraphs 3(A)(3), 3(A)(6) and 3(A)(7) of the Insurance Programme in relation to the Insurances;
- (c) satisfaction or waiver of all conditions precedent in each Project Document and each Shareholder Document (other than in relation to any condition relating to the occurrence of Financial Close) that are required by the Agent to be completed by Financial Close;
- (d) such consents, confirmations and derogations (if any) required to be delivered under the Shareholder Documents and/or the Project Documents in order to ensure that the Borrower can comply with its obligations under the Finance Documents as may be requested by the Agent on or prior to Financial Close;
- (e) that no Encumbrances exist over the assets of the Borrower or over the shares of the Borrower held by UWSL (other than any Permitted Encumbrance); and
- (f) receipt by the Borrower of correspondence with Yorkshire Electricity in respect of the Connection Agreement demonstrating that the Borrower is likely to be able to comply with its obligations under Clause 19.9.5(a) and identifying the likely costs of interconnection.

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This is an extract of Schedule 9 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

## SCHEDULE 9

### Project Documents

Item	Document	Date	Parties
1.	Services Contract	2.4.98	Council, Borrower
2.	Assets Sale Agreement	2.4.98	Council, Borrower
3.	Deed of Environmental Indemnity (and Deed of variation dated 28.6.00 in respect of the same)	2.4.98	Council, UWSL, Parent, Borrower
4.	Construction Contract	15.10.99	Borrower, Constructor
5.	Construction Guarantee	12.10.99	Construction Guarantor
6.	Performance Bond	25.10.99	Bayerische Landesbank Girozentrale, Borrower
7.	Technical Support Agreement	the date hereof	Parent, Borrower
8.	Project Management Services Agreement	3.9.98	Borrower, Européene de Services SA
9.	Electricity Sales Contract	11.2.97	United Waste Limited, NFPA
10.	Deed of Assignment of the Electricity Sales Contract	19.06.00	United Waste Limited, Borrower
11.	Services Agreement	31.7.00	Européene de Services SA, Borrower
12.	Lease of Huddersfield Incinerator Site, Emerald Street/Vine Street, Huddersfield, West Yorkshire	2.4.98	Council, Borrower, Parent
13.	Supplemental Lease of Hillhouse Lane/Diamond Street, Huddersfield, West Yorkshire	28.06.00	Council, Borrower, Parent
14.	Lease of Brick & Tile Site, Emerald Street, Huddersfield, West Yorkshire	2.4.98	Council, Borrower, Parent

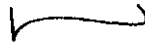


Item	Document	Date	Parties
15.	Lease of Lower Spen Valley TLS , Park Road, Dewsbury, West Yorkshire	2.4.98	Council, Borrower, Parent
16.	Lease of Nab Lane Household Waste Disposal Centre, Nab Lane, Birstall, Batley, West Yorkshire	2.4.98	Council, Borrower, Parent
17.	Lease of Meltham Incinerator Site, Bentley Road, Meltham, West Yorkshire	2.4.98	Council, Borrower, Parent
18.	Agreement for Lease of Bromley Farm Household Waste Disposal Centre, off Barnsley Road, Cumberworth, Huddersfield, West Yorkshire	2.4.98	Council, Borrower, Parent
19.	Agreement relating to rights at Hollins Hey Landfill Site, Blackley Road, Blackley, West Yorkshire	2.4.98	Council, Borrower, Parent
20.	Agreement relating to rights of Honley North Side Quarry Landfill Site, Meltham Road, Honley, Huddersfield, West Yorkshire	2.4.98	Council, Borrower, Parent
21.	Licence of land at Emerald Street, Huddersfield, West Yorkshire	2.4.98	Council, Borrower
22.	Deed of rectification relating to Brick and Tile Site, Emerald Street, Huddersfield, West Yorkshire	12.6.00	Council, Borrower, Parent
23.	The Connection Agreement, when entered into.		
24.	Any document which replaces an Additional Land Document.		
25.	Any document which amends or varies any of the Project Documents.		
26.	Any other agreement designated a Project Document by the Borrower and the Agent in writing.		

#### Sites

1. Hollins Hey landfill site.

2. Honley Wood landfill site.
3. Bromley Farm civic amenity site.
4. Meltham civic amenity site.
5. Lower Spen Valley transfer loading station/civic amenity site.
6. Vine Street/Diamond Street incinerator/transfer loading station and materials recycling facility, Huddersfield.
7. Nab Lane civic amenity site.
8. Emerald Street civic amenity site and composting facility, Huddersfield.
9. Office/visitor centre building at Diamond Street, Huddersfield.
10. Thornhill Road site, waste management complex, Dewsbury.
11. Such other sites as may be designated a Site by the Borrower and the Agent in writing.



This is an extract of Schedule 10 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by Kirklees Waste Services Limited in favour of Dexia Public Finance Bank S.A.

## SCHEDULE 10

### INSURANCE PROGRAMME

References in this document to paragraphs and Appendices shall be construed as references to the paragraphs and Appendices of this document, unless the context otherwise requires.

#### 1. INSURANCES TO BE EFFECTED

(A) **Scope and duration:** The Borrower shall procure that at its own expense:

- (1) the insurances specified in Appendix 1 in relation to the construction of the Plant are effected for the benefit of the Borrower and, amongst others, each Finance Party from no later than Financial Close and are maintained in full force and effect until:
  - (a) (in the case of physical damage and loss insurances of any asset (or part thereof) covered thereby) Project Taking Over, or such other date or dates as may be agreed by the Agent; and
  - (b) (in the case of all other insurances specified in Appendix 1) Project Taking Over, or such other date or dates as may be reasonably agreed by the Agent (in consultation with the Bank Insurance Consultant);
- (2) the insurances specified in Appendix 2 in relation to the operation of the Plant are effected for the benefit of the Borrower and, amongst others, each Finance Party from no later than Project Taking Over and are maintained in full force and effect until the Final Repayment Date; and
- (3) the insurances specified in Appendix 3 in relation to the operation of the Project (other than the Plant) are effected for the benefit of the Borrower and, amongst others, each Finance Party from Financial Close, and the Borrower warrants and undertakes that such insurances have been in force for its own benefit in the period from the date such insurances were first required to be in full force under the Services Contract up to Financial Close.

(B) **Undertakings:** The Borrower shall procure that at its own expense the said insurances:

- (1) are effected against the risks and liabilities and maintained in the amounts specified in Appendices 1, 2 and 3 (as varied from time to time as required by paragraphs 1(B)(3)-(4));
- (2) include only such provisions for self-insurance, whether by deductible or otherwise, as are specified in Appendix 1 and 2 (subject to any variation thereof from time to time agreed or determined pursuant to this Schedule 10);

- (3) cover the Project Facilities to their full replacement value, increased from time to time as necessary to maintain such full replacement value;
  - (4) are otherwise increased from time to time to such amounts as would be effected by a prudent operator of a business similar to that of the Borrower and financed on the basis of the Finance Documents save to the extent that the Agent (in consultation with the Bank Insurance Consultant) otherwise agrees in writing;
- (C) **Warranties:** The Borrower represents and warrants to and for the benefit of each other party to this Agreement (and their respective successors and assigns) that as at the date hereof there are no insurances not disclosed to the Agent which have been effected pursuant to paragraph 2(E) and are presently in effect under which the Borrower is insured or has any rights. The representation and warranty set out in this paragraph shall survive the execution of this Agreement and shall be deemed to be repeated on each date the insurances in Appendices 1, 2 and 3 are required to be maintained in accordance with paragraphs 1(A)(1) and (2).
- (D) **Regular information on renewal of Insurances:** Not later than 30 days before the renewal or expiry date of any Insurances the Borrower shall deliver to the Agent and the Bank Insurance Consultant written notification of all the proposed terms of the Insurances to be renewed for the following twelve months period, including details of replacement values, insured amounts and deductibles. The Agent may thereafter make representations to the Borrower in respect of the information it has received and paragraph 2(D)(2) shall apply in the event of any disagreement in relation thereto.

## 2. **ADDITIONAL COVERAGES**

- (A) **Insurances required by law:** Without prejudice to the other provisions of this document, during the periods referred to in paragraph 1 the Borrower shall from time to time effect and maintain in full force those insurances which it is required to have by any applicable law or by the terms of the Project Documents.
- (B) **Additional insurances and risk management steps:**
- (1) The Borrower agrees that it will purchase and maintain such additional Insurance or such wider or increased levels of cover under existing Insurances as a prudent developer, owner or operator of the Project would purchase and maintain, or as the Agent may reasonably require in order to protect the interests of the Finance Parties in relation to the Project. In determining whether a prudent developer, owner or operator of the Project would purchase such insurance regard shall be had to the scope of such insurance, and its cost in the context of the finances of the Project.
  - (2) The Borrower undertakes to take or procure the taking of all risk management and risk control measures in relation to the risks required to be insured hereunder as a reasonable and prudent developer, owner and/or operator of such a project, financed on the basis of the Finance Documents, would take, or which the Agent may reasonably require to protect the interest of the Finance Parties and as is required by any insurer.

**(C) Availability of Cover**

The Borrower shall not be in breach of its obligations under this Schedule 10 to purchase and maintain any Insurance to the extent that, and for so long as:

- (a) cover required to be maintained is not available to the Borrower in the UK insurance market place in the opinion of the Bank Insurance Consultant after consulting with the Agent and the Borrower on reasonable commercial terms. In determining whether such cover is available on reasonable commercial terms the Bank Insurance Consultant shall have on-going regard to the cost and scope of such insurance and the Finance Parties need to protect their own interests in relation to the Project; or
- (b) the Agent agrees after consultation with the Bank Insurance Consultant in writing to waive such requirement.

**(D) Disputes over availability or extent of cover**

If:

- (1) the Borrower disagrees on reasonable grounds with any decision taken by the Agent and/or the Bank Insurance Consultant in respect of any matter referred to in paragraph 2(C) the Borrower shall give the Agent written notice of the disagreement, and
- (2) if the Agent (acting on the advice of the Bank Insurance Consultant), following receipt of information from the Borrower pursuant to paragraph 1(D), disagrees with the proposed level of cover under any existing or proposed Insurance or believes that additional Insurances should be taken out by the Borrower in accordance with paragraph 2(B)(1) the Agent shall give written notice of the disagreement;

and if any such disagreement is not resolved within 14 days of the date of any such notice, the disagreement shall be referred for determination to a reputable insurance broker, to be reasonably agreed, or failing agreement nominated, at the request of the Borrower or the Agent, by the Chairman of the British Insurance Brokers Association, acting as an independent expert. The expert's decision shall be final and binding on the parties. The expert's fees and disbursements shall be borne by the Borrower.

**(E) Borrower's insurance:**

- (1) For the avoidance of doubt, and subject to subparagraph (2) below, the Borrower shall at any time be entitled to effect such other insurances in addition to or supplementing those referred to elsewhere in this document as it may think fit.
- (2) The Borrower shall promptly notify the Agent of any insurances effected pursuant to paragraph 2(E)(1).

3. **PROVISIONS COMMON TO ALL INSURANCES**

- (A) **Policies:** The Borrower shall procure that each policy taken out pursuant to paragraphs 1(A) and 2(B)(1) of this document shall from Financial Close:
- (1) be placed and maintained through such brokers and with such insurers or underwriters as may be approved from time to time by the Agent (acting reasonably and after consulting the Bank Insurance Consultant);
  - (2) be in such form and substance, consistent with the obligations of the Borrower under this document, as may be approved from time to time by the Agent in writing (acting reasonably and after consulting the Bank Insurance Consultant);
  - (3) be the subject of a Notice of Assignment duly given (the Borrower undertaking to serve such Notice forthwith upon the execution of the Debenture or in the case of any policy of insurance taken out pursuant to this document after the date of the Debenture, forthwith upon the effecting of such policy upon the relevant Insurers) in the form required in Appendix 6 (except to the extent that the Agent, after consultation with the Bank Insurance Consultant may otherwise agree) and by Financial Close will have attached to each policy notice of such assignment endorsed on each such policy and such other endorsements substantially in the form set out in Appendix 4;
  - (4) contain a provision whereunder the Insurers waive all rights of subrogation howsoever arising which they may have or acquire against each Insured Party arising out of any occurrence in respect of which any claim is admitted under the policy;
  - (5) provide that all the provisions of the policy (except those relating to limits of liability) shall operate as if there were a separate policy covering each insured party;
  - (6) shall include each Finance Party as additional insureds under the policy for their security interest in, amongst other things, the Project Facilities and such provisions for the protection of each Finance Party as the Agent may reasonably require;
  - (7) contain an acknowledgement by the insurers that in no circumstances shall any Finance Party be liable for the payment of premiums or any other obligation owed to the Insurers;
  - (8) be notified to the Agent within 7 days of the said policy being taken out.
- (B) **Principal insured:** The Borrower shall procure that in each policy taken out pursuant to paragraphs 1(A), 2(A), 2(B)(1) and 2(E)(1) of this document the Borrower is named as the principal insured.
- (C) **Policies/Premiums:** The Borrower shall promptly produce to the Agent upon request each policy of insurance taken out pursuant to this document and procure the

prompt payment of all premiums payable under each such policy in accordance with its terms and shall promptly produce to the Agent upon request receipts for all such premium payments. Upon the renewal of any such policy the Borrower shall produce to the Agent upon request, on or before its expiry date, evidence of such renewal.

- (D) **Brokers' undertakings:** The Borrower shall procure that each broker or agent through whom any insurance policy required to be effected or renewed under Appendix 1 and 2 is effected or renewed delivers to the Agent a letter substantially in the form set out in Appendix 5 on Financial Close and, when each such insurance policy is effected or renewed.
- (E) **Non-avoidance of coverage:** The Borrower shall promptly and diligently perform and comply in all respects with its respective obligations contained in and the terms and conditions of each policy of insurance taken out pursuant to this document including without limitation any stipulations or restrictions as to the use and/or operation of any asset and shall not at any time do (or omit to do) anything whereby any policy of insurance taken out pursuant to this document may be rendered void or voidable or suspended, impaired or defeated in whole or in part and shall promptly notify the Agent of any occurrence which gives rise or might give rise to a material claim under any such policy of insurance and of any event which might cause any such policy of insurance to lapse or become invalid including any default by the Borrower and institute and maintain all such proceedings as may be necessary or expedient to preserve or protect its interest and that of each Finance Party in each policy from time to time taken out by any person pursuant to this document.
- (F) **Claims procedure:** The Borrower shall (subject to the prior written approval of the Agent) collect, recover, compromise and give a good discharge for all claims now outstanding or at any time hereafter arising under the policies of insurance required under this document under which the Borrower is loss payee and institute all such proceedings in connection therewith as the Agent may (in consultation with the Bank Insurance Consultant) reasonably require. The Agent shall not be obliged to make any enquiry as to the nature of sufficiency of any payment received by it under the policies of insurance required under this document and shall not be responsible for its own act or omission or for that if any of its directors, officers, employees, agents, counsel or others acting on its behalf in the enforcement of any right assigned to it under the Debenture unless caused by willful misconduct, gross negligence or breach of any obligations imposed on it by law.

#### 4. INFORMATION

- (A) **Information:** The Borrower shall give to the Agent and the Bank Insurance Consultant such information as to the insurances taken out pursuant to this document (or as to any matter which may be relevant to such insurances) as the Agent may, from time to time, reasonably request.
- (B) **Warranty:** The Borrower represents and warrants to and for the benefit of each party to this Agreement (other than itself) that it has disclosed to the insurers all facts, circumstances or occurrences which the Borrower acting in accordance with the industry standards of the insurers and in good faith considers to be material to the risks insured against under the insurances taken out pursuant to this document. The

Borrower undertakes on an ongoing basis to disclose promptly to the insurers all facts, circumstances or occurrences which the Borrower acting in accordance with the industry standards of the insurers and in good faith considers to be material to the risks insured against under any insurance effected pursuant to this document. Prior to taking out the Insurances set out in Appendices 1, 2 and 3 to this document, the Borrower shall consult with the Banks' Insurance Consultant as to the disclosure which it intends to make in relation to such Insurances (provided that such consultation may not prejudice or restrict in any way the Borrower's disclosure obligations owed to the insurers in respect thereof).

- (C) **Alteration of coverage:** The Borrower shall procure that no reductions in limits or coverage (including those resulting from extensions) or increases in deductibles, exclusions or exceptions shall be made to any insurance effected pursuant to this document without the written consent of the Agent, after consultation with the Bank Insurance Consultant.

## 5. OMISSION TO COMPLY WITH PROVISIONS OF INSURANCES

If at any time and for any reason any insurance required to be maintained under this document shall not be in full force and effect for any reason then, without prejudice to the rights of the Agent and each other Finance Party under Clauses 10.1, 21.1 or 21.2 of the Agreement, the Agent shall thereupon, or at any time whilst the same is continuing, be entitled to procure such insurance at the expense of the Borrower and, without prejudice to any other obligations of the Borrower under the Finance Documents, require the Borrower to take all such steps to minimise hazard as the Agent may consider expedient or necessary after consulting the Bank Insurance Consultant.



## APPENDIX 1

### CONSTRUCTION PHASE INSURANCES

The insurances required under paragraph 1(A)(1):

1.

#### CONSTRUCTION ALL RISKS INSURANCES

Cover :

All risks of loss, destruction or damage to the permanent and temporary works, formwork, falsework, materials, equipment, machinery, supplies and all other property belonging to or in the care, custody or control of the insured or for which they are otherwise responsible used for or in connection with the Project excluding the Contractor's and/or sub-contractors' and/or suppliers' constructional equipment occurring during the period of insurance from any causes not excluded.

Insured Parties :

Kirklees Waste Services Limited (KWSL), United Waste Services Limited United Waste Services Limited, E.d.S., Finance Parties, Lurgi as main Contractor and/or sub-contractors and/or suppliers and/or associates and/or subsidiaries, officers, directors and/or any other relevant interested parties in the Project for their respective rights and interests, including those of Kirklees Metropolitan Council (KMC), acting in their own behalf and/or on behalf of any party to whom it may concern.

The Project :

The design, supply, construction, erection, testing, start-up, commissioning, operation and maintenance of the Vine Street Waste to Energy Plant, including the Transfer Load Station and the Material Recycling Facility to be built adjacently to the Waste to Energy Plant, Head Offices, Thornhill Road waste management facility.

Period :

From Notice to Proceed to Project Taking Over (estimated to be from 1st February 2000, until 31st December 2001) including up to 6 months testing and commissioning, anticipated Project Taking Over possible on 30th November 2000.

Automatic extensions in period at no greater than pro rata additional premium.

Guarantee Maintenance : 24 months as from Project Taking Over. A new 24 month Guarantee Period shall start as from the end of the repair of damages occurred during the first 24 months Guarantee Period.

Sum Insured : The reinstatement value of the Project estimated at 35,000,000 GBP.

Maximum Deductibles : 50,000 GBP per occurrence for DE5.  
25,000 GBP per occurrence during testing/commission and maintenance.  
6,000 GBP all other claims.

Conditions : Lenders endorsements:

LSW 1001 (Insurance) – Several Liability Notice.  
Design Exclusion DE5 or equivalent.  
Guarantee Maintenance in respect of Buildings, Machinery and Equipment.  
Debris Removal (Limited – 10% in addition to the Sum Insured).  
Expediting Expenses (Limit = 50% above normal costs in addition to the Sum Insured).  
Professional Fees (in addition to the Sum Insured).  
Full Terrorism cover (provided by Special Provision hereunder of 100,000 GBP plus buy back from either Pool Reinsurance Company or open market)  
Public Authorities Clause.  
72 hour Clause.  
Cost Escalation Clause 25%.  
Automatic Reinstatement of Sum Insured without additional premium.  
Existing Property arising out of the performance of the project (Section 3).  
Inland Transit and off site storage (Warehouse to Warehouse basis).  
Loss of minimisation costs at Insurers expense.  
Additional costs of rebuilding (Limit 2,500,000 GBP in addition to the Sum Insured).  
Additional costs of completing Works which are incomplete at time of loss (Limit 2,500,000 GBP in addition to the Sum Insured).  
Munitions Clause.

2.

## **DELAY IN START-UP**

Indemnity : Loss of gross profit and/or increased cost of working following delay in scheduled date of commencement of commercial operation where the cause of delay is indemnifiable loss or damage under the Construction All Risks (or that would have been indemnifiable but for the application of any of the policy excesses).  
Indemnity period : 22 months.

Insured Parties : KWSL and the Finance Parties.

Period : As for Construction All Risks Insurance.

Sum Insured : [ ] GBP (on a [22] month basis).

Indemnity Period : [22] months.

Maximum Deductible : 30 days waiting period in the aggregate.

Conditions : Lenders endorsements.  
Suppliers extension.  
Customers extension.  
Denial of Access.  
Utilities Clause.  
Contractors Equipment.  
Full Terrorism Cover (provided by Special Provision hereunder of 100,000 GBP plus buy back from either Pool Reinsurance Company or open market).

3.

## **CONSTRUCTION THIRD PARTY LIABILITY**

Cover : Legal liability of the Insured to pay (including claimants' costs and expenses) as damages in respect of :

- (i) death or bodily injury to or illness or disease contracted by any person;
- (ii) loss of or damage to property;
- (iii) interference to property or any easement, right of air, light, water or way of the enjoyment or use thereof by obstruction,

trespass, loss of amenities, nuisance or any like cause;

happening during the Period of Insurance and arising out of or in connection with the Project.

Insured Parties : As for Construction All Risks Insurances including each party's servants, agents, officers, employees, secondees and assigns for their respective rights and interests.

Period : As for Construction All Risks Insurances.

Limit : 25,000,000 GBP any one occurrence.

Maximum Deductible : 5,000 GBP any one occurrence of Third Party property damage.

Principal Extensions : Lenders endorsements.  
World-wide jurisdiction (exclusive punitive and exemplary damages, costs inclusive in USA and Canada).  
Cross Liability Clause.  
Legal and contractual liability.  
Underground Services Clause.  
Vibration, removal and weakening of support, subsidence and collapse in accordance with Clause 21.2.1 or the JCT 1980 Conditions of Contract or equivalent.  
Sudden & Accidental pollution as per ABI wording (aggregate limit plus one re-instatement without additional premium).

4.

#### **MARINE/CARGO INSURANCE**

Cover : All risks of loss, destruction or damage to the Property Insured from any cause not excluded.

Insured Parties : As for Construction All Risks.

Sum Insured : 2,150,000 GBP any one conveyance.

Interest : Conveyance and vessel, and/or vessels, and/or barge, and/or air, and/or road, and/or any other conveyance by land, sea or air and connections.

Period :	From the date of first shipment until completion of all shipments in connection with the Project.
Maximum Deductibles :	1,000 GBP any one occurrence.
Principal Extensions :	<p>Institute Cargo Clauses A CL.252 dated 1/1/82.  Unpacked/unpainted steelwork and non-containerised cargo on deck excluding rust, oxidation and discoloration, unless caused by a peril recoverable under Institute Cargo Clause C but reinforced bars additionally excluded twisting and bending, unless caused by a peril recoverable under Institute Cargo Clause C.  No Deck Cargo Clause exclusion.  Institute War Clauses (Cargo) CL.255 dated 1/1/82.  Institute Strikes Clauses (Cargo) CL.256 dated 1/1/82.  Institute Cargo Clauses (Air) CL.259 dated 1/1/82.  Institute War Clauses (Air Cargo) CL.258 dated 1/1/82.  Institute Strikes Clauses (Air Cargo) CL.260 dated 1/1/82.  Institute Radioactive Contamination Exclusion Clause CL.356 dated 1/10/90.  Institute Replacement Clause CL.161 dated 1/1/94.  Institute Classification Clause CL.354 dated 1/8/97.  Institute Marine Policy General Provision (Cargo) CL.269 dated 1/10/82.  Paramount War Clause.</p>

5.

**MARINE/CARGO  
DELAY IN START UP**

Indemnity :	Loss of gross profit and/or increased cost of working following delay in scheduled date of commencement of commercial operation where the cause of delay is indemnifiable loss or damage under the Marine/Cargo Insurance.
Insured Parties :	KWSL and the Finance Parties.
Sum Insured :	[     ] GBP (on a [22] month basis).
Indemnity Period :	[22] months.
Deductibles :	30 days waiting period in the aggregate.
Principal Extensions :	As per Marine/Cargo Policy.

6.

**OTHER INSURANCE**

(1) EMPLOYER'S LIABILITY

In a form comply with current  
legislation.

Maximum Limit of Liability : 25,000,000 GBP each and every claim.

Deductible : Nil.

(2) MOTOR

(3) ANY OTHER INSURANCE  
REQUIRED BY LAW

## APPENDIX 2

### OPERATIONAL PHASE INSURANCES (PLANT)

The Insurances required under paragraph 1(A)(2):

#### 1.

##### MATERIAL DAMAGE ALL RISKS

Cover :	All risks of loss or damage to the Property Insured from any cause not excluded and including Machinery Breakdown and the Computer Breakdown cover in respect of appropriate equipment.
Insured Parties :	Kirklees Waste Services Limited (KWSL), United Waste Services Limited, E.d.S., Finance Parties and/or associates and/or subsidiaries, officers, directors and/or any other relevant interested parties in the operation project for their respective rights and interests, including those of Kirklees Metropolitan Council (KMC), acting in their own behalf and/or on behalf of any party to whom it may concern.
Property Insured :	All real and personal property used for or in connection with the ownership, maintenance and operation of the Facilities.
Sum Insured/Limits :	Reinstatement value of the property insured estimated at:  40,000,000 GBP , but 15,000,000 GBP in respect of Machinery Breakdown and Related Business Interruption as a combined limit.
Deductibles :	75,000 GBP any one occurrence property damage and business interruption combined Business Interruption : 7 days must be reached per occurrence.
Period :	12 months or such other periods as may be agreed, as from Project Taking Over to Final Repayment Date (31st March 2020).
Principal Extensions :	Lenders endorsements. Debris Removal (Limited - 10% in addition to the Sum Insured Limit).

Expediting Expenses (Limit = 50% above normal costs in addition to the Sum Insured Limit).  
Professional Fees (in addition to the Sum Insured Limit).  
Full Terrorism cover (provided by Special Provision hereunder of 100,000 GBP plus buy back from either Pool Reinsurance Company or open market)  
Public Authorities Clause.  
72 hour Clause.  
Cost Escalation Clause 25%.  
Loss of minimisation costs at Insurers expense.  
Munitions Clause.  
Transits.

2.

**LOSS OF REVENUE  
(BUSINESS INTERRUPTION)**

Indemnity :	Loss of gross profit and/or increased cost of working following interruption to commercial operation where the cause is indemnifiable loss or damage under Section 1 (or that would have been but for the application of the property damage excess).
Insured Parties :	KWSL and the Finance Parties.
Sum Insured :	[     ] GBP ([22] months).
Indemnity Period :	[22] months.
Deductibles :	75,000 GBP any one occurred property damage and business interruption combined in full: for BI, 7 days must be reached per occurrence.
Period :	As per Material Damage section.
Extensions :	Denial of Access (not limited to damage), including but not limited to interruption or additional costs of working due to activities of central and/or local government authorities including but not limited to the Health and Safety Executive and the Environmental Agency. Additional Increased Cost of Working. Suppliers' Extension. Customer's Extension. Loss of Utilities. Full Value Terrorism.



3.

**OPERATIONAL THIRD PARTY  
LIABILITY**

Cover :	Legal liability of the Insured to pay (including claimants' costs and expenses) as damages in respect of : <ul style="list-style-type: none"><li>(i) death or bodily injury to or illness or disease contracted by any period;</li><li>(ii) loss of or damage to property;</li><li>(iii) interference to property or any easement, right of air, light, water or way of the enjoyment or use thereof by obstruction, trespass, loss of amenities, nuisance or any like cause;</li></ul> happening during the Period of Insurance and arising out of or in connection with the Project.
Insured :	As per Material Damage section.
Period :	As per Material Damage section.
Minimum Limit :	33,000,000 GBP any one occurrence/unlimited in the aggregate, but for products.
Maximum Deductibles :	5,000 GBP each and every occurrence of property damage (personal injury claims will be paid in full).
Principal Extensions :	Cross liabilities. Contractual liability clause. World-wide Jurisdiction.

### APPENDIX 3

#### OPERATIONAL PHASE INSURANCES (NON-PLANT)

1.

##### MATERIAL DAMAGE

###### SCOPE OF COVER

All risks of loss or damage to the Property Insured from any cause not excluded and including Machinery Breakdown and the Computer Breakdown cover in respect of appropriate equipment.

###### PROPERTY INSURED

All property used for or in connection with the ownership, maintenance and operation of the Facilities.

###### INSURED

KWSL (Kirklees Waste Services Limited)  
UWSL  
Finance Parties (from Financial Close)  
for their respective rights and interests

###### SUM INSURED

Reinstatement Values estimated at:

Buildings	: £5,595,189
Machinery	: £ 218,705
Mobile Plant	: £ 42,000
EDP	: £ 31,105

###### DEDUCTIBLES

£1,550 each and every claim arising from Fire, Lightning, Explosion and Aircraft.  
£1,500 all other perils

###### PERIOD

From April 1, 1998 to the Final Repayment Date

###### PREMISES INSURED

Civic Amenity Sites    Vine Street, Huddersfield  
HD1 6NT  
Lower Span Valley,  
Dewsbury WP13 3DS  
Nab Lane, Maltham WF17  
0HU  
Bromley Farm, Huddersfield  
HD7 3DS

Transfer Stations        Vine Street, Huddersfield  
HD1 6NT  
Lower Span Valley,  
Dewsbury WP13 3DS

Materials Recycling Facility	Lower Span Valley, Dewsbury WP13 3DS
Green Waste Computing	Lower Span Valley, Dewsbury WP13 3DS Emerald Street, Huddersfield HD1 6NT
Waste to Energy	Vine Street, Huddersfield HD1 6NT

#### PRINCIPAL EXTENSIONS

Lenders endorsements from Financial Close.  
Replacement/reinstatement basis of claims settlement.  
Architects' and surveyors' fees.  
Debris removal costs.  
Public Amenity clause.  
Cost of labour and computer time expended in reproducing documents or computer records, including accidental or malicious capture.  
Automatic reinstatement of sum insured.  
Full Value Terrorism.  
Including property whilst undergoing demolition, refurbishment, rebuilding or due to construction on the same site.

#### PRINCIPAL EXCLUSIONS

War and civil war.  
Radioactive contamination.  
Deliberate acts or omissions of the Insured.  
Unexplained shortages or mysterious disappearance.  
The cost of making good wear and tear, gradual deterioration, rust etc gradually developing defects, flaws, deformation, distortion, cracks or partial fractures, defects in design, materials, or workmanship but this shall not exclude subsequent damage resulting from an ensuing cause which is not otherwise excluded.  
Consequential (financial) losses, loss of revenue, loss of use, etc.  
Sonic boom.  
Loss of or damage to vehicles licensed for road use, marine vessels or aircraft.  
Fidelity losses.

2.

## **BUSINESS INTERRUPTION**

INSURED	KWSL (Kirklees Waste Services Limited) UWSL Finance Parties (from Financial Close) for their respective rights and interests
INDEMNITY	Loss of gross revenue caused by interruption to the Insured's business arising out of the actions of any of the perils insured under Material Damage as above.
SUM INSURED	£550,000 or such other amount as represents the indemnity over the indemnity period.
PERIOD DATE	From April 1, 1998 to the Final Repayment Date.
INDEMNITY PERIOD	18 months from the date of property damage.
DEDUCTIBLE	48 hours.
PRINCIPAL EXTENSIONS	Lenders endorsements from Financial Close. Additional Increased Cost of Working. Suppliers' Extension. Infectious Diseases. Loss of Utilities. Full Value Terrorism.

3.

## **PUBLIC/PRODUCTS LIABILITY**

INSURED	KWSL (Kirklees Waste Services Limited) UWSL Finance Parties (from Financial Close) for their respective rights and interests
SCOPE OF COVER	Legal liability of the insured to pay (including claimants' costs and expenses) as damages in respect of:  (i) death or bodily injury to or illness of disease contracted by any person;  (ii) loss of or damage to property;  (iii) interference to property or any easement, right of air, light, water or way of the enjoyment or use thereof by obstruction,

	trespass, loss of amenities, nuisance or any like cause;
	happening during the Period of Insurance and arising out of or in connection with the Insured's Business.
PERIOD DATE	From April 1, 1998 to the Final Repayment Date.
DEDUCTIBLE	£2,500 each and every claim in respect of Third Party Property Damage.
LIMIT OF INDEMNITY	Public Liability - £33,000,000 each and every claim, unlimited in the aggregate. Products Liability - £33,000,000 each and every claim and in the aggregate any one period of insurance.
PRINCIPAL EXTENSIONS	Lenders endorsements from Financial Close. Cross liabilities. Contractual liability clause. Costs in addition to the limit (other than North America). World-wide jurisdiction.
PRINCIPAL EXCLUSIONS	Insured's own employees. Fines, penalties, punitive or exemplary damages. Liquidated damages. War, invasion, acts of foreign enemies, hostilities (whether declared or not), civil war, rebellion, revolution, insurrection of military or usurped power. Seepage, pollution or contamination unless caused by a sudden, unintended and unexpected happening. Medical Malpractice. Watercraft exceeding 10 metres in length. Aircraft. Professional Indemnity. Nuclear Risks.

4.

#### EMPLOYERS' LIABILITY

INSURED	KWSL (Kirklees Waste Services Limited) UWSL for their respective rights and interests
---------	---

SCOPE OF COVER

Legal liability of the Insured to pay (including claimants' costs and expenses) as damages in respect of death or bodily injury to or illness or disease contracted by any person under a contract of service with the Insured including an indemnity to Principals Clause.

happening during the Period of Insurance and arising out of or in connection with the Insured's Business.

PERIOD

From April 1, 1998 to Final Repayment Date.

LIMIT OF INDEMNITY

£25,000,000 each and every claim arising out of any one incident, including Costs & Expenses.

DEDUCTIBLE

Nil.

## APPENDIX 4

The endorsements required under paragraph 3(A)(3) are as follows:

### PART 1

Each policy shall contain the following endorsements:

1. In this Policy:

"**Borrower**" means Kirklees Waste Services Limited;

"**Facility Agreement**" means a facility agreement of even date herewith between inter alios the Borrower and the Security Trustee providing for senior credit facilities of up to £44,000,000;

"**Finance Party**" has the meaning given to it in the Facility Agreement and includes any assignee, transferee, successor or novatee or replacement creditor of or in relation to any of the foregoing;

"**Insurance Account**" means the account so entitled maintained by the Borrower at National Westminster Bank plc, Huddersfield Branch (sort code 53-61-07) (Account No 24421758) entitled "Insurance Account"; and

"**Security Trustee**" means Dexia Public Finance Bank S.A. in its capacity as agent for each Finance Party under the Facility Agreement and includes its successors in that capacity.

2. The Insurers hereby agree to waive all rights of subrogation howsoever arising which they may have or acquire against any Finance Party arising out of any occurrence in respect of which any claim is admitted hereunder.
3. All the provisions of this policy (except those relating to limits of liability) shall operate as if there were a separate policy covering each insured.
4. Each Finance Party is an additional insured under this policy. The insurers waive all rights of contribution against any other insurance effected by any Finance Party.
5. The Insurers agree with each Finance Party that paragraphs (a) and (b) below shall take effect and be treated as a separate and distinct contract between the Insurers and each Finance Party with the intention that, following an assignment of all the Borrower's right, title and interest in and to the policy to the Security Trustee on behalf of each Finance Party (the "**Assignment**"), no Finance Party shall be deprived of any benefit under the policy and/or the Assignment or suffer any disadvantage whatsoever under the policy and/or the Assignment as a result of any act, neglect, error or omission on the part of any other Insured Party:
  - (a) the Insurers undertake to each Finance Party that the policy shall not be invalidated as regards the respective rights and interests of each Finance Party and that the Insurers will not seek directly or indirectly to avoid any

liability under this policy and/or the Assignment because of any act, neglect, error omission made by any other Insured Party (whether occurring before or after the inception of the policy), including, without limitation any failure by any other Insured Party to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured Party, any breach or non-fulfillment by any other Insured Party or any condition, warranty, or provision contained in the policy;

- (b) upon payment of any sum to any Finance Party pursuant to this paragraph 5, the Insurers shall to the extent of such payment be thereupon legally subrogated to all the rights of such Finance Party provided always that the Insurers shall not exercise any such rights howsoever arising in competition with the rights of any Finance Party in respect of the Project Facilities or any monies secured thereon.

6. The Security Trustee shall be advised:

- (a) at least 30 days (or such lesser period (if any) as may be specified from time to time by Insurers in the case of war risks and kindred perils but not less than 14 days) before any cancellation is to take effect if any Insurer cancels or gives notice of such cancellation of any insurance relative to the Project for any reason including no payment of premium;
- (b) at least 30 days (or such lesser period (if any) as may be specified from time to time by Insurers in the case of war risks and kindred perils but not less than 14 days) before any reduction in limits or coverage, any increase in deductibles or any termination before the original expiry date is to take effect unless any such reduction in limits or coverage or increase in deductibles or termination is requested jointly by the Borrower and the Agent;
- (c) of any act or omission or of any event of which the Insurer has knowledge and which might invalidate or render unenforceable in whole or in part any insurance relative to the Project.

7. All notices or other communications under or in connection with this policy will be given in writing or by telex or fax. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered;
- (b) if by telex, when dispatched but only if; at the time of transmission, the correct answerback appears, at the start and end of the sender's copy of the notice; and
- (c) if by fax, when transmitted but only if; immediately after the transmission, the sender's fax machine records the correct answerback.

The address, telex number and fax number of the Agent for all notices under or in connection with this policy are those notified from time to time by the Agent for this purpose to the Borrower's broker at the relevant time. The initial address, telex number and fax of the Agent are as follows:



The Security Trustee: Dexia Public Finance Bank S.A.  
Address: 55 Tufton Street  
Westminster  
London  
SW1P 3QF  
Fax No: 020 7976 0976  
Attention: Victoria Derby

## PART 2

The Contractors' insurances shall contain the following endorsement:

1. By a Debenture dated September 2000 and made between Kirklees Waste Services Limited (the "**Borrower**") and Dexia Public Finance Bank S.A. as security trustee for each Finance Party therein defined (the "**Security Trustee**"), the Borrower assigned in favour of the Security Trustee all its right, title and benefit in this insurance and all the benefits thereof (including all claims of whatsoever nature thereunder and return of premiums in respect thereof). Terms defined in the Debenture shall have the same meaning herein.
2. The Insurers agree that until the Security Trustee shall have notified the Insurers to the contrary, all recoveries hereunder shall be paid in full into the Insurance Account without any deduction or deductions whatsoever.

## PART 3

The delay in start-up and business interruption insurances shall contain the following endorsement:

1. By a Debenture dated September 2000 and made between Kirklees Waste Services Limited (the "**Borrower**") and Dexia Public Finance Bank S.A. as security trustee for each Finance Party therein defined (the "**Security Trustee**") the Borrower assigned in favour of the Bank all its right, title and benefit in this insurance and all the benefits thereof (including all claims of whatsoever nature thereunder and return of premiums in respect thereof). Terms defined in the Debenture shall have the same meaning herein.
2. The Insurers agree that until the Security Trustee shall have notified the Insurers to the contrary, all recoveries hereunder shall be paid in full into the Proceeds Account without any deduction or deductions whatsoever.
3. The Insurers agree that until the Security Trustee shall have given its written consent to the Insurers no claim hereunder shall be accepted by the Insurers from any Insured Party, other than the Borrower or a Finance Party.

#### PART 4

The third party/public liability insurances shall contain the following endorsement:

1. By a Debenture dated September 2000 and made between Kirklees Waste Services Limited (the "**Borrower**") and Dexia Public Finance Bank S.A. as security trustee for each Finance Party therein defined (the "**Security Trustee**"), the Borrower assigned in favour of the Security Trustee all its right, title and benefit in this insurance and all the benefits thereof (including all claims of whatsoever nature thereunder and return of premiums in respect thereof). Terms defined in the Debenture shall have the same meaning herein.
2. The Insurers agree that, subject to the provisions of any applicable legislation and notwithstanding the assignment referred to above, all sums in respect of any claim hereunder by an Insured shall be paid directly to the person whose claim(s) constitutes the risk or liability insured against provided that such person has executed a discharge of all claims against each of the Insureds in respect of the risk or liability in relation to which the claim was made, save in cases where Insurers are satisfied that the Insured has fully and unconditionally discharged the claim or liability when such sums shall be paid to the Insurance Account.

## APPENDIX 5

### Form of Broker's Letter of Undertaking

To: Dexia Public Finance Bank S.A.  
55 Tufton Street  
Westminster  
London  
SW1P 3QF  
FAO: [ ]  
as Security Trustee for the Finance Parties  
under the Facility Agreement referred to below

[ Date ]

Dear Sirs

[ ] (the "Project")

We have been requested by Kirklees Waste Services Limited (the "**Borrower**"), to provide you with certain confirmations relating to the insurances arranged by us in relation to the Project. Accordingly we provide you with the confirmations set out below.

We confirm that the insurances summarised in the cover notes attached as Appendix A to this letter (the "**Insurances**") are, at the date hereof, in full force and effect in respect of the risks and liabilities as set out in the insurance policies evidenced in the policies/cover notes attached to this letter as Appendix A (the "**Policies**").

We further confirm that all premiums due to date in respect of the Insurances have been paid and that the Insurances are, to the best of our knowledge and belief, placed with insurers which as at the time of placement are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims.

We also confirm that a notice of assignment of insurances ("**Notice of Assignment**"), in substantially the form attached to this letter as Appendix B, will be served on each insurer in respect of each of the Insurances and that we will use our reasonable endeavours to procure that each insurer acknowledges each Notice of Assignment as soon as reasonably practicable after the date of this letter. We confirm that the endorsements to the Policies attached to this letter as Appendix C (the "**Endorsements**") have been made in respect of the Policies for the periods stipulated therein.

Pursuant to instructions received from the Borrower in connection with the Insurances we hereby undertake:

- (a) (i) to advise you promptly upon receipt of notice of any material changes notified to us which are proposed to be made in the terms of the Insurances and which, if effected, would result in any reduction in limits or coverage (including those resulting from extensions) or in any increase in deductibles, exclusions or exceptions;

- (ii) to notify you, at least 30 days prior to the expiry of the Insurances, if we have not received instructions from the Borrower and/or any insured parties or the agents of any such party to negotiate renewal, and, in the event of our receiving instructions to renew, to advise you as soon as reasonably practicable after receipt of the details hereof; and
- (iii) to notify you as soon as reasonably practicable after receiving notice, or at the same time as our giving notice, of termination of our appointment as brokers in relation to the Insurances;
- (b) subject to our lien, if any, on the Policies for premiums due under the Policies to pay into the Insurance Account, without any set-off or deduction of any kind, for any reason, all payments received by us from the insurers in relation to the Insurances (including refunds of premium) other than as may be permitted in the relevant loss payable clauses in the Endorsements;
- (c) to advise you (i) forthwith upon receiving notice of any insurer's cancellation or suspension of any of the Insurances or receiving notice of any insurer's intention to cancel or suspend any of the Insurances and (ii) of any action or omission or of any event of which we have knowledge and which might reasonably be foreseen as invalidating or rendering unenforceable in whole or in part this insurance;
- (d) to disclose to the Insurers any act, change of circumstance or occurrence material to the risks insured against under the insurances promptly when we become aware of such act, change of circumstance or occurrence;
- (e) to hold the insurance slips or contracts, the Policies and any renewals thereof or any new or substitute policies to the extent held by us, to the order of the Security Trustee; and
- (f) to treat as confidential all information in relation to the Insurances marked as confidential and supplied to us by the Borrower or the Security Trustee and not to disclose such information, without the written consent of the supplier, to any third party. Our obligations of confidentiality shall not conflict with our duties owed to the Borrower and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law or regulation having the force of law or to information which is in the public domain.

The above undertakings are subject to our continuing appointment as insurance brokers to the Borrower in relation to the Insurances.

This letter is given by us on the instructions of the Borrower and with the Borrower's full knowledge and consent as to its terms as evidenced by the Borrowers signature below.

This letter shall be governed by and shall be construed in accordance with English law and any dispute as to its terms shall be submitted to the exclusive jurisdiction of the courts of England and Wales.

Yours faithfully

.....  
For and on behalf of [MARSH TRADING COMPANY]

.....  
For and on behalf of KIRKLEES WASTE SERVICES LIMITED

## APPENDIX A

[attach cover notes/policies]

## APPENDIX B

### Notice of Assignment

[Kirklees Waste Services Limited Letterhead]

To: [Name and Address of Insurance company]

Dear Sirs

Re Policy No [            ]

We (the "**Company**") refer to the insurance policy taken out with you as identified above (the "**Insurance Policy**").

WE HEREBY GIVE YOU NOTICE that by a Debenture dated            September 2000 we assigned to Dexia Public Finance Bank S.A. (the "**Security Trustee**") as agent and trustee for certain other banks and/or financial institutions all the Company's right, title and interest in and to all insurances effected and to be effected in respect of all buildings, Project Facilities and machinery erected and/or installed in connection with the construction and/or subsequent operation of the Project including the Insurance Policy, and all the rights of the Company to make recovery under the Insurance Policy and all proceeds of the Insurance Policy recoverable by the Company.

We, and not the Security Trustee, will remain liable to perform all obligations assumed by us pursuant to the Insurance Policy and in particular to pay all premiums thereunder.

Will you kindly acknowledge receipt of this Notice by signing and returning the attached copy to the Security Trustee.

Dated        September 2000

---

for and on behalf of  
Kirklees Waste Services Limited

---

for and on behalf of  
Dexia Public Finance Bank S.A.

We hereby acknowledge receipt of the foregoing notice of assignment and confirm that we have not received any prior notice of an interest in the above mentioned insurance policy.

Dated

---

for and on behalf of  
[Insurance Company]

## APPENDIX C

### Part 1

Each policy shall contain the following endorsements:

1. In this Policy:

**"Borrower"** means Kirklees Waste Services Limited;

**"Facility Agreement"** means a facility agreement of even date herewith between inter alios the Borrower and the Security Trustee providing for senior credit facilities of up to £44,000,000;

**"Finance Party"** has the meaning given to it in the Facility Agreement and includes any assignee, transferee, successor or novatee or replacement creditor of or in relation to any of the foregoing;

**"Insurance Account"** means the account so entitled maintained by the Borrower at National Westminster Bank plc, Huddersfield Branch (sort code 53-61-07) (Account No [ ] entitled "Insurance Account"); and

**"Security Trustee"** means Dexia Public Finance Bank S.A. in its capacity as agent for each Finance Party under the Facility Agreement and includes its successors in that capacity.

2. The Insurers hereby agree to waive all rights of subrogation howsoever arising which they may have or acquire against any Finance Party arising out of any occurrence in respect of which any claim is admitted hereunder.

3. All the provisions of this policy (except those relating to limits of liability) shall operate as if there were a separate policy covering each insured.
4. Each Finance Party is an additional insured under this policy. The insurers waive all rights of contribution against any other insurance effected by any Finance Party.
5. The Insurers agree with each Finance Party that paragraphs (a) and (b) below shall take effect and be treated as a separate and distinct contract between the Insurers and each Finance Party with the intention that, following an assignment of all the Borrower's right, title and interest in and to the policy to the Security Trustee on behalf of each Finance Party (the "Assignment"), no Finance Party shall be deprived of any benefit under the policy and/or the Assignment or suffer any disadvantage whatsoever under the policy and/or the Assignment as a result of any act, neglect, error or omission on the part of any other Insured Party:
  - (a) the Insurers undertake to each Finance Party that the policy shall not be invalidated as regards the respective rights and interests of each Finance Party and that the Insurers will not seek directly or indirectly to avoid any liability under this policy and/or the Assignment because of any act, neglect, error omission made by any other Insured Party (whether occurring before or after the inception of the policy), including, without limitation any failure by any other Insured Party to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured Party, any breach or non-fulfillment by any other Insured Party or any condition, warranty, or provision contained in the policy;
  - (b) upon payment of any sum to any Finance Party pursuant to this paragraph 5, the Insurers shall to the extent of such payment be thereupon legally subrogated to all the rights of such Finance Party provided always that the Insurers shall not exercise any such rights howsoever arising in competition with the rights of any Finance Party in respect of the Project Facilities or any monies secured thereon.
6. The Security Trustee shall be advised:
  - (a) at least 30 days (or such lesser period (if any) as may be specified from time to time by Insurers in the case of war risks and kindred perils but not less than 14 days) before any cancellation is to take effect if any Insurer cancels or gives notice of such cancellation of any insurance relative to the Project for any reason including no payment of premium;
  - (b) at least 30 days (or such lesser period (if any) as may be specified from time to time by Insurers in the case of war risks and kindred perils but not less than 14 days) before any reduction in limits or coverage, any increase in deductibles or any termination before the original expiry date is to take effect unless any such reduction in limits or coverage or increase in deductibles or termination is requested jointly by the Borrower and the Agent;



- (c) of any act or omission or of any event of which the Insurer has knowledge and which might invalidate or render unenforceable in whole or in part any insurance relative to the Project.
7. All notices or other communications under or in connection with this policy will be given in writing or by telex or fax. Any such notice will be deemed to be given as follows:
- (a) if in writing, when delivered;
  - (b) if by telex, when dispatched but only if; at the time of transmission, the correct answerback appears, at the start and end of the sender's copy of the notice; and
  - (c) if by fax, when transmitted but only if; immediately after the transmission, the sender's fax machine records the correct answerback.

The address, telex number and fax number of the Agent for all notices under or in connection with this policy are those notified from time to time by the Agent for this purpose to the Borrower's broker at the relevant time. The initial address, telex number and fax of the Agent are as follows:

The Security Trustee: Dexia Public Finance Bank S.A.  
Address: 55 Tufton Street  
Westminster  
London  
SW1P 3QF  
Fax No: 020 7976 0976  
Attention: Victoria Derby

## PART 2

The Contractors' insurances shall contain the following endorsement:

1. By a Debenture dated September 2000 and made between Kirklees Waste Services Limited (the "**Borrower**") and Dexia Public Finance Bank S.A. as security trustee for each Finance Party therein defined (the "**Security Trustee**"), the Borrower assigned in favour of the Security Trustee all its right, title and benefit in this insurance and all the benefits thereof (including all claims of whatsoever nature thereunder and return of premiums in respect thereof). Terms defined in the Debenture shall have the same meaning herein.
2. The Insurers agree that until the Security Trustee shall have notified the Insurers to the contrary, all recoveries hereunder shall be paid in full into the Insurance Account without any deduction or deductions whatsoever.

### PART 3

The delay in start-up and business interruption insurances shall contain the following endorsement:

1. By a Debenture dated September 2000 and made between Kirklees Waste Services Limited (the "**Borrower**") and Dexia Public Finance Bank S.A. as security trustee for each Finance Party therein defined (the "**Security Trustee**") the Borrower assigned in favour of the Bank all its right, title and benefit in this insurance and all the benefits thereof (including all claims of whatsoever nature thereunder and return of premiums in respect thereof). Terms defined in the Debenture shall have the same meaning herein.
2. The Insurers agree that until the Security Trustee shall have notified the Insurers to the contrary, all recoveries hereunder shall be paid in full into the Proceeds Account without any deduction or deductions whatsoever.
3. The Insurers agree that until the Security Trustee shall have given its written consent to the Insurers no claim hereunder shall be accepted by the Insurers from any Insured Party, other than the Borrower or a Finance Party.

### PART 4

The third party/public liability insurances shall contain the following endorsement:

1. By a Debenture dated September 2000 and made between Kirklees Waste Services Limited (the "**Borrower**") and Dexia Public Finance Bank S.A. as security trustee for each Finance Party therein defined (the "**Security Trustee**"), the Borrower assigned in favour of the Security Trustee all its right, title and benefit in this insurance and all the benefits thereof (including all claims of whatsoever nature thereunder and return of premiums in respect thereof). Terms defined in the Debenture shall have the same meaning herein.
2. The Insurers agree that, subject to the provisions of any applicable legislation and notwithstanding the assignment referred to above, all sums in respect of any claim hereunder by an Insured shall be paid directly to the person whose claim(s) constitutes the risk or liability insured against provided that such person has executed a discharge of all claims against each of the Insureds in respect of the risk or liability in relation to which the claim was made, save in cases where Insurers are satisfied that the Insured has fully and unconditionally discharged the claim or liability when such sums shall be paid to the Insurance Account.

## APPENDIX 6

### Notice of Assignment

[Kirklees Waste Services Limited Letterhead]

To: [Name and Address of Insurance company]

Dear Sirs

Re Policy No [       ]

We (the "**Company**") refer to the insurance policy taken out with you as identified above (the "**Insurance Policy**").

WE HEREBY GIVE YOU NOTICE that by a Debenture dated       September 2000 we assigned to Dexia Public Finance Bank S.A. (the "**Security Trustee**") as agent and trustee for certain other banks and/or financial institutions all the Company's right, title and interest in and to all insurances effected and to be effected in respect of all buildings, Project Facilities and machinery erected and/or installed in connection with the construction and/or subsequent operation of the Project including the Insurance Policy, and all the rights of the Company to make recovery under the Insurance Policy and all proceeds of the Insurance Policy recoverable by the Company.

We, and not the Security Trustee, will remain liable to perform all obligations assumed by us pursuant to the Insurance Policy and in particular to pay all premiums thereunder.

Will you kindly acknowledge receipt of this Notice by signing and returning the attached copy to the Security Trustee.

Dated       September 2000

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for and on behalf of  
Kirklees Waste Services Limited

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for and on behalf of  
Dexia Public Finance Bank S.A.

We hereby acknowledge receipt of the foregoing notice of assignment and confirm that we have not received any prior notice of an interest in the above mentioned insurance policy.

Dated

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for and on behalf of  
[Insurance Company]

2

This is an extract of Schedule 11 of the Facility Agreement referred to in the foregoing definitions relative to a Form 395 in relation to a Debenture dated 21st September 2000 granted by United Waste Services Limited in favour of Dexia Public Finance Bank S.A.

## SCHEDULE 11

### Form of Transfer Certificate for a Bank

#### WARNING

Banks are advised not to employ Transfer Certificate or otherwise to assign or transfer interests in the Facility Agreement without first ensuring that the transaction complies with all applicable laws and regulations.

#### TRANSFER CERTIFICATE

between

(1) [ ] of [ ] (the "Agent")

(2) [ ] of [ ] (the "Bank")

and

(3) [ ] of [ ]  
(the Transferee)

WHEREAS under the provisions of the Facility Agreement dated [ ] 2000 between Kirklees Waste Services Limited (the "**Borrower**"), the Banks and the Agent and others (the "**Facility Agreement**"), the Bank wishes to transfer certain of its rights and obligations thereunder to the Transferee on the terms set out below. NOW IT IS HEREBY AGREED THAT:

1. Terms defined in the Facility Agreement shall (unless otherwise defined herein) have the same meaning herein. References herein to "**transfer**" shall include a reference to "**assignment**".
2. The Bank:
  - (a) confirms that the details appearing in the Schedule hereto under the headings "**Commitment**" and "**Loans**" accurately summarise its Commitment in the Facility and the amount of its Outstanding Liabilities and the current applicable Interest Periods;
  - (b) requests the Transferee to accept and procure the transfer to the Transferee of the proportion specified in the Schedule hereto of its commitment in the Facility and its participation in such Loans which by its execution hereof the Transferee duly does.
3. The Transferee hereby requests the Agent to accept this Transfer Certificate as being delivered to the Agent pursuant to and for the purposes of Clause 28.5 of the Facility Agreement so as to take effect in accordance with the terms hereof and thereof on [date of transfer] subject only to the Agent having previously received tested telex confirmation from [Bank's correspondent] that the sum of £[ ] has been credited to the Bank's account no [ ] with [Bank's correspondent] for value [date of transfer].

4. The Transferee undertakes to pay to the Agent for its own account a transfer fee of £1,000 as provided in Clause 28.6 of the Facility Agreement.
5. The Transferee represents and warrants that it is a Qualifying Bank whose ordinary business is or includes the making of, or the participating in, Sterling loans, confirms that it has received a copy of the Facility Agreement and each other Finance Document together with such other documents and information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Bank or the Agent to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such documents or information and further agrees that it has not relied and will not rely on the Bank to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Borrower or the Project.
6. The Transferee hereby undertakes to the Bank and each of the other parties to the Facility Agreement that it will perform in accordance with their terms all those obligations which by the terms hereof and of the Agreement will be assumed by it after delivery of this Transfer Agreement to the Agent and satisfaction of the conditions (if any) subject to which this Transfer Agreement is expressed to take effect.
7. None of the Agent or any Bank make any representation or warranty or assumes any responsibility for the legality, effectiveness, adequacy or enforceability of the Facility Agreement or any other Finance Document or any document relating thereto or for the financial condition of the Borrower or for the performance and observance by the Borrower of any of its obligations under the Facility Agreement or any other Finance Document or any documents relating thereto, and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.
8. On execution of this Transfer Certificate by the Agent on their behalf, the Borrower accepts the Transferee as a party to the Agreement in the place of the Bank [to the extent of the transfer] and confirms that all its obligations under the Facility Agreement and each other Finance Document to which it is a party are and remain in full force and effect.
9. The Transferee confirms the details of its lending office and address(es) for notices for the purpose of the Agreement as set out in the Schedule.
10. The Bank hereby assigns, transfers and makes over to the Transferee with effect from [transfer date], subject as provided in Clause 3 hereof, the Commitment and its participation in the Loans specified in the Schedule hereto and all its rights, benefits and obligations relating thereto over each of the Finance Documents. The Transferee hereby accepts such assignment, transfer and making over and agrees to be bound by the terms of the Finance Documents.
11. This Transfer Certificate and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with English Law and the Transferee hereby submits to the jurisdiction of the Courts of England and Wales:

IN WITNESS WHEREOF

**The Schedule hereinbefore referred to  
Details of Proportion to be transferred**

**Bank's Commitment  
in respect of the  
Facility  
transferred**

**Bank's participation  
in the Loan/Interest  
Period**

**Proportion**

Term:

Standby:

Working Capital:

[Existing Bank]

[New Bank]

By: \_\_\_\_\_

By: \_\_\_\_\_

Date:

Date:

Lending Office address:

\_\_\_\_\_  
Address for service of  
Notices (if different)

[Borrower]

2

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 03497105

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 21<sup>st</sup> SEPTEMBER 2000 AND CREATED BY KIRKLEES WASTE SERVICES LIMITED FOR SECURING ALL PRESENT AND FUTURE OBLIGATIONS AND LIABILITIES OF THE COMPANY TO DEXIA PUBLIC FINANCE BANKS S.A. LONDON BRANCH FOR ITSELF AS AGENT FOR THE BANKS (THE AGENT) AND SECURITY TRUSTEE FOR AND ON BEHALF OF THE FINANCE PARTIES (THE SECURITY TRUSTEE) UNDER THE CHARGE AND UNDER THE FACILITY AGREEMENT AND ANY FINANCE DOCUMENT TO WHICH IT IS A PARTY AND/OR ANY DEED OR DOCUMENT SUPPLEMENTAL THERETO WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 29<sup>th</sup> SEPTEMBER 2000.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 3<sup>rd</sup> OCTOBER 2000.

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THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



C O M P A N I E S H O U S E