

Schedule 22 (Availability)

Availability Payment

An element of the Unitary Charge payable in respect of:

- the MRF; and
- each HWRC

shall comprise an Availability Payment calculated in accordance with Schedule 6a (Payment Mechanism).

The Availability Payment shall:

- be subject to the Maximum Availability Hours for the MRF and HWRC (as appropriate) defined in Schedule 6a (Payment Mechanism);
- only be payable during the MRF and HWRC Opening Hours defined in Schedule 2 (Specification); and
- only be payable to the extent that the MRF and HWRCs satisfy the Availability Criteria for the MRF and HWRCs (as appropriate) set out in this Schedule 22.

Tipping Away Payments

In respect of Delivery Points but subject to paragraph 2.7 of the Payment Mechanism, Tipping Away Payments shall be payable if the Delivery Points do not satisfy the Delivery Points Availability Criteria in accordance with Schedule 6a (Payment Mechanism).

This Schedule 22 sets out:

- the Availability Criteria for the MRF;
- the Availability Criteria for the HWRCs;
- the Availability Criteria for the Delivery Points;

CONTRACT A

- in each case, the definition of Unavailability;
- the procedure for measuring Availability for the purposes of calculating the Availability Payment payable in accordance with Schedule 6a (Payment Mechanism);
- the procedure for measuring Availability for the purposes of calculating Tipping Away Payments payable in accordance with Schedule 6a (Payment Mechanism); and
- the procedure for notification of Unavailability at each Facility.

Contractor Default limb (m)

For the avoidance of doubt, for the purposes of limb (m) of the definition of Contractor Default only, the Contractor shall be deemed to be providing one or more HWRC's or one or more Delivery Points in a WCA area meeting the Availability Criteria during any period during which (in accordance with the terms of this Contract or otherwise by agreement with the Authority) the Contractor is not required to provide any HWRC or Delivery Point in that WCA area

1. **AVAILABILITY CRITERIA FOR HWRCs**

- 1.1. During the HWRC Opening Hours defined in Schedule 2 (Specification) each HWRC shall satisfy the Availability Criteria defined in this Schedule 22 before the Availability Payment relating to that HWRC shall become payable in accordance with Schedule 6a (Payment Mechanism).
- 1.2. The Availability Criteria are as set out below and each must be met in order for the HWRCs to be Available.
- 1.3. With respect to any New HWRCs only, the Acceptance Criterion at paragraph 1.4 must be met (in addition to those Availability Criteria set out at paragraphs 1.6 to 1.8 below)
- 1.4. Acceptance Certificate
 - 1.4.1. The Authority has issued an Acceptance Certificate pursuant to Clause 40 (Completion of Works) confirming that the New HWRC has passed the Acceptance Tests.
- 1.5. With respect to all HWRCs, each of the Availability Criteria set out below must be met in order for an HWRC to be Available:
- 1.6. Lawful operation
 - 1.6.1. The HWRC complies with all Legislation so that the HWRC is lawfully able to operate - demonstrated by the obtaining and maintaining of:
 - (i). a valid Planning Permission (where relevant to the HWRC); and
 - (ii). a Permit (which may be a PPC Permit or Waste Management Licence) as appropriate for the nature and the scale of the HWRC.
- 1.7. Staff
 - 1.7.1. The presence at the HWRC of appropriately trained and competent staff in order to be able to operate the HWRC safely in accordance with Health & Safety Legislation and the requirements of relevant Consents.
- 1.8. Operation of the HWRC

- 1.8.1. The HWRC is during the HWRC Opening Hours open to the public and fully functional such that Household Waste can be delivered to the HWRC by the public and that such Household Waste can be and is segregated by its placement by the public within suitable containers with sufficient capacity and then removed from the HWRC for Recycling, Recovery, Landfilling, Composting or sent to the ERF Contractor.

2. **AVAILABILITY CRITERIA FOR THE MRF**

- 2.1. During the MRF Opening Hours defined in Schedule 2 (Specification) the MRF shall satisfy the Availability Criteria defined in this Schedule 22 before the Availability Payment relating to the MRF shall become payable in accordance with Schedule 6a (Payment Mechanism).
- 2.2. The Availability Criteria are as set out below and each must be met in order for the MRF to be Available.
- 2.3. Acceptance Certificate
 - 2.3.1. The Authority has issued an Acceptance Certificate pursuant to Clause 40 (Completion of Works) confirming that the MRF has passed the Acceptance Tests.
- 2.4. Lawful operation
 - 2.4.1. The MRF complies with all Legislation so that the MRF is lawfully able to accept Recyclable Waste demonstrated by the obtaining and maintaining of:
 - (i). a valid Planning Permission (relevant to the MRF);
 - (ii). a Permit (which may be a PPC Permit or Waste Management Licence) as appropriate for the nature and the scale of the MRF.
- 2.5. Staff
 - 2.5.1. The presence at the MRF of appropriately trained and competent staff in order to be able to manage reception of Recyclable Waste at the MRF in accordance with Health & Safety Legislation and the requirements of relevant Consents.

2.6. Reception of Waste

2.6.1. The MRF is lawfully able to receive Recyclable Waste.

2.7. Weighbridge and other recording equipment

2.7.1. A weighbridge and other recording equipment is installed and in an operating condition sufficient to satisfy the data recording requirements set out in Schedule 2 (Specification) and Schedule 25 (Reporting).

3. **AVAILABILITY CRITERIA FOR DELIVERY POINT(S)**

3.1. The Availability Criteria are as set out below and each must be met in order for the Delivery Point to be Available.

3.1. Lawful operation

3.1.1. The Delivery Point complies with all Legislation so that the Delivery Point is lawfully able to receive Contract Waste demonstrated by the obtaining and maintaining of:

- (i). A valid Planning Permission (relevant to the Delivery Point);
- (ii). a Permit (which may be a PPC Permit or Waste Management Licence) as appropriate for the nature and the scale of the Delivery Point.

3.2. Staff

3.2.1. The presence at the Delivery Point of appropriately trained and competent staff in order to be able to manage the reception of Contract Waste at the Delivery Point in accordance with Health & Safety Legislation and the requirements of relevant Consents.

3.3. Reception of Waste

3.3.1. The Delivery Point is lawfully able to receive Contract Waste.

3.4. Weighbridge and other recording equipment

- 3.4.1. A weighbridge and other recording equipment is installed and in an operating condition sufficient to satisfy the data recording requirements set out in Schedule 2 (Specification) and Schedule 25 (Reporting).

4. **UNAVAILABILITY**

4.1. HWRC and MRF Unavailability

- 4.1.1. An HWRC shall be Unavailable and therefore not attract an Availability Payment if at any stage during the Contract Period an HWRC fails to satisfy one or more of the Availability Criteria during the HWRC Opening Hours defined in Schedule 2 (Specification).

- 4.1.2. The MRF shall be Unavailable and therefore not attract an Availability Payment if at any stage during the Contract Period the MRF fails to satisfy one or more of the Availability Criteria during the MRF Opening Hours defined in Schedule 2 (Specification).

- 4.1.3. For the purposes of calculating the Availability Payment for an HWRC or the MRF, the duration of Unavailability shall be measured in 15 minute units ("Units"). Any fraction of a Unit shall be rounded up to the next whole Unit. For example, if an HWRC is Unavailable for 25 minutes, it shall be deemed Unavailable for 30 minutes. In the event that there is more than one instance of Unavailability in a Unit these shall be treated as a single incidence of Unavailability.

4.2. Delivery Point Unavailability

- 4.2.1. A Delivery Point shall be Unavailable and therefore the Contractor shall be liable for Tipping Away Payments in accordance with Schedule 6a (Payment Mechanism) if at any stage during the Contract Period a Delivery Point fails to satisfy one or more of the Delivery Point Availability Criteria during the Delivery Point Opening Hours defined in Schedule 2 (Specification).

5. **MONTHLY REPORTING**

- 5.1. In accordance with Schedule 25 (Reporting Requirements), the Contractor shall record and report on a Monthly basis the duration for which a Delivery Point does not meet one or more Availability Criteria.

- 5.2. For all instances of Unavailability, the Contractor shall confirm to the Authority in its Monthly report the following:
- 5.2.1. the reason for the Unavailability;
 - 5.2.2. which of the Availability Criteria were/are not being met;
 - 5.2.3. the time (to nearest half hour) when the Availability Criteria ceased to be met;
 - 5.2.4. the anticipated time when the Availability Criteria will be met or the actual time when the Availability Criteria were met, if this has occurred; and
 - 5.2.5. details of the remedial action taken or to be taken by the Contractor to remedy the defect.

6. **NOTIFICATION OF UNAVAILABILITY**

- 6.1. The Contractor shall monitor and accurately record all instances of Unavailability of a Delivery Point in accordance with the requirements set out in Schedule 25 (Reporting Requirements).
- 6.2. The Contractor shall regularly monitor the Availability Criteria throughout the required Opening Hours defined in Schedule 2 (Specification).
- 6.3. The Contractor shall within one hour in respect of Clause 6.3.1 and two hours in respect of Clauses 4.3.2 to 4.3.6 of its occurrence notify the Authority's Representative of any instance of Unavailability, providing details of:
- 6.3.1. the reason for the Unavailability;
 - 6.3.2. which of the Availability Criteria are not being met;
 - 6.3.3. the time (to the nearest half hour) when the Availability Criteria ceased to be met;
 - 6.3.4. the likely duration of Unavailability;
 - 6.3.5. whether the WCAs will need to be diverted to Contingency Delivery Points;
 - 6.3.6. details of the remedial action being taken by the Contractor to remedy the defect.
- 6.4. In respect of any HWRC Site, the Contractor shall notify the Authority's Representative as soon as reasonably practicable

when a period of Unavailability has ended and that the HWRC is Available to receive Contract Waste. The HWRC Site shall be deemed Available from receipt by the Authority of such notice.

- 6.5. Following a period of Unavailability in respect of the MRF and/or any other Delivery Point, the relevant Facility shall be deemed Available:
 - 6.5.1. if notification of Availability to receive Contract Waste is received by the Authority before twelve noon on a Business Day, from the beginning of the following day;
 - 6.5.2. if notification of Availability to receive Contract Waste is received by the Authority after twelve noon on a Business Day, from the beginning of the next Business Day;
 - 6.5.3. if notification of Availability to receive Contract Waste is received by the Authority on a day which is not a Business Day, from the beginning of the day following the next Business Day;
- 6.6. Without prejudice to the notice periods in paragraph 6.5 above, the Authority shall use its reasonable endeavours to redirect the WCAs from the Contingency Delivery Points back to the MRF and/or the Delivery Point as applicable as soon as reasonably practicable within the timescales referred in paragraph 6.5. In such event, the MRF and/or Delivery Point as appropriate shall be deemed Available from the time that deliveries of Contract Waste from WCAs recommence within the timescales referred to in paragraph 6.5.
- 6.7. The Authority's Representative may, upon becoming aware of any Unavailability, serve upon the Contractor a written notice providing the Contractor with details of the time it believes any HWRC, the MRF and/or any Delivery Point became Unavailable and the reasons it considers this to be the case.
- 6.8. Subject to Clause 110 (Rights of Access) the Contractor shall allow the Authority reasonable access to all HWRCs, the MRF and/or any Delivery Point to make its own independent assessment of Availability and/or to confirm the Unavailability details (pursuant to paragraph 5.2 above) set out in the Monthly Report.
- 6.9. In the event of any dispute as to whether or not a Delivery Point is Available, the matter shall be dealt with in accordance with Clause 116 (Dispute Resolution).

7. **PLANNED MAINTENANCE**

- 7.1. Planned Maintenance shall be carried out outside required Opening Hours (in accordance with Clause 66 (Planned Maintenance)).
- 7.2. In the event that Planned Maintenance is carried out during Opening Hours such that one or more Availability Criteria are not met:
 - 7.2.1. a Delivery Point shall be Unavailable and Availability Payments shall not be made to the Contractor;
 - 7.2.2. the Contractor shall be liable for Tipping Away Payments calculated in accordance with Schedule 6a (Payment Mechanism);
 - 7.2.3. the provisions of Schedule 6b (Performance Mechanism) shall apply and the Unitary Charge may be subject to Performance Deductions;
 - 7.2.4. during any period of Unavailability the WCAs shall deliver Contract Waste to the Contingency Delivery Points until such time that the Contractor notifies that deliveries of Contract Waste to a Delivery Point may recommence pursuant to paragraph 6.4 above; and
 - 7.2.5. in the event that as a result of the Planned Maintenance being carried out during Opening Hours Contract Waste is Landfilled which may not otherwise have been Landfilled the amount of such Contract Waste Landfilled shall be taken into account in assessing the calculation of Landfill Tax payable under paragraph 2.8 (Landfill Tax) Schedule 6a (Payment Mechanism).

8. **EXCUSING CAUSE AND RELIEF FOR MUNITIONS, HAZARDOUS MATERIALS OR HUMAN REMAINS**

- 8.1. Subject always to the Contractor complying with the provisions of paragraph 8.2 the Contractor shall be entitled to relief in the event any Munitions, Hazardous Waste or Human Remains are delivered to a Delivery Point as set out below on no more than 3 (three) occasions in any Contract Year (ie three sets of one day of protection).
- 8.2. In the event that the Delivery Point is caused to temporarily cease operations following the discovery of any Munitions, Hazardous

Waste or Human Remains (Enforced Closure), the Contractor shall notify the Authority of:

- 8.2.1. the time (to the nearest half hour) at which the Enforced Closure commenced;
 - 8.2.2. the anticipated duration of the Enforced Closure;
 - 8.2.3. details of the steps being taking by the Contractor to remove the Munitions, Hazardous Waste or Human Remains; and
 - 8.2.4. the time (to the nearest half hour) that the Munitions, Hazardous Waste or Human Remains are removed from the Site and/or that normal operation of the Delivery Point is resumed.
- 8.3. For the avoidance of doubt, compliance with paragraph 8.2 shall be deemed to satisfy the requirements of Clause 104 (Relief Events) in respect of notification and claiming relief for a Relief Event in respect of Enforced Closure and the Contractor shall not additionally be required to comply with Clause 104 (Relief Events).
- 8.4. The Delivery Point shall be deemed to be Available during the Enforced Closure for a period of up to 1 (one) Day. In this event and for up to a maximum of 1 (one) Day:
- 8.4.1. the Delivery Point shall be deemed Available and the Availability Payment shall be payable in accordance with Schedule 6a (Payment Mechanism);
 - 8.4.2. the Contractor shall be relieved from termination pursuant to Clause 104 (Relief Events);
 - 8.4.3. to the extent that the Enforced Closure prevents delivery of Contract Waste to the Delivery Point the Contractor shall be liable for Tipping Away Payments calculated in accordance with Schedule 6a (Payment Mechanism);
 - 8.4.4. in the event that Contract Waste is Landfilled which may not otherwise have been Landfilled the amount of such Contract Waste Landfilled shall be taken into account in assessing the calculation of Landfill Tax payable under paragraph 2.8 (Landfill Tax) Schedule 6a (Payment Mechanism); and

CONTRACT A

- 8.4.5. the provisions of Schedule 6b (Performance Mechanism) shall apply and the Unitary Charge may be subject to Performance Deductions.
- 8.5. If the Enforced Closure continues beyond 1 (one) Day and as a result one or more of the Availability Criteria are not satisfied
 - 8.5.1. the Delivery Point shall be Unavailable and the Availability Payment shall not be payable;
 - 8.5.2. to the extent that the Enforced Closure prevents delivery of Contract Waste to a Delivery Point the Contractor shall be liable for Tipping Away Payments calculated in accordance with Schedule 6a (Payment Mechanism);
 - 8.5.3. in the event that Contract Waste is Landfilled which may not otherwise have been Landfilled the amount of such Contract Waste Landfilled shall be taken into account in assessing the calculation of Landfill Tax payable under paragraph 2.8 (Landfill Tax) Schedule 6a (Payment Mechanism); and
 - 8.5.4. the provisions of Schedule 6b (Performance Mechanism).shall apply and the Unitary Charge may be subject to Performance Deductions; but
 - 8.5.5. the Contractor shall be relieved from termination pursuant to Clause 104 (Relief Events).

