

Waste & Resources Action Programme

OMK002 Residual Biogas Potential (RBP) Test

A review of the application of the Residual Biogas Potential (RBP) test for PAS110 as used across the UK's Anaerobic Digestion industry and a consideration of potential alternatives

Tender Invitation Document

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Section 1: Background

- 1.1 WRAP (The Waste & Resources Action Programme) is a not-for-profit private company backed by funding from the Department for Environment, Food and Rural Affairs, the Scottish Government, the Welsh Government and Northern Ireland Executive. WRAP works in partnership to encourage and enable businesses and consumers to be more efficient in their use of materials and recycle more things more often. This helps to minimise landfill, reduce carbon emissions and improve our environment.
- 1.2 This document sets out the scope of work that the Waste and Resources Action Programme ("WRAP") wishes to commission. WRAP selects its tenderers through a competitive process and this document describes that process and explains how tenderers may tender for the work described.
- 1.3 WRAP works closely with a range of stakeholders in the agriculture and food industries, to provide the evidence they require to demonstrate that the use of quality digestates and composts in agriculture meets their requirements.

Section 2: Scope of work

Background and Scope of Work

- 2.1 The Residual Biogas Potential (RBP) test is a compulsory component of PAS110, providing a measure of genuine gas potential and thus of how effectively an anaerobic digestion (AD) plant has digested the feedstock. This is the measure that shows that the input 'waste' materials have been recovered.
- 2.2 The current RBP test limit was set by comparison of the stability demonstrated by digestate samples available at the time PAS110 was developed, with a small number of livestock slurries that were considered acceptable for spreading (untreated) to agricultural land. The stability of digested sewage sludge was also considered, but this was found to be much more stable than either livestock slurries or digestates, and a compromise figure of 0.25 l/g of volatile solids (VS) was suggested and agreed with the industry prior to publication of the PAS in 2010.
- 2.3 Feedback (via the Biofertiliser Certification Scheme (BCS)) has indicated that some AD facilities are experiencing difficulty with achieving the required digestate stability. It seems that this particularly relates to plants accepting high proportions of food waste. At the same time, other plants accepting similar inputs are (apparently) achieving the required stability with ease.
- 2.4 There has also been some confusion around the purpose of the test. As stated above, it was developed to demonstrate that digestion had taken place – but it is possible that the test (and its limit) could also offer a control over the environmental impacts arising from the use of digestates. A wider range of feedback was provided on the RBP test during workshops held in December 2011 to obtain industry feedback on PAS110 and the AD Quality Protocol (ADQP)/ Additional Scheme Rules for Scotland (ASRS). The relevant feedback specific to the RBP test is reproduced as a table (below), providing some background information and context for the successful tenderer.
- 2.5 The main purpose of the project being tendered is to ensure that the RBP test is working correctly, with a supplementary aim being to consider whether alternative methods for demonstrating recovery of input materials are available (and more cost-effective) and whether they have any advantages over the RBP test.
- 2.6 The maximum budget for this work is £50,000 (including VAT) across the entire project period, which spans FYs 2011/12 and 2012/13. WRAP anticipates the budget spanning both financial years and expect deliverables based invoicing including an initial planning and development invoice in FY2011-2012.
- 2.7 Tenderers should submit projects that are designed and costed for the entire project period, FY2011/12 and 2012/13. However, you are reminded that this is a competitive process and tenders in excess of the maximum budget will only be considered if they contain strong justification of the requested expenditure.

**Relevant feedback from the PAS110/ADQP workshops held in December 2011
(Edinburgh, Bristol & London)**

Residual Biogas Potential Test
1. AD facilities accepting food wastes are producing digestates that are close to RBP limit, and can't be sure that they will pass. This uncertainty means that operators have to operate parallel product and waste spreading regimes – adding substantial cost (and market uncertainty).
2. With the RBP test, a failure can have dramatic consequences on the operator, while the consequences on the environment might be nil or negligible (given that the same material can be spread as waste without RBP testing). It was suggested that significant testing of digestate take place before certification to demonstrate compliance below a realistic average figure and there be a requirement to stay below a rolling average after certification – permitting results above the rolling average up to a maximum figure. It was proposed that the initial rolling average RBP limit be 0.30 litres/ gram of VS and the maximum figure be 0.35 litres per gram VS.
3. Despite feedback to the contrary, it has been confirmed that most digestates pass the current test limit.
4. The RBP test was designed to handle digestates taken from storage - not sampled from the digestion vessels. If operators wish to sample from the end of the 'active' process (as is permitted within PAS110:2010), then the limit would need to be adjusted accordingly.
5. A clear statement from the environmental regulator was requested, as to why RBP was needed for product digestates but not waste digestates. Initial feedback was that this is needed to demonstrate that wastes had been subjected to a recovery process – which isn't needed when handling wastes.
6. There was general consensus that it is important to demonstrate that digestion has occurred, and also to demonstrate that negative outcomes from the use of digestates are avoided (eg by controlling VFA loadings in digestate). This could mean that two or more separate tests are appropriate to demonstrate different digestate characteristics. For example: One to demonstrate that the process has taken place, and one to show that digestate will not harm the environment in use. Samples for separate tests could be taken at different points in the overall process.
7. Need to review current RBP data and undertake repeatability trials.
8. Need to look at historic data and re-evaluate test, as well as examining the slurry baseline data to determine whether they remain valid.
9. Is there a quicker / cheaper RBP equivalent / alternative? For example: Does VFA monitoring have anything to offer in terms of process monitoring? Is there an in-line test to predict stability? How do VFAs relate to RBP?
10. Could waste data flows and OFGEM returns be used to demonstrate that full recovery had taken place?
11. A number of parameters are already routinely monitored to check process operation - could these be used instead of RBP?
12. Carbon in and carbon out instead of RBP?
13. Could just test whole digestate (since this would demonstrate that a digestion process had taken place) and not test separated fractions.
14. Is there a direct or indirect test that could correlate with and predict eventual digestate stability?
15. Look at RBP sampling intervals during validation. Need to demonstrate consistent process, but is current approach too restrictive / insufficiently restrictive? Could EU End of Waste approach give a steer?
16. Need for full retention time between samplings (during validation) is hard – could it be streamlined?
17. Could we have a system that allowed x out of y passes, with any failure below a secondary limit (as with <i>E coli</i> monitoring for ABPR compliance)?
18. Need to understand impacts of VFAs on soils, since this could provide the necessary 'environmental outcome' test to sit alongside the 'process outcome' RBP test.
19. Do storage conditions impact on digestate stability?

20. Is RBP suitable for aerobic digestates, or is an alternate test needed?

21. What would the impacts of the different EU test be?

Requirements or Services

- 2.8 Applicants should include in their proposals an explanation of how they will deliver the following services and any other services that the applicant considers would add value to WRAP's objectives for this project (see above) and the Deliverables (see below).
- 2.9 The successful contractor **will be required** to work with the Biofertiliser Certification Scheme (BCS), Open University, University of Southampton and suitable AD industry partners to examine:
- 2.9.1 The RBP of digestates sampled *prior* to storage, and whether this could impact on the current RBP limit;
- a. The RBP test was developed for digestate samples taken from storage. However, PAS110 allows digestates to be sampled from the digestion vessel if the operator intends to despatch them to market at this point. This degree of flexibility (of point of despatch) needs to remain in PAS110 but may require that samples be taken at different points in the process to be subjected to different tests.
- 2.9.2 Whether separate tests should be introduced into PAS110 to demonstrate that not only had full recovery of input materials taken place, but that the resulting digestates would not result in unacceptable environmental harm when used according to Good Agricultural Practice;
- a. Since the number of possible environmental indicators is so large, it is envisaged that this element of the work will focus on Volatile Fatty Acids (VFA) and their impacts on the receiving soil environment. If VFA concentrations in digestates are found to be directly proportional to RBP values in the same digestates, it might be possible to set an RBP limit that encompasses both process and use outcomes. However, it is considered more likely that separate RBP and VFA limits will be needed to encompass process and use outcomes, respectively.
- 2.9.3 Whether the RBP test should only be applied to whole digestates, and not subsequently separated fractions;
- a. If the test is principally intended to demonstrate a process outcome, then it may be most appropriate that it is applied to the initial output from any process, rather than any secondary fractions.
- 2.9.4 Whether there are sufficient data to support statistical changes in the current pass / fail approach;
- a. For example, significant (repeated) testing of digestate could take place before certification to demonstrate compliance below an average figure, but that after certification a rolling average approach be applied – permitting results above the rolling average up to a maximum figure. It has been proposed by one operator that the initial rolling average RBP limit be 0.30 litres per gram of VS and the maximum figure be 0.35 litres per gram VS. Such an approach has been adopted for monitoring *E. coli* populations in digestate under the Animal By-Products Regulations¹.
- 2.9.5 Whether the current sampling intervals set by PAS110 (which require material to be tested after a minimum guaranteed retention time that is specific to each facility) are appropriate, or whether different sampling intervals would still afford an adequate demonstration of digestate consistency;

¹<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:300:0001:0033:EN:PDF>

- a. Any consideration of different sampling intervals should consider discussion on this subject within the proposed EU End-of-Waste criteria².
- 2.9.6 Whether alternative methods for demonstrating recovery of input materials are available (and more cost-effective) and whether they offer any advantages over the RBP test;
- a. This should at least include a consideration of other routinely-monitored determinands – and particularly those that provide short-term feedback to AD operators (allowing them to more closely manage their processes with a view to ensuring compliance with PAS110). Real-time monitoring and an ability to predict ultimate stability would be highly desirable, but it is not known how realistic this is.
- 2.9.7 Whether the RBP test could be applied to aerobic digestates (such as those arising from Thermophilic Aerobic Digestion or TAD facilities), and if so, whether a different limit would be required. If the RBP test were deemed suitable, then the contractor would also need to consider the 'use outcome test' as discussed in point 2.9.2 above – and if necessary, to recommend a separate 'use outcome limit' for aerobic digestates;
- 2.9.8 An impact assessment (covering, where possible, environment & health, economic, market and legislative) of the proposed EU End-of-Waste criteria on the UK AD sector², regarding the following proposal;
- a. The current proposal is for digestates to meet a limit of 1500 mg organic acids (total) per litre of digestate. It is unknown whether UK AD operators could comply with this proposal.
- 2.10 Potential bidders should note that WRAP Cymru recently supported a project that included RBP testing of a range of materials. The resulting report³ can be downloaded from the WRAP website³.
- 2.11 It is expected that WRAP will make the outputs from this project publicly available. As a market-facing organisation, WRAP has to ensure that evidence is transparent, robust and presented in a balanced way. All reports should be written clearly using language that is accessible to the intended audiences, which in this case include the AD industry and environmental regulators, and a writing guide will be issued to the successful contractor. To accommodate this, applicants should plan for several rounds of WRAP comments and amendments to project outputs, to ensure that the results can be communicated appropriately. WRAP may request that the report be copyedited, at the contractor's cost, where it does not reach the required standard.
- 2.12 The successful applicant will be expected to attend project meetings as appropriate, including as a minimum, project initiation, interim and final meetings.

Deliverables

- 2.13 Provide WRAP with milestone reports as appropriate.
- 2.14 A single final report bringing together the information gathered in addressing 2.5 and the questions in 2.9, which recommends whether changes are or are not needed to PAS110. Where changes are recommended, the contractor should provide the robust evidence that supports such recommendations. Where necessary (as a result of the research activity), the report should include new or amended laboratory protocols.
- 2.15 A PowerPoint presentation providing an overview of the project and the key findings.

Programme

²<http://susproc.jrc.ec.europa.eu/activities/waste/documents/IPTSEoWBiodegradablewaste1stworkingdocument20110221.pdf>

³ http://www.wrap.org.uk/downloads/Biofertiliser_management_-_agronomic_benefit_and_odour_control.6d79160a.11225.pdf

2.16 The target deadline for the work programme is detailed below:

Work Programme

Work to commence by: March 05th, 2012*

Work to be completed by: August 31st, 2012*

* WRAP reserves the right to change the timetable

Section 3: The tender submission - Information required

3.1 Your tender submission should be submitted electronically to rachel.tipping@wrap.org.uk by the closing date provided below. Where electronic submission is not possible, your application should be printed double sided, submitted on recycled paper wherever possible and should be limited to no more than 20 pages (excluding appendices).

3.2 Your tender submission must include the following information (preferably in order):

(1) An executive summary of no more than one side of A4 in length, outlining the proposed work and including the total cost of the proposed work, inclusive of Value Added Tax ("VAT") and anticipated expenses.

(2) Company/Organisation details

WRAP will need the following information:

- The name of the Company submitting the tender;
- The registered office name, address, VAT number (if applicable) and company or charity registration number;
- The name of the nominated contact person within the tenderer's organisation;
- Contact details including: address (if different to the above), telephone number, fax number and e-mail address.

WRAP accepts tenders both from individual companies and from consortiums. Should you decide to tender as part of a consortium you will need to identify one member of the consortium (the "Lead Contractor") to act as the contracting party. All other consortium members will be sub-contractors to the Lead Contractor.

(3) A description of your working methods

You will need to make clear how you intend to deliver the work and provide estimated timescales for delivery.

(4) A description of the project team who will manage and deliver the work

This should include a list of individuals, their respective roles within the organisation and, for the purposes of this work their relevant skills and experience including any relevant professional qualifications.

(5) An identification of any sub-contractors to be used

You should include a list of any sub-contractors you intend to use to fulfil the requirements of the work.

(6) The total cost of the work (inclusive of VAT) together with a full breakdown of costs. Expenses should be identified separately but must be included as part of the total cost of the work.

(7) Identification of any conflicts of interest which might arise if you were selected to undertake the work and if such a conflict were to arise, an indication of how this conflict would be addressed. Where you tender as part of a consortium, all members of the consortium should be considered.

(8) A copy of your Environmental Policy and evidence of any accredited Environmental Management System.

(9) As appendices, tender submissions should include:

- **Audited or management accounts for the last 2 financial years;**
WRAP reserves the right to reject bids from Contractors where the accounts show that the Contractor might be at risk of insolvency.
- **A statement of any material litigation, pending or threatened, or other legal proceedings;**
WRAP reserves the right to reject bids from Contractors subject to legal proceedings where in WRAP's reasonable opinion such proceedings could impact upon the Contractor's ability to deliver the services required.
- **Evidence of the level of professional indemnity, public liability and property damage insurance cover held.**
WRAP will require minimum cover levels of:
 - £1 million professional indemnity;
 - £2 million public liability;
 - £2 million property damage
 To be considered for evaluation, Contractors must have this cover in place at the time of bidding or must include (as part of the tender submission) a commitment to take out such cover in the event of being appointed to the framework.

- 3.3 Should you have any questions in relation to the type of information required by WRAP please contact the person identified in Section 5.3 of this Tender Invitation Document to discuss.
- 3.4 All tender submissions will be treated on a confidential basis by WRAP and its advisers, subject to the provisions of the Freedom of Information Act 2000.

Section 4: Evaluation criteria

- 4.1 WRAP must be satisfied that each potential contractor has the appropriate capabilities and resources available to undertake the work to WRAP's requirements and provide the necessary services
- 4.2 The process WRAP uses to select its contractors is a competitive one. Your tender submission should be written to address the key requirements and scope of the work and demonstrate how it meets the evaluation criteria below:
- Price including both:
 - total price (weighting 15%); and
 - average daily rate, calculated by dividing the total price by the number of contractor days offered (weighting 15%).
 - Quality of proposal: strength of interpretation of the requirements, clear demonstration of how the Deliverables will be achieved successfully and consistently with the Services, clear workplan with realistic and testable milestones (weighting 35%).
 - Details of the contractor: ability to provide the proposed services based on evidence of project management capability, authority of allocated personnel, their skills and technical capability (weighting 30%). Demonstrated capabilities and a demonstrated knowledge and understanding of the following issues will be particularly relevant:
 - understanding of PAS110 and the RBP test;
 - understanding of potential environmental impacts arising from digestate use;
 - understanding of laboratory tests and their implementation;
 - ability to engage with key UK AD industry contacts; and
 - ability to engage with environmental regulators.
 - Corporate environmental commitment: evidenced by a credible environmental policy and/or environmental management system (weighting 5%).

Section 5: Application procedure / tender process

- 5.1 Completed tender forms must have been received electronically by rachel.tipping@wrap.org.uk by the time and date set out below.
- 5.2 All correspondence relating to this tender, including tenders submitted, must be clearly marked 'Confidential Tender: OMK002 -00X Residual Biogas Potential Test.
- 5.3 If you have an enquiry about the work being commissioned or the processes WRAP uses to select its tenderers, please contact: sarah.macnaughton@wrap.org.uk.
- 5.4 All tender submissions must remain valid for a minimum period of 90 days following the deadline for receipt of tender submissions.
- 5.5 All tender submissions will be competitively assessed against the evaluation criteria, (stated in Section 4 of this document).
- 5.6 The target timetable for this process is as follows:

Tender Timetable*

Deadline for receipt of tender submissions	12:30 pm 21 st February 2012
Tenderers receive written notification of WRAP's decision	01 st March 2012
Work to commence	5 th March 2012
Work to complete	31 st August 2012

*WRAP reserves the right to change the timetable if deemed necessary by WRAP

- 5.7 All tenderers will receive written notification of WRAP's decision and tenderers will be given the opportunity to obtain feedback on their tender submission.
- 5.8 This information is offered in good faith for the guidance of interested parties, but no warranty or representation is given as to the accuracy or completeness of any of it. WRAP and its advisers shall not be under any liability for any error, misstatement or omission. No aspect of this procedure shall constitute a contract or part of a contract. Tenderers participate in the process on the strict understanding that the procedure may be altered or that WRAP may not proceed for any reason. WRAP reserves the right not to follow up this Tender Invitation Document in any way and in particular not to enter into any contractual arrangement with any of the tenderers. WRAP does not bind itself to enter into negotiations or proceed with or accept any tender. Any decision to tender is at the sole discretion of the tenderer and WRAP excludes all liability in respect of any tendering costs incurred.
- 5.9 Tenderers taking part in this process acknowledge and accept that WRAP may publish details about the winning bid (such as the contract value and the name of the winning bidder) on WRAP's website.

Appendix I – Sample Form of Contract

SERVICES AGREEMENT

Between

The Waste and Resources Action Programme

And

Name of Contractor

WRAP Contract Reference No. xxxx

Title of Services Agreement

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THIS AGREEMENT is made

Between: **The Waste and Resources Action Programme** (Company no. 4125764) whose registered office is at The Old Academy, 21 Horse Fair, Banbury, Oxfordshire, OX16 0AH ("**WRAP**")

And: **Name of Contractor** (Company no. *number*) whose registered office is at *address (not PO Box)* (the "**Contractor**")

RECITALS: WRAP has agreed with the Contractor to make payments to the Contractor in consideration of the Contractor carrying out the Services on and subject to the terms and conditions set out in this agreement.

NOW IT IS HEREBY AGREED as follows:

This agreement shall be made on the date when both parties have executed the agreement.

1. Definitions and Interpretation

1.1 In this agreement terms set out in this Clause 1.1 shall have the following meanings and terms not defined in this Clause 1.1 shall have the meanings given to them in Schedule 1 (Agreement Details):

"**Confidential Information**" means: all information (of whatever nature and however recorded or preserved) disclosed by one party to the other, which:

- (a) is marked as or has been otherwise indicated to be confidential; or
- (b) derives value to a party or that party's Group from being confidential; or
- (c) would be regarded as confidential by a reasonable business person,

except to the extent that such information is: already in the public domain at the time of disclosure; enters the public domain otherwise than by a breach of any obligation of confidentiality; known to that party before it is disclosed to that party by, or on behalf of, the other party; or information which is lawfully obtained.

"**Expenses**" means out-of-pocket expenses reasonably incurred by the Contractor's staff in the proper performance of the Services.

"**Event of Default**" means any event described in Clauses 17.1.1 (Breaches of Obligations) to 17.1.11 (Failure to Pay), whether or not within the Contractor's control.

"**Group**" means, in relation to each party, itself, each of the holding companies and subsidiaries and each subsidiary of each of the holding companies (as each such term is defined in the Companies Act 1985).

"**Intellectual Property**" and "**Intellectual Property Rights**" means all and any current and future patents, trade marks (whether registered or unregistered), design rights, registered designs, trade or business names, know-how (including commercial know-how), copyright, (including rights in computer software and data), database rights, discoveries and inventions, confidential information and any other intellectual property rights of whatever nature and in every case in every part of the world and whether or not registered.

"**Maximum Contract Value**" means the maximum contract value specified in Schedule 1 (Agreement Details).

"**Milestone Payment**" means the milestone payments specified in Schedule 1 (Agreement Details).

"**Milestones**" means the services specified in respect of each Milestone in Schedule 1 (Agreement Details).

"**Potential Event of Default**" means an event which has a reasonable possibility of becoming an Event of Default.

"Progress Report" means a written report of the Contractor in such form as WRAP may reasonably require updating WRAP on general progress in relation to the Services.

"Services" means the services specified in Schedule 1 (Agreement Details) to be performed by the Contractor.

- 1.2 As used herein unless the context otherwise requires, the singular includes the plural and vice versa.
- 1.3 As used herein unless the context otherwise requires, the masculine includes the feminine and vice versa.
- 1.4 References to a "Clause", "Paragraph" or "Schedule" are references to a clause of, paragraph of, or a schedule to, this agreement unless otherwise provided. Clause headings are for ease of reference only.
- 1.5 References to this or any other agreement or document or statute are references to them in force for the time being and as amended, varied, supplemented, consolidated or re-enacted from time to time and include any schedules or annexes to such agreement or document and, in the case of statutes, any delegated legislation.
- 1.6 References to parties and other persons include their successors and permitted assigns, except where the content requires otherwise.

2. Payment

- 2.1 Subject to the terms of this agreement, WRAP will pay the Contractor:
 - 2.1.1 Milestone Payments, in aggregate up to the Services Payment Total, providing such payments do not exceed the Maximum Contract Value, following receipt of relevant invoices raised upon performance in full of each Milestone;
 - 2.1.2 Expenses, in aggregate up to the Contract Expenses Total, which have been agreed in advance by WRAP and are in accordance with the rates for contract expenses set out in Schedule 1 (Agreement Details), following receipt of such receipts as WRAP may require; and
 - 2.1.3 Any further payments specified in Schedule 1 (Agreement Details), subject to any terms specified and providing always that the sum of all payments do not exceed the Maximum Contract Value;
 - 2.1.4 All invoices submitted by the Contractor must be on headed paper and must quote the following:
 - The Milestone completed (if applicable); and
 - The amount of payment requested; and
 - The Contractor's bank details; and
 - The project/contract reference number.
 - 2.1.5 WRAP reserves the right to return, without payment, invoices not containing the above information. WRAP will pay invoices within 30 days of WRAP being satisfied that payment is due.
- 2.2 Subject to Clause 16 (No Fault Termination), unless WRAP agrees otherwise, it will not make any payment to the Contractor at any time when:
 - 2.2.1 WRAP considers any Event of Default or Potential Event of Default has occurred and is continuing;
 - 2.2.2 WRAP considers any representation in Clause 3 (Representations) is:
 - (a) not true and accurate in all material respects; or
 - (b) misleading;
 - 2.2.3 WRAP has requested in writing and is yet to receive evidence from the Contractor substantiating that the representations by the Contractor are true and accurate in all material respects and not misleading;

- 2.2.4 making the payment would cause the total amount paid to the Contractor to exceed the relevant amounts specified in Schedule 1 (Agreement Details);
- 2.2.5 The Contractor is in breach of any EU Procurement or State Aid Regulation or WRAP has reasonable grounds to suspect that the Contractor may be in breach of the same; or
- 2.2.6 WRAP has given notice to terminate this agreement.

3. Representations

3.1 The Contractor represents to WRAP at all times that the representations set out in this Clause are true and accurate in all material respects, and are not misleading, and will notify WRAP of any breach of these representations at the earliest opportunity:

- 3.1.1 it is duly incorporated and validly existing;
- 3.1.2 it has the power to own its assets and carry on its business;
- 3.1.3 the obligations expressed to be assumed by it in this agreement are legal, valid, binding and enforceable obligations;
- 3.1.4 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this agreement;
- 3.1.5 no breach of this agreement is continuing;
- 3.1.6 any factual information was true, complete and accurate when provided, except to the extent superseded by subsequent information so provided; and
- 3.1.7 the non factual information, forecasts or projections most recently provided to WRAP were made in good faith and arrived at bona fide after careful consideration,

and (where clauses 3.1.6 and 3.1.7 are relevant) the Contractor was not at the time when the information was so supplied by or on behalf of the Contractor aware of any material facts or circumstances that were not disclosed to WRAP which would have rendered such information inaccurate or misleading in a material respect.

4. Undertakings

4.1 The Contractor undertakes:

- 4.1.1 to carry out, or procure the carrying out of, the Services;
- 4.1.2 that the Services shall be carried out with the competence, skill, care and due diligence that might reasonably be expected of a contractor that has held itself out to be an expert in every aspect of the performance of the Services;
- 4.1.3 to commence, or procure the commencement of, the Services on or before the Services Commencement Date;
- 4.1.4 to complete each Milestone on or before the milestone completion date specified for the relevant Milestone in Schedule 1 (Agreement Details);
- 4.1.5 to complete, or procure the completion of, the Services on or before the Services Completion Date;
- 4.1.6 to comply with the environmental policy statement of the Contractor (or in the absence of such a statement an appropriate environmental policy statement determined by WRAP acting in its absolute discretion), and to comply with the arrangements for the implementation of that policy statement as documented in the environmental management system of the Contractor and the laws relating to the environment and the health and safety of humans;
- 4.1.7 to promptly notify WRAP if an Event of Default or a Potential Event of Default occurs;
- 4.1.8 where requested by WRAP, to arrange at the Contractor's cost:
- 4.1.9 for an audited account within 3 months of the Services Completion Date and provide the same to WRAP, in a form and substance satisfactory to WRAP, which will confirm to WRAP that the Milestone Payments and Expenses have been applied or spent in accordance with the conditions of this agreement; and

4.1.10 for delivery to WRAP, within 6 months of the end of each of its financial years, and in any event not less than once in each requested 12 month period calculated from the date of this agreement, copies of audited financial statements of the Contractor disclosing a true and fair statement of its assets, liabilities, income and outgoings.

5. Services Management

5.1 The Contractor shall:

5.1.1 at all times keep WRAP fully informed on the progress of the Services and fully advised of all information which it receives in connection with the Services;

5.1.2 provide Progress Reports to WRAP on each Reporting Date;

5.1.3 have progress meetings with WRAP on each Meeting Date;

5.1.4 use reasonable endeavours to ensure that at all times any of the Contractor's personnel, advisers or auditors are available to speak with and otherwise to deal with any queries from WRAP in respect of the Services on reasonable notice; and

5.1.5 on reasonable notice allow WRAP to inspect and examine the Services and to provide all such facilities as WRAP may reasonably require for such inspection and examination.

5.2 If WRAP requests a change to the agreed scope or nature of the Progress Reports and progress meetings for a reason not related to WRAP's concern about performance of the Services by the Contractor then WRAP will pay such reasonable costs of the Contractor as are agreed in advance by WRAP and the Contractor at the time.

6. Personnel

6.1 The Contractor will at all times promptly notify WRAP in writing of the Key Personnel to carry out the Services and will provide on receipt of a written request from WRAP details of the employees and other resources allocated to carry out the Services (including persons engaged by the Contractor).

6.2 WRAP may, by notice in writing to the Contractor explaining the reasons for its objection, object to any person proposed by the Contractor to complete part of the Services. Upon receipt of such notice the Contractor shall immediately remove such persons from the team to provide or providing the Services. Unless WRAP subsequently withdraws such notice after a consultation with the Contractor, the Contractor shall ensure that such persons have no further involvement in the provision of the Services.

6.3 The Contractor acknowledges that the Key Personnel are essential to the fulfilment of its obligations under this agreement and undertakes to use all reasonable endeavours to retain such Key Personnel. If the Contractor is aware that any of the Key Personnel will become unavailable for any reason the Contractor will promptly notify WRAP and replace such individual with another individual with equivalent experience and competencies.

6.4 The Contractor will not, and will procure that its employees and persons engaged by the Contractor will not, either during its engagement or for a period of 12 months thereafter:

6.4.1 offer or cause to be offered any employment to any employee of WRAP without the prior written consent of WRAP; and

6.4.2 knowingly do or fail to do any act or thing which could or might reasonably cause any employee of WRAP to either act in breach of his or her obligations to WRAP or terminate his or her employment with WRAP.

7. Remedies Indemnities and Limitation of Liability

Death, injury or fraudulent misrepresentation

7.1 Nothing in this agreement shall be taken to exclude or limit the liability of the other party:

7.1.1 for death or personal injury caused by its negligence; or

7.1.2 for fraudulent misrepresentation.

Indemnity

- 7.2 The Contractor shall, on demand, indemnify and agrees to keep indemnified WRAP against all costs, expenses, actions, charges, claims, damages, proceedings and other liabilities and costs (including legal costs) sustained or incurred by WRAP as a result of any breach of this agreement by the Contractor.

Intellectual Property Indemnity

- 7.3 The Contractor shall, on demand, indemnify and agrees to keep indemnified WRAP against all costs, expenses, actions, charges, claims, damages, proceedings and other liabilities and costs (including legal costs) relating to any infringement or alleged infringement of any Intellectual Property Rights of any third party:
- 7.3.1 arising from the Services and/or their execution or the results of the Services; or
- 7.3.2 in the event that the assignments or the consents anticipated by Clause 10.7 are not provided, or are otherwise defective.

Property Damage

- 7.4 The liability of either party under this agreement for any breach resulting in direct loss of or damage to tangible property, or any series of connected breaches resulting in or contributing to the loss of or damage to tangible property, shall not exceed the Property Damage Limit.

Negligence/Professional Indemnity

- 7.5 Subject to Clause 7.1 (Death, injury or fraudulent misrepresentation), the aggregate liability of either party under this agreement for breaches arising in any twelve-month period, other than those governed by Clause 7.3 (Intellectual Property Indemnity) and Clause 7.4 (Property Damage), shall not exceed the Negligence/PI Limit.

Insurance

- 7.6 The Contractor shall at all relevant times maintain or procure insurance in connection with the Services against such risks and losses, in such respective amounts, with reputable insurers as are appropriate for work of a similar scope and nature, except those risks and losses which are not capable of being insured and shall take all reasonable steps to procure that any person engaged by it shall also be similarly insured. At any time, on reasonable notice, the Contractor shall, if requested by WRAP, provide reasonable written confirmation (for instance a broker's certificate) that such insurance continues to be valid. The Contractor shall promptly apply the proceeds of any insurance claim either in reinstatement or replacement of any relevant asset, discharge of any relevant third party liability or towards payment of any amounts then owing from the Contractor.

8. Corrupt Gifts and Conflict of Interest

- 8.1 The Contractor shall not offer or give or agree to give any employee of WRAP any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this agreement or any other contract for WRAP or for showing or forbearing to show favour or disfavour to any person in relation to this agreement or any other contract for WRAP.
- 8.2 Any breach of this Clause by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by it or acting on its behalf under the Prevention of Corruption Acts, 1889 to 1916, in relation to this agreement or any other agreement for WRAP, shall entitle WRAP to terminate this agreement and recover from the Contractor the amount of any loss resulting from such termination.
- 8.3 The Contractor warrants and undertakes to WRAP that in relation to the performance of the Services, it will provide independent and unbiased advice, recommendations and reports to WRAP.
- 8.4 The Contractor must ensure that no conflict arises or appears to arise between its duties under this agreement and its private interests, financial or otherwise. WRAP should be

consulted immediately if there is any uncertainty about whether any such conflict of interest may exist.

9. Confidentiality

- 9.1 Without prejudice to the rights of WRAP set out in Clause 10.4, each party undertakes:
- 9.1.1 to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by Clause 9.2 and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information;
 - 9.1.2 not to use the Confidential Information otherwise than for the purpose of this agreement; and
 - 9.1.3 to use all reasonable endeavours to ensure that any person to whom it passes any Confidential Information (unless disclosed under Clause 9.2.2) acknowledges and complies with the provisions of this agreement as if that person were also a party to it.
- 9.2 Each party agrees that the other party may disclose Confidential Information:
- 9.2.1 to members of its Group and their officers, directors, employees and professional advisers to the extent necessary for the purpose of this agreement and to any auditors of members of its Group;
 - 9.2.2 where:
 - (a) requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body;
 - (b) required by the rules of any stock exchange on which the shares or other securities of any member of its Group are listed; or
 - (c) required by the laws or regulations of any country with jurisdiction over the affairs of any member of its Group; or
 - 9.2.3 with the other party's prior written consent.
- 9.3 Each party agrees (to the extent permitted by law) to inform the other party of the full circumstances of any disclosure:
- 9.3.1 under Clause 9.2.2, provided that to the extent practicable each party will give the other party prior written notice, including a copy of the proposed disclosure, and take into account the other party's reasonable requirements as to timing, content and manner of making; or
 - 9.3.2 upon becoming aware that Confidential Information has been disclosed in breach of this agreement and, without prejudice to any rights or remedies that the other party may have, the relevant party shall take such steps, or shall procure that such steps are taken, as the other party which may be damaged by such breach may reasonably require in order to remedy or mitigate the effects of such breach.
- 9.4 Each party acknowledges and agrees that it or members of its Group may be irreparably harmed by the breach of the terms of this Clause 9 and damages may not be an adequate remedy; each party or member of its Group may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this Clause 9 by the other party.

10. Publication

- 10.1 The Contractor shall not (and shall procure that any person engaged by it shall not):
- 10.1.1 make any public announcement regarding the Services or the entering into of this agreement without the prior written consent of WRAP, to whom, unless in any particular circumstances WRAP shall require otherwise, any press or other enquiry in relation to any such matter shall be referred, immediately upon the enquiry arising;
 - 10.1.2 publish alone or in conjunction with any other person any articles or other material relating to the Services nor impart any information regarding the Services without the

prior written consent of WRAP except as permitted under Clause 9 (Confidentiality);
and

- 10.1.3 by itself, its employees or any person engaged by it communicate with representatives of the press, television, radio or other communications media on any matter concerning the Services without the prior written consent of WRAP.
- 10.2 The Contractor shall acknowledge WRAP and the payments made by WRAP in any publications in respect of the Services.
- 10.3 Without prejudice to any other rights and remedies that WRAP might have, the Contractor agrees that damages may not be an adequate remedy for any breach of this Clause; WRAP may be granted an injunction or specific performance for any threatened or actual breach of Clauses 10.1 or 10.2.
- 10.4 WRAP may publish and disclose details of the Services and all or any of the data, information or knowledge relating to the Services.
- 10.5 The design of all publications in any media produced by the Contractor in relation to this agreement must conform to standards communicated by WRAP from time to time to the Contractor and be approved by WRAP in advance of publication.
- 10.6 Websites relating to or produced as a result of the Services specified in this agreement will reside within a domain specified by WRAP, which will usually be www.wrap.org.uk/.
- 10.7 If any material provided by the Contractor in connection with the Services to be published and distributed by WRAP is subject to rights owned by third parties, including text, data, design, artwork and photographs in any format and in any media the Contractor must at its own cost either obtain an assignment of the copyright for the benefit of WRAP, or a licence/permission in appropriate form. The Contractor must send evidence of such copyright ownership and/or all necessary licences and permissions prior to or at the same time as submitting such material to WRAP.
- 10.8 The Contractor warrants that it will duly observe all of its obligations under current Data Protection legislation and any other relevant legislation relating thereto which arise in connection with this agreement.

11. Reports

- 11.1 All reports produced in relation to the Services must include a 50 to 100 word abstract of the report and an executive summary and be written in plain English with the use of technical and business jargon kept to a minimum. Where specialist terminology is necessary, it must be clearly explained. Similarly, abbreviations and acronyms must be followed by their long form, in parentheses, on first mention. Any reports produced by the Contractor in accordance with this agreement that fail to meet the standards required by WRAP may be returned to the Contractor for re-writing.
- 11.2 The Contractor must provide a paper copy (unbound), together with a disc copy on CD ROM, for all reports prepared according to the latest template which will be provided by WRAP. Wherever possible, the Contractor must reduce all spreadsheets and graphics and other methods of presenting information so that they can be accommodated on an A4 sheet. Where a report includes illustrations (either black and white or coloured), the Contractor must supply these at a resolution suitable for reproduction.

12. Intellectual Property Rights

- 12.1 The Contractor and WRAP shall each retain ownership of all their existing Intellectual Property Rights in existence at the date of this agreement.
- 12.2 All Intellectual Property including, without limitation, all data, databases, reports, records, drawings, photographs, specifications, plans, software, designs, inventions and/or other material created by the Contractor (or any employee or person engaged by the Contractor) in the course of the performance of the Services under this agreement shall vest in and be the property of WRAP.

- 12.3 To the extent that any Intellectual Property Rights in any of the items referred to in Clause 12.2 do not automatically vest in WRAP and vest:
- 12.3.1 in the Contractor, the Contractor hereby assigns to WRAP; or
 - 12.3.2 in any person engaged by the Contractor, the Contractor shall procure the assignment to WRAP of,
- in each case with full title guarantee (by way of present assignment of present and future rights), all Intellectual Property Rights in such items (except to the extent that these rights are already owned by WRAP) free from any lien, charge, encumbrance (whether monetary or not) or third party right.
- 12.4 Without prejudice to the rights of WRAP as to ownership of Intellectual Property set out in this Clause the Contractor hereby grants to WRAP a non-exclusive, transferable, irrevocable, royalty free, perpetual licence (with the right to grant sub-licences) in respect of all the Intellectual Property Rights of the Contractor created after the date of this agreement which in the opinion of WRAP are necessary in order for WRAP to use, exploit or deal with the results of the Services.
- 12.5 Without prejudice to the rights of WRAP as to ownership of Intellectual Property set out in this Clause the Contractor hereby grants to WRAP a non-exclusive, irrevocable, royalty free, perpetual licence (with the right to grant sub-licences and transferable only for the purposes of publishing and disclosure) in respect of all the Intellectual Property Rights of the Contractor in existence at the date of this agreement which in the opinion of WRAP are necessary or useful in order for WRAP to publish and disclose details of the Services and all or any of the other data, information or knowledge relating to the Services.
- 12.6 The Contractor hereby irrevocably waives all moral rights relating to the Services and the results thereof and shall procure that its employees and persons engaged by the Contractor also waive such moral rights.
- 12.7 The Contractor shall notify WRAP in writing within 14 days upon notice of any challenge, claim or dispute by any third party to any of the Intellectual Property and other rights referred to in this Clause.
- 12.8 If required by WRAP the Contractor shall (at WRAP's reasonable expense) take whatever steps are requested by WRAP to protect all Intellectual Property and other rights referred to in this Clause. Notwithstanding such obligation, the Contractor will not take any action (unless required to do so by WRAP pursuant to this Clause) so as to prejudice the Intellectual Property and other rights and/or adversely affect the validity of any registered Intellectual Property.
- 12.9 The Contractor undertakes to WRAP not to use or deal with any of the Intellectual Property Rights or other rights, other than in the performance of this agreement, unless the Contractor has first obtained a written licence from WRAP in specific terms to do so.
- 12.10 If the Contractor wishes to grant a sub-licence to use any of the data, databases, reports, records, drawings, photographs, specifications, plans, software, designs, inventions and/or other material referred to in this Clause to a third party it shall obtain the prior written consent of WRAP.

13. Inventions

- 13.1 If the Contractor makes any discovery or invention in carrying out the Services (or any other Intellectual Property, comes into existence as a result of the carrying out of the Services), the Contractor shall forthwith disclose the same to WRAP. All such Intellectual Property shall, for the avoidance of doubt, upon their creation be automatically owned by WRAP.
- 13.2 If in the view of WRAP any such invention is patentable or subject to any other application for registration of the Intellectual Property Rights relating thereto then WRAP shall, at WRAP's expense, have the right to apply in its own name and as absolute and sole owner for patents or such other registrable Intellectual Property Rights and the Contractor shall, or shall procure that the inventor shall (if the Contractor is not the inventor), if so requested by WRAP, and at the direction of WRAP, apply for, or assist in, the application for patent rights or such other registrable Intellectual Property Rights in each case for the sole benefit of WRAP.

14. Property Rights

- 14.1 Any data, databases, reports, records, drawings, photographs, specifications, plans, software, designs, inventions and/or materials and articles of equipment supplied by or on behalf of WRAP to the Contractor pursuant to this agreement shall remain the sole and exclusive property of WRAP.
- 14.2 Any and all property created by the Contractor (or any employee or person engaged by the Contractor) in the course of the performance of the Services shall vest in and be the property of WRAP.
- 14.3 To the extent that any property referred to in Clause 14.2 does not automatically vest in WRAP and vests:
 - 14.3.1 in the Contractor, the Contractor hereby assigns to WRAP; or
 - 14.3.2 in any person engaged by the Contractor, the Contractor shall procure the assignment to WRAP,in each case with full title guarantee (by way of present assignment of present and future rights), all such property (except to the extent that such property is already owned by WRAP) free from any lien, charge, encumbrance (whether monetary or not) or third party right.
- 14.4 The Contractor undertakes to keep such data, databases, reports, records, drawings, photographs, specifications, plans, software, designs, inventions and/or materials and articles of equipment separable, safe and readily identifiable, and to provide all such property to WRAP on completion of the Services or earlier if requested by WRAP within 15 days of any written request for their return.

15. Variations

- 15.1 WRAP may at any time provide the Contractor with a written proposal to alter the Services to be undertaken by the Contractor under this agreement and the Contractor shall, acting reasonably and in good faith, submit to WRAP as soon as reasonably practicable, and in any event within 30 days, a quotation for such alterations specifying what variations (if any) will be required to the Services.
- 15.2 Upon receipt of such quotation WRAP may elect either:
 - 15.2.1 to accept such quotation, in which case WRAP will issue a contract variation substantially in the form detailed in Schedule 2 (Form of Contract Variation), in which case when the contract variation is signed by both parties the amendment will become binding; or
 - 15.2.2 to withdraw the proposed alterations, in which case this agreement shall continue in force unchanged.

16. No Fault Termination

- 16.1 Notwithstanding its other rights, WRAP shall have the right at any time by written notice to the Contractor to terminate this agreement by giving notice to the Contractor.
- 16.2 In the event of termination under this Clause:
 - 16.2.1 WRAP will pay the Contractor a fair and reasonable amount for the Services completed to the satisfaction of WRAP at the date of termination of this agreement but the Contractor will not be entitled to any additional payment, compensation or other recourse from WRAP; and
 - 16.2.2 the Contractor shall provide WRAP with a full report on the status of the Services and shall provide to WRAP as soon as reasonably practicable and in any event within 15 days all information, documentation, property and materials relating to the Services.

17. Termination for Breach

- 17.1 Each of the events set out in Clauses 17.1.1 (Breaches of Obligations) to 17.1.11 (Failure to Pay) (inclusive) is an Event of Default (whether or not caused by any reason whatsoever outside the control of any person):

Breaches of Obligations

- 17.1.1 The Contractor defaults in the due performance or observance of any covenant, undertaking, condition or provision on its part contained in this agreement which is not the subject of a specific provision of this Clause and such default:
- (a) is not capable of remedy; or
 - (b) is capable of remedy but shall not have been remedied to the satisfaction of WRAP (acting reasonably) within 30 days after either notice from WRAP requiring it to be remedied or the Contractor becoming aware of the breach, whichever shall be the earlier.

Breach of Representations and Warranties

- 17.1.2 Any representation, warranty or statement made by the Contractor in this agreement or in any notice delivered pursuant to this agreement is untrue or incorrect in any material respect when made.

Insolvency

- 17.1.3 The Contractor or any member of its Group is unable or admits inability to pay its debts as they fall due, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- 17.1.4 The value of the assets of the Contractor or any member of its Group is less than its liabilities (taking into account contingent and prospective liabilities).
- 17.1.5 A moratorium is declared in respect of any indebtedness of the Contractor or any member of its Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

Insolvency Proceedings

- 17.1.6 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Contractor or any member of its Group other than a solvent liquidation or reorganisation of any member of its Group other than the Contractor itself;
 - (b) a composition, compromise, assignment or arrangement with any creditor of the Contractor or any member of its Group;
 - (c) the appointment of a liquidator (other than in respect of a solvent liquidation of any member of the Group of the Contractor other than the Contractor itself), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Contractor or any member of its Group or any of its assets; or
 - (d) enforcement of any security over any assets of the Contractor or any member of its Group,

or any analogous procedure or step is taken in any jurisdiction. This Clause 17.1.6 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised.

Creditors' Process

- 17.1.7 Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Contractor or any member of its Group and is not discharged within 14 days.

Fraud or negligence

17.1.8 At any time, the Contractor has acted fraudulently or negligently in relation to this agreement or the Services.

Change to the ownership or structure of the Contractor

17.1.9 At any time before the date of actual completion of the Services, there is a change of control of the Contractor, as defined by section 416 of the Income and Corporation Taxes Act 1988.

Termination or repudiation of agreement

17.1.10 If any of the following occur:

- (a) the Contractor, terminates, cancels, revokes, repudiates, surrenders or forfeits this agreement or any of its obligations thereunder or issues a formal notice of its intention to do so;
- (b) the Contractor takes any other action with regard to this agreement which causes it not to be in full force and effect; or
- (c) the Services specified in Schedule 1 (Agreement Details) are not completed by the Services Completion Date.

Failure to Pay

17.1.11 The Contractor fails to pay any sum required to be paid under this agreement on the due date unless the Contractor demonstrates that the failure to pay is solely due to technical or administrative reasons and the Contractor uses all reasonable endeavours to procure payment as soon as possible and the relevant amount is duly paid in full within 3 business days after the due date.

Actions available to WRAP on an Event of Default

17.2 If an Event of Default occurs and is continuing WRAP will consider the seriousness of the Event of Default and whether or not it is remediable, and WRAP's present intention in such circumstances is to seek to discuss the matter in good faith with the Contractor and to agree a course of action to be taken, but it is not obliged to do so where it considers:

17.2.1 that the Event of Default is irremediable;

17.2.2 that the Contractor has deliberately or negligently failed to comply with its obligation to notify WRAP of an Event of Default or Potential Event of Default, on this or any previous occasion; or

17.2.3 that it would be against its own interests or unlikely to lead to a satisfactory outcome.

17.3 On and at any time after the occurrence of an Event of Default which is continuing WRAP may by notice to the Contractor:

17.3.1 suspend or cancel all further payments by WRAP to the Contractor under this agreement;

17.3.2 make all further payments by WRAP to the Contractor under this agreement subject to such conditions as WRAP may specify;

17.3.3 demand immediate repayment of, in which case the Contractor will immediately repay, the whole or any part of the payments made by WRAP to the Contractor under this agreement;

17.3.4 exercise any guarantees, security and/or other rights which WRAP may have in respect of the Contractor or this agreement; and/or

17.3.5 terminate this agreement.

Administrative error

17.4 The Contractor will, unless WRAP agrees otherwise, repay to WRAP any payments made by WRAP to the Contractor under this agreement paid as a result of an administrative error by WRAP or any other person.

On demand and set-off

- 17.5 Any amounts falling to be paid by the Contractor to WRAP under this agreement will be paid on demand of WRAP. WRAP may, but need not, set off any such unpaid amounts against any amount then due, or which at any later time may become due, to the Contractor under this agreement or under any other agreement to which WRAP and the Contractor are party.

Default interest

- 17.6 If the Contractor fails to pay any amounts due to WRAP on the due date, such amounts will bear interest at the rate of 2% per annum over the base rate from time to time of Barclays Bank PLC or such other clearing bank as may be selected by WRAP and notified to the Contractor from time to time until paid in full.

Full report and provision of information

- 17.7 On the expiry or termination of this agreement for any reason the Contractor shall:
- (a) provide WRAP with a full report on the status of the Services and shall provide to WRAP as soon as reasonably practicable and in any event within 15 days all information, documentation, property and materials relating to the Services; and
 - (b) take all reasonable steps and otherwise co-operate fully with WRAP and any successor contractor in order to achieve (where applicable):
 - (i) a continuation of the Services with the minimum of disruption;
 - (ii) a smooth transition of responsibilities between the Contractor and any successor contractor; and
 - (iii) a smooth transfer of the possession and operation of the service assets to any successor contractor.

18. Assignment and Subcontracting

- 18.1 This agreement will benefit and be binding on the parties, their respective successors and permitted assigns, including any statutory or other body which may become the successor of WRAP.
- 18.2 The Contractor shall not be entitled to assign this agreement or any part hereof or any benefit or interest herein to any person for the purposes of the performance of its duties under this agreement without the prior written consent of WRAP. Where a subcontract has been consented to by WRAP this shall not relieve the Contractor of any of its responsibilities or obligations under this agreement.
- 18.3 Where the Contractor enters into a subcontract with a subcontractor for the purpose of performing this agreement or any part of it, the Contractor shall cause a term to be included in such subcontract which requires:
- 18.3.1 such subcontractor to comply with all the general terms of this agreement relevant to the Contractor;
 - 18.3.2 such subcontractor to comply with all the specific terms of this agreement directly relevant to such subcontract; and
 - 18.3.3 payment to be made by the Contractor to the subcontractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the subcontract requirements.

19. Health, Safety and Resource Conservation

- 19.1 The Contractor shall, on request, provide WRAP with a copy of its policy statement in respect of health and safety at work and details of arrangements for implementation of that policy and shall comply with any such policy, all applicable health and safety regulations and legislation.
- 19.2 The Contractor must at all times during the term of this agreement demonstrate commitment to resource conservation and use recycled products and materials whenever these are available at reasonable cost and are fit for purpose.

20. Discrimination

The Contractor shall not unlawfully discriminate directly or indirectly or by way of victimisation or harassment against any person on grounds within the meaning of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 or any age discrimination legislation if the same has the force of law (in each case as amended), and the Contractor shall take all reasonable steps to ensure that all employees employed by and persons engaged by it in the execution of this agreement do not unlawfully discriminate.

21. Notices

21.1 Save as otherwise provided in this agreement, all notices or other communications under or in connection with this agreement shall be given in writing by fax or by letter (delivered in person or by first class registered mail). Any such notice or communication will be deemed to have been given:

21.1.1 if by way of fax, when received in legible form;

21.1.2 if by way of letter, on the day when delivered (in the case of personal delivery) and 2 business days after having been posted by first class registered mail (in the case of postal delivery).

21.2 Any notice or communication given in accordance with this Clause but received on a non business day or after business hours in the place of receipt will only be deemed to be given on the next business day in that place.

21.3 The address of each person for all notices and other communications under or in connection with this agreement are:

21.3.1 those notified by a party for this purpose in this Clause; or

21.3.2 any other notified by a party for this purpose by no less than 5 business days' notice.

21.4 The address and contact details of WRAP are:-

Address: The Old Academy, 21 Horse Fair, Banbury, OXON OX16 0AH

Fax: 01295 819911

Attention: The Company Secretary

or such other as WRAP may notify to the Contractor by no less than 5 business days' notice.

21.5 The address and contact details of the Contractor are:-

Address:

Email:

Attention:

or such other as the Contractor may notify to WRAP by no less than 5 business days' notice.

22. Amendments

Any amendment to this agreement is ineffective unless in writing.

23. Waiver

23.1 The failure of WRAP to exercise any right or remedy shall not constitute a waiver of that right or remedy.

23.2 A waiver of any right or remedy arising from a breach of this agreement shall not constitute a waiver of any right or remedy arising from any other breach of this agreement.

23.3 Any consent or waiver or agreement of WRAP under this agreement must be obtained in advance and is ineffective unless in writing. It may be given subject to any conditions thought fit by WRAP.

24. Severability

If, at any time, any provision of this agreement is or becomes invalid, illegal or unenforceable in any respect under any law of any jurisdiction, neither the validity, legality or enforceability of the remaining provisions nor the validity, legality or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired. If the result of such provision being or becoming invalid, illegal or unenforceable is so fundamental as to prevent the accomplishment of the purpose of this agreement, WRAP and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity, illegality or unenforceability.

25. Rights of Third Parties

25.1 Subject to Clause 9.4, nothing in this agreement is intended to confer on any person any right to enforce any provision of this agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999. Notwithstanding any provisions of this agreement, the parties to this agreement do not require the consent of any third party to rescind or vary this agreement at any time.

26. Continuation of Obligations

The provisions of Clauses 1 (Definitions and Interpretation), 2 (Payment), 7 (Remedies, Indemnities and Limitation of Liability), 8 (Corrupt Gifts and Conflict of Interest), 9 (Confidentiality), 10 (Publication), 11 (Reports), 12 (Intellectual Property Rights), 13 (Inventions), 14 (Property Rights), 21 (Notices), 23 (Waiver), 26 (Continuation of Obligations), 27 (Entire Understanding) and 28 (Law) will survive the termination of this agreement irrespective of the reason for termination for a period of 6 years.

27. Entire Understanding

This agreement comprises the entire understanding of the parties in relation to the matters referred to in this agreement and supersedes any previous understanding, arrangement or agreement between the parties in relation to such matters. The parties acknowledge that no claim shall arise in respect of any previous understanding, arrangement or agreement so superseded.

28. Law

This agreement is governed by English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

IN WITNESS WHEREOF, the parties have executed this agreement.

For and on behalf of: **The Waste and Resources Action Programme**

Signature:

Print name: name.....

Title: title

Date:

For and on behalf of: **Name of Contractor**

Signature:

Print name:

Title:

Date:

SCHEDULE 1

Agreement Details

1. Services

The Services to be performed by the Contractor and the objectives of the Services

2. Approved subcontractors

Subcontractor name	Subcontractor Service
<i>Name of any approved subcontractor</i>	<i>Service to be provided by any approved subcontractor</i>

3. Other agreement details

3.1 Day-to-Day Contacts shall be:

3.1.1 for WRAP: name, email, phone and fax numbers;

3.1.2 for the Contractor: name, email, phone and fax numbers.

3.2 "**Key Personnel**" means *names of key personnel* being those individuals that are fundamental to the performance of the Services.

3.3 "**Meeting Date**" means each of *dates* or such other dates as the parties agree from time to time and such additional dates as WRAP may specify from time to time if WRAP is concerned about performance of the Contractor.

3.4 "**Negligence/PI Limit**" means £1,000,000.00

3.5 "**Property Damage Limit**" means £1,000,000.00

3.6 "**Reporting Date**" means each *dates* or such other dates as the parties agree from time to time and such additional dates as WRAP may specify from time to time if WRAP is concerned about the performance of the Contractor.

3.7 "**Services Commencement Date**" means *date*.

3.8 "**Services Completion Date**" means *date*.

4. FINANCIAL DETAILS

4.1 "**Maximum Contract Value**" means £ total of all payments including the Contract Expenses Total and the Services Payment Total including VAT.

4.2 "**Contract Expenses Total**" means a maximum of *£relevant amount* including VAT, to be invoiced in accordance with clause 2.1.2 (Payment) hereto.

4.3 "**Services Payment Total**" means a maximum of £ xxxx including VAT to be paid in full on completion **OR** on satisfactory completion of the relevant Milestone **OR** monthly in arrears **OR USE TABLE**

Type	Maximum (excluding VAT)	VAT	Total
Lump sum fees	Up to £xxxx	Up to £xxxx	Up to £xxxx
Item charge fees	Up to £xxxx calculated as follows: £xxxx per unit item being counted	Up to £xxxx	Up to £xxxx
Time charge fees	Up to £xxxx calculated as follows: £xxxx per period of time for person	Up to £xxxx	Up to £xxxx
Total	Up to £xxxx	Up to £xxxx	Up to £xxxx

4.4 "Milestone Payments" excluding Expenses

Milestone	Milestone services	Milestone completion date	Maximum Payment to be invoiced (incl. VAT)
1	<i>Details of Services required by the milestone completion date and delivery of satisfactory Progress Report and occurrence of satisfactory progress meeting.</i>	date	£amount
2	<i>Details of Services required by the milestone completion date and delivery of satisfactory Progress Report and occurrence of satisfactory progress meeting.</i>	date	£amount
3	<i>Details of Services required by the milestone completion date and delivery of satisfactory Progress Report and occurrence of satisfactory progress meeting.</i>	date	£amount
4	<i>Details of Services required by the milestone completion date and delivery of satisfactory Progress Report and occurrence of satisfactory progress meeting.</i>	date	£amount

Incurring Expenses, agreed in advance with WRAP, should be included in each invoice but should (cumulatively) not exceed the Contract Expenses Total.

5. Schedule of rates for Contract Expenses

Expense	Rate
Motor vehicle mileage	at 45 pence per mile (including VAT)
Hotel and breakfast in London	at actual cost up to a maximum of £90.00 night (including VAT)
Hotel and breakfast other than London	at actual cost up to a maximum of £75.00 night (including VAT)
Other	at the rate agreed with WRAP prior to the expense being incurred

SCHEDULE 2

Form of Contract Variation

The Contractor

Address

Date

Dear Sir/Madam

Contract Variation

We are writing to you pursuant to the agreement between The Waste and Resources Action Programme and *name of the Contractor* dated *date* (the "**Agreement**"). This document constitutes a contract variation under Clause 15 (Variations) of the Agreement for Services to be carried out under the same terms and conditions as the Agreement, except where stated otherwise in this contract variation.

Changes

For and on behalf of: **The Waste and Resources Action Programme**

Signature:

Print name:

Title:

We have read and agree the above and agree to carry out the Services described above in accordance with the terms of the Agreement, as varied by this contract variation.

For and on behalf of: **Name of Contractor**

Signature:

Print name:

Title: