

CT-2010-005

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/94-290;

AND IN THE MATTER OF the acquisition by IESI-BFC Ltd. of Waste Services, Inc.;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT June 30, 2010 CT-2010-005 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 0002

Applicant

– and –

**IESI-BFC LTD., BFI CANADA INC., WASTE SERVICES INC.,
and WASTE SERVICES (CA) INC.**

Respondents

CONSENT AGREEMENT

WHEREAS pursuant to an agreement and plan of merger dated November 11, 2009 between IESI-BFC Ltd. ("BFI"), IESI-BFC Merger Sub, Inc. ("Merger Sub") and Waste Services, Inc. ("WSI"), Merger Sub will be merged with and into WSI, with WSI continuing as a wholly-owned subsidiary of BFI (the "Transaction");

AND WHEREAS the Commissioner of Competition (the "Commissioner") has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of front-end commercial waste collection services in each of Calgary and Edmonton in the Province of Alberta, and each of Hamilton, Ottawa and Simcoe County in the Province of Ontario (collectively, the "Relevant Markets");

AND WHEREAS the Commissioner has concluded that the implementation of this Consent Agreement (the "Agreement") is necessary and sufficient to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction;

AND WHEREAS the Respondents do not admit but will not for the purposes of the enforcement of any provision of this Agreement, or in any subsequent proceeding relating to the Transaction, including in any proceedings under section 106 of the *Competition Act* (the "Act"), contest: (i) the Commissioner's conclusion that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of front-end commercial waste collection services in each of the Relevant Markets; and (ii) the Commissioner's conclusion that the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction;

AND WHEREAS the Respondents attorn to the jurisdiction of the Competition Tribunal (the "Tribunal") for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement;

AND WHEREAS the Respondents agree to the immediate registration of this Agreement with the Tribunal;

NOW THEREFORE the Respondents and the Commissioner agree as follows:

I. DEFINITIONS

[1] For the purposes of this Agreement, unless something in the subject matter or context is inconsistent therewith, the following capitalized terms have the following meanings:

- (a) "**Act**" means the *Competition Act*, R.S.C., 1985, c. C-34, as amended from time to time;
- (b) "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- (c) "**Agreement**" means this Consent Agreement entered into between the Respondents and the Commissioner pursuant to section 105 of the Act, including the appendices hereto;

- (d) "**BFI**" means IESI-BFC Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and Affiliates, including, Merger Sub, BFI Canada Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors and assigns of each. Following the Transaction, BFI shall include WSI, and the entity formed upon the merger of Merger Sub with WSI;
- (e) "**Business Day**" means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (f) "**Closing Date**" means the date upon which the Transaction is completed;
- (g) "**Commercial Waste Collection**" means the collection of solid, non-hazardous waste (which includes recycling and organic material) from commercial, institutional and industrial customers by front-end loading trucks for disposal at a disposal facility;
- (h) "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7 of the Act and any person designated by the Commissioner to act on her behalf;
- (i) "**Confidential Information**" means competitively sensitive or proprietary information not independently known to a Person from sources other than the entity to which the information pertains or a Person who is under confidentiality obligations to that other Person, including, without limiting the generality of the foregoing, manufacturing, operations and financial information, operating costs and revenues, customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets;
- (j) "**Divest**" or "**Divesting**" means to implement and complete the Divestiture;
- (k) "**Divestiture**" means the sale, conveyance, transfer, auction, public tender, public offering, assignment, or other disposal of the Divestiture Assets to a Purchaser, such that BFI will have no direct or indirect interest in the Divestiture Assets, except as permitted herein;
- (l) "**Divestiture Agreement**" means a binding and definitive agreement between BFI and a Purchaser or Purchasers or, if necessary, between the Divestiture Trustee and a Purchaser or Purchasers, in each case to effect the Divestiture contemplated by this Agreement;
- (m) "**Divestiture Assets**" means (i) the contracts with customers, trucks, bins, and other related equipment used by WSI for the supply of Commercial Waste Collection and ancillary services with customers in each of the Relevant Markets, as more fully described in Schedule "A" and Confidential Schedule "A.1"; and (ii) all of WSI's interest in the Hamilton Transfer Station and related equipment, as more fully described in Schedule "A";

- (n) "**Divestiture Trustee**" means the Person appointed pursuant to **Part VII** of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (o) "**Divestiture Trustee Sale**" means the Divestiture to be conducted by the Divestiture Trustee pursuant to **Part VII** of this Agreement;
- (p) "**Divestiture Trustee Sale Period**" means the period set out in Confidential Schedule "B";
- (q) "**Hamilton Transfer Station**" means the Transfer Station operated by WSI and located at 306 Lake Avenue North in Hamilton, Ontario and related equipment and assets, as more fully described in Schedule "A";
- (r) "**Hold Separate Businesses**" means WSI's Commercial Waste Collection businesses in each of the Relevant Markets and the Hamilton Transfer Station, and includes the Divestiture Assets;
- (s) "**Hold Separate Manager**" means the Person appointed pursuant to **Part III** of this Agreement (or any substitute appointed thereto) to manage the Hold Separate Businesses;
- (t) "**Hold Separate Period**" means the period immediately following the Closing Date until the Divestiture has been completed in accordance with this Agreement;
- (u) "**Initial Sale Period**" means the period set out in Confidential Schedule "B";
- (v) "**Monitor**" means the Person appointed pursuant to **Part IV** of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor;
- (w) "**Person**" means any individual, partnership, limited partnership, firm, corporation, association, trust, unincorporated organization or other entity, whether acting alone or in concert with another Person;
- (x) "**Purchaser**" means a Person that acquires Divestiture Assets pursuant to this Agreement;
- (y) "**Relevant Market**" means each of Calgary and Edmonton in the Province of Alberta, and each of Hamilton, Ottawa and Simcoe County in the Province of Ontario;
- (z) "**Respondents**" means the parties to this Agreement, excluding the Commissioner;

- (aa) "**Substitute Contract**" means a contract with a customer of BFI or WSI that is substituted for any contract in accordance with paragraphs 53, 54, 55, 65 or 76 of this Agreement;
- (bb) "**Third Party**" means any Person other than the Respondents or the Purchaser;
- (cc) "**Transaction**" has the meaning given to it in the recitals;
- (dd) "**Transfer Station**" means a disposal facility where commercial, institutional and industrial waste is collected and stored for disposal at a landfill or other facility;
- (ee) "**Tribunal**" means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.), as amended;
- (ff) "**Unassigned Contract**" has the meaning given to it in paragraph 52 of this Agreement; and
- (gg) "**WSI**" means Waste Services, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and Affiliates, including, Waste Services (CA) Inc., and the respective directors, officers, employees, agents, representatives, predecessors, successors and assigns of each.

All other terms defined in this Agreement have the meanings established elsewhere in this Agreement.

II. APPLICATION

[2] The provisions of this Agreement shall apply to:

- (a) BFI, and BFI shall cause each of its Affiliates to carry out their respective obligations under this Agreement;
- (b) WSI, and WSI shall cause each of its Affiliates to carry out their respective obligations under this Agreement;
- (c) each officer, director, employee, agent or other Person acting for or on behalf of the Respondents with respect to any of the matters referred to in this Agreement;
- (d) all other Persons acting in concert or participating with one or more of those listed in (a) or (b) above, with respect to the matters referred to in this Agreement, who shall have received actual notice of this Agreement;
- (e) the Commissioner;
- (f) the Hold Separate Manager;
- (g) the Monitor;

- (h) the Divestiture Trustee; and
- (i) each Purchaser and its heirs, successors, legal representatives and assigns.

III. HOLD SEPARATE BUSINESSES

[3] The Commissioner shall appoint a Hold Separate Manager. The Hold Separate Manager shall execute an agreement, in a form determined by the Commissioner, agreeing to be bound by the terms and conditions of this Agreement and to perform the duties and responsibilities required of the Hold Separate Manager under this Agreement. BFI shall transfer to the Hold Separate Manager all of the rights and powers necessary to permit the Hold Separate Manager to perform his duties and responsibilities under this Agreement.

[4] Effective immediately upon the Closing Date, the Hold Separate Businesses shall be operated independently and separately from the other businesses of BFI, under the supervision of the Hold Separate Manager, during the Hold Separate Period, provided that the Hold Separate Businesses may operate from the same locations as WSI businesses, and that BFI shall, at the request of the Hold Separate Manager, provide managerial, administrative and operational (including maintenance) resources of BFI as required by the Hold Separate Businesses, including:

- (a) human resources and payroll;
- (b) accounts payable systems;
- (c) occupational health and safety;
- (d) services related to environmental permitting and liability;
- (e) insurance, including notification of claims for which coverage is sought; and
- (f) financial services, including banking.

In using such resources, the Hold Separate Manager shall not disclose any Confidential Information and shall ensure that any Confidential Information is only disclosed to personnel employed solely in connection with the Hold Separate Businesses, other than as permitted herein.

[5] BFI shall be responsible for all fees and expenses properly charged or incurred by the Hold Separate Manager in the course of carrying out his duties and responsibilities under this Agreement, provided that the Hold Separate Manager shall not be authorized to make capital expenditures that are outside of the ordinary course of the Hold Separate Businesses, except for those capital expenditures which, in the opinion of the Hold Separate Manager, acting reasonably and after consultation with the Monitor, are necessary to maintain the viability and competitiveness of the Hold Separate Businesses. The Hold Separate Manager may, in consultation with the Monitor, utilize available equipment of BFI in the operation of the Hold

Separate Businesses as an alternative to purchasing additional equipment for use in the Hold Separate Businesses.

[6] BFI shall:

- (a) not exert or attempt to exert any influence, direction or control over the Hold Separate Manager;
- (b) take all commercially reasonable steps to ensure that, from and after the Closing Date, the Hold Separate Businesses are operated independently and separately from BFI, including transferring to the Hold Separate Manager all rights, powers and authority necessary to perform his duties and responsibilities under this Agreement; and
- (c) not exercise direction or control, direct or indirect, over the management and operations of the Hold Separate Businesses, except to the extent that BFI must exercise such direction and control to ensure compliance with this Agreement and except as otherwise provided in this Agreement.

[7] The Hold Separate Manager shall report directly to the Monitor. The Hold Separate Manager shall not have any access to any Confidential Information of BFI other than that relating to the Hold Separate Businesses. During the term of the Hold Separate Period, the Hold Separate Manager shall not be involved or participate in any way in the operations of the other businesses or activities of BFI.

[8] The Hold Separate Manager shall have the responsibility to manage the Hold Separate Businesses, although the Hold Separate Manager may employ such Persons as are reasonably necessary to locally manage the Hold Separate Businesses in each of the Relevant Markets or otherwise assist him in the management and operation of the Hold Separate Businesses. Such Persons shall be under the direct supervision of the Hold Separate Manager and shall be employed solely in connection with the Hold Separate Businesses, and not employed in connection with the operation of other businesses of BFI following the Closing Date.

[9] In addition to those Persons employed in connection with the Hold Separate Businesses on the Closing Date, the Hold Separate Manager may employ such Persons as are reasonably necessary to assist him in the management and operation of the Hold Separate Businesses, including, without limitation, those providing administrative services, such as finance, information technology, employee relations, regulatory and legal, public relations, and customer relations services; provided that the Hold Separate Manager may not employ additional Persons if such services are reasonably capable of being provided by Persons employed solely in connection with the Hold Separate Businesses, and not employed in connection with the operation of other businesses of BFI following the Closing Date, or through the use of the managerial, administrative and operational (including maintenance) resources of BFI in accordance with paragraph 4 above and the other terms and conditions of this Agreement. All costs associated therewith shall be borne by BFI.

[10] The Hold Separate Manager shall have the responsibility to, and be given by BFI the resources reasonably necessary to, implement existing sales and marketing plans relating to the Hold Separate Businesses and to modify existing plans with the approval of the Monitor. The Hold Separate Manager shall not have access to BFI's confidential marketing materials unrelated to the Hold Separate Businesses.

[11] The Hold Separate Manager shall deliver to the Monitor a copy of any written communications between the Hold Separate Manager and BFI within five (5) Business Days of the date such communication was made. Verbal communications shall be summarized and reduced to writing by the Hold Separate Manager for provision to the Monitor in accordance with the foregoing.

[12] If the Hold Separate Manager ceases to act or fails to act diligently or otherwise in accordance with this Agreement or any agreement between the Commissioner and the Hold Separate Manager, the Commissioner, or the Monitor with the approval of the Commissioner, may remove the Hold Separate Manager. In the event the Hold Separate Manager ceases to act in his role, the Commissioner shall, in her sole discretion, select a substitute Hold Separate Manager after consultation with BFI and the Monitor, and transfer to the substitute Hold Separate Manager all rights, powers and authority necessary to fulfill the duties and responsibilities of the Hold Separate Manager pursuant to this Agreement.

[13] Pending the completion of the Divestiture, the Hold Separate Manager shall take all commercially reasonable steps to preserve the independence and competitive viability of the Hold Separate Businesses in the ordinary course and in a manner that is reasonably consistent in nature, scope and magnitude with past practices, including, but not limited to, instructing Persons employed in connection with the Hold Separate Businesses to:

- (a) operate the Hold Separate Businesses independently and separately from BFI;
- (b) operate the Hold Separate Businesses in compliance with all applicable laws, including labour and employment laws;
- (c) maintain all approvals, registrations, consents, licences, permits, waivers, and other authorizations necessary for the operation of the Hold Separate Businesses;
- (d) use commercially reasonable efforts to maintain the competitiveness of the Hold Separate Businesses in the ordinary course and in a manner that is reasonably consistent in nature, scope and magnitude with past practices;
- (e) maintain and hold the trucks and equipment which are included in the Hold Separate Businesses in an operating condition and state of repair at least equal to the current level for such assets, normal wear and tear excepted, and to standards at least equal to those that existed prior to the date of this Agreement;
- (f) establish all fees, deductions, discounts, credits or allowances with respect to the services provided by the Hold Separate Businesses;

- (g) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Hold Separate Businesses at least equal to the standards that existed prior to the date of this Agreement;
- (h) ensure that the Hold Separate Businesses are not engaged in any type of business other than the type of business conducted as of the date of this Agreement, except with the prior approval of the Monitor and the Commissioner;
- (i) not communicate any Confidential Information related to the Hold Separate Businesses to anyone other than the Monitor, the Commissioner, or as otherwise permitted herein;
- (j) not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, operations, financial status or value of the Hold Separate Businesses;
- (k) not materially curtail marketing, sales, promotional or other activities of the Hold Separate Businesses in connection with the solicitation of existing or prospective customers, except with the prior approval of the Monitor;
- (l) not alter to any material extent, or cause to be altered, the management of the Hold Separate Businesses as it existed prior to the date of this Agreement, except:
 - (i) as may be necessary to comply with the terms of this Agreement;
 - (ii) to replace employees that may resign; or
 - (iii) with the prior approval of the Monitor; and
- (m) not terminate or alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for Persons employed in connection with the Hold Separate Businesses, without the prior approval of the Monitor.

[14] At the request of the Hold Separate Manager, BFI shall provide sufficient resources, as appropriate in the judgment of the Hold Separate Manager, with the concurrence of the Monitor, to accomplish the foregoing.

[15] BFI shall use commercially reasonable efforts to ensure that all Persons employed in connection with the Hold Separate Businesses continue to conduct sales and marketing activities independently of BFI and that such Persons refrain from sharing with BFI any Confidential Information related to sales and marketing, except, with the prior approval and consent of the Commissioner, summaries in aggregate form to the extent required by a public company to complete adequate financial reporting.

[16] The Hold Separate Manager shall not (and shall cause any Persons employed in connection with the Hold Separate Businesses to not) communicate any Confidential Information acquired in the performance of their duties to any Person, except to the extent required or permitted by this Agreement. The Hold Separate Manager and any officers of BFI employed in connection with the Hold Separate Businesses shall execute a confidentiality agreement in a form determined by the Commissioner.

[17] BFI and the Hold Separate Manager shall hold and maintain all customer contracts of the Hold Separate Businesses and associated files and customer databases separate from BFI's databases and records. Employees of BFI that are not employed solely in connection with the Hold Separate Businesses shall not have access to information regarding contracts included in the Hold Separate Businesses or associated customer information, except to the extent that access to or use of such Confidential Information is necessary in order to complete the Transaction, defend or prosecute litigation, obtain legal advice, negotiate and meet obligations under agreements to effect the Divestiture or to the extent otherwise required by law.

[18] BFI shall indemnify the Hold Separate Manager and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the duties of the Hold Separate Manager, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence or bad faith by the Hold Separate Manager.

[19] The Hold Separate Businesses shall be staffed with sufficient employees, on a level consistent with past custom and practice, to maintain their viability, competitiveness and value. Persons employed in connection with the Hold Separate Businesses shall include: (a) all personnel performing responsibilities primarily in connection with any of the Hold Separate Businesses, as determined by the Hold Separate Manager, as of the Closing Date; and (b) any Persons subsequently hired in connection with the Hold Separate Businesses. The Hold Separate Manager, with the approval of the Monitor, may replace departing or departed employees with Persons who, in the opinion of the Hold Separate Manager, have appropriate experience and expertise, or determine not to replace such departing or departed employees.

[20] BFI shall not, during the Hold Separate Period, offer Persons employed in connection with the Hold Separate Businesses positions with BFI. BFI shall not enter into any agreement with an employee or otherwise offer any incentive to such employees to decline employment with the Purchaser, and shall remove any impediments that may deter such employees from accepting employment with the Purchaser. Without limiting the generality of the foregoing, BFI shall waive any non-compete provisions of employment or other contracts that could impede such employees from being employed by the Purchaser; provided that BFI shall be entitled to seek to enforce any provision in an agreement that precludes such employees from using Confidential Information of WSI, or from using Confidential Information of WSI to solicit business from customers of WSI whose contracts are not included in the Divestiture Assets for a period of one (1) year from the termination of their employment with BFI.

[21] For a period of two (2) years following completion of the Divestiture, BFI shall not employ or make offers of employment to Persons employed in connection with the Hold Separate Businesses who have accepted offers of employment with the Purchaser unless the individual employee has been terminated by the Purchaser.

[22] BFI shall ensure that Persons employed in connection with the Hold Separate Businesses receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions

and other current and accrued benefits and such other payments to which those employees would otherwise have been entitled.

IV. MONITOR

[23] The Commissioner may appoint a Monitor as selected in her sole discretion, responsible for monitoring the compliance of the Respondents and the Hold Separate Manager with this Agreement.

[24] The Monitor's obligations and powers shall not expire under this Agreement until the Divestiture has been completed in accordance with this Agreement or further order of the Tribunal.

[25] BFI shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out his duties under this Agreement. The Monitor shall account for all fees and expenses incurred and such account shall be subject to the approval of the Commissioner only.

[26] Within five (5) Business Days of the appointment of the Monitor, the Respondents and the Monitor shall execute an agreement, subject to the approval of the Commissioner, agreeing to be bound by the terms and conditions of this Agreement and that confers on the Monitor all of the rights and powers necessary to permit the Monitor to monitor the Respondents' compliance with this Agreement.

[27] If the Monitor ceases to act or fails to act diligently or otherwise in accordance with this Agreement, the Commissioner shall appoint a substitute Monitor as selected in her sole discretion.

[28] The Monitor shall have, subject to a legally recognized privilege, full and complete access to all personnel, books, records, documents and facilities related to the Hold Separate Businesses and the Divestiture Assets or to any other information relevant to the performance of his responsibilities as Monitor, including Confidential Information, as the Monitor may request from the Respondents. The Respondents shall cooperate with any request of the Monitor. The Respondents shall not interfere with or impede the Monitor's compliance with this Agreement or the Monitor's ability to oversee the performance of this Agreement by the Respondents and the Hold Separate Manager.

[29] The Monitor shall serve without bond or security, at the expense of BFI, on such reasonable and customary terms as are agreed with the approval of the Commissioner. If the Monitor and the Respondents fail to agree on terms within five (5) Business Days from the date of the Monitor's appointment, the Commissioner shall establish the terms of the Monitor's service. The Monitor shall have the authority to engage, at the cost and expense of BFI, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities under this Agreement.

[30] The Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of

his duties under this Agreement. This includes all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not such claim results in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from malfeasance, gross negligence or bad faith by the Monitor.

[31] The Monitor shall report in writing to the Commissioner concerning compliance with this Agreement by the Respondents and the Hold Separate Manager: (i) no later than thirty (30) days after the Closing Date and every thirty (30) days thereafter until the completion of the Divestiture; (ii) no later than thirty (30) days from the date upon which the Divestiture is completed in accordance with this Agreement; and (iii) within five (5) days following a request by the Commissioner or her staff for supplemental information.

[32] Neither the Respondents nor the Hold Separate Manager shall exert or attempt to exert any influence, direction or control over the Monitor.

[33] The Monitor is not the agent of the Respondents and this Agreement shall not be construed as providing the Monitor with ownership, management, possession, charge or control of the Hold Separate Businesses or the Divestiture Assets.

[34] The Monitor shall execute a confidentiality agreement in the form attached hereto at Schedule "E", pursuant to which the Monitor will undertake to the Respondents not to disclose any Confidential Information acquired in the performance of the Monitor's duties to any Person, except as permitted by such confidentiality agreement or by this Agreement.

[35] If the Monitor believes that any of the Respondents or the Hold Separate Manager is in breach of any of the terms of this Agreement, the Monitor shall immediately notify the Commissioner, the Respondents and the Hold Separate Manager of the breach, setting out particulars of such breach.

V. PRESERVATION OF THE DIVESTITURE ASSETS

[36] In order to preserve the Divestiture Assets pending completion of the Divestiture, and except to the extent that such powers, duties and responsibilities are vested with the Hold Separate Manager, the Respondents shall:

- (a) ensure that the management and operation of the Hold Separate Businesses continues in the ordinary course of business and in a manner that is reasonably consistent in nature, scope and magnitude with past practices;
- (b) provide resources necessary for the operational support of the Hold Separate Businesses in a manner that is reasonably consistent in nature, scope and magnitude with the past practices of WSI;
- (c) use commercially reasonable efforts to maintain the viability and saleability of the Divestiture Assets;

- (d) maintain all approvals, registrations, consents, licences, permits, waivers, and other authorizations necessary for the operation of the Hold Separate Businesses;
- (e) maintain and hold the Hamilton Transfer Station and trucks, bins and other equipment included in the Divestiture Assets in an operating condition and state of repair at least equal to the current level for such assets, normal wear and tear excepted, and to standards at least equal to those that existed at the date of this Agreement;
- (f) operate the Hold Separate Businesses in the ordinary course of business and in accordance with past practices, generally accepted industry practices and in material compliance with all applicable laws;
- (g) ensure that the Divestiture Assets are not engaged in any type of business other than the type of business conducted as of the date of this Agreement, except with the prior approval of the Monitor and the Commissioner;
- (h) not knowingly take or allow to be taken any action that materially and adversely affects the viability and saleability of the Divestiture Assets;
- (i) not materially curtail marketing, sales, promotional or other activities in respect of the Hold Separate Businesses in connection with the solicitation of existing or prospective customers, except with the prior approval of the Monitor;
- (j) not alter to any material extent, or cause to be altered, the management of the Hold Separate Businesses as it existed immediately prior to the date of this Agreement, except: (i) as may be necessary to comply with the terms of this Agreement; (ii) to replace employees that may resign; or (iii) with the prior approval of the Monitor; and
- (k) maintain, adequate financial ledger books and records of material financial information with respect to the Hold Separate Businesses in accordance with Canadian generally accepted accounting principles consistently applied and sufficient to show the accounts receivable, fixed assets, revenues, direct expenses and earnings of the Hold Separate Businesses on a separate or stand-alone basis.

[37] Pending completion of the Divestiture, the Respondents shall not, without the Commissioner's prior written approval:

- (a) create any new encumbrances on the Divestiture Assets, other than ordinary course obligations that are not due or delinquent;
- (b) enter into, withdraw from, amend or otherwise take steps to alter any obligations in material contracts relating to the Divestiture Assets, except as necessary to comply with this Agreement; or

- (c) make any material changes to the Divestiture Assets, except as required to comply with this Agreement.

VI. DIVESTITURE PROCESS (INITIAL SALE PERIOD)

[38] BFI shall conduct the Divestiture in accordance with the provisions of this Part VI and Confidential Schedules "B", "C" and "D".

[39] The Initial Sale Period commences on the Closing Date and ends at the time prescribed in Confidential Schedule "B" to this Agreement.

[40] During the Initial Sale Period, BFI shall promptly use all commercially reasonable efforts to:

- (a) complete the Divestiture in accordance with this Agreement, such that BFI will have no direct or indirect interest in the Divestiture Assets, except as expressly provided for in paragraph 52 for Unassigned Contracts that are subcontracted to a Purchaser;
- (b) complete the Divestiture to a Purchaser or Purchasers, each of which is:
 - (i) approved in writing by the Commissioner and on terms approved in writing by the Commissioner, each as determined in her sole discretion;
 - (ii) at arm's length from the Respondents; and
 - (iii) able to satisfy the Commissioner, in her sole discretion, that such Purchaser:
 - a. is committed to carrying on a Commercial Waste Collection business using the Divestiture Assets in the Relevant Market in which such Divestiture Assets are located or, in the case of the Hamilton Transfer Station, operating a Transfer Station in Hamilton, Ontario;
 - b. has the managerial, operational and financial capability to compete effectively in the Commercial Waste Collection business in the Relevant Market in which the Divestiture Assets are located, including the ability to operate from a facility located in such Relevant Market or, in the case of the Hamilton Transfer Station, it has the managerial, operational and financial capability to operate a Transfer Station in Hamilton, Ontario; and
 - c. will complete the Divestiture prior to the expiry of the Initial Sale Period.

The determination of whether the above conditions are satisfied is at the sole discretion of the Commissioner. In exercising her discretion to approve a proposed Divestiture to a Purchaser, the Commissioner may take into account, *inter alia*, the likely impact of the Divestiture on competition.

[41] BFI shall notify the Commissioner as soon as possible of any negotiations with a prospective Purchaser that may lead to a Divestiture and shall forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.

[42] BFI shall promptly notify the Commissioner of its intention to enter into a Divestiture Agreement with respect to any proposed Divestiture.

[43] Within five (5) Business Days of receipt of the notice described in paragraph 42, the Commissioner may request additional information concerning the proposed Divestiture. The Commissioner may request further additional information within three (3) Business Days of all of the information received from the prior request.

[44] The Commissioner shall notify BFI of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within five (5) Business Days of receipt of all information requested pursuant to paragraph 43 or if no additional information was requested, within ten (10) Business Days of the receipt of the notice described in paragraph 42.

[45] BFI shall provide reasonable and customary commercial covenants, representations, warranties and indemnities to the Purchaser(s), consistent with those typically included in sales of assets similar to the Divestiture Assets.

[46] Any Person making a *bona fide* inquiry of BFI shall be notified by BFI that the Divestiture is being made pursuant to this Agreement and shall be provided with a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to paragraph 82.

[47] Subject to paragraphs 48 and 49 below, prospective Purchasers who have demonstrated a *bona fide* interest and who have the financial capability to complete a purchase of the Divestiture Assets shall:

- (a) be furnished with all pertinent information regarding the Divestiture Assets within fourteen (14) days of a request therefor, excluding customer names and addresses;
- (b) be permitted to make reasonable inspection of the Divestiture Assets and of all financial, operational or other non-privileged documents and information, including Confidential Information, which may be relevant to the Divestiture, except for any documents which, at the time of the request for inspection of such documents the Commissioner has agreed need not be disclosed; and
- (c) be given such full and complete access as is reasonable in the circumstances to the personnel involved in managing the Divestiture Assets.

[48] If the Monitor is concerned as to the *bona fides* or the financial capability of any Person making an inquiry, the Monitor shall advise the Commissioner of such concern and the final determination of *bona fides* or financial capability shall be made by the Commissioner alone.

[49] Access by a potential Purchaser to the information identified in paragraph 47 above shall be conditional on the potential Purchaser demonstrating its financial capability to complete a purchase of Divestiture Assets and executing a standard confidentiality agreement in a form determined by the Commissioner and subject to approval by BFI.

[50] Subject to Confidential Schedule "C", BFI shall Divest of all of the Commercial Waste Collection assets included in the Divestiture Assets in a Relevant Market to the same Purchaser, unless otherwise agreed to in writing by the Commissioner. For example, the Purchaser of a Divestiture Asset in Calgary, Alberta, must be the Purchaser for the remaining Divestiture Assets located in Calgary, Alberta. However, as an example, the Purchaser of all of the Divestiture Assets located in Calgary, Alberta is not required to also be the Purchaser for the Divestiture Assets located in Edmonton, Alberta or any other Relevant Market.

[51] BFI shall use all commercially reasonable efforts to obtain any Third Party consents or waivers necessary to permit the assignment to, and assumption by, the Purchaser, of all contracts, licences, permits, agreements and authorizations included in the Divestiture Assets.

[52] In the event that BFI fails to secure the Third Party consents or waivers necessary to permit the assignment to, and assumption by, the Purchaser of a Divestiture Asset, other than the lease of the Hamilton Transfer Station ("Unassigned Contract") BFI may subcontract to the Purchaser an Unassigned Contract, with the approval of the Commissioner, in her sole discretion, and in accordance with the following procedure:

- (a) BFI shall promptly notify the Commissioner in writing of any failure to secure the Third Party consents or waivers necessary to permit the assignment of an Unassigned Contract, and the terms of any proposed subcontract;
- (b) Within five (5) Business Days of receipt of the notice described in subparagraph (a) above, the Commissioner may request additional information concerning the attempt to assign the Unassigned Contract, including any documents or other information relating to negotiations or discussions with respect to the attempt to assign the Unassigned Contract, the particulars of the Unassigned Contract and the particulars of the proposed subcontracting arrangement;
- (c) The Commissioner shall notify BFI of her approval of, or objection to, the proposed subcontract of the Unassigned Contract as soon as possible, and in any event within five (5) Business Days of receipt of the information described in subparagraph (b) above;
- (d) In the event of, and upon receipt of, the approval described in (c) above, BFI may subcontract the Unassigned Contract to the Purchaser on the terms described in

Schedule "F" or such other terms as approved by the Commissioner, in her sole discretion; and

- (e) BFI shall use all commercially reasonable efforts to obtain any Third Party consents or waivers necessary to permit the subcontract of the Divestiture Asset to the Purchaser.

[53] In the event that:

- (a) BFI does not secure the Third Party consents or waivers necessary to permit a subcontract of an Unassigned Contract to the Purchaser, or the Commissioner does not approve of a subcontract of an Unassigned Contract or such Divestiture Asset is not otherwise subcontracted in accordance with paragraphs 51 and 52 above; or
- (b) a contract included in the Divestiture Assets has been terminated or expires prior to the Divestiture of such contract;

BFI shall substitute a contract or contracts of at least equal value (based on contract or customer type, revenues, remaining term and location) in the same Relevant Market (the "Substitute Contract"), with the approval of the Commissioner in her sole discretion and in accordance with the procedure set out in paragraph 55 below, and such Substitute Contract shall form part of the Divestiture Assets.

[54] In the event that more than three percent (3%) of the Commercial Waste Collection annual revenues associated with the Divestiture Assets in a Relevant Market are attributable to contracts to provide services in more than one province, then BFI shall substitute contracts of a sufficient value so that no more than three percent (3%) of the Commercial Waste Collection annual revenues associated with Divestiture Assets in a Relevant Market are attributable to contracts to provide services in more than one province, in accordance with the procedure set out in paragraph 55 below, and such Substitute Contract shall form part of the Divestiture Assets.

[55] Where BFI is required to substitute a contract or contracts in the Divestiture Assets with a Substitute Contract:

- (a) BFI shall promptly notify the Commissioner that a Substitute Contract is required under the terms of this Agreement;
- (b) BFI shall, within five (5) Business Days of any request by the Commissioner, provide any additional information requested by the Commissioner to evaluate a Substitute Contract, including copies of other contracts with customers in the same geographic region as an Unassigned Contract;
- (c) The Commissioner shall notify BFI of the approval of, or the objection to, a Substitute Contract as soon as possible, and in any event within five (5) Business Days of receipt of the information described in subparagraph (b) above; and

- (d) Where the Commissioner objects to a Substitute Contract:
 - (i) BFI shall propose an alternate contract or contracts of at least equal value (based on contract or customer type, revenues, remaining term and location) in the same Relevant Market to be a Substitute Contract; and
 - (ii) The process established by these subparagraphs (b) to (d) shall be repeated until such time as a Substitute Contract is approved by the Commissioner.

[56] With respect to the Divestiture of all of WSI's interests in the Hamilton Transfer Station to a Purchaser, BFI shall take the steps set out in Confidential Schedule "D" during the Initial Sale Period.

[57] BFI, or the Divestiture Trustee on behalf of BFI, shall enter into the following agreements to supply transitional services, at the option of the relevant Purchaser:

- (a) For the Purchaser of the Divestiture Assets that are located in Calgary, Alberta, an agreement to permit such Purchaser to dispose of waste at BFI's landfill located at 201-194th Avenue SE, Calgary, Alberta at volumes of up to 18,000 tonnes per year at rates (exclusive of all applicable taxes and government levies imposed following the Closing Date), and on terms which are the same as those agreed to between BFI and WSI for disposal of solid, non-hazardous waste from commercial, institutional and industrial customers at BFI's landfill in Calgary, Alberta and set out in the Solid Waste Disposal Agreement dated August 1, 2009, for the earlier of two (2) years or such time as BFI no longer has the capacity to accept such waste at its Calgary landfill from any person, including BFI. The rate for disposal of waste during the second year of such agreement shall be adjusted to reflect any change in the all-items consumer price index for Alberta as published by Statistics Canada in the Consumer Price Index Catalogue No. 62-001-X Table 9-9 (Alberta) (or a publication replacing same);
- (b) For the Purchaser of the Divestiture Assets that are located in Simcoe County, Ontario, an agreement to permit such Purchaser to dispose of up to 9,000 tonnes of solid, non-hazardous waste from commercial, institutional and industrial customers for the first year and up to 10,000 tonnes of such waste for the second year, at the option of the Purchaser, at either the WSI Transfer Station located at 320 Saunders Road, Barrie, Ontario or the BFI Transfer Station located at 21 Bertram Industrial Parkway, Midhurst, Ontario, at rates exclusive of all applicable taxes and government levies imposed following the Closing Date, in accordance with Confidential Schedule "D" and on commercially reasonable terms, provided that the waste complies with the permits issued to these Transfer Stations; and
- (c) For each Purchaser of the Divestiture Assets, a transitional services agreement for a period of up to 90 days to allow for access and use of BFI's yard and related facilities for the parking or storage of vehicles, bins and other equipment forming part of the Divestiture Assets in the Relevant Market in which the Divestiture

Assets are located at no cost, and the supply of maintenance and repair services for such equipment on commercially reasonable terms.

VII. DIVESTITURE TRUSTEE PROCESS

[58] In the event that BFI fails to complete the Divestiture during the Initial Sale Period, the Commissioner may appoint a Divestiture Trustee to, within the Divestiture Trustee Sale Period, complete the Divestiture to a Purchaser approved by the Commissioner and on terms approved by the Commissioner (including those terms set out at Confidential Schedules "C" and "D"), in her sole discretion. The Divestiture Trustee shall use whatever procedure it believes is suitable, as determined by the Divestiture Trustee in its sole discretion, subject to oversight and approval by the Commissioner only.

[59] The Commissioner may appoint the Divestiture Trustee ten (10) days before the expiry of the Initial Sale Period or on such later date as determined by the Commissioner. Immediately following the appointment of the Divestiture Trustee, and prior to the expiry of the Initial Sale Period, BFI shall provide the Divestiture Trustee with complete access to all information relating to the Divestiture Assets, including Confidential Information, to facilitate the Divestiture by the Divestiture Trustee.

[60] The Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period to complete the Divestiture and enter into a legally binding agreement with a Purchaser that will be binding on BFI. BFI shall be bound by any agreement entered into by the Divestiture Trustee on behalf of BFI to complete the Divestiture in accordance with this Part. BFI agrees that it will do all such acts and execute all such further documents, and will cause the doing of all such acts and the execution of all such further documents as are within its power to cause the doing or execution of, as may be reasonably necessary to ensure that the Divestiture Assets are Divested in the Divestiture Trustee Sale Period and that agreements entered into by the Divestiture Trustee are binding upon and enforceable against BFI.

[61] Any Person making a *bona fide* inquiry of the Divestiture Trustee shall be notified that the Divestiture is being made pursuant to this Agreement and shall be provided with a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to paragraph 82.

[62] BFI consents to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority and responsibilities:

- (a) Subject to oversight and approval by the Commissioner only, the Divestiture Trustee shall have the exclusive authority to control the Divestiture, subject to this Agreement, to accomplish the Divestiture by whatever procedure the Divestiture Trustee believes in its discretion is suitable, as soon as practicable within the Divestiture Trustee Sale Period or such longer period as directed by the Commissioner.

- (b) BFI will not be included in the Divestiture process, including negotiations, nor will BFI have contact with prospective Purchasers, except with the prior approval of the Commissioner; provided, however, that the Divestiture Trustee may consult with BFI in the presence of a representative of the Commissioner when the Divestiture Trustee considers such consultation to be appropriate and the Commissioner consents.
- (c) Notwithstanding any term of this Agreement, the Divestiture Trustee's obligations and powers under this Agreement shall not expire until the Divestiture is completed.
- (d) The Divestiture Trustee shall execute a standard confidentiality agreement in a form determined by the Commissioner, and may communicate Confidential Information to a prospective Purchaser to the extent reasonably required to complete the Divestiture, provided that such Person shall have agreed in writing with the Divestiture Trustee to keep such information confidential in a form of agreement determined by the Divestiture Trustee in its sole discretion, subject to oversight and approval by the Commissioner only.
- (e) The Commissioner may extend the Divestiture Trustee Sale Period as the Commissioner considers necessary, in her sole discretion, to complete the Divestiture.
- (f) BFI shall grant the Divestiture Trustee full and complete access to all personnel, books, records and facilities related to the Divestiture Assets, and to any other information relevant to the performance of its responsibilities as Divestiture Trustee, including Confidential Information, deemed relevant by the Divestiture Trustee to complete the Divestiture. BFI shall take no action to interfere with or impede the Divestiture Trustee's efforts to complete the Divestiture.
- (g) BFI shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. BFI shall identify an individual who shall have primary responsibility for responding to such requests from the Divestiture Trustee on behalf of BFI.
- (h) The Divestiture Trustee shall use commercially reasonable efforts to negotiate terms and conditions that are favourable to BFI as are reasonably available at that time for the Divestiture, having regard to the terms attached hereto as Confidential Schedules "C" and "D".
- (i) The Divestiture Trustee shall have the sole authority to determine, and BFI shall provide, all reasonable and customary commercial covenants, representations, warranties and indemnities for the purpose of completing the Divestiture to a Purchaser.

- (j) The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of BFI, and on such reasonable and customary terms and conditions as the Commissioner may set.
- (k) BFI shall pay all reasonable invoices submitted by the Divestiture Trustee within thirty (30) days of receipt. Any outstanding monies owed to the Divestiture Trustee by BFI shall be paid out of the proceeds of the Divestiture.
- (l) The Divestiture Trustee shall have the authority to employ, at the expense of BFI, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities.
- (m) BFI shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.
- (n) If the Divestiture Trustee ceases to act or fails to act diligently or otherwise in accordance with this Agreement or any agreement between the Commissioner and the Divestiture Trustee, the Commissioner may appoint a substitute Divestiture Trustee in the same manner as provided in this Part for the initial Divestiture Trustee.
- (o) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.
- (p) The Divestiture Trustee shall report in writing to the Commissioner every thirty (30) days following the date of the Divestiture Trustee's appointment, and upon the Commissioner's request within three (3) days, concerning the Divestiture Trustee's efforts to complete the Divestiture. Such reports shall contain reasonable detail on the steps being taken by the Divestiture Trustee to complete the Divestiture, including but not limited to: the identity of prospective Purchasers; the status of negotiations with such prospective Purchasers; and any additional information requested by the Commissioner.
- (q) The Divestiture Trustee shall promptly notify the Commissioner of any proposed agreement to Divest the Divestiture Assets. Such notice shall include: the identity of the proposed Purchaser; the details of the proposed agreements; information concerning whether, in the view of the Divestiture Trustee, the proposed Purchaser would likely satisfy the terms of this Agreement; and any additional information requested by the Commissioner.

- (f) The Divestiture Trustee shall complete the Divestiture to a Purchaser or Purchasers, each of which is:
- (i) approved in writing by the Commissioner and on terms approved in writing by the Commissioner, each as determined in her sole discretion;
 - (ii) at arm's length from the Respondents; and
 - (iii) who is able to satisfy the Commissioner, in her sole discretion, that such Purchaser:
 - a. is committed to carrying on a Commercial Waste Collection business using the Divestiture Assets in the Relevant Market in which such Divestiture Assets are located or, in the case of the Hamilton Transfer Station, operating a Transfer Station in Hamilton, Ontario;
 - b. has the managerial, operational and financial capability to compete effectively in the Commercial Waste Collection business in the Relevant Market in which the Divestiture Assets are located, including the ability to operate from a facility located in such Relevant Market or, in the case of the Hamilton Transfer Station, that it has the managerial, operational and financial capability to operate a transfer Station in Hamilton, Ontario; and
 - c. will complete the Divestiture prior to the expiry of the Divestiture Trustee Sale Period.

The determination of whether the above conditions are satisfied is at the sole discretion of the Commissioner. In exercising her discretion to approve a proposed Divestiture to a Purchaser, the Commissioner may take into account, *inter alia*, the likely impact of the Divestiture on competition. The decision of the Commissioner as to whether to approve the proposed Divestiture shall be in writing.

[63] Subject to Confidential Schedule "C", the Divestiture Trustee shall Divest of all of the Commercial Waste Collection assets included in the Divestiture Assets in a Relevant Market to the same Purchaser, unless otherwise agreed to in writing by the Commissioner.

[64] The Divestiture Trustee shall use all commercially reasonable efforts to obtain any Third Party consents or waivers necessary to permit the assignment to, and assumption by, the Purchaser of all contracts, licences, permits, agreements and authorizations included in the Divestiture Assets. In the event that, despite commercially reasonable efforts, the Divestiture Trustee fails to secure the Third Party consents or waivers necessary to permit the assignment to, and assumption by, the Purchaser of an agreement or contract included in the Divestiture Assets, other than the lease for the Hamilton Transfer Station, the Divestiture Trustee, on behalf of BFI,

may, with the approval of the Commissioner in her sole discretion, subcontract the Unassigned Contract to the Purchaser on the terms described in Schedule "F" or such other terms as approved by the Commissioner in her sole discretion. Where the Unassigned Contract will be subcontracted to the Purchaser, the Divestiture Trustee shall use all commercially reasonable efforts to obtain any Third Party consents or waivers necessary to permit the subcontract to the Purchaser.

[65] In the event the Divestiture Trustee does not secure the Third Party consents or waivers necessary to permit a subcontract of an Unassigned Contract or the Commissioner does not approve of a subcontract of an Unassigned Contract in accordance with paragraph 64 above, the Divestiture Trustee shall substitute another contract or contracts of at least equal value (based on contract or customer type, revenues, remaining term and location) in the same Relevant Market, and such Substitute Contract shall form part of the Divestiture Assets. The Divestiture Trustee shall choose a BFI contract as a Substitute Contract only if, in the opinion of the Divestiture Trustee, there are no WSI contracts of at least equal value (based on contract or customer type, revenues, remaining term and location) to an Unassigned Contract in the same Relevant Market available to be Divested. The Divestiture Trustee's choice of Substitute Contracts shall be subject to the prior approval of the Commissioner in her sole discretion.

[66] BFI may not object to or challenge the performance of the Divestiture Trustee's duties under this Agreement or any Divestiture Trustee Sale on any grounds other than the Divestiture Trustee's malfeasance, gross negligence or bad faith in executing its obligations hereunder. If BFI objects to the terms and conditions of a Divestiture that has been proposed by the Divestiture Trustee on grounds of malfeasance, gross negligence or bad faith by the Divestiture Trustee, BFI or the Commissioner may apply to the Tribunal for directions, but in no event shall any such dispute serve to suspend the Divestiture Trustee Sale Period.

VIII. FAILURE OF DIVESTITURE TRUSTEE SALE

[67] If, by the end of the Divestiture Trustee Sale Period, the Divestiture has not been completed, or if the Commissioner is of the opinion that the Divestiture likely will not be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal for such order as is necessary to complete the Divestiture, or for such order as is necessary to ensure that the Transaction is not likely to prevent or lessen competition substantially.

[68] BFI agrees that the Tribunal has jurisdiction to grant such relief as is required to give effect to this Agreement and complete the Divestiture to a Purchaser.

IX. COMPLIANCE

[69] Subject to paragraph 71 below, for a period of ten (10) years from the Closing Date, BFI shall not manage or operate any Divestiture Assets or directly or indirectly acquire any interest in the Divestiture Assets, without the prior written consent of the Commissioner.

[70] In respect of each Relevant Market, pending the completion of the Divestiture of all the Commercial Waste Collection assets included in the Divestiture Assets in such Relevant Market and for a period of one (1) year following such Divestiture, BFI shall not, directly or indirectly, solicit or offer to provide Commercial Waste Collection services in that Relevant Market to a customer subject to a contract included in the Divestiture Assets. For greater clarity, nothing in this paragraph shall preclude the Hold Separate Manager or Hold Separate Businesses from, directly or indirectly, soliciting, acquiring, offering or providing Commercial Waste Collection services in a Relevant Market pending the completion of the Divestiture of the Commercial Waste Collection assets included in the Divestiture Assets in that Relevant Market.

[71] Following the expiry of the one-year period in paragraph 70, BFI shall not be restricted by this Agreement from competing for the business of any customers, including customers who have contracts included in the Divestiture Assets.

[72] For a period of three (3) years from the Closing Date, without the prior written consent of the Commissioner, BFI shall not:

- (a) acquire any Commercial Waste Collection assets in any Relevant Market from a Purchaser or Third Party offering Commercial Waste Collection in any of the Relevant Markets;
- (b) consummate any merger or other combination relating to Commercial Waste Collection in any Relevant Market with a Purchaser or Third Party offering Commercial Waste Collection in any of the Relevant Markets;
- (c) enter into, perform or consummate any agreement with a Purchaser or Third Party offering Commercial Waste Collection in any of the Relevant Markets that would restrict or impair the Purchaser's or Third Party's ability to operate its Commercial Waste Collection business in any Relevant Market in a manner that is competitive and fully independent of BFI; or
- (d) acquire any voting or non-voting stock, share capital, equity, notes convertible into any voting or non-voting stock or otherwise acquire any direct or indirect interest in any Purchaser or Third Party offering Commercial Waste Collection in any of the Relevant Markets.

[73] For any transaction described in paragraph 72 above that is proposed within a two (2) year period following the expiry of the period in paragraph 72 and for which notice is not required under section 114 of the Act, BFI shall, unless otherwise agreed by the Commissioner, supply the information described in section 16 of the *Notifiable Transaction Regulations* to the Commissioner at least thirty (30) days before completing such transaction. The Commissioner may, within thirty (30) days of receiving the information described in section 16 of the *Notifiable Transaction Regulations*, request that BFI supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, BFI agrees that it will supply such information to the Commissioner in the form specified by the Commissioner and shall not complete such

transaction until at least thirty (30) days after BFI has supplied all such requested information in the form specified by the Commissioner.

[74] BFI shall: (i) six (6) months from the Closing Date, and every six (6) months thereafter for a period of five (5) years, provide to the Commissioner a declaration of compliance with this Agreement; and (ii) provide to the Commissioner information requested by the Commissioner to confirm compliance with this Agreement no later than ten (10) Business Days after receiving a request for such information from the Commissioner.

[75] In the event of a material breach of any of the terms of this Agreement, the Respondents shall, upon becoming aware of such breach, promptly notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual or anticipated) of the breach.

[76] In the event that a subcontracting agreement entered into with a Purchaser in accordance with paragraphs 51 and 52 or 64 of this Agreement has been terminated prior to the expiry of the term of the Unassigned Contract, BFI shall substitute a contract or contracts of at least equal value (based on contract or customer type, revenues, remaining term and location) in the same Relevant Market with the approval of the Commissioner in her sole discretion and in accordance with the procedure set out in paragraph 55 above.

[77] For a period of five (5) years from the Closing Date, for purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request and upon two (2) Business Days notice to the Respondents, the Respondents shall, without restraint or interference, permit any duly authorized representative(s) of the Commissioner:

- (a) access, during regular office hours of the Respondents on Business Days, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondents related to compliance with this Agreement, which copying services shall be provided by the Respondents at their expense; and
- (b) to interview officers, directors, or employees of the Respondents regarding such matters,

it being understood that this paragraph 77 shall not be construed so as to derogate from any protections afforded by section 29 of the Act.

[78] The Respondents shall not be deemed to be in default under this Agreement if such default is caused by or is attributable to any occurrence which is beyond the reasonable control of the Respondents and which by the exercise of reasonable foresight and due diligence the Respondents are unable to prevent or overcome (a "Force Majeure Event"); provided that: (a) notice of the Force Majeure Event is promptly provided; (b) a work-around strategy is promptly

developed; and (c) all commercially reasonable efforts are used to implement the work-around strategy and to otherwise resume performance of this Agreement given the circumstances.

X. NOTIFICATION

[79] The Respondents shall provide a copy of this Agreement to each of their own and their Affiliates' officers, employees and agents having managerial responsibility for any obligations under this Agreement, no later than ten (10) Business Days from the date this Agreement is registered with the Tribunal.

[80] Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement or in any proceedings arising herefrom before the Tribunal shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the parties as follows:

- (a) If to the Commissioner:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Melanie Aitken, Commissioner of Competition
Fax: (819) 953-5013

With copies to:

Executive Director and Senior General Counsel
Competition Law Division
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

and

Adam Fanaki
Davies Ward Phillips & Vineberg LLP
44th Floor, 1 First Canadian Place
Toronto, Ontario
M5X 1B1

(b) If to BFI:

IESI-BFC Ltd.
BFI Canada Inc.
135 Queens Plate Drive Suite 300
Toronto, Ontario, M9W 6V1

Attention: William Chyfetz, General Counsel
Fax: (416) 741-4565

With copies to:

Donald B. Houston
McCarthy Tétrault LLP
Suite 5300
Toronto-Dominion Bank Tower
Toronto, Ontario, M5K 1E6

or to such other street address, individual or electronic communication number or address as may be designated by notice given by any party to the other parties. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery and, if given by registered mail, on the fifth (5th) Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

XI. GENERAL

[81] The Respondents agree to the immediate registration of this Agreement with the Tribunal.

[82] Information in Confidential Schedules "A.1" and "D" shall remain confidential at all times during and following the duration of this Agreement, provided that BFI or the Divestiture Trustee may disclose the contents of Confidential Schedule "A.1" to any prospective Purchaser. Information in Confidential Schedule "B" shall be made public upon expiration of the Initial Sale Period. Information in Confidential Schedule "C" shall be made public upon the completion of the Divestiture of all Divestiture Assets.

[83] The Commissioner may, in her sole discretion, extend any of the time periods contemplated by this Agreement. The Respondents and the Commissioner may mutually agree to amend this Agreement in any manner pursuant to subsection 106(1) of the Act.

[84] Nothing in this Agreement (including the recitals hereto) precludes the Respondents from bringing an application under section 106 of the Act (or a successor or equivalent provision under the Act) to vary or rescind this Agreement. The Respondents agree that they shall not, in any such application, contest the Commissioner's present conclusions that: (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in supply of Commercial Waste Collection in each of the Relevant Markets; and (ii) that the implementation of this Agreement is necessary and sufficient to ensure that any substantial lessening and/or prevention of competition would not result from the Transaction.

[85] Computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of this Agreement, the definition of "holiday" in the *Interpretation Act* shall be deemed to include Saturday.

[86] This Agreement constitutes the entire agreement between the Commissioner and the Respondents and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.

[87] Nothing in this Agreement precludes the Commissioner from taking enforcement action against the Respondents under any provision of the Act, including sections 77 and 79 of the Act, except for an application under section 92 of the Act (or a successor or equivalent provision under the Act) with respect to the Transaction, or precludes the Respondents from raising any available defences to such action.

[88] Nothing in this Agreement abrogates the notification obligations set out in Part IX of the Act.

[89] In the event of a dispute regarding the interpretation, application or implementation of this Agreement, including any decision by the Commissioner pursuant to this Agreement or any breach of this Agreement by the Respondents, any of the Commissioner, the Monitor or BFI may apply to the Tribunal for directions or a further order. In no event shall any dispute serve to suspend the Initial Sale Period or the Divestiture Trustee Sale Period.

[90] This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English language and French language versions of this Agreement, the English language version shall prevail.

The undersigned hereby agree to the immediate registration of this Agreement.

DATED this 29th day of June, 2010.

"Melanie L. Aitken"

Melanie L. Aitken
Commissioner of Competition

IESI-BFC LTD.

By: "Keith Carrigan"

Name: Keith Carrigan
Title: Vice-Chairman and
Chief Executive Officer

BFI CANADA INC.

By: "Keith Carrigan"

Name: Keith Carrigan
Title: President and
Chief Executive Officer

WASTE SERVICES INC.

By: "Ivan R. Cairns"

Name: Ivan R. Cairns
Title: Executive Vice-President

WASTE SERVICES (CA) INC.

By: "Ivan R. Cairns"

Name: Ivan R. Cairns
Title: Vice-President

SCHEDULE "A"
DIVESTITURE ASSETS

Calgary

Approximate Number of Customer Contracts (detailed information in Confidential Schedule "A.1"):	795
Annual Revenue	\$4,051,449
Approximate Number of Containers	1,212
List of Trucks (5 in total)	2009, Autocar/labrie, 5VCDC6JF39H208163 2007, Autocar/labrie, 5VCDC6MF47H204583 2005, Autocar/labrie, 5VCDC6MF85H201411 2005, Autocar/labrie, 5VCDC6MFX5H201412 2005, Autocar/labrie, 5VCDC6ME25H200898

Edmonton

Approximate Number of Customer Contracts (detailed information in Confidential Schedule "A.1"):	1,592
Annual Revenue	\$5,851,605
Approximate Number of Containers	2,116
List of Trucks (4 in total)	2007, Autocar/labrie, 5VCDC6MF67J204584 2007, Autocar/labrie, 5VCDC6MF08H205442 2004, Autocar/labrie, 5VCDC6LF65H200534 2002, Autocar/labrie, 4V2DC6UE93N339815

Barrie

Approximate Number of Customer Contracts (detailed information in Confidential Schedule "A.1"):	428
Annual Revenue	\$1,806,236
Approximate Number of Containers	822
List of Trucks (2 in total)	2005, Mack/UHE, 1M2K195CX6M028544 2000, Volvo/UHE, 4V2DCHEYN796758

Ottawa

Approximate Number of Customer Contracts (detailed information in Confidential Schedule "A.1"):	859
Annual Revenue	\$4,933,382
Approximate Number of Containers	2,231
List of Trucks (5 in total)	2007, Mack, 1M2K189C57M034905 2007, Mack, 1M2K189C77M034906 2001, Volvo/UHE, 4V2DC6UE21N321198 2000, Volvo/UHE, 4V2DCHE7YN780238 2000, Volvo/UHE, 4V2DC2HE2YN780261

Hamilton

Approximate Number of Customer Contracts (detailed information in Confidential Schedule "A.1"):	460
Annual Revenue	\$1,700,293
Approximate Number of Containers	938
List of Trucks (2 in total)	2007, Mack/UHE, 1M2K189C87M039712 2001, Mack/Labrie, 1M2K185C41M008079

Hamilton Transfer Station

- Assignment of all of WSI's interests in the Hamilton Transfer Station, including assignment of the lease for the Hamilton Transfer Station.
- Transfer Station equipment:
 - 06 John Deere 200CLC Hydraulic Excavator with grapple and scale
 - Transfer Station Compactor
 - 99 John Deere 624H Wheel Loader
 - Facility Scale
 - Radiation Detector

CONFIDENTIAL SCHEDULE "A.1"

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE "B"

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE "C"

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE "D"

[CONFIDENTIAL]

SCHEDULE "E"
CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is dated as of ■

BETWEEN:

[Full name of Monitor]

(hereinafter referred to as the "**Receiving Party**")

- and -

[IESI-BFC LTD., BFI CANADA INC., WASTE
SERVICES INC., and WASTE SERVICES (CA)
INC.]

(hereinafter referred to as the "**Disclosing Parties**")

WHEREAS:

- A. Pursuant to an agreement and plan of merger dated November 11, 2009 between IESI-BFC Ltd. ("**BFI**"), IESI-BFC Merger Sub, Inc. ("**Merger Sub**") and Waste Services, Inc. ("**WSI**"), Merger Sub will be merged with and into WSI, with WSI continuing as a wholly-owned subsidiary of BFI (the "**Transaction**");
- B. The Commissioner of Competition (the "Commissioner") and the Disclosing Parties have entered into a Consent Agreement dated the June 29, 2010 and registered with the Competition Tribunal pursuant to section 105 of the *Competition Act*, R.S.C. 1985, c.C-34;
- D. The Receiving Party has been appointed by the Commissioner to act as Monitor (as such term is defined in the Consent Agreement) pursuant to Part IV of the Consent Agreement
- E. The Consent Agreement sets forth the role and obligations of the Receiving Party (the "**Purpose**").
- F. In fulfilling the Purpose, the Receiving Party may be furnished with certain confidential and/or proprietary business information regarding the Disclosing Parties' businesses.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

1. **Definitions**

- (a) "**Agreement**" means this Agreement entered into between the Receiving Party and the Disclosing Parties;
- (b) "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7 of the Act and any person designated by the Commissioner to act on her behalf;
- (c) "**Confidential Information**" means all or any part of the information regarding financial affairs, operations, engineering and technical matters, accounting matters, suppliers, customer information, customer lists, computer programs, trade secrets, trademarks, patents, know-how, ideas, financial information, data, models, specifications, patent or trademark applications, methodologies, designs, processes, technology, techniques, drawings, inventions, diagrams, business requirements, technical requirements and exploration, including, without limitation all information marked as "Confidential", "Proprietary" or "Restricted" or that reasonably should be considered as such from its nature or from the circumstances surrounding its collection, use or disclosure and all other relevant information pertaining thereto in any form whatsoever, as well as this Agreement and the Purpose; except that Confidential Information will exclude information that:
 - (i) was already in the public domain;
 - (ii) was already lawfully in the Receiving Party's possession, or previously known to or developed by the Receiving Party without obligation of confidentiality, at the time of disclosure by the Disclosing Parties;
 - (iii) becomes part of the public domain through no act or omission of the Receiving Party;
 - (iv) is disclosed to the Receiving Party without obligation of confidentiality by a third party having the legal right to do so;
 - (v) is independently developed by the Receiving Party without reference to the Confidential Information of the Disclosing Parties; or
 - (vi) is approved in writing for disclosure by the Disclosing Parties.
- (d) "**Disclosing Parties**" has the meaning ascribed thereto in the recitals and, for greater certainty, includes any of that party's Affiliates and their respective successors or assigns;
- (e) "**Monitor**" has the meaning ascribed thereto in the Consent Agreement;

- (f) **"Receiving Party"** has the meaning ascribed thereto in the recitals and, for greater certainty, includes any of their Affiliates and any of their respective successors or assigns;
- (g) **"Representatives"** means the Receiving Party's officers, directors, partners, personnel or professional advisors;

All other capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Consent Agreement.

2. **Receiving Party's Duty of Confidentiality.** With respect to any Confidential Information the Receiving Party receives from the Disclosing Parties, the Receiving Party shall: (i) use commercially reasonable measures to keep such information confidential; (ii) use the same degree of care to protect the Disclosing Parties' Confidential Information as it uses for its own Confidential Information, but in no event less than reasonable care; (iii) not use the Confidential Information other than in connection with the performance of this Agreement; and (iv) not divulge the Confidential Information to the Representatives, unless the Receiving Party has informed such Representatives of the confidential nature of the Confidential Information and the Representatives are subject to similar confidentiality obligations.
3. **Return of Confidential Information.** Following termination of this Agreement and upon written notice from any of the Disclosing Parties requesting return of any or all Confidential Information, the Receiving Party shall forthwith return all such Confidential Information to the Disclosing Party requesting return of the Confidential Information and shall keep no copies. Where deletion of information is necessary to fulfill this requirement, it shall be performed within the confines afforded by existing technology limitations. Upon request, an officer's certificate confirming that such actions have been completed and that there are no tangible and/or electronic versions of the Confidential Information in the Receiving Party's possession or control, shall be provided to the Disclosing Parties by the Receiving Party. Notwithstanding the foregoing, the Receiving Party shall be entitled to retain such Confidential Information as is necessary in order to comply with its professional obligations which require the retention of such working papers, records and other documentation which reasonably evidence the nature and extent of the work done in respect of any professional engagement.
4. **Disclosure of Confidential Information.** In the event that the Receiving Party or any of the Representatives is required to disclose any Confidential Information by law or by any regulatory authority or due to the Receiving Party's professional obligations or the Rules of Professional Conduct, if permitted by law the Receiving Party shall provide the Disclosing Party with prompt notice thereof so that the Disclosing Parties may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement prior to such disclosure. The Receiving Party shall cooperate with the Disclosing Parties in its efforts to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained or the Disclosing Parties waives compliance with the provisions of this Agreement, either the Receiving Party or

its representatives will furnish only that portion of the Confidential Information which is legally required to be disclosed to such parties, based on advice from the Receiving Party's internal counsel, and the Receiving Party shall exercise all reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information.

5. **Interim Relief.** The Receiving Party agrees that it shall be responsible for any breach of this Agreement by the Representatives and that the Disclosing Parties shall be entitled to seek all remedies available at law or in equity to enforce, or seek relief in connection with, any breach of the obligations set forth in this Agreement, provided that the Disclosing Parties shall provide the Commissioner with notice in writing in advance of any proceedings it commences in this regard.
6. **Choice of Law.** This Agreement shall be interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein (other than any conflict of laws rules that would result in the choice of laws of another jurisdiction).
7. **Severability.** If any provision contained in this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions herein shall not in any way be affected or impaired thereby.
8. **Term.** This Agreement will continue in force until three years after the Receiving Party ceases to act as Monitor.
9. **Headings.** The headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation thereof.
10. **No Assignment.** Neither party may assign this Agreement or any of its rights or obligations thereunder, in whole or in part.
11. **Relationship of Parties.** Nothing in this Agreement shall be construed to establish an agency, employment, partnership, joint venture or other relationship between the parties.
12. **Notice.** All notices required or contemplated by this Agreement shall be in writing and shall be deemed received:
 - (a) when delivered in person; or
 - (b) on the day sent by facsimile (fax) transmission or, if that day is not a business day on the date of receipt, then on the next following business day,

addressed to the Disclosing Party as follows:

■
Attention: ■
Telecopy: ■

and addressed to the Receiving Party as follows:

■
Attention: ■
Telecopy: ■

With copies to:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Melanie Aitken, Commissioner of Competition

Fax: (819) 953 5013

And:

Executive Director and Senior General Counsel
Competition Law Division
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Each party may change the address to which notices shall be sent from time to time by giving the other party notice of change in accordance with this Section 12. For the purposes of this Section, the term "business day" means a day, other than a Saturday or Sunday, on which banks are open for regular business in Toronto, Ontario.

13. **Amendment; Waiver; and Entire Agreement.** No amendment, modification or change in this Agreement shall be binding unless in writing, executed by all parties, and with the prior written approval of the Commissioner, acting in her sole discretion. No waiver of any provision of this Agreement shall be binding unless in writing, executed by the party making the waiver, and with the prior written approval of the Commissioner, acting in her sole discretion. No amendment, modification or change in this Agreement, nor any waiver of any provision by a party, shall be binding upon such party unless and until executed in writing by an authorized officer of such party. No delay or omission to exercise any right, power or remedy accruing to either party under this Agreement shall impair any such right, power or remedy, nor will it be construed to be a waiver of any

breach, default or non-compliance by the other party, or any acquiescence therein. Subject to the terms of the Consent Agreement, this Agreement reflects the complete understanding of the parties and constitutes the parties' entire agreement with respect to the subject matter contained herein, superseding all prior negotiations, representations, agreements, understandings, and statements.

14. **Execution.** This Agreement may be executed in counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

By: _____
Authorized Signing Officer

[NTD: Full name of Disclosing Parties]

By: _____
[Name]
Authorized Signing Officer

SCHEDULE "F"
SUBCONTRACT TERMS

1. Subcontractor as Independent Contractor

BFI is required under the terms of the Consent Agreement with the Commissioner of Competition (the "Commissioner") dated June 29, 2010 to subcontract to the Subcontractor any Unassigned Contracts (as defined in paragraph 52 of the Consent Agreement) to the Subcontractor to perform, as an independent contractor, all of the services required to be subcontracted and as more fully described in Appendix A. It is expressly understood and agreed that the Subcontractor is an independent contractor carrying on its own business independent of BFI and neither the Subcontractor nor any of its employees are employees or partners of BFI. It is understood and agreed that BFI does not have the right to, and will not control or endeavour to control the manner or prescribed method of performing the services covered by this Subcontracting Agreement provided the service provided by the Subcontractor complies with the terms of the various agreements pursuant to which the waste collection service is being provided.

2. Term

This Subcontracting Agreement shall be effective as of the date first above written and shall continue until the expiry of the terms, including any renewal options, as set out in the Unassigned Contract that BFI is subcontracting to the Subcontractor, as described in Appendix A.

3. Services and Payment

The Subcontractor shall provide the services and equipment necessary to perform all of the services required to be subcontracted and as more fully described in Appendix A.

The Subcontractor shall be paid the amounts shown on Appendix A, which amounts shall provide for the Subcontractor to receive all of the revenues payable or attributable to all of the services required to be subcontracted. The Subcontractor shall invoice BFI within ten (10) days of the end of each calendar month. BFI shall pay the amount owing to the Subcontractor within ten (10) days of receipt of invoice by BFI.

BFI will provide the Subcontractor with copies of the Unassigned Contracts with its customer and the Subcontractor shall perform all of the subcontracted services required under those agreements in accordance with the agreements.

4. Accident Reporting

The Subcontractor shall report immediately to BFI any and all accidents involving property damage or bodily injuries.

5. General Liability Insurance

The Subcontractor shall, at all times during the term of this Subcontracting Agreement, carry at its own expense, adequate comprehensive general liability insurance covering personal injury and property damage with a minimum \$2,000,000 per occurrence combined single limit for bodily injury and property damage liability.

6. Automobile Liability

The Subcontractor shall, at all times during the term of this Subcontracting Agreement, carry at its own expense adequate automobile liability insurance with a minimum \$2,000,000 per occurrence combined single limit for bodily injury and property damage liability.

BFI shall be provided with certificates of insurance with respect to this and general liability coverage.

7. Indemnity

The Subcontractor agrees to indemnify and hold harmless BFI from and against any and all claims, damages, losses and expenses (including reasonable legal fees), arising out of the performance of any work to be performed hereunder by the Subcontractor, including, without limitation, all damages for bodily injury, illness, death, and property damage caused in whole or in part by the Subcontractor's negligent act or omission, or that of anyone employed by the Subcontractor or for whose acts the Subcontractor may be liable.

8. Inability to Perform Services

In the event that the Subcontractor is unable to complete the services contracted for herein for any reason whatsoever, BFI may terminate this Subcontracting Agreement and shall provide prompt written notice to the Commissioner of such termination.

9. Driver's Safety Regulations

Any driver utilized by the Subcontractor shall be an individual who meets all the requirements to drive and operate the equipment used by the Subcontractor under this Subcontracting Agreement. The Subcontractor shall be liable for fines or any other expenses incurred by reason of any violation by such driver(s) of any rule, order or regulation of regulatory bodies.

10. Permits, Equipment and Maintenance

The Subcontractor warrants that it has, and that it shall maintain and keep in good standing during the term of this Subcontracting Agreement, all federal, provincial and municipal permits and licenses required to perform the services contracted for herein.

The Subcontractor shall comply with all federal, provincial and municipal rules and regulations, including, without limitation, rules in respect of health and safety.

All equipment used by the Subcontractor shall be maintained in a safe and road-worthy condition in compliance with all federal, provincial and municipal laws, rules, regulations, permits and licenses.

11. Entire Agreement, Amendments and Waivers

This Subcontracting Agreement, the Consent Agreement and the Appendix hereto, constitute the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, statements, representations and warranties, understandings, negotiations, and discussions of the parties, whether oral or written. No supplement, modification or waiver of this Subcontracting Agreement shall be binding unless approved by the Commissioner and executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Subcontracting Agreement shall be deemed or shall constitute a waiver of any other provision hereof, and the waiver of any default shall not be deemed to be a waiver of any other or subsequent default.

12. Assignment

Neither this Subcontracting Agreement nor any of the rights and obligations provided by this Agreement may be assigned by the Subcontractor without the prior written consent of BFI, which consent shall not be unreasonably withheld.

13. Validity

In the event that any provision of this Subcontracting Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not effect the remainder of the provisions hereof and such part shall be fully severable and this Agreement shall be construed and enforced as if such invalid or unenforceable part had not been a part of this Subcontracting Agreement.

14. Binding on Successors and Assigns

This Agreement shall enure to the benefit of the parties and their permitted successors and assigns.

15. Confidential Information

The Subcontractor recognizes and acknowledges that it will have access to confidential information of BFI which the Subcontractor agrees it will not disclose to any third parties.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of XX and the laws of Canada, applicable therein.