

Private & Confidential

DATED _____ 2006

FURNACE FINANCE LIMITED

and

COUNCIL

SERVICES AGREEMENT
Relating to the provision of
Cremation Equipment

IUVUS LIMITED
Draft: Nigel Weiss 11/1/06

THIS AGREEMENT is dated

2006

and is made **BETWEEN**:

- (1) **FURNACE FINANCE LIMITED** a company incorporated in England under company number 5677477 and whose registered office is at 15 Lower Quay, Fareham, Hampshire PO16 0RJ (**FFL**); and
- (2) **Council of** (the **Customer**).

RECITALS

- (A) The Customer wishes to procure new equipment in order to continue its activity of performing cremations at the Site.
- (B) The Customer currently enters into contracts with third parties for the management and maintenance of existing equipment.
- (C) The parties have agreed that FFL will procure install, test and maintain the Equipment and the Customer will pay FFL for each cremation in accordance with the terms set out below.

AGREEMENT

1. DEFINITIONS & INTERPRETATION

1.1 In this Agreement and the recitals, unless the context otherwise requires:

Additional Charges	means the charges described as such in Part 2 of Schedule 6
Agreement	means this agreement, including all schedules and appendices;
Basic Charge	means the charge described as such in Part 1 of Schedule 6;
Basic Cremation Activity	means an aggregate number of YY cremations in any year based upon the Customer's prior cremation activity;
Charges	means the Basic Charge and the Additional Charges as set out in Schedule 6;
Confidential Information	means any commercial, financial, marketing, technical or other information, know-how, trade secrets and other information in any form or medium whether disclosed orally or in writing by one party to the other before or after the date of this Agreement or any reproductions of such information which is not publicly available;

Consumables	means all items or materials necessary for the proper operation of the Equipment which need replacement from time to time and which are not capable of repair or the subject of routine maintenance;
Customer Site Manager	means the Customer's representative at the Site responsible for dealing with FFL from time to time and who is, at the date hereof, [insert name, telephone no. and e-mail address.];
DEFRA Guidelines	means the DEFRA published guidance on crematoria (PG5/2(04) and AQ1,13,24(05)) applicable at the date of this Agreement;
Equipment	means any and all equipment provided by or on behalf of FFL in relation to the provision of any or all of the Services including, without limitation, all equipment identified in Schedule 1;
Equipment Acceptance Certificate	means the certificate in the form of Schedule 3 to be signed by the Customer to confirm that the Equipment has been installed and tested to its satisfaction;
FFL Manager	means the FFL representative responsible for the relationship with the Customer from time to time and who is, at the date hereof, Steven Sheridan, telephone 01329 227642, email Steve@furnacefinance.co.uk;
Funder	means the financier who has entered into a financial arrangement with FFL to fund the purchase of all or part of the Equipment used to provide the Services under this Agreement, and to whom title in the Equipment and all or part of the rights (but not the obligations) under this Agreement are transferred or assigned;
Initial Contract Period	means the initial duration of the Agreement being a minimum period of ten years from the Start Date;
Installation Date	means the earlier of 14 Working Days after FFL has signed the Site Acceptance Certificate or 21 Working Days after receipt by FFL of the Site Acceptance Certificate;
IPRs	means any copyright, moral right, patent, database right, design right, registered design, unregistered design, trade mark, service mark, utility model or any other intellectual or industrial property rights whether registered or unregistered and including applications for any such right subsisting anywhere;
Legislation	means any applicable statute, (including, without limitation, the Health & Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 and Data Protection Act 1998) statutory rule, order, directive, regulation or other instrument having force of law (including any directive or order promulgated by any competent supra-national body), all British and European standards, UKAS (United Kingdom Accreditation Service) all other legislation for

the time being in force, Codes of Practice and other requirements of any relevant government or governmental agency relating to the provision of the Services, including the DEFRA Guidelines;

Manufacturer	means Facultatieve Technologies (Holding) B.V. or any subsidiary thereof;
Operational Service Requirements	means the operational objectives that FFL is required to meet in terms of the technical and functional specification of the Equipment in relation to the Site as specified in further detail in Schedule 1;
Plan	means the implementation plan which the parties are to agree and review in accordance with Clause 4.11;
Proposed Installation Date	means the date specified as such in Schedule 1;
Reconciliation	means the process whereby actual usage volume is reconciled with the minimum volume in order to calculate any Additional Charges;
Replacement Service Provider	means a third party supplier who takes over the rights and obligations of FFL in accordance with Clause 7;
Service Levels	the standards to which the Services are to be provided as set out in Schedule 5;
Services	means the supply, installation and testing of the Equipment, the maintenance of the Equipment, the supply of all Consumables, and the provision of the Support Facility Services;
Site	meansCrematorium
Site Acceptance Certificate	means the certificate in the form of Schedule 2 to be signed by both parties to confirm that the Site is ready for installation of the Equipment
Start Date	means the earlier of the date the Customer signs the Equipment Acceptance Certificate or the date FFL delivers a warranty to the Customer in accordance with Clause 2.6.2;
Support Facility Services	means the equipment support services specified in Clause 4.4
Term	means the Initial Contract Period plus any continuation beyond the Initial Contract Period pursuant to Clause 15.2;
Termination Sum	means the amount specified as such in Clause 17;

Working Days means Mondays to Fridays (inclusive) but excluding English bank holidays and English public holidays and Saturdays and Sundays; and

Working Hours the hours of 9.00am to 5.00pm GMT on Working Days or as otherwise agreed by the parties in writing.

- 1.2 The headings to Clauses are inserted for convenience only and will not affect the interpretation or construction of this Agreement.
- 1.3 Words expressed in the singular will include the plural and vice versa. Words referring to a particular gender include every gender.
- 1.4 The words and phrases "other", "including" and "in particular" will not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.5 References to any statute or statutory provision will include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.6 "subsidiary" and "holding company" are to be given the meanings given to those terms in section 736 of the Companies Act 1985;
- 1.7 "party" means a party to this Agreement unless otherwise specified and include that party's successors in title and assigns or transferees;
- 1.8 A person includes any person, individual, partnership, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and wheresoever incorporated or existing);
- 1.9 All references in this Agreement to Clauses, Schedules and Appendices are to the clauses, schedules and appendices to this Agreement (as amended or supplemented from time to time) unless otherwise stated.
- 1.10 In the event of any conflict between this Agreement and any Schedule, the former will prevail.

2. PROVISION OF EQUIPMENT

- 2.1 **Site preparation:** The Customer will, at its own expense, prepare the Site for the installation of the Equipment and deliver the Site Acceptance Certificate to FFL least [14] Working Days prior to the Proposed Installation Date.
 - 2.1.1 FFL will within 7 Working Days of receipt of the Site Acceptance Certificate either:
 - (a) sign and return it to the Customer; or

- (b) certify what additional works are required to be performed by the Customer before FFL can commence installation,

failing which the Site Acceptance Certificate will be deemed to have been signed by FFL on the last such Working Day.

- 2.1.2 If 2.1.1 (b) above applies, FFL will carry out such certified works and the Customer will reimburse FFL on demand for the cost of undertaking such works.

2.2 Supply: FFL will supply the Equipment to the Customer on the Installation Date.

2.3 Operational Service Requirements: The Equipment supplied will satisfy the Operational Service Requirements.

2.4 New & unused: All Equipment will be supplied and installed new and unused.

2.5 Installation: All installation of the Equipment:

- 2.5.1 will be carried out in accordance with the requirements specified in Schedule 1; and

- 2.5.2 will be carried out in accordance with the provisions of the Plan as agreed between the parties from time to time; and

- 2.5.3 will be installed to the Manufacturer's specification; and

- 2.5.4 will be completed within [] Working Days of the Installation Date.

2.6 Testing: Following installation of the Equipment in accordance with Clause 2.5, the Manufacturer will test the Equipment and when satisfied that the Equipment meets the Operational Service Requirements, FFL will deliver the Equipment Acceptance Certificate to the Customer for execution.

- 2.6.1 The Customer will, within [3] Working Days of receipt thereof, either:

- 2.6.2 (a) sign and return the Equipment Acceptance Certificate, or

- (b) certify the reasons why it believes that the Equipment does not meet the Operational Service Requirements,

failing which the Equipment Acceptance Certificate will be deemed to have been signed by the Customer on the last such Working Day.

- 2.6.3 If Clause 2.6.1(b) applies, FFL must, within [3] Working Days of such certification, either remedy the Customer's concerns (so that it signs and returns the Equipment Acceptance Certificate to FFL) or deliver to the Customer a warranty in the form of Schedule 4, stating that the Equipment does meet the Operational Service Requirements.

2.7 Legislation: FFL will ensure that the Equipment will comply fully with all Legislation current at the time of the installation.

3. EQUIPMENT RIGHTS

3.1 IPRs in Equipment: As between the parties, all IPRs in the Equipment supplied in order to provide the Service will remain FFL's exclusive property or that of its third party licensors.

3.2 FFL Inspection Right: FFL may enter the Site during Working Hours to inspect the Equipment provided that it has given the Customer not less than one (1) Working Day's prior written notice to do this.

3.3 Customer Restrictions: The Customer will not during the Term:

3.3.1 do or permit any act nor purport to do or permit any act which would or could have the effect of subjecting any Equipment to any encumbrance, charge, security or lien;

3.3.2 sell, assign, pledge, sublet, lend or hire the Equipment or any part or attempt to do any of these things;

3.3.3 make any alterations, additions or modifications to the Equipment without the prior written consent of FFL;

3.3.4 remove the Equipment or any part thereof from the Site;

3.3.5 damage the Equipment in any way or take any action which might render the Equipment inoperable;

3.3.6 carry out any work on the Equipment, attempt any maintenance or fit any Consumables except as specified in the operating manuals;

3.3.7 not allow the Equipment to become affixed to any land or building in such a way that it would be considered a fixture at common law.

3.4 Customer Warranties: The Customer will throughout the Term:

3.4.1 ensure that the Equipment is kept safe and secure and in accordance with the instructions of FFL and that the Site at which the Equipment is kept is secure with reasonable security arrangements in place when the Site is not in use;

3.4.2 only use the Equipment in accordance with the Manufacturer's recommended instructions and for the sole purpose of cremations;

3.4.3 only use trained and authorised personnel to operate the Equipment.

3.5 Title: The Customer:

3.5.1 acknowledges that title in the Equipment will at all times remain with FFL or the Funder;

3.5.2 waives any interest it may have in the Equipment other than its right to operate the Equipment pursuant to this Agreement;

3.5.3 will, to the extent that it does not own the land upon which the Site is located, procure that the owner of such land (and any intermediate lessor) waives any interest it may have in the Equipment and grants FFL a right to remove the Equipment.

3.6 Operation: Subject to compliance with all its obligations under this Agreement, the Customer may operate the Equipment in accordance with the Manufacturer's operating instructions in order to perform cremations.

4. PROVISION OF THE SERVICES

4.1 Supply: FFL will provide the Services from the Start Date in accordance with this Agreement.

4.2 Maintenance: FFL will be responsible for the maintenance of the Equipment during the Term as detailed in Schedule 5.

4.3 Consumables: FFL will be responsible for the supply of all Consumables during the Term.

4.4 Support Facility: FFL will provide the following support facility services to the Customer during the Term:

4.4.1 If maintenance of the Equipment falls below the relevant Service Level for a continuous period of more than 14 Working Days, and if dispute resolution in accordance with clause 14 is unsuccessful, FFL will replace the maintenance contractor.

4.4.2 If the Equipment does not meet the Operational Service Requirements for a continuous period of more than 14 Working Days, and if dispute resolution in accordance with clause 14 is unsuccessful, FFL will replace the Equipment.

4.4.3 FFL will use its best endeavours to enforce all warranty rights it may have against the Manufacturer.

4.5 Basic Standards: FFL undertakes to provide the Services with the highest level of professional skill and care and in a competent, efficient, diligent and professional manner, using suitably qualified, experienced and trained personnel. FFL will at all times during the subsistence of this Agreement faithfully and diligently perform the duties and exercise such powers consistent with them which are from time to time necessary in connection with the provision of the Services.

4.6 Legislation: FFL will ensure that the Services will fully comply with all applicable Legislation in force at the time of the agreement and to the extent that such regulations are advisory (compliance with which is advisable but not mandatory) the minimum compliance to be achieved by FFL will be the best practice in the relevant industry.

4.7 Compliance with Customer policies etc.: FFL will ensure that it complies with the safety and security standards and procedures and codes of the Customer and any reasonable instructions relating thereto issued by the Customer from time to time subject always to the Manufacturer's recommendations.

- 4.8 Tools & Equipment:** FFL or its maintenance contractor will provide as appropriate all tools, equipment and machinery necessary to carry out the Services. Risk in all tools, equipment and machinery will remain with FFL at all times.
- 4.9 Minimised interruption:** When performing its obligations and providing the Services FFL will ensure that all work will be carried out by FFL in such a way as to minimise if not eliminate, any interruption to the Customer and its employees, agents and subcontractors.
- 4.10 Plan:** As soon as reasonably practical and in any event within [14] Working Days of the date of this Agreement, the parties will meet to draft and agree the Plan.
- 4.11 Prime Contractor:** FFL will at all times be the prime contractor for the provision of all of the Services and in the performance of its obligations under this Agreement. No subcontracting or other delegation of its obligations by FFL will relieve FFL of its obligations and liabilities pursuant to this Agreement.

5. SERVICE LEVELS

- 5.1 Service Level:** FFL will provide the Services to the Service Levels throughout the Term.
- 5.2 Failure of Service Levels:** In the event that, in the Customer's reasonable opinion, FFL fails to meet any of the Service Levels, FFL will rectify the failure or delay as soon as reasonably possible
- 5.3 Productivity commitment:** FFL undertake that if the Basic Cremation Activity falls below 125 per month for any reason other than the Customer's failure to operate the Equipment to its full capacity from time to time, the Customer will be entitled to perform without charge at the end of the Initial Period, the same number of cremations by which the actual number of cremations in any relevant period fell short of the Basic Cremation Activity in relation to such period, and FFL will provide the Equipment and the Services necessary to enable the Customer to perform such additional cremations. For the avoidance of doubt, the customer shall be responsible for the cost and provision of personnel required to perform such additional cremations.

6. PAYMENT & CHARGES (including VAT)

- 6.1 Payment of Charges:** The Customer will in consideration of FFL providing the Services, pay the Charges set out in Schedule 6. The Charges consist of two elements, the Basic Charge and the Additional Charges. The Customer acknowledges that:-
- 6.1.1** it is obligated to pay the Basic Charge regardless of the number of cremations performed, the Equipment being unusable for any period of time or not being in good working order or if any of the Services have not been provided to the satisfaction of the Customer or at all; and

- 6.1.2 any penalties or credits that it may be entitled to may only be applied in accordance with Clause 5.3.
- 6.2 Reconciliation:** On the second Working Day of each calendar month a Reconciliation will take place on the following basis:
- 6.2.1 The Customer will deliver to FFL a statement in the form of Schedule 7 detailing the date and time of each cremation performed by the Customer in the previous calendar month.
- 6.2.2 FFL may at any time during Working Hours visit the Site, and inspect the Equipment and the Customer's records in order to verify the information provided in any such statement.
- 6.2.3 FFL will within [7] Working Days of receipt of such statement calculate the amount of any Additional Charges and if such Additional Charges are payable, deliver a VAT invoice to the Customer for payment by the end of the calendar month in which the invoice is issued.
- 6.3 Equipment delivery costs:** Any costs incurred in the delivery of the Equipment or any other equipment from FFL to the Site will be met by FFL.
- 6.4 VAT & taxes:** Save as the context requires or as otherwise stated herein all references to payments made in this Agreement are references to such payments exclusive of Value Added Tax chargeable in respect of the supply of goods or services for which the payment is or is deemed to be consideration and insofar as such payments fall to be made under this Agreement such Value Added Tax will be added to the amount thereof and against provision of a proper tax invoice therefore paid in addition thereto.
- 6.5 Time for payment:** All Charges will be payable by the Customer by the end of the month following that being charged for whether or not FFL has issued an invoice in respect thereof. The Customer acknowledges that time for payment of the Charges is of the essence.
- 6.6 Invoicing:** Invoices will be submitted by FFL to the Customer on a monthly basis in arrears and will itemise all Charges and any service credits to be applied in accordance with Clause 5.3.
- 6.7 Interest:** FFL reserves the right to charge interest on all overdue sums at the rate of 4 % per annum above Lloyds Bank Plc base rate from time to time (both before and after any judgment, such amount not to merge with the judgment).
- 6.8 Funder:** The finance for this contract will be provided by the Funder, details of whom will be provided to the Customer directly by the Funder and the Customer agrees to acknowledge such notification in accordance with the Funder's reasonable requirements. FFL will act as prime contractor in pursuance of the delivery of this Agreement and will issue invoices addressed to the Customer. Until notified otherwise by the Funder, the Customer will make all payments to FFL and FFL will pay the Funder as necessary. The parties hereto acknowledge that any payments received by FFL will be applied first in satisfaction of the Basic Charge and thereafter in satisfaction of any Additional Charges

7. STEP IN RIGHT

- 7.1** Notwithstanding anything to the contrary in this Agreement, in the event that FFL is in material breach of its obligations under this Agreement and the Customer has given written notice of termination to FFL under Clause 16 and a copy thereof to the Funder, the remaining provisions of this Clause 7 will apply.
- 7.2** For a period of up to 90 days commencing on the date upon which notification of termination is received by the Funder (the **Replacement Period**) the Funder and the Customer will use all reasonable endeavours to identify a suitable replacement provider for the Services under this Agreement.
- 7.3** Any new service provider the Customer may appoint on a temporary basis (whilst the procurement of a Replacement Service Provider continues) will continue to enjoy quiet use and possession of the Equipment to which the Charges relate subject to receipt by the Funder of the Basic Charge, and if payable, any Additional Charges.
- 7.4** From the date of such termination, the Customer will no longer be obliged to pay the Charges to FFL and will pay them directly to the Funder.
- 7.5** If on the expiry of the Replacement Period and despite the endeavours of the Funder and the Customer a new service provider of the Services has not been identified to the satisfaction of the Customer and the Funder and an agreement entered into with such service provider to their satisfaction, the Customer will have the following options:
- 7.5.1** no later than 14 days after the expiry of the Replacement Period to lease the Equipment from the Funder for the remainder of the Term or any extension thereof in consideration of paying the Charges to the Funder whereupon this Agreement will immediately terminate (but without prejudice to the accrued rights or liabilities of the Customer, FFL and the Funder at the time of such termination) and a revised leasing contract reflecting the above will be entered into between the Customer and the Funder;
- 7.5.2** to continue to have the benefit of the Services (or such of them as can continue to be provided) whereupon, notwithstanding the lack of agreement regarding a replacement provider the Customer will be bound to continue to pay the Charges to the Funder in accordance with the terms of this Agreement. If having exercised this option, the Customer subsequently wishes to terminate the arrangements in respect of the supply of the Services, it will on termination comply with its obligations under this Contract and will pay the full amount of the Termination Sum (as detailed in Clause 17 below).

8. WARRANTIES, REPRESENTATIONS & UNDERTAKINGS

- 8.1 Warranties etc.:** FFL represents, warrants and undertakes that:
- 8.1.1** it has full power and capacity to enter into this Agreement;

- 8.1.2 the Equipment and its use by the Customer does not and will not infringe any IPRs of any third party;
- 8.1.3 the Equipment will conform in all respects with the Manufacturer's technical specifications;
- 8.1.4 the Equipment will operate to at least the minimum performance standards contained in the Manufacturer's specification and will continue to operate at least to such standard during the Term;
- 8.2 Exclusion of other warranties:** The parties agree that neither party has made any representations, fraudulent misrepresentations, or warranties (other than those expressly contained in this Agreement) and that all conditions, terms or undertakings implied by statute or common law in relation to the Services, or the Agreement, are excluded and neither party will be liable to the other in respect of any representations save as expressly provided in this Agreement.

9. PLACE FOR THE PERFORMANCE OF THE SERVICES

- 9.1 Location:** The Services will be performed at the Site.
- 9.2 Health & Safety:** FFL is responsible, at all times, for the health and safety of all persons it brings on to the Site to perform the Services and must report to the Customer's Site Manager prior to performing any Service.
- 9.3 Compliance with Customer policies etc. whilst onsite:** FFL will be responsible for ensuring that its employees and agents comply at all times with all the Customer's rules and regulations relating to the Site provided it has been notified of the same.
- 9.4 Location of Equipment:** The Equipment will remain at the Site for the duration of the Term.
- 9.5 Right of Access:** For the exclusive purposes of the provision by FFL of the Services, the Customer permits FFL, its employees and contractors to visit the Site and grants FFL such access as is reasonably necessary for the purposes of FFL referred to above. The right granted by the Customer to FFL will be exercisable during Working Hours and at such times and on such terms as will reasonably be agreed by the parties, and in accordance with the Customer's instructions and applicable policies relating to such access.

10. TRAINING

- 10.1 Training:** FFL will provide as part of the Services any and all training required by the Customer and will assist the Customer in understanding the Equipment as the Customer reasonably requests. Any such training will be chargeable.

11. MANAGING CHANGES

- 11.1 Requesting a change:** In the event that either party requests a variation to this agreement including but without limitation to the Service Levels, Equipment, or any other term of this Agreement such proposed change will be set out in a written change request (a **Change Request**) which will be delivered to the other party detailing the proposed change and any amendments to this Agreement which would be necessitated by such change.
- 11.2 Discussing a change:** upon receipt of a Change Request the parties will meet within 10 Working Days to discuss the same acting reasonably and in good faith.
- 11.3 Documenting an agreed change:** In the event that the parties agree to a change then the change will be effected by a written variation addendum which will be signed and dated by both parties and will form part of this Agreement. Unless and until such variation addendum is signed and dated by both parties the proposed change will not take effect.

12. PERSONNEL

- 12.1 No further Customer liability:** The Customer will have no other or further liability to FFL in respect of employees of FFL engaged in the provision of the Services at the Site other than that expressly stated in this Agreement and FFL will indemnify the Customer for any and all claims, losses, damages and liabilities arising directly or indirectly in relation to any employees or subcontractors engaged by or on behalf of FFL pursuant to this Agreement or in relation to the provision of the Services.

13. LIABILITY

- 13.1 Certain losses which cannot be excluded:** Nothing in this Agreement will limit or exclude the liability of either party in respect of loss sustained by the other arising out of:
- 13.1.1 death or personal injury caused by the negligence of such party or its employees; or
 - 13.1.2 any fraudulent misrepresentation; or
 - 13.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979; or
 - 13.1.4 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
 - 13.1.5 any breach of any implied condition or warranty which by common law may not be excluded.
- 13.2 Excluded losses:** Neither party will in any circumstances be liable to the other for any loss of profit or any other indirect or consequential loss whatsoever sustained by such party howsoever arising.

13.3 Cap on FFL's liability: The total aggregate liability of FFL arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way will not exceed £50,000.

13.4 Cross Indemnification: Subject to Clauses 13.2 and 13.3, each party (**Indemnifying Party**) will indemnify and keep the other party (**Indemnified Party**) fully and effectively indemnified against any and all demands, claims, damages, costs, expenses (including reasonable legal costs and expenses and VAT thereon) and liabilities suffered or incurred by the Indemnified Party in direct consequence of any breach by the Indemnifying Party of its warranties and/or material obligations contained in this Agreement.

14. DISPUTE ESCALATION & RESOLUTION

14.1 Level 1: Any and all disputes or disagreements concerning this Agreement will be referred immediately to the Customer Site Manager and the FFL Manager.

14.2 Level 2: If the Customer Site Manager and the FFL Manager cannot resolve the dispute within 14 Working Days of being notified of such dispute it will be escalated immediately to the appropriate director/chief executive of each of the parties for resolution.

14.3 Level 3: If no agreement can be reached within a further 14 Working Days of the referral pursuant to Clause 14.2 either party may exercise their rights pursuant to this Agreement.

14.4 Mediation at any time: Nothing in this Agreement will preclude either party from seeking mediation of any dispute or disagreement.

15. TERM

15.1 Initial Contract Period: This Agreement will be effective as from the date of execution by both parties and will continue in force for the Initial Contract Period.

15.2 Renewal: Subject to Clause 16, this Agreement will continue automatically at the end of the Initial Contract Period unless terminated by one party giving to the other not less than 30 Working Days written notice.

16. MUTUAL TERMINATION RIGHTS

16.1 Unremedied material breach: Subject to Clause 7 and Clause 14, either party may terminate this Agreement at any time by serving written notice on the other, such termination to take effect forthwith upon receipt of such written notice if one party has committed a material breach of the terms of this Agreement and has failed to remedy such breach within [30] Working Days' of the other party's written notice requiring it to do so.

16.2 Insolvency etc.: Subject to Clause 7, either party may terminate this Agreement at any time by serving written notice on the other, such termination to take effect forthwith upon receipt of such written notice upon

the happening of one or more of the following events in relation to the notified party:

- 16.2.1 a liquidator, provisional liquidator, administrator, administrative receiver or receiver is appointed over all or a substantial part of its assets;
- 16.2.2 a resolution is passed to wind it up (other than in the course of a reorganisation or restructuring);
- 16.2.3 if the notified party is a local authority, it is dissolved.

17. CONSEQUENCES OF TERMINATION OR EXPIRY

17.1 If FFL terminates: If FFL terminates this Agreement pursuant to Clause 16 above, the Customer will pay to FFL within 30 Working Days of such termination a Termination Sum which will be an amount equal to the aggregate of:

- 17.1.1 any arrears of the Basic Charge;
- 17.1.2 any arrears of the Additional Charges;
- 17.1.3 any late payment interest payable pursuant to Clause 6.8;
- 17.1.4 the Basic Charge that has yet to fall due discounted at a rate of 3% to reflect accelerated receipt of such payments together with any applicable VAT thereon;
- 17.1.5 any costs or expenses incurred by FFL or the Funder in exercising, enforcing or preserving of any of FFL's and/or the Funder's rights under this Agreement following an event of Default.

For the avoidance of doubt the Termination Sum will be payable in full, without set off, counterclaim, withholding or deduction.

17.2 If the Customer terminates: If the Customer terminates this Agreement pursuant to Clause 16 above, then, without prejudice to the Customer's other rights and remedies, the provisions of Clause 7 will apply provided that nothing therein will release the Customer in any way from its obligation to pay the Basic Charge and any applicable Additional Charges, which in such event should be paid directly to the Funder.

17.3 Return of Equipment: Upon any expiry or termination of this Agreement FFL or the Funder may upon 5 Working Days notice to the Customer access the Site at any time during Working Hours to enable FFL or the Funder (as applicable) or their respective and duly authorised agents to de-install, disassemble, and remove the Equipment. Any costs incurred in equipment removal shall be met by the Customer.

17.4 Survival of termination or expiry: Notwithstanding any termination or expiry of this Agreement the rights and obligations of the parties in [Clauses 7, 13, 14, and 17] will remain in full force and effect and will survive termination.

17.5 Nothing in this Agreement will limit or prevent either the Customer or the Funder from enforcing its or their rights and remedies generally against FFL in the event of any breach or failure of FFL to provide the Services, but the Customer acknowledges and agrees that it will have no rights or remedies against the Funder in respect thereof and will comply in full with its obligations to the Funder in accordance with the terms hereof.

18. FORCE MAJEURE

18.1 FM Events: Neither party will be nor will be deemed to be in breach of any obligation to which it is subject pursuant to this Agreement (and the relevant obligation will be deemed suspended) if and to the extent that it is hindered in the performance of such obligation for a period of 30 Working Days or longer by any act of God, fire, flood, act of government or state, war, civil commotion, insurrection, embargo, strike or any other reason beyond the reasonable control of that party (a **Force Majeure Event**) provided however that if the performance by it of its obligations under this Agreement is affected by a Force Majeure Event it will forthwith communicate the existence of such a Force Majeure Event to the other.

19. ASSIGNMENT & NOVATION

19.1 FFL will not assign, novate, transfer, charge or otherwise dispose of all or any of its rights and/or responsibilities under this Agreement without the prior written consent of the Customer. The Customer acknowledges that it is FFL's intention to transfer title to the Equipment and various rights under this Agreement (including without limitation the right to receive payment of the Basic Charge) to the Funder. The Customer hereby consents to such transfer to the Funder. For the further avoidance of doubt the Customer acknowledges that the Funder will have no liability to perform any of the Services under this Agreement.

19.2 The Customer will not assign, novate, transfer, charge or otherwise dispose of all or any of its rights and/or responsibilities under this Agreement without the prior written consent of FFL and the Funder. In the event of any such assignment, all references in this Agreement to the Customer will be deemed to include its assigns. Notwithstanding the foregoing, any such assignment will not relieve the Customer from its obligations hereunder unless specifically agreed by both FFL and the Funder in writing.

20. CONFIDENTIALITY & ANNOUNCEMENTS

20.1 Basic Duty: The parties will, and will procure that all persons engaged by them or on their behalf will, keep and procure to be kept secret and confidential during the subsistence of this Agreement and for one (1) year thereafter, all Confidential Information disclosed or obtained as a result of the relationship of the parties under this Agreement and will not use nor disclose the same save for the purposes of the proper performance of this Agreement or with the prior written consent of the other. Where disclosure is made to any employee, supplier, sub-contractor or agent, it will be done subject to obligations equivalent to those set out in this Agreement. Each party will ensure that any such employee, supplier, sub-contractor or agent complies

with such obligations and will be responsible to the other in respect of any disclosure or use of such Confidential Information by the person to whom disclosure is made.

21. RELATIONSHIP OF THE PARTIES

21.1 Nothing in this Agreement and no action taken by the parties pursuant to this Agreement will constitute, or be deemed to constitute between the parties a partnership, association, joint venture or other co-operative entity. In performing the Services, FFL will not operate as, and have the status of agent, employee or representative of the Customer.

22. NOTICES

22.1 Any notice, demand or other communication given or made in connection with the matters contemplated by this Agreement (other than requests by the Customer for Service) will be in writing and will be delivered personally or sent by post to the address set out at the beginning (or to such other address of which notification has been received by the sending party from the other prior to despatch) or sent by fax to the fax number set out below:

Furnace Finance Limited Council

Fax Number: 01329 227409 Fax Number:

Tel Number: 01329 227642 Tel Number:

Attention: Steve Sheridan Attention:

22.2 Deemed Service: All such notices will (in favour of the sending party) be deemed received by the other where delivered personally upon receipt at the relevant address, where sent by post at the beginning of Working Hours on the second Working Day after being put into the post properly addressed and pre-paid and where sent by fax upon despatch.

23. WAIVER

23.1 No waiver of any provision of this Agreement will be effective unless given in writing and signed by an authorised official of the waiving party.

23.2 No failure or delay on the part of either party in exercising any right under this Agreement will operate as a waiver of it, nor will any single or partial exercise of any such right preclude any other or further exercise of that right or the exercise of any other right.

23.3 The rights and remedies provided by this Agreement are cumulative with and not exclusive of any rights or remedies available at law.

24. INVALIDITY

24.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction then the validity, legality and enforceability in that jurisdiction of any other provisions and the validity, legality and enforceability under the law of any other jurisdiction of that or any other provisions will not be affected or impaired in any way.

25. THIRD PARTY RIGHTS

25.1 Rights of the Funder: The parties agree that all the obligations, warranties, representations and undertakings of the Customer (including any indemnities given by the Customer) have been entered into for the benefit of the Funder and that the Funder may enforce such rights against the Customer to the same extent as FFL pursuant to the Contracts (Rights of Third parties) Act 1999.

25.2 No other rights: Except for the Funder, no person who is not a party to this Agreement (including any employee, officer, agent, representative or sub-contractor of either party) will have the right (whether under the Contracts (Rights of Third parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this Clause.

26. ENTIRE AGREEMENT

26.1 Entire Agreement: This Agreement together with the Schedules constitutes the whole and only Agreement between the parties relating to the provision of the Services to the Customer by FFL and, save to the extent repeated in this Agreement, supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating thereto.

26.2 No reliance on pre-contractual statements: Each party acknowledges that in entering into this Agreement on the terms set out in this Agreement it is not relying upon any representation, warranty, promise or assurance made or given by any other party or any other person, whether or not in writing, at any time prior to the execution of this Agreement which is not expressly set out herein.

27. GOVERNING LAW & JURISDICTION

27.1 Governing Law: This Agreement will be governed by and construed in accordance with English Law.

27.2 Jurisdiction: Without prejudice to Clause 14 any dispute, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation will be determined by the courts of England and Wales and such courts will have exclusive jurisdiction in respect thereof.

SCHEDULE 1

The Equipment

Description:

Installation Date:

Operational Service Requirements:

1 The Equipment will be capable of performing X cremations per day/week/month.

2 []

Installation Requirements:

1 []

SCHEDULE 2

Site Acceptance Certificate

Customer:

Site:

The customer hereby confirms that it has prepared the Site in readiness for installation of the Equipment in accordance with the site preparation specification dated dd/mm/yy.

The Site will be ready for installation and the required services will be available on dd/mm/yy.

Name

Position

Date

FFL hereby **accepts/declines** the Site Acceptance Certificate

Name

Position

Date

If declined, reasons are as follows:-

- 1.
- 2.
- 3.
- 4.
- 5.

SCHEDULE 3

Equipment Acceptance Certificate

Customer:

Site:

The Manufacturer has declared that, following testing, the Customer now has beneficial use of the Equipment.

Under the terms of the Services Agreement, FFL hereby invites the Customer to confirm its acceptance of the Equipment

Signed on behalf of FFL

Name

Position

Date

We hereby accept the Equipment and confirm that it satisfies the Operational Service Requirements.

Signed on behalf of the Customer

Name

Position

Date

SCHEDULE 4
Equipment Warranty

SCHEDULE 5

Service Levels

Part 1: Maintenance Service Levels

Interval: The service interval shall be three months.

Scope: Service and inspection of the cremator installation, emissions monitoring equipment and flue gas treatment plant.

The service shall comprise the attendance of the Service Engineer inclusive of his travelling time, overnight accommodation and any other expenses but does not include the supply of any materials or repairs found to be necessary or for any work other than adjustments calibration, setting and routine service items which can be carried out readily by the Service Engineer during the visit. Materials and components used by the engineer from his own stock will be invoiced separately.

Within a reasonable period, the maintenance contractor will submit a detailed report on the condition of the equipment, recommendations for repairs, operational difficulties evident, etc., followed by a quotation for any repairs found to be necessary, and will then await the Customer's instructions before taking action.

1st visit	Full service: cremator, analyser, cremulator, flue gas abatement (inc boiler clean).
2nd visit	Analytical service: analyser.
3rd visit	Full service: cremator, analyser, flue gas abatement plant
4th visit	Analytical service: analyser

Part 2: Support Service Levels

Reconciliation and invoicing

Supply of consumables

SCHEDULE 6

Part 1

Basic Charge

The Customer will pay the sum of £XX.00 per cremation [a]

The assumed minimum number of cremations to be performed by the Customer in each month based upon the Customer's prior performance history is YY [b]

The Customer will pay monthly in arrears a minimum monthly charge equal to the product of [a] and [b] i.e. £ZZZ

The Customer will pay the above Basic Charge for a minimum period of 10 years without set-off or deduction of any kind [and subject only to the operation of Clause 5.3.]

Part 2

Additional Charges

The Customer will pay monthly in arrears the sum of £XX.00 per cremation in respect of each cremation performed during the Term period of this contract by the Customer which exceeds the assumed minimum number of cremations stated in Part 1 above.

SCHEDULE 7

[Form of Reconciliation Statement]

Customer:

Site:

Period: month/year

Date	Number of Cremations
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
Total	

Minimum number of cremations per month: YY

Basic Charge: £XX x YY = £ZZ

Additional Charge: £XX x = £

Total Charge for month £ZZ

Invoice Number:

Due Date:

Service Credits

Brought forward

This month

Carried forward

Signed on behalf of the Customer

Name

Position

Date

IN WITNESS the parties have signed this Agreement on the date written at the beginning of this Agreement.

SIGNED by)
)
on behalf of)
FURNACE FINANCE LIMITED) Director & Authorised Signatory

SIGNED by)
)
on behalf of)
COUNCIL) Authorised Signatory)