NORTH YORKSHIRE COUNTY COUNCIL

Waste Treatment Contract
(OJEU Notice Ref 208874-2007)

Deed of Novation
DATED 30 October 2014

ALLERTON WASTE RECOVERY PARK INTERIM SPV LIMITED

AND

NORTH YORKSHIRE COUNTY COUNCIL

AND

AMEYCESPA (AWRP) SPV LIMITED

DEED OF NOVATION
IN RELATION TO
THE NORTH YORKSHIRE COUNTY COUNCIL WASTE TREATMENT PROJECT AGREEMENT
THIS DEED OF NOVATION dated 30 October 2014 is made

BETWEEN:-

(1) ALLERTON WASTE RECOVERY PARK INTERIM SPV LIMITED a company incorporated in England (registration number 07580751) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ ("Interim SPC"); and

(2) NORTH YORKSHIRE COUNTY COUNCIL of County Hall, Racecourse Lane, Northallerton, DL7 8AH (the “Authority”); and

(3) AMEYCESPA (AWRP) SPV LIMITED a company incorporated in England (registration number 08717850) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ ("SPC").

BACKGROUND

(A) Interim SPC and the Authority entered into a waste treatment contract dated on or around 26 August 2011 (the "Project Agreement") for the design, construction, financing, operation and maintenance of the Facility and the provision of the Services.

(B) Interim SPC was formed for the purpose of entering into the Project Agreement on or around the date in (A) above and for obtaining a Satisfactory Planning Permission and funding for the Project. Following receipt of a Satisfactory Planning Permission and in order to provide Senior Debt to the Project, the Senior Lenders require that the Project Agreement is novated from Interim SPC to a new special purpose vehicle, SPC.

(C) Pursuant to the Project Agreement, Interim SPC has obtained a Satisfactory Planning Permission. In order to proceed with the Project, the Authority, Interim SPC and SPC wish to amend and restate and novate the Project Agreement and SPC wishes to enter into the Senior Financing Agreement with the Senior Lenders.

(D) The Parties have agreed that Interim SPC’s rights, obligations and liabilities under the Project Agreement shall be novated to SPC in accordance with the terms of this Deed as from the Effective Date.

(E) The Parties have also agreed to amend and restate the Project Agreement in relation to the grant of a Satisfactory Planning Permission and the provision of Senior Debt and as otherwise set out in Appendix 1 to this Deed.

(F) The Parties intend that this Deed be a certified contract for the purposes of the Local Government (Contracts) Act 1997 and the Relevant Discharge Terms are as set out in schedule 12 of the Project Agreement (as amended pursuant to this Deed).

(G) Interim SPC and SPC consent to the issue of a certificate under Section 3 of the Local Government (Contracts) Act 1997.
IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed:

"Effective Date" means the date on which this Deed is executed and delivered;

"Party" means a party to this Deed and "Parties" shall be construed accordingly.

1.2 The provisions of the Project Agreement shall have effect with respect to the interpretation of this Deed, unless the context otherwise requires.

1.3 Words and phrases used in this Deed which are not defined in this Deed shall have the same meaning ascribed to them in the Project Agreement, except where the context otherwise requires.

2 NOVATION

2.1 With effect from the Effective Date and in consideration of the Authority consenting to the novation by the Interim SPC of all its rights and obligations under the Project Agreement to SPC, SPC shall enjoy all the rights and benefits of Interim SPC under the Project Agreement, and all references to Interim SPC in the Project Agreement shall be read and construed as references to SPC.

2.2 The SPC undertakes with the Authority to observe and perform with effect from the Effective Date all the agreements, undertakings, covenants, and obligations on the part of the Interim SPC to be observed and performed pursuant to the Project Agreement as if they were a party thereto.

2.3 SPC shall have no liability in respect of any obligation, restriction, indemnity or otherwise created by or arising under or in connection with the Project Agreement which was due for performance or which should have been performed, before the date of this Deed by the Interim SPC or its sub-contractors and shall not be liable for any act, neglect or default or omission in respect of the Project Agreement committed by the Interim SPC or its sub-contractors occurring before the Effective Date.

2.4 The Authority undertakes with SPC to observe and perform with effect from the Effective Date all the agreements, undertakings, covenants on the part of the Authority to be observed and performed pursuant to the Project Agreement as if SPC were party to the Project Agreement from the Effective Date.

2.5 The Authority shall have no liability to SPC in respect of any obligation, restriction, indemnity or otherwise created by or arising under or in connection with the Project Agreement which was due for performance or which should have been performed, before the date of this Deed by the Authority and shall not be liable for any act, neglect or default or omission in respect of the Project Agreement committed by the Authority occurring before the Effective Date.

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3 RELEASE OF OBLIGATIONS AND LIABILITIES

3.1 The Authority and Interim SPC release and discharge each other from their covenants, undertakings, obligations, duties and liabilities to the other under the Project Agreement arising after the Effective Date.

3.2 In consideration of the release by Interim SPC of the obligations of the Authority, the Authority hereby releases and discharges with effect from the Effective Date Interim SPC from all claims and demands arising under or in connection with the Project Agreement, except that nothing in this Deed shall affect or prejudice any claim or demand that either the Authority or Interim SPC may have against the other relating to matters arising before the Effective Date.

4 AMENDMENTS TO THE PROJECT AGREEMENT

4.1 With effect from the Effective Date, the Authority and SPC acknowledge and agree to amend and restate the Project Agreement in the form set out in Appendix 1 to this Deed.

4.2 The amendment and restatement of the Project Agreement under clause 4.1 shall take effect immediately following the novation of the Project Agreement under clause 2 (Novation).

5 MISCELLANEOUS

5.1 In the event of any discrepancy between the terms and conditions of this Deed and the Project Agreement, the terms and conditions of this Deed shall prevail.

5.2 For the purposes of the Project Agreement (including without limitation clauses 7, 50 and 64), the Authority consents to the Ancillary Documents (and any amendments or novations thereto) and Financing Agreements entered into by SPC on or around the date of this Deed and any increases in the Authority's liabilities on early termination arising from such amendments or new agreements.

5.3 DISPUTE RESOLUTION

5.3.1 The provisions of clause 62 (Dispute Resolution) of the Project Agreement shall apply to this Deed as if set out in full in this Deed, except for clauses 62.4, 62.16, 62.17, 62.18, 62.19, 62.20, 62.21 and 62.22.

5.3.2 Identity of Adjudicator

The Adjudicator shall be selected in accordance with the following:

(a) there shall be a panel of legal experts (the Legal Panel). All the experts on the Legal Panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-Contractor and any of the major competitors of the Contractor or relevant Sub-Contractor;

(b) the Legal Panel shall comprise three (3) experts, who shall be selected jointly by the Contractor and the Authority. Such selection
shall take place within twenty (20) Business Days of the Effective Date;

(c) if any member of the Legal panel resigns during the Contract Period, a replacement expert shall be selected by the Contractor and the Authority as soon as practicable;

(d) in the event that the nominated Adjudicator is unable or unwilling to confirm acceptance of his appointment as Adjudicator within two (2) Business Days of receipt of the Notice of Adjudication, then the Referring Party shall invite the person next in line to act as the Adjudicator. In the event that the second panel member is unwilling or unable to confirm acceptance of his appointment as Adjudicator within two (2) days or if the Parties disagree as to the relevant panel of experts to be used then the Referring Party may apply to the President for the time being of the Chartered Institute of Arbitrators who shall within three (3) Business Days of any such application nominate an Adjudicator to determine the issue set out in the Notice of Adjudication; and

(e) if the Authority and the Contractor are unable to agree on the identity of the experts to be selected to the panels, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within thirty (30) days of any application for such appointment by either Party.

6 LOCAL GOVERNMENT (CONTRACTS) ACT 1997

6.1 Certification Requirements

The Certification Requirements are intended to be satisfied by the Authority with respect to this Deed including the form of amended Project Agreement on the Effective Date and in any event before the end of the period relating to this Deed including the form of amended Project Agreement within which the Certification Requirements must be satisfied for this Deed including the form of amended project Agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

6.2 Consent

Interim SPC and SPC hereby consent to the issue by the Authority of a certificate under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Deed including the form of amended Project Agreement.

6.3 Failure to Issue a Certificate

If any certificate is not issued by the Authority pursuant to clause 6.2 (SPC Consent) within five (5) Business Days of the date of this Deed then SPC shall be entitled by giving notice in writing to the Authority within five (5) Business Days of such date to terminate the Project Agreement (as amended pursuant to this Deed), whereupon the Authority shall pay to SPC an amount equal to the compensation that would be payable in accordance with clause 37.1 (Voluntary Termination by the Authority) and
the Contractor shall be entitled to be paid by the Authority the sum which is the sum equivalent to the amount of the compensation payable by the Authority to the Contractor pursuant to clause 45 (Compensation on Termination for Authority Default/Voluntary Termination). In each case as such clauses are set out in the amended version of the Project Agreement contained in Appendix 1 of this Deed.

6.4 Relevant Discharge Terms

6.4.1 The Authority shall, immediately after executing and dating this Deed:

(a) procure that its authorised officer executes and dates a certificate in respect of this Deed including the form of amended Project Agreement as prescribed under and in accordance with the Local Government (Contracts) Act 1997 and the Local Authorities (Contracts) Regulations 1997; and

(b) provide a copy of such certificate to SPC and each person required by law to be provided with a copy.

6.4.2 The relevant discharge terms within the meaning of section 6 of the Local Government (Contracts) Act 1997 are set out in schedule 12 (Relevant Discharge Terms) of the amended Project Agreement at Appendix 1 of this Deed.

7 APPLICATIONS UNDER PROCUREMENT LEGISLATION

7.1 In the event of the making of a determination or order by a court in relation to an application or claim under procurement legislation (including without limitation the Public Contracts Regulations 2006) the result of which is that this Agreement or any part or all of the Direct Agreement does not have effect or is otherwise unenforceable between Financial Close and the Expiry Date, then the Authority shall be deemed to have issued notice to the Contractor terminating this Agreement under clause 37.1 (Voluntary Termination by the Authority) and the Contractor shall be entitled to be paid by the Authority the sum which is the sum equivalent to the amount of the compensation payable by the Authority to the Contractor pursuant to clause 45 (Compensation on Termination for Authority Default/Voluntary Termination).

7.2 The Authority shall pay to the Contractor the sums referred to in clause 7.1 within forty (40) Business Days of the determination or order of the court referred to in clause 7.1 above and the provisions of clauses 50 (Miscellaneous Compensation Provisions) and 51 (Method of Payment) shall apply in respect of such sums.

7.3 The obligations in this clause 7 shall be deemed to take effect immediately prior to this Agreement being ineffective or otherwise unenforceable.

8 RIGHTS OF THIRD PARTIES

This Deed does not create, confer or purport to create or confer any benefit or right enforceable by any person not a party to it (except that a person who is a permitted successor to or assignee of the rights of a party to this Deed shall be deemed to be a party to this Deed).
9 COUNTERPARTS

This Deed may be executed in any number of counterparts all of which taken together constitute one and the same document and any Party may execute this Deed by signing any one or more of such counterparts.

10 GOVERNING LAW AND JURISDICTION

10.1 This Deed and any non-contractual obligations arising in connection with this Deed shall be governed by and shall be construed in accordance with the laws of England and Wales.

10.2 Each Party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Deed.

THIS DOCUMENT is executed as a deed and delivered and takes effect on the date stated at the beginning of this deed.
SIGNED as a deed by: [Signature of [redacted]]
[redacted]

for and on behalf of

ALLERTON WASTE RECOVERY
PARK INTERIM SPV LIMITED

in the presence of a witness:

Signature of Witness [Signature of Ben Hogan]
Name: Ben Hogan
Address: c/o Ashfords LLP, Ashford House, Grenadier Road, Exeter
Occupation: Solicitor

The COMMON SEAL of NORTH YORKSHIRE COUNTY COUNCIL [Common Seal of North Yorkshire County Council]
was hereunto affixed this 30th day of October 2014 in the presence of:

[Signature of Cathryn Moore]

Authorised Signatory
SIGNED as a deed by: ) [Signature of [redacted]]
[redacted]

for and on behalf of

AMEYCESPA  (AWRP)  SPV
LIMITED

in the presence of a witness:

Signature of Witness  [Signature of Ben Hogan]
Name:  Ben Hogan
Address:  c/o Ashfords LLP, Ashford House, Grenadier Road, Exeter
Occupation:  Solicitor
APPENDIX 1 TO THE DEED OF NOVATION
NORTH YORKSHIRE COUNTY COUNCIL

Waste Treatment Contract
(OJEU Notice Ref 208874-2007)

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DATED 26 August 2011

AMENDED AND RESTATED ON 30 October 2014

(1) NORTH YORKSHIRE COUNTY COUNCIL

(2) AMEYCESPA (AWRP) SPV LIMITED

AMENDED AND RESTATED
PROJECT AGREEMENT
THIS AGREEMENT was made on 26 August 2011 and is amended and restated on 30 October 2014

BETWEEN

(1) NORTH YORKSHIRE COUNTY COUNCIL of County Hall, Racecourse Lane, Northallerton, DL7 8AH (the "Authority"); and

(2) AMEYCESPA (AWRP) SPV LIMITED (company registered number 08717850) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (the "Contractor"),

each a Party and together the Parties.

WHEREAS

(A) The Authority is a Waste Disposal Authority pursuant to s30(2)(a) of the Environmental Protection Act 1990 and together with the City of York Council has run a procurement to enter into this Agreement.

(B) The Authority and Allerton Waste Recovery Park Interim SPV Limited executed this Agreement on 26 August 2011 (Commercial Close) with the intention of obtaining a Satisfactory Planning Permission and an Approved Funding Package before, on 30 October 2014 novating this Agreement to AmeyCespa (AWRP) SPV Limited and amending and restating this Agreement for the purposes of achieving Financial Close.

(C) The Parties recognise that, following Financial Close:

(a) various provisions of this Agreement that related to the period between Commercial Close and Financial Close will become historic obligations;

(b) by virtue of the Deed of Novation, the Contractor will have no liability to the Authority in respect of any obligation, restriction, indemnity or otherwise created by or arising under or in connection with this Agreement which was due for performance or which should have been performed before Financial Close by the Contractor or its sub-contractors; and

(c) by virtue of the Deed of Novation, the Authority will have no liability to the Contractor or to Allerton Waste Recovery Park Interim SPV Limited in respect of any obligation, restriction, indemnity or otherwise created by or arising under or in connection with this Agreement which was due for performance or which should have been performed before Financial Close by the Authority.
PART 1 - Preliminary

1 Definitions

1.1 In this Agreement save where the context otherwise requires the following terms shall have the meanings given to them below:

1999 Act means the Local Government Act 1999;

Abandonment means not having carried out any Works contemplated by the Construction Programme at the Site for sixty (60) consecutive Business Days or during one hundred and twenty (120) Business Days (whether consecutive or not) in any period of twelve (12) consecutive months commencing on the Effective Date or any anniversary thereof;

Accepted means the Contractor:

(a) is able to lawfully accept Contract Waste at the Delivery Point or Contingency Delivery Point and where delivered by the Authority in fact does accept it; and

(b) is able to accurately weigh and provide a transfer note for Contract Waste,

Ad Hoc Waste which cannot be accepted lawfully at the Delivery Point or Contingency Delivery Point shall be nevertheless considered Accepted if the Contractor arranges for a third party to accept the Ad Hoc Waste and the third party does lawfully accept and accurately weigh the Ad Hoc Waste and provides a transfer note

(and the terms Accept and Contract Waste Accepted shall be construed accordingly);

Actual Level of Contract Waste has the meaning given to it in Schedule 6 (Payment Mechanism);

AD Facility means the anaerobic digestion facility to be constructed by the relevant Construction Contractor;

Ad Hoc Waste has the meaning given to it in Schedule 23 (Waste Acceptance Protocol);

Additional Permitted Borrowing means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended whether or not with the approval of the Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

(a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and

(b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under clause 10.4.3 of the Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is (i) invested as part of any Qualifying Variation or (ii) outstanding from time to time as a result of any drawing
under the Senior Financing Agreements as entered into at the date of Financial Close, disregarding any subsequent amendment or (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to clause 7.2.3 (Delivery of Initial and Changed Ancillary Document and Financing Agreements), shall not be counted as Additional Permitted Borrowing;

**Additional Permitted Borrowings Limit** means an amount equal to:

(a) ten percent (10%) of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced to fifty percent (50%) or less of the Original Senior Commitment, and thereafter;

(b) the higher of:

i five percent (5%) of the Original Senior Commitment; and

ii the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in (a);

**Additional Waste** means Contract Waste in excess of the Maximum Treatment Threshold;

**Adjoining Property** means any land and/or property adjoining or in the neighbourhood of the Sites and each and every part thereof including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;

**Adjudicator** has the meaning given to it in clause 62.3 (Adjudication);

**Adjusted Estimated Fair Value of the Contract** means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

(a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number);

(b) the Tender Costs; and

(c) amounts that the Authority is entitled to set off or deduct under clause 31.10 (Set Off),

plus an amount equal to the aggregate of:

i all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the Estimated Fair Value of the Contract is calculated;

ii any insurance proceeds and other amounts owing to the Contractor (and which the Contractor is entitled to retain) to the extent not included in (i); and

iii the Post Termination Service Amounts (if a negative number).
to the extent that:

(1) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and

(2) the Authority has received such amounts in accordance with this Agreement or such amounts are standing to the credit of the Joint Insurance Account or the Authority Revenue Account;

Adjusted Highest Compliant Tender Price means the Highest Compliant Tender Price less the aggregate of:

(a) any Post Termination Service Amounts paid to the Contractor to date;

(b) the Tender Costs; and

(c) amounts that the Authority is entitled to set off or deduct under clause 31.10 (Set Off),

plus an amount equal to the aggregate of:

i all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest priced Compliant Tender is received;

ii any insurance proceeds and other amounts owing to the Contractor, to the extent not included in (i); and

iii the Post Termination Service Amounts (if a negative number),

to the extent that:

(1) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and

(2) the Authority has received such amounts in accordance with this Agreement;

Adverse Title Matters means any and all of those rights, covenants, restrictions, interests and other matters in relation to the Site created (i) on or after Commercial Close and (ii) immediately prior to Financial Close whether registered or not that would prevent, disrupt or adversely affect the carrying out of the Works and/or the Services;

Affected Party has the meaning given to it in the definition of Force Majeure Event in this clause 1.1 (Definitions);

Affiliate means:

(a) in relation to any person (including any Financial Investor), any holding company or subsidiary of that person or any subsidiary of such holding company, and “holding company” and “subsidiary” shall have the meaning given to them in Section 1159 of the Companies Act 2006; and

(b) in relation to any Financial Investor only:
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any unit trust, investment fund, partnership or other fund including any investor therein or other entity of which any entity referred to in paragraph (a) of this definition is the general partner, trustee, principal or manager; or

any company whose shares are held on behalf of any entity falling within paragraph (a) of this definition whose purpose is to hold shares or shareholder debt on their behalf (as nominee or trustee);

Aftercare Plan has the meaning given to it in clause 26.7 (Aftercare Plan);

Agent has the meaning given to the term "Intercreditor Agent" in the Common Terms Agreement;

Agreed Commissioning Volumes means the lower of

(a) an average of [redacted] tonnes of Kerbside Contract Waste and [redacted] tonnes of HWRC Contract Waste per week increasing to an average of [redacted] tonnes of Contract Waste per week for the final two (2) months of the Commissioning Plan (in each case as measured over any consecutive four (4) week period during the Commissioning Period); and

(b) such volumes of Contract Waste as are required by the Commissioning Plan;

Agreed Form means, in relation to any document, the form of the document agreed between the Parties and initialled by or on behalf of the Parties for the purpose of identification;

Agreement means this agreement (including the Recitals and its Schedules);

Ancillary Documents means each Construction Contract, the Works and Operating Agreement and the guarantees in the Agreed Form under which the obligations of the Construction Contractors under the Construction Contracts and the Works and Operating Sub-Contractor under the Works and Operating Agreement are guaranteed respectively (in each case to the Contractor) and any other documents to which the Authority is not a party and which are listed in Part 1 of Schedule 15 (Project Documents and Ancillary Documents), as they may be amended or replaced from time to time;

Annual Authority Credit Balance means in respect of an Annual Reconciliation Report, the net amount of the Annual Reconciliation Payment shown in such Annual Reconciliation Report as owed by the Contractor to the Authority for the Contract Year to which such Annual Reconciliation Report relates;

Annual Contractor Credit Balance means in respect of an Annual Reconciliation Report, the net amount of the Annual Reconciliation Payment shown in such Annual Reconciliation Report as owed by the Authority to the Contractor for the Contract Year to which such Annual Reconciliation Report relates;

Annual Reconciliation Payment means the payment to be made in accordance with clause 31.4 (Payment of the Annual Reconciliation Payment);
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Annual Reconciliation Report means the report to be issued by the Contractor to the Authority under clause 31.3 in the form agreed by the Parties from time to time (both acting reasonably) regarding the Annual Reconciliation Payment;

Annual Services Plan has the meaning given to it in clause 35.2.4 (Annual Services Report and Annual Services Plan) of clause 35 (Best Value and Continuous Improvement);

Annual Services Report has the meaning given to it in clause 35.2.1 (Annual Services Report and Annual Services Plan) of clause 35 (Best Value and Continuous Improvement);

APB Distribution means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

Approved Funding Package has the meaning given to it in Schedule 24 (Funding Protocol);

Approved Purposes has the meaning given to it in clause 63.1 (Project Data);

Approved Transferee means a transferee to whom the Contractor is permitted to transfer the Lease without landlord’s consent pursuant to clause 8.2.3 of the Supplemental Deed;

Assets means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Agreement including:

(a) the Facility;
(b) any Equipment;
(c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);
(d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
(e) any revenues and any other contractual rights; and
(f) any Intellectual Property Rights,

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner;

Assigned Employees has the meaning given to it in clause 27.3.1(a) (Retendering Information);

Associated Company means, in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include Holdco and each of the Shareholders;
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Authorised Persons means persons driving Authorised Vehicles who have been inducted in the safe carrying out of their duties at the Facility;

Authorised Users means the Authority, the Waste Collection Authorities and the Authority’s Haulage Contractor and such other persons as are authorised from time to time by the Authority;

Authorised Vehicles means vehicles whose use for the delivery of Contract Waste to the Facility has been authorised by the Authority pursuant to clause 26.2 (Authorised Vehicles);

Authority Change means a Change that is initiated by the Authority by submitting an Authority Change Notice to the Contractor, in accordance with the requirements of Schedule 21 (Change Protocol);

Authority Change Notice has the meaning given to it in Schedule 21 (Change Protocol);

Authority Default means one of the following events:

(a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Contractor or Holdco by the Authority or other Relevant Authority;

(b) a failure by the Authority to make payment(s) of an amount of money equal to or exceeding (in aggregate) one month’s Monthly Unitary Charge that is due and payable by the Authority under this Agreement within twenty (20) Business Days of service of a formal written demand by the Contractor, where the amount fell due and payable one (1) (or more) months prior to the date of service of the written demand;

(c) a breach by the Authority of its obligations under this Agreement which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Agreement for a continuous period of two (2) months; or

(d) a breach by the Authority of clause 64.1 (Restrictions on Transfer of this Agreement by the Authority);

Authority Default Termination Sum means the amount payable in accordance with clause 45 (Compensation on Termination for Authority Default/Voluntary Termination);

Authority’s FC Obligations has the meaning given to it in Schedule 26 (Interim Period);

Authority’s Forecast Level of Contract Waste means the forecast prepared by the Authority in accordance with clause 26A.4.1 (Authority’s Forecast Level of Contract Waste);

Authority’s Haulage Contractor means the person from time to time appointed as the Authority’s contractor for the haulage of Contract Waste from HWRCs and WTSs;

Authority Party means any officer, agent, contractor, employee or sub-contractor (of any tier) of the Authority acting in the course of his office or employment or appointment (as appropriate), the Authority’s Representative and any Authorised User but excluding in each case the Contractor, and any Contractor Parties;
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Authority’s Policies means the policies of the Authority referred to in Schedule 9 (Authority’s Policies);

Authority’s Representative means the representative appointed by the Authority pursuant to clause 11 (Representatives);

Authority’s Requirements means the requirements of the Authority in respect of the Project set out in Schedule 1 (Authority’s Requirements);

Authority Revenue Account a joint bank account in the names of both the Authority and the Contractor opened with a financial institution for the purpose of holding the Authority share of excess revenue pending the Authority’s Payment of Excess Revenue in accordance with paragraph 13 (Annual Reconciliation) of Schedule 6 (Payment Mechanism);

Available means that Contract Waste can be Accepted by the Contractor in accordance with either:

(a) Schedule 2 (Contractor’s Proposals); or

(b) the Contingency Plan;

Base Case means, subject to any express provisions of this Agreement to the contrary, the FC Base Case as updated from time to time in accordance with the terms of this Agreement;

Base Case Equity IRR means [redacted];

Base Senior Debt Termination Amount means subject to clause 50.4 (Changes to Financing Agreements and Ancillary Documents):

(a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Finance Parties in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and

(b) all amounts including costs of early termination of interest rate and foreign exchange hedging arrangements and other breakage costs, payable by the Contractor to the Finance Parties as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate and foreign exchange hedging arrangements only, as a result of termination of this Agreement, subject to the Contractor and the Finance Parties mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

i all credit balances on any bank accounts (but excluding the Joint Insurance Account and the Authority Revenue Account) held by or on behalf of the Contractor on the Termination Date;
any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;

all amounts, including costs of early termination of interest rate and foreign exchange hedging arrangements and other breakage costs, payable by the Finance Parties to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate and foreign exchange hedging arrangements only, as a result of termination of this Agreement; and

all other amounts received by the Finance Parties on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have;

**Best Value Change in Law** means a Change in Law which comprises:

(a) an order made by the Secretary of State in the exercise of powers conferred upon him by Section 4 of the 1999 Act the substance of which amounts to a change in a performance standard or a change in the definition of or details of a performance indicator (as opposed to a change in the description of a performance indicator);

(b) a direction made by the Audit Commission in the exercise of powers conferred upon it by sections 44 and 46 of the Audit Commission Act 1998 which in substance is similar to an order referred to in (a) above; or

(c) Guidance issued by the Secretary of State or Audit Commission or other competent authority in respect of (a) or (b) above;

**Best Value Duty** means the duty imposed on the Authority by Section 3 of the 1999 Act in relation to, inter alia, the Services;

**Best Value Inspector** means an officer, agent or employee of the Audit Commission or other Relevant Authority empowered to inspect the Authority’s or City of York Council’s compliance with the Best Value Duty in accordance with Part 8 of the Local Government and Public Involvement in Health Act 2007 (Local Services: Inspection and Audit);

**Best Value Performance Indicators** means the best value performance indicators, Audit Commission performance indicators and local performance indicators and/or the National Performance Indicators for the Services or any other performance indicators published in Guidance or Legislation as may be issued by the Secretary of State, the Audit Commission or any other Relevant Authority from time to time;

**Best Value Services Change** means a Change required by the provisions of clause 35.2 (Annual Services Report and Annual Services Plan);

**Best Value Services Change Notice** has the meaning given to it in clause 35.2.3 (Annual Service Report and Annual Service Plan) of clause 35 (Best Value and Continuous Improvement);

**BMW** means biodegradable municipal waste;
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Business Day means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

Capital Expenditure means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

CC Base Case means the financial model submitted by the Contractor at Commercial Close as annexed at Part 1 of Schedule 7 (Base Case);

CDM Regulations means the Construction (Design & Management) Regulations 2007;

Certification Requirements means the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;

Challenge Period has the meaning set out in Schedule 22 (Planning);

Change means any change, variation, extension, or reduction in the Works and/or the Facility and/or the Services requested by the Authority or the Contractor and/or deemed to be an Authority Change by virtue of an express provision of this Agreement;

Change in Costs means, in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or any Key Sub-Contractors (without double counting), including, as relevant, the following:

(a) the reasonable costs of complying with the requirements of clauses 13 (Extensions of Time), 14 (Compensation Events), 54 (Change in Law), and 66 (Financial Adjustments), including the reasonable costs of preparation of design and estimates;

(b) the costs of continued employment of, or making redundant, staff who are no longer required;

(c) the costs of employing additional staff;

(d) reasonable professional fees;

(e) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Charge;

(f) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;

(g) operating costs, or life cycle, maintenance or replacement costs;
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(h) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible);

(i) the costs required to ensure continued compliance with the Financing Agreements;

(j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and

(k) Direct Losses or Indirect Losses, including reasonable legal expenses on an indemnity basis;

Change in Law means, the coming into effect after the Commencement Date of:

(a) Legislation, other than any Legislation which on the Commencement Date has been published:
   
   i in a draft Bill as part of a Government Departmental Consultation Paper;

   ii in a Bill;

   iii in a draft statutory instrument; or

   iv as a proposal in the Official Journal of the European Communities;

(b) any Guidance; or

(c) any applicable judgment of a relevant court of law which changes a binding precedent;

Change in Ownership means:

(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor and/or Holdco (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or

(b) any other arrangements that have or may have or which result in the same effect as paragraph (a);

Change in Revenue means, in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated Third Party Income (net of costs) (subject to the provisions of clause 66.7 (Lost Third Party Income)) (without double counting) of the Contractor and/or the Works and Operating Sub-Contractor;

Change Notice has the meaning given to it in Schedule 21 (Change Protocol);

Claro House means that part of the Site shown cross hatched red on the Site Plan;

City of York Council means the City of York Council, The Guildhall, York, YO1 9QN;
Collateral Warranty means a collateral warranty executed as a deed between the Authority and (as the case may be) the Construction Contractors or a Key Sub-Contractor in the relevant form as set out in Schedule 15 Part 1 (Project Documents) together with such other collateral warranties as are required to be provided under clause 4.1.3 below;

Commencement Date means 26 August 2011;

Commercial Close means 26 August 2011;

Commercial Facilities Agreement means the commercial facilities agreement dated on or around the Effective Date between, among others, the Contractor and the Commercial Lenders (as such term is defined therein);

Commercially Sensitive Information means the subset of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 13 (Commercially Sensitive Information) in each case for the period specified in the respective columns 2 of Parts 1 and 2 of Schedule 13 (Commercially Sensitive Information);

Commissioning Payment has the meaning given in Schedule 6 (Payment Mechanism);

Commissioning Period means the period between the commencement of commissioning of the Facility in accordance with the Commissioning Plan and the Service Commencement Date, such period to commence no earlier than ten (10) months prior to the Planned Service Commencement Date without the agreement of the Authority;

Commissioning Plan means the detailed plan developed from the Outline Commissioning Plan in accordance with the Commissioning Requirements;

Commissioning Requirements means the requirements for the commissioning of the Facility contained in Schedule 1 (Authority’s Requirements);

Commissioning Volume Balance means an average of [redacted] tonnes of Contract Waste per week (measured over any consecutive four week period during the Commissioning Period);

Common Terms Agreement means the common terms agreement dated on or around the Effective Date between, among others, the Contractor and the Finance Parties;

Compensation Date means either:

(a) if clause 47.2 (Retendering Procedure) applies, the earlier of:

i the date that the New Contract is entered into; and

ii the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor; or

(b) if clause 47.3 (No Retendering Procedure) applies, the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

Compensation Event means a breach by the Authority of any of its obligations under this Agreement during the Works Period;
Compensation Event TPI Adjustment has the meaning given to it in clause 66.7.3 (Lost Third Party Income);

Compliant Tender means any tender submitted by a Compliant Tenderer that meets the Qualification Criteria notified under clause 47.2.3 (Retendering Procedure);

Compliant Tenderer means a tenderer who is a Suitable Substitute Contractor;

Conditions Precedent means those conditions, set out in clause 1.12 (Conditions Precedent), which must be fulfilled or waived (as appropriate) prior to the Effective Date;

Confidential Information means:

(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information, disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and

(b) Commercially Sensitive Information;

Construction Contract means, subject to clause 7.1 (Ancillary Documents) the Construction Contract in the Agreed Form between the Works and Operating Sub-Contractor and each Construction Contractor relating to the Works;

Construction Contractor means:

(a) in respect of the EFW Facility, Vinci Environment UK Limited, with registered address Astral House, Imperial Way, Watford, Hertfordshire, WD24 4WW, and with company number 06248053;

(b) in respect of the AD Facility, Organic Waste Systems nv, with registered address Dok Noord 4, B-9000 Ghent, Belgium;

(c) in respect of the MT Facility, Stadler UK Limited, with registered address 16 Great Queen Street, London WC2B 5AH and with company number 06388781; and

(d) in respect of civil construction, Vinci Construction UK Limited with registered address, Astral House, Imperial Way, Watford, Hertfordshire, WD24 4WW and with company number 02295904,

or such other Construction Contractor as may, subject to clause 7 (Ancillary Documents and Financing Documents), be appointed to carry out the Works;

Construction Panel has the meaning given to it in clause 62.4.1 (Identity of Adjudicator);

Construction Period means the Period from the commencement of the Works to the Service Commencement Date;

Construction Programme the programme for the carrying out of the Works as contained in Appendix 2 to Schedule 2 (Contractor's Proposals) as updated from time to time in accordance with clause 10 (Construction Programme) or Schedule 8 (Review Procedure);
Contamination means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);

Contingency Delivery Point means a Delivery Point(s) identified from time to time under the Contingency Plan;

Contingency Plan means the contingency plan prepared by the Contractor pursuant to clause 26.3;

Contingent Funding Liabilities means (without double counting) any contingent liabilities of the Shareholder in respect of the financial obligations owed to the Contractor and the Finance Parties under the Senior Financing Agreements which are triggered as a result of a termination of this Agreement but excluding any guarantees or letters of credit issued in support of any of the Sub-Contractors under the relevant Sub-Contracts;

Continuation Notice has the meaning given to it in clause 41.7 (Notice to Continue);

Contract Month means each successive calendar month in a Contract Year provided that:

(a) the first Contract Month shall comprise the period from (and including) the Service Commencement Date up to and including the last day of that month in which the Service Commencement Date occurs;

(b) the last Contract Month shall comprise the period from and including the first day of the calendar month in which the earlier of the Termination Date and/or the Expiry Date occur until and including the earlier of the Termination Date and the Expiry Date;

Contract Period means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;

Contract Waste has the meaning given to it in Schedule 23 (Waste Acceptance Protocol);

Contract Waste Shortfall has the meaning given in clause 26C.2.3(b);

Contract Waste Threshold or CWT has the meaning given to it in Schedule 6 (Payment Mechanism);

Contract Year means a period of twelve (12) months commencing on 1 April, provided that:

(a) the first Contract Year shall be the period commencing on the Service Commencement Date and ending on the immediately following 31 March; and

(b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;
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**Contractor Change** means a Change that is initiated by the Contractor by submitting a Contractor Change Notice to the Authority, in accordance with the requirements of Schedule 21 (Change Protocol);

**Contractor Change Notice** has the meaning given to it in Schedule 21 (Change Protocol);

**Contractor Default** means one of the following events:

(a) a breach by the Contractor of any of its obligations under this Agreement which materially and adversely affects the performance or fulfilment by the Authority of any of its duties in relation to the management of municipal solid waste or as a Waste Disposal Authority;

(b) a Persistent Breach occurs;

(c) a court makes an order that the Contractor or Holdco be wound up or a resolution for a voluntary winding-up of the Contractor or Holdco is passed;

(d) any receiver or manager in respect of the Contractor or Holdco is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;

(e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of the Contractor or Holdco;

(f) an administration order is made in respect of the Contractor or Holdco;

(g) a breach by the Contractor of its obligations in clause 64.2 (Assignment and Sub-Contracting) occurs;

(h) a breach of clause 65.1 (Change of Ownership) occurs;

(i) the Abandonment of the Works by the Contractor;

(j) a failure to Accept Contract Waste at any Facility by the Longstop Date;

(k) the Contractor accrues more than [redacted] Performance Failure Points in any one (1) Contract Year;

(l) subject to clause 37.3.3 (Termination on Contractor Default) failure to achieve Diversion Percentage of (on a mean average) [redacted] or more in respect of [redacted] consecutive Contract Years; or

(m) subject to clause 60 (Risks that Become Uninsurable), a breach by the Contractor of its obligation to take out and maintain Required Insurances;

**Contractor IPR** has the meaning given to it in clause 63.2.1 (Licence in Respect of Intellectual Property Rights);
Contractor Party means the Contractor's agents and contractors (including, without limitation, the Construction Contractor and the Works and Operating Sub-Contractor) and its or their Sub-Contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any person on or at the Site at the express or implied invitation of the Contractor (other than the Authority or any Authority Party);

Contractor Response means the written response of the Contractor to an Authority Change Notice which shall include the information listed in the relevant paragraph of Schedule 21 (Change Protocol);

Contractor Stage 1 Response shall have the meaning given in paragraph 2.1 of Part 3 (High Value Changes) of Schedule 21 (Change Protocol);

Contractor Stage 2 Response shall have the meaning given in paragraph 4.1 of Part 3 (High Value Changes) of Schedule 21 (Change Protocol);

Contractor's Proposals means the proposals of the Contractor to deliver the Project to satisfy the Authority's Requirements, as set out in Schedule 2 as may be amended pursuant to the terms of this Agreement from time to time;

Contractor's Representative means the person to be appointed by the Contractor pursuant to clause 11 (Representatives);

Contractor Termination Notice has the meaning given to it in clause 37.2.1 (Termination on Authority Default);

Contractor Warranted Data means the information relating to the Contractor and its Affiliates contained in Schedule 11 (Warranted Data);

CPR means the Civil Procedure Rules issued by the Ministry of Justice from time to time;

Cumulative Capital Expenditure means the aggregate of:

(a) all Capital Expenditure which has been incurred as a result of each General Change in Law that has come into effect on or after the Service Commencement Date; and

(b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under clause 54 (Change in Law);

Deduction(s) means any Haulage Deduction, Performance Deduction, Unavailability Deduction and/or any Performance Failure Points;

Deed of Novation means the deed of novation entered into by the Authority, the Contractor and Allerton Waste Recovery Park Interim SPV Limited on the Effective Date;

Deed of Variation means the deed of variation in the form set out in Part 2 of Schedule 27 (Land Issues) entered into between the Authority (1) and the Landowner (2) on or before the Commencement Date;

Deemed New Contract means an agreement on the same terms and conditions as this Agreement as at the Termination Date, but with the following amendments:
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(a) if this Agreement is terminated during the Works Period, then the Planned Service Commencement Date shall be extended by such period as would have been granted to allow a New Contractor to achieve completion of the Works at the Facility;

(b) any accrued warning notices or Final Warning Notices issued pursuant to clause 38 (Termination for Persistent Breach by the Contractor) or Deductions or Performance Failure Notices shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled;

(c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date; and

(d) in the event that any New Contractor Rectification Works are required (in relation to a Facility that has, at the Termination Date, been completed) to enable the New Contractor to provide the Services to the full specification and standards required by this Agreement then, provided that the New Contractor complies with the New Contractor Rectification Plan for the New Contractor Rectification Period, the Authority shall not exercise its rights to terminate the Agreement under clause 37.3 (Termination on Contractor Default) by reason of any failure to achieve some or all of the specification and/or standards required by this Agreement solely as a consequence of the New Contractor Rectification Works being required. Such provision shall, for the avoidance of doubt, not affect the Authority’s entitlement to make adjustments and/or deductions in accordance with Schedule 6 (Payment Mechanism) as a result of failure to achieve the specification and/or standards required by this Agreement during the New Contractor Rectification Period;

**Default Interest** means any increased margin that is payable to the Finance Parties or which accrues as a result of any payment due to the Finance Parties not being made on the date on which it is due;

**Delivery Point** means the Site or a Contingency Delivery Point or where the reception of Contract Waste at the Site or a Contingency Delivery Point is not permitted pursuant to any Necessary Consent such other point as the parties may agree;

**Design Data** means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Facility;

**Direct Agreement** means the direct agreement dated on or about the date of Financial Close and made between the Authority, the Contractor, the Agent and the Trustee;


**Direct Losses** means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, including Third Party Income, but excluding Indirect Losses;
Disclosed Data means information relating to the Project disclosed to the Contractor and its Shareholders and advisers before the Effective Date including:

(a) any tender documents issued by the Authority (including any descriptive document);

(b) the data room originally located at County Hall Northallerton and subsequently hosted at www.leststalklessrubbish.com; and

(c) the results of any investigations and surveys carried out at the Site (whether carried out by or on behalf of the Contractor or the Authority).

Discriminatory Change in Law means a Change in Law, the terms of which apply expressly to:

(a) the Project and not to similar projects procured under the PFI or under public private partnership projects;

(b) the Contractor and not to other persons; and/or

(c) PFI contractors or contractors engaged on public private partnership projects and not to other persons;

Disputed Amount has the meaning given to it in clause 31.6 (Disputed Amounts);

Dispute Resolution Procedure means the procedure for the resolution of disputes set out in clause 62 (Dispute Resolution);

Distribution means:

(a) whether in cash or in kind, any:

i dividend or other distribution in respect of share capital;

ii reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;

iii payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);

iv payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or

v the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

Diversion Percentage has the meaning set out in Schedule 6 (Payment Mechanism);

DPA means the Data Protection Act 1998;
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EEA means, from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

Effective Date means the date on which all Conditions Precedent have been satisfied;

EfW Facility means the energy from waste facility, to be constructed by the relevant Construction Contractor;

Employee Liability Information means the employee liability information to be provided pursuant to Regulation 11 of TUPE;

EIR means the Environmental Information Regulations 2004 (SI 2004 No. 3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

Environmental Permit means any permit issued by the regulator pursuant to regulation 13(1) of the Environmental Permitting (England and Wales) Regulations 2010 in relation to the Facility;

Environmentally Acceptable has the meaning set out in Schedule 28 (Environmental Provisions);

EPA means the Environmental Protection Act 1990;

Equalities Legislation means the Equality Act 2010;

Equality Impact Assessment has the meaning given to it in clause 26.9 (Equality Impact Assessment);

Equality Matters has the meaning given to it in clause 26.9 (Equality Impact Assessment);

Equipment means all plant, machinery and equipment:

(a) provided and/or maintained by the Contractor pursuant to this Agreement; and

(b) used in the provision of the Services;

Equity IRR means the projected blended rate of return to the Relevant Persons over the full term of this Agreement, having regard to Distributions made and projected to be made;

Estimated Change in Project Costs means, in respect of any Relevant Event the aggregate of any Change in Costs and/or (without double counting) Change in Revenue (as relevant));

Estimated Fair Value of the Contract means the amount determined in accordance with clause 47.3 (No Retendering Procedure) that a third party would pay to the Authority as the market value of the Deemed New Contract;
Excess Profit Share means the proportion of income payable to the Authority by the Contractor from excess profit as calculated in accordance with paragraph 17.2 of Schedule 6 (Payment Mechanism);

Excluded Change in Law means:

(a) the replacement of the Renewables Obligation with the Contracts for Difference Feed-in Tariff established pursuant to the Energy Act 2013 (but for the avoidance of doubt does not mean (i) any other Changes in Law arising from the Energy Act 2013 or (ii) any changes to that Feed-in Tariff scheme); and/or

(b) any amendments to the Environmental Permitting Regulations 2010 that implement the Industrial Emissions Directive (2010/75/EU) to the extent that they came into force prior to the Effective Date and have been reflected in the terms of the Environmental Permit as in effect on the Effective Date (but for the avoidance of doubt, this does not include: (i) any other Changes in Law implemented pursuant to the Industrial Emissions Directive (2010/75/EU) or (ii) any changes to the Environmental Permitting Regulations 2010 which come into force after the Effective Date);

Excusing Cause means those events listed in clause 16.2 (Excusing Causes);

Exempt Refinancing means:

(a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge;

(b) a change in taxation or change in accounting treatment;

(c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:

i breach of representations and warranties or undertakings;

ii movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements;

iii late or non-provision of information, consents or licences;

iv amendments to Sub-Contracts;

v approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements);

vi restrictions imposed by the Finance Parties on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements and/or amounts released from the Sterling Utilisation Account and/or the Euro Proceeds Account during the Availability Period (each as defined in the Senior Financing Agreements) and which are given as a result of any
failure by the Contractor to ensure that the construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given;

vii changes to milestones for drawdown and/or amounts released from the Sterling Utilisation Account and/or the Euro Proceeds Account during the Availability Period set out in the Senior Financing Agreements and which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Finance Parties to the Authority prior to being given;

viii failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements; or

ix voting by the Finance Parties and the voting arrangements between the Finance Parties in respect of the levels of approval required by them under the Senior Financing Agreements;

(d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Agreement;

(e) any sale of shares in the Contractor or Holdco by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor or Holdco provided that this paragraph (e) shall, in respect of shares in Holdco, only apply for so long as Holdco holds 100% of the issued share capital of the Contractor;

(f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or

(g) any Qualifying Bank Transaction;

*Expiry Date* means (subject to the provisions of clause 3.2 (Extension of the Service Period)) the 25th anniversary of the Planned Service Commencement Date;

*Expiry Plan* has the meaning set out in clause 26.5;

*Facility* means the facilities comprising the EFW Facility, MT Facility, AD Facility, IBA Facility (if provided on Site) and the Visitor Centre and all supporting infrastructure including associated plant and amenities to be designed, constructed, tested and operated by the Contractor for the purposes of delivering the Services;

*Facility Take Over Tests* means the tests in Part 2 of Schedule 5 (Facility Take Over Tests) relating to the AD Facility, the EFW Facility, the MT Facility and the Visitor Centre;

*Fair Value* the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;
Fast Track Dispute has the meaning given to it in clause 62.20 (Fast Track);

Fast Track Dispute Resolution Procedure means the fast track procedure for the resolution of disputes set out in clause 62.20 (Fast Track);

FC Base Case means the financial model submitted by the Contractor at Financial Close as annexed at Part 2 of Schedule 7 (Base Case) (which for the avoidance of doubt is set to the 'equity case');

FC Longstop Date has the meaning given to it in Schedule 26 (Interim Period);

Fee Letters has the meaning given to it in the Common Terms Agreement;

Fees Regulations the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

Final Equipment List means a list of Equipment prepared not more than two (2) months prior to the Expiry Date;

Final Contract Month Reconciliation Amount has the meaning given to it in Schedule 6 (Payment Mechanism);

Final Warning Notice has the meaning given to it in clause 38.2 (Final Notice);

Finance Panel has the meaning given to it in clause 62.4.1 (Identity of Adjudicator);

Finance Parties has the meaning given to it in the Common Terms Agreement;

Financial Close means the Effective Date;

Financial Investor means each of:

(a) Aberdeen Infrastructure investments (No.5) Limited, a company registered in England and Wales with registered number 08063001 and having its registered office at Bow Bells House, 1 Bread Street, London EC4M 9HH;

(b) Aberdeen Infrastructure Investments (No.6) Limited, a company registered in England and Wales with registered number 08062999 and having its registered office at Bow Bells House, 1 Bread Street, London EC4M 9HH; and

(c) Equitix Concessions 3 Ltd, a company registered in England and Wales with registered number 08874528 and having its registered office at Welken House, 10-11 Charterhouse Square, London EC1M 6EH;

Financing Agreements means all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Contractor or any of its Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing);

Financing Default means a relevant event of default occurring under the Senior Financing Agreements;
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**FOIA** the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

**FOIA Code** has the meaning given to it in clause 56.9.8 (Freedom of Information);

**Force Majeure Event** means the occurrence after the Effective Date of:

(a) war, civil war, armed conflict or terrorism;

(b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of any act by the Contractor or its Sub-Contractor except where such actions of the Contractor or Sub-Contractor constitute solely the receipt or treatment by the Contractor or Sub-Contractor of Contract Waste (containing nuclear, chemical or biological contamination) in accordance with the Agreement, Third Party Waste (containing nuclear, chemical or biological contamination) or Substitute Waste (containing nuclear, chemical or biological contamination); or

(c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes a Party (the **Affected Party**) to be unable to comply with all or a material part of its obligations under this Agreement;

**Force Majeure Termination Sum** means the sum calculated in accordance with clause 48 (Compensation on Termination for Force Majeure or Uninsurability);

**Force Majeure TPI Adjustment** has the meaning given to it in clause 66.7.6 (Lost Third Party Income));

**Foreseeable Waste Management Change in Law** means the anticipated Changes in Law set out in Schedule 19 (Foreseeable Waste Management Change in Law);

**Funding Package** has the meaning given to it in Schedule 24 (Funding Protocol);

**Future Service Provider** shall have the meaning given in clause 27.2.1 (Termination related Transfer);

**General Change in Law** means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law or a Best Value Change in Law;

**Good Industry Practice** means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or an operation and maintenance contractor or construction contractor or any sub-contractor under the same or similar circumstances;

**Guaranteed Minimum Tonnage** has the meaning given to it in Schedule 6 (Payment Mechanism);
Guidance means any applicable guidance or directions with which the Contractor is bound to comply;

Handback Requirements means the requirements set out in clause 26.6;

Haulage Deduction has the meaning given to it in Schedule 6 (Payment Mechanism);

Health and Safety File has the meaning given to it in the CDM Regulations;

Health, Safety and Welfare Plan has the meaning set out in clause 26.8;

Highest Compliant Tender Price means the price offered by the Compliant Tenderer (if any) with the highest tender price;

Holdco means AmeyCespa (AWRP) Holding Co Limited;

Holding Company has the meaning given to it in Section 1159 of the Companies Act 2006;

HWRC means household waste recycling centre provided from time to time by the Authority and/or City of York Council pursuant to s51(1)(b) EPA;

HWRC Contract Waste means Contract Waste arising from HWRCs;

IBAA means incinerator bottom ash aggregate;

IBA Facility means a facility for recycling incinerator bottom ash (IBA);

IBA Off-Take Contract has the meaning given to it in the definition of Off-Take Contract in this clause 1 (Definitions);

Indemnified Party has the meaning given to it in clause 57.4 (Notification of Claims);

Indemnifying Party has the meaning given to it in clause 57.4 (Notification of Claims);

Independent Tester means the person appointed jointly by the Authority, the Contractor, the Works and Operating Sub-Contractor and the Agent to act as independent tester to the Project in accordance with the Independent Tester's Appointment;

Independent Tester's Appointment the appointment of the Independent Tester in the Agreed Form at Schedule 15 (Project Documents and Ancillary Documents);

Index has the meaning given to it in the definition of RPIx in this clause 1 (Definitions);

Indexation Base Month means January 2008;

Indirect Losses means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature excluding for the avoidance of doubt any loss of revenue and/or loss of Third Party Income recoverable under the express terms of this Agreement;

Information has the meaning given under Section 84 of the FOIA;

Initial Financing Agreements means the Financing Agreements to be put in place at Financial Close;
Instalment Dates has the meaning given to it in clause 51.2.1(a)i (Instalments);

Insurance Term means any terms and/or conditions required to be in a policy of insurance by clause 58 (Insurance) and/or Schedule 14 (Insurances) but excluding any risk;

Insurance Undertaking has the meaning given to it in the rules from time to time of the Financial Services Authority;

Intellectual Property Rights means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Contractor or any Contractor Party for the purposes of carrying out the Works and/or providing the Services and/or otherwise for the purposes of this Agreement;

Intercreditor Agreement means the intercreditor agreement dated on or around the Effective Date between, among others, the Contractor, the Intercreditor Agent, the Junior Creditors and the Lender Creditors (as such terms are defined therein);

Interim Period means the period starting on the date of Commercial Close and ending on the earlier of the date of Financial Close and the FC Longstop Date;

Irrecoverable VAT has the meaning given to it in clause 54.8 (Payment of Irrecoverable VAT);

Joint Insurance Account the joint bank account (in accordance with clause 58.11 (Joint Insurance Account)) in the names of both the Authority and the Contractor, having account number [redacted] and sort code [redacted] and held with Norddeutsche Landesbank Girozentrale (London Branch);

Joint Project Board means the board established pursuant to Schedule 10 (Partnership);

JR Period has the meaning given to it in Schedule 24 (Funding Protocol);

JR Proceedings has the meaning given to it in Schedule 24 (Funding Protocol);

JR Rectification Period has the meaning given to it in Schedule 26 (Interim Period);

Judicial Review Challenge means proceedings brought under Part 54 of the Civil Procedure Rules or by any party other than the Contractor under Section 288 of the Planning Act in respect of the planning permission including any Judicial Review Injunction;

Judicial Review Injunction means any interim injunction or interim mandatory order granted in connection with, or as a part of, a Judicial Review Challenge which prevents, delays or hinders or otherwise affects the performance of the Works or Services;

Junior Debt means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;
JMWMS means the Joint Municipal Waste Management Strategy as drawn up by the Authority as required under s32 WET Act;

Kerbside Contract Waste means Contract Waste which is not HWRC Contract Waste;

Key Component means:

(a) MT Facility trommels;
(b) MT Facility ballistic separators;
(c) AD Facility gas engines;
(d) EFW Facility turbine;
(e) HV transformer;
(f) EFW Facility roller grates;
(g) EFW Facility boilers; and/or
(h) EFW Facility air cooled condenser;

Key Performance Indicators or KPIs means those performance requirements indicated as being key performance indicators in Schedule 4 (Performance Framework);

Key Sub-Contractor means the Works and Operating Sub-Contractor;

Landfill Allowance Trading Scheme (LATS) has the meaning given to it in Schedule 6 (Payment Mechanism);

Landfill Market Testing Date has the meaning given in paragraphs 3.1 and 3.2 of Schedule 17 (Market Testing);

Landfill Market Testing Proposals has the meaning given in paragraph 3.3 of Schedule 17 (Market Testing);

Landfill Services means the disposal by the Contractor and/or a Sub-Contractor of Contract Waste or process residues arising from the processing of Contract Waste excluding Fly Ash by means of landfill including for the purpose of Market Testing any haulage services associated with such landfill services but excluding any handling charges incurred in respect of the same;

Landfill Services Proposal has the meaning given in paragraph 3.8 of Schedule 17 (Market Testing);

Landowner means The Rt Hon Edward William Stephen Baron Mowbray Segrave and Stourton;

Lease means the lease of the Site in the form set out in Part 5 (Lease) of Schedule 27 (Land Issues);

Lease Transfer Date means the Expiry Date or the Termination Date unless (i) the Service Period is extended under clause 3.2 in which case the Lease Transfer Date shall be the date on which such extension expires or (ii) the Contractor is required to transfer
its rights and obligations to a Suitable Substitute Contractor in which case the Lease Transfer Date shall be the Site Release Date;

**Legislation** means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;

**Liquid Market** means there are sufficient willing parties (being at least two (2) parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PF1 contracts, public private partnership projects or similar contracts for the provision of services (in each case the same as or similar to the Agreement) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Finance Parties either specifically for the purposes of this Project and to which this Agreement may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

**LLCR Default Level** means the ratio set out in [redacted] of the Common Terms Agreement;

**Lock-in Period** means the period from the Commencement Date expiring on the date that is one (1) year after the Service Commencement Date;

**Longstop Date** means eighteen (18) months after the Planned Service Commencement Date or such later date as may be allowed in accordance with the terms of this Agreement;

**Losses** includes all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;

**Market Tested Services** means the Landfill Services;

**Market Testing** the process described in paragraph 3 of Schedule 17 (Market Testing) to competitively test prices for the Market Tested Services and the term Market Tested shall be construed accordingly;

**Market Testing Proposal** the draft proposal, as agreed by the Parties, or as determined, in either case in accordance with Schedule 17 (Market Testing);

**Market Testing Review Date** the Landfill Market Testing Date;

**Market Value Availability Deduction Amount** means, for any month or part of a month, an amount equal to the Unavailability Deductions that were made from the Monthly Unitary Charge under Schedule 6 (Payment Mechanism) in the month immediately preceding the Termination Date, less an amount equal to any Unavailability Deductions that were made in respect of the Service being Unavailable at the Termination Date but which has subsequently become Available whether as a result of the Authority incurring Rectification Costs or otherwise;
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Maximum Tonnage means the lesser of (i) 110% of the Authority's Forecast Level of Contract Waste; and (ii) the Maximum Treatment Threshold, in each case for the relevant Contract Year;

Maximum Treatment Threshold or MTT has the meaning given to it in Schedule 6 (Payment Mechanism);

Medium Value Changes has the meaning given to it in Schedule 21 (Change Protocol);

Mobilisation Plan has the meaning set out in clause 26.4;

Monthly Landfill Payment has the meaning given to it in Schedule 5 (Payment Mechanism);

Monthly Tonnage Adjustment has the meaning given to it in Schedule 6 (Payment Mechanism);

Monthly Unitary Charge has the meaning given to it in Schedule 6 (Payment Mechanism);

MT Facility means the mechanical treatment facility to be constructed pursuant to this Agreement by the relevant Construction Contractor;

Municipal Waste has the meaning given to it in Schedule 23 (Waste Acceptance Protocol);

National Performance Indicators means the single set of national indicators published in 'The New Performance Framework for Local Authorities and Local Authority Partnerships' published by the Secretary of State, October 2007 as supplemented by the 'National Indicators for Local Authorities and Local Authority Partnerships: Handbook of Definitions' published by the Secretary of State, 1 April 2008 or any other national performance indicators relating to performance for local authorities and local authority partnerships as may be issued by a Relevant Authority from time to time and National Indicator 192 shall be construed accordingly;

Necessary Consents means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor's obligations under this Agreement or which are required in order to comply with Legislation;

Net Present Value means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

New Contract means an agreement on the same terms and conditions as this Agreement at the Termination Date, but with the following amendments:

(a) if this Agreement is terminated prior to the Service Commencement Date, then the Planned Service Commencement Date shall be extended by a period to allow a New Contractor to achieve Service Commencement provided always that there is no extension to the Service Period;
(b) any accrued Deductions and/or warning notices or Final Warning Notices issued pursuant to clause 38 (Termination for Persistent Breach by the Contractor) or Performance Failure Notices shall, for the purposes of termination only and without prejudice to the rights of the Authority to make financial deductions, be cancelled;

(c) the term of such agreement shall be equal to the term from the Termination Date to the Expiry Date;

(d) any other amendments which do not adversely affect the Contractor; and

(e) in the event that any New Contractor Rectification Works are required (in respect of the Facility) to enable a New Contractor to provide the Services to the standards required by the Agreement, then provided that the New Contractor complies with the New Contractor Rectification Plan for the New Contractor Rectification Period the Authority shall not exercise its right to terminate the Agreement pursuant to clause 37.3 (Termination on Contractor Default) by reason of any failure by the Contractor to meet some or all of the requirements of Schedule 1 (Authority's Requirements) and/or standards required by this Agreement or by reason of the Facility being unable to accept Contract Waste. Such provision shall not affect the Authority's entitlement to make Deductions as a result of failure to provide the Services to the standards required by the Agreement during the New Contractor Rectification Period;

**New Contractor** means the person who has entered or who will enter into the New Contract with the Authority;

**New Contractor Rectification Period** means such period as would be reasonable in the circumstances from the date of the New Contract to allow the New Contractor to carry out New Contractor Rectification Works as shall be agreed by the Authority and the Contractor or in default of agreement determined pursuant to clause 62 (Dispute Resolution);

**New Contractor Rectification Plan** means the rectification plan to be implemented by the New Contractor setting out the New Contractor Rectification Works and timescales;

**New Contractor Rectification Works** means such works (including new and rectification works) and systems as may be required to enable the New Contractor to provide the Services to the standards required by the Agreement;

**Notice Date** the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the Parties pursuant to clause 47.3 (No Retendering Procedure);

**Notice of Adjudication** has the meaning given to it in clause 62.3 (Adjudication);

**Notice of Non Completion** means a notice issued pursuant to clause 21.4.4 (b) (Issue of Take Over Test Certificate or Notice of Non Completion);

**Notifiable Financings** means any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar
effect or which has or would have the effect of limiting the Contractor's or any Associated Company's ability to carry out any such arrangement;

Off-Site Expenditure has the meaning given to it in Schedule 22 (Planning) and for the avoidance of doubt excludes the first [redacted] of such costs which are for the account of the Contractor;

Off-Take Contract means:

(a) an agreement for the purchase of heat and/or power and/or recyclates produced at the Facility; or

(b) an agreement for the supply of incinerator bottom ash produced at the EFW Facility (an IBA Off-Take Contract);

Operating Manual has the meaning given to it in clause 29.1 (Maintenance of Manual);

Operational Panel has the meaning given to it in clause 62.4.1 (Identity of Adjudicator);

Option Agreement means the option agreement dated 29 August 2007 made between the Landowner (1) and the Authority (2) as varied by a deed of variation dated 9 April 2009, the Deed of Variation and two further deeds of variation dated (respectively) 30 July 2014 and 9 October 2014 (and a copy of the further deed of variation dated 9 October 2014 is attached to this Agreement at Part 7 of Schedule 27 (Land Issues));

Option Period has the meaning given to it in clause 60.4 (Risks that become Uninsurable);

Original FC Longstop Date has the meaning given to it in Schedule 26 (Interim Period);

Original Senior Commitment means the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);

Original Transfer has the meaning given to it in clause 65.1.3 (Change in Ownership);

Outline Commissioning Plan means the plan provided by the Contractor in accordance with Schedule 2 (Contractor's Proposals) and incorporating the Agreed Commissioning Volumes;

Outstanding Principal means the principal amount outstanding at the Termination Date of each borrowing (other than any borrowing under any equity bridge facility) under the Senior Credit Agreements;

Outstanding Work has the meaning given to it in clause 43.4 (Maintenance Work);

Overriding Interests means interests that override first registration (as defined in schedule 1 to the Land Registration Act 2002), interests that override registered dispositions (as defined in schedule 3 Land Registration Act 2002), and interests the status of which is preserved as overriding by schedule 12 Land Registration Act 2002;

Over Threshold Contract Waste has the meaning given to it in Schedule 6 (Payment Mechanism);
Panel shall mean any one of the Construction Panel, Operational Panel, or Finance Panel as described in clause 62.4.1 (Identity of Adjudicator);

Pass Through Costs has the meaning given to it in Schedule 6 (Payment Mechanism);

Payment Period means each calendar month or (in the case of the first and final Payment Periods or the Payment Period during which the Service Commencement Date occurs) part thereof during the Contract Period;

Performance Deduction has the meaning given to it in Schedule 6 (Payment Mechanism);

Performance Failure means in respect of any KPI has the meaning set out against that KPI in column 4 of Table 2 of Schedule 4 (Performance Framework);

Performance Failure Longstop Period has the meaning given in Schedule 4 (Performance Framework);

Performance Failure Notice has the meaning given to it in Schedule 4 (Performance Framework);

Performance Failure Points has the meaning given to it in paragraph 2.6 of Schedule 4 (Performance Framework);

Permitted Borrowing means, without double counting, any:

(a) advance to the Contractor under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of clause 7.2.3);

(b) Additional Permitted Borrowing;

(c) Not used; and

(d) interest under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of clause 7.2.3), and, in respect of the original Senior Financing Agreements only (as entered into on or before the Effective Date, prior to any subsequent amendment), other amounts accrued or payable thereunder,

except where the amount referred to in paragraphs (a) to (d) inclusive is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

Permit Variation Deadline means the date falling on the last Business Day of the ninth month immediately following the Commencement Date;

Persistent Breach means a breach for which a Final Warning Notice has been issued, which has continued for more than thirty (30) Business Days or recurred four (4) or more times within the six (6) month period after the date on which such Final Warning Notice is served on the Contractor;
**Personal Data** means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;

**PFI** the Government’s Private Finance Initiative or any similar or replacement initiative;

**Physical Damage Policies** has the meaning given to it in clause 59.1;

**Planned Service Commencement Date** means, in relation to the Services, 31 January 2018 or such later date as may be allowed in accordance with the terms of this Agreement;

**Planning Longstop Date** has the meaning set out in Schedule 22 (Planning);

**Post Termination Service Amount** means for the purposes of clause 47.2 (Retendering Procedure), for the whole or any part of a month for the period from the Termination Date to the Compensation Date, an amount equal to the Monthly Unitary Charge which would have been payable in that month under this Agreement including any Third Party Income actually received by the Authority less any costs (and depreciation and other charges) incurred in generating such Third Party Income had this Agreement not been terminated, less an amount equal to the aggregate of:

(a) the Market Value Availability Deduction Amount for that month;

(b) the Rectification Costs incurred by the Authority in that month; and

(c) (where relevant) the amount by which the Post Termination Service Amount for the previous month was less than zero (0);

**Prescribed Rate** means two percent (2%) above the base rate from time to time of Barclays Bank plc;

**Pre-Refinancing Equity IRR** means the nominal post-tax (i.e. post Contractor tax pre Shareholder tax) Equity IRR calculated immediately prior to the Refinancing, as set out within the Base Case at [redacted] in the "Summary" worksheet;

**Programmed Maintenance** means the maintenance work which the Contractor is to carry out in accordance with the Schedule of Programmed Maintenance;

**Programmed Maintenance Information** has the meaning given to it in clause 23.4.2;

**Prohibited Act** means:

(a) offering, giving or agreeing to give to any servant of the Authority or the City of York Council any gift or consideration of any kind as an inducement or reward:

i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority or the City of York Council; or

ii for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority or the City of York Council;
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(b) entering into this Agreement or any other contract with the Authority or the City of York Council in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;

(c) committing any offence:

i under the Prevention of Corruption Acts 1889-1916;

ii under Legislation creating offences in respect of fraudulent acts; or

iii at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority or the City of York Council; or

(d) defrauding or attempting to defraud or conspiring to defraud the Authority or the City of York Council;

Project means the provision of waste treatment services to the Authority by the Contractor as contemplated by this Agreement including the carrying out of the Works and the provision of the Services;

Project Accounts means the accounts referred to in and required to be established under the Senior Financing Agreements;

Project Data means:

(a) all Design Data; and

(b) any other materials, documents or data acquired or brought into existence or used in relation to the Works, the Services or this Agreement,

in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Works or Services or the performance of the Contractor’s obligations under this Agreement;

Project Documents means this Agreement, the Direct Agreement, the Independent Tester's Appointment and the Collateral Warranties and any other agreements entered into by the Contractor and the Authority which are listed in Part 1 of Schedule 15 (Project Documents and Ancillary Documents);

Protestor Action means any picketing, demonstration, blockade, embargo or other protestor action (other than as a result of industrial action which affects only the employees of the Contractor or its Sub-Contractors or in respect of matters other than those arising from this Agreement or the Facility to be constructed pursuant to this Agreement) taking place at the Facility or directly affecting access to the Facility;

Qualification Criteria means the criteria that the Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with the procurement regulations) shall be:
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(a) the New Contract terms;

(b) tenderers should have the financial ability to pay the capital sum tendered for the New Contract and the financial ability to deliver the Works and/or the Services (as appropriate) for the price tendered;

(c) the tenderers may only bid on the basis of a single capital payment to be made on the date of the New Contract;

(d) the tenderer (either itself or through the proposed sub-contractors) is experienced in providing the Services or similar services;

(e) the technical solution proposed by the tenderer is capable of delivery and the tenderer (either by itself or through the proposed sub-contractors) is technically capable of delivery of the Services; and

(f) any other tender criteria agreed by the Authority and the Contractor;

Qualifying Bank Transaction means

(a) the syndication by a Finance Party, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;

(b) the grant by a Finance Party of any rights of participation, or the disposition by a Finance Party of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Financing Agreements in favour of:

i any other Finance Party;

ii any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;

iii a local authority or public authority;

iv a trustee of a charitable trust which has (or has had at any time during the previous two (2) years) assets of at least ten million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);

v a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two (2) years) at least fifty (50) members and assets under management of at least ten million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);

vi an EEA or Swiss Insurance Undertaking;

vii a Regulated Collective Investment Scheme; or
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viii any other institution in respect of which the prior written consent of the Authority has been given; or

(c) the grant by a Finance Party of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Contractor or Holdco, whether by way of security or otherwise, in favour of:

i any other Finance Party;

ii any institution specified in paragraphs (b)(ii) to (vii) above; or

iii any other institution in respect of which the prior written consent of the Authority has been given;

Qualifying Change in Law means:

(a) a Discriminatory Change in Law;

(b) a Specific Change in Law;

(c) a General Change in Law, which comes into effect after the Service Commencement Date and which involves Capital Expenditure; or

(d) a Best Value Change in Law;

which was not foreseeable at the Commencement Date; or

(e) any Legislation or Guidance coming into effect after the Commencement Date, giving effect to any of those documents or policies listed in the Foreseeable Waste Management Change in Law list other than an Excluded Change in Law; and

(f) any change to the terms of an Environmental Permit for the Facility (after the relevant Facility Environmental Permit has been granted), other than where such change arises as a result of:

i the act or omission of the Contractor or any Contractor Party (not including acts or omissions undertaken in accordance with and to perform its obligations under the Agreement); or

ii any breach of the Agreement by the Contractor or any Contractor Party;

Qualifying Change in Law TPI Adjustment has the meaning given to it in clause 66.7.1 (Lost Third Party Income);

Qualifying Refinancing means any Refinancing that will give rise to a Refinancing Gain greater than zero (0) that is not an Exempt Refinancing;

Qualifying Variation means either:

(a) a change in the Works and/or the Services in respect of which either an Authority Change Notice or a Contractor Change Notice has been served and, in the case of:
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i an Authority Change Notice, the Authority has confirmed the Contractor Response (Medium Value Changes) or (as applicable) the Contractor Stage 2 Response (High Value Changes) and, where the Contractor is not funding all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; or

ii a Contractor Change Notice, has been accepted by the Authority; or

(b) a Qualifying Change in Law,

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in the Works and/or the Services have become unconditional in all respects;

Quality Assurance System has the meaning given to it in clause 29.6 (Quality Assurance);

Quarter means each period of three months starting on the 1st January; 1st April, 1st July and 1st October each year, provided that the first such period shall start on Commercial Close and shall end on the quarter date immediately following Commercial Close and Quarterly shall be construed accordingly;

Radioactive Load has the meaning given to it in Schedule 23 (Waste Acceptance Protocol);

Radioactive Waste Method Statement means the procedure set out in paragraph 3 (Radioactive Waste Method Statement) of Schedule 23 (Waste Acceptance Protocol);

Readiness Test Certificate means a certificate issued by the Independent Tester that the relevant Readiness Test has been satisfactorily passed;

Readiness Tests means the tests in Part 1 of Schedule 5 (Readiness Tests for the Facility);

Real Pre-tax Project IRR means [redacted];

Recipient has the meaning given to it in clause 31.12.2 (VAT on Payments);

Rectification Costs means, for the purposes of any Termination Date that occurs during the Service Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular month or part of a month in providing the Services;

Rectification Period means the relevant period of time following the Resolution Period (if applicable) that the Contractor must rectify a Performance Failure to prevent the allocation of additional Performance Failure Points pursuant to paragraph 2.8 of Schedule 4 (Performance Framework). The relevant Rectification Period for each Key Performance Indicator is provided in column 9 of Table 2 in Schedule 4 (Performance Framework);

Rectification Programme means the programme submitted pursuant to clause 37.4.2(b) (Rectification);
Recyclables, recycle, recycling and any cognate terms shall be interpreted in light of National Indicator 192;

Referral Notice has the meaning given to it in clause 62.5 (Referral of the Dispute);

Referring Party has the meaning given to it in clause 62.3 (Adjudication);

Refinancing means:

(a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);

(b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);

(c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreement (other than any Subordinated Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Contractor whether by way of security or otherwise; or

(d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Contractor’s or any Associated Company’s ability to carry out any of (a) to (c) above;

Refinancing Gain means an amount equal to the greater of zero and ((A-B)-C), where:

\[
A = \text{the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing;}
\]

\[
B = \text{the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and}
\]

\[
C = \text{any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;}
\]

Refinancing Notice has the meaning given to it in clause 32.9.1 (Authority Right to Request Refinancing);

Regulated Collective Investment Scheme has the meaning given to it in the rules from time to time of the Financial Services Authority;
Reinstatement Plan has the meaning given to it in clause 59.3.1 (Reinstatement);

Reinstatement Works has the meaning given to it in clause 59.3.1 (Reinstatement);

Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

Relevant Employees the employees who are the subject of a Relevant Transfer;

Relevant Event any:

(a) Authority Change;

(b) Qualifying Change in Law;

(c) Compensation Event;

(d) Required Action; or

(e) other matter as a result of which there may be an adjustment to the Unitary Charge, in accordance with clause 66 (Financial Adjustments);

Relevant Incident has the meaning given to it in clause 59.3 (Reinstatement);

Relevant Insurance has the meaning given to it in Part 6 of Schedule 14 (Insurances);

Relevant Payment has the meaning given to it in clause 60.4 (Risks that become Uninsurable);

Relevant Person means a Shareholder and any of its Affiliates;

Relevant Proceeds any amounts standing to the credit of the Joint Insurance Account in accordance with clause 59 (Reinstatement);

Relevant Resolution Period has the meaning given to it in Schedule 4 (Performance Framework);

Relevant Transfer a relevant transfer for the purposes of TUPE;

Relief Event means any of the following:

(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;

(b) the delivery in Contract Waste, Substitute Waste or Third Party Waste of any munitions, hazardous materials, or human remains during the Commissioning Period and/or the Service Period where the law or any relevant authority requires the relevant Facility to be closed;

(c) failure by any statutory undertaker, utility company, local authority or other like body (but excluding, for the avoidance of doubt, the Authority as purchaser) to carry out works or provide services;
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(c) any accidental loss or damage to the Facility and/or any Key Component thereof in transit to the Site or to any roads servicing the Site and/or the Facility;

(e) any failure or shortage of power, fuel or transport;

(f) any blockade or embargo which does not constitute a Force Majeure Event;

(g) any:
   i official or unofficial strike;
   ii lockout;
   iii go-slow; or
   iv other dispute,

generally affecting the waste management industry, the construction industry or a significant sector of any of them;

(h) the discovery of fossils, antiquities, or human remains requiring action in accordance with Legislation;

(i) the occurrence of Protestor Action to the extent that the Contractor has complied with its obligations pursuant to clause 17 (Protestor Action); or

(j) the exercise by any third party or the Authority of rights or statutory rights over the Site (which may include investigation rights), and which may result in the closure of the Facility resulting from the proximity of the Site to the adjoining landfill site currently operated by Waste Recycling Group, and in respect of any future successor of Waste Recycling Group to the adjoining landfill site,

unless

A any of the events listed in paragraphs (a) to (j) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any of its Sub-Contractors; or

B in the case of limb b above, arises (directly or indirectly) as a result of the negligence of the Contractor or any of its Sub-Contractors;

Remediation Handback Costs has the meaning given to it in Schedule 28 (Environmental Provisions);

Request for Information shall have the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term request shall apply);

Required Action has the meaning given to it in clause 30.3 (Action by the Authority);

Required Insurances the insurances specified in Schedule 14 (Insurances);
Required Permit Variations means such changes to the WRG Permit as are required to ensure that the WRG Permit does not include any land comprised within the Site;

Required Standard has the meaning given to it in 43.3.1 (Results of Survey);

Resolution Period means the period set out in column 7 of Table 2 of Schedule 4 (Performance Framework);

Responding Party has the meaning given to it in clause 62.5 (Referral of the Dispute);

Response has the meaning given to it in clause 62.6 (Response to the Referral);

Retendering Information has the meaning given to it in clause 27.3.1(a) (Retendering Information);

Retention Fund Account has the meaning given to it in clause 43.5 (Retention Fund);

Return Date has the meaning given to it in clause 27.4.2 (Termination of Agreement);

Revenue has the meaning given to it in Part 6 (Insurance Premium Risk Sharing Schedule) of Schedule 14 (Insurances);

Review Procedure means the procedure set out in Schedule 8 (Review Procedure);

Reviewable Design Data means the Design Data listed in paragraph 7 of Schedule 8 (Review Procedure);

Revised Commissioning Plan means the detailed plan setting out the programme for the commissioning of the Facility in the circumstances set out in clause 20B.6;

Revised Senior Debt Termination Amount means, subject to clause 7.2 (Delivery of Initial and Changed Ancillary Documents and Financing Agreements):

(a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Contractor to the Finance Parties in respect of Permitted Borrowing; and

(b) all amounts including costs of early termination of interest rate and foreign exchange hedging arrangements and other breakage costs, payable by the Contractor to the Finance Parties as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination of interest rate and foreign exchange hedging arrangements only, as a result of termination of this Agreement, subject to the Contractor and the Finance Parties mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

i all credit balances on any bank accounts (but excluding the Joint Insurance Account and the Authority Revenue Account) held by or on behalf of the Contractor on the Termination Date;
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ii any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;

iii all amounts, including costs of early termination of interest rate and foreign exchange hedging arrangements and other breakage costs, payable by the Finance Parties to the Contractor as a result of a prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate and foreign exchange hedging arrangements only, as a result of termination of this Agreement;

iv all other amounts received by the Finance Parties on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have; and

v all APB Distributions;

RPIX means the index published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the Index, such other index as the Parties may agree, or such adjustments to the Index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the Index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with clause 62.20 (Fast Track);

RPIX Indexation means as calculated in paragraph 19.4 of Schedule 6 (Payment Mechanism);

Satisfactory Planning Permission has the meaning given to it in Schedule 22 (Planning);

Schedule of Programmed Maintenance means the Contractor's annual programme for the maintenance of the Facility to satisfy the requirements of Schedule 1 (Authority's Requirements);

SCW Capacity Notice has the meaning given to it in clause 26A.4.6;

Section 106 Agreement means the Section 106 agreement in relation to development at land at Allerton Park Quarry, Knaresborough, North Yorkshire dated 14 February 2013 and made between (1) the Authority, (2) The Right Honourable Edward William Stephen Baron Mowbray Segrave and Stourton and (3) Allerton Waste Recovery Park Interim SPV Limited;

Section 278 Agreement means the Section 278 agreement in relation to execution of highway works at Allerton Park Quarry dated 15 July 2013 and made between (1) the Authority and (2) Allerton Waste Recovery Party Interim SPV Limited;

Secured Creditors has the meaning given to it in the Intercreditor Agreement;

Senior Credit Agreements means the Commercial Facilities Agreement, the Senior EIB Finance Contract A, the Senior EIB Finance Contract B and the Common Terms Agreement as at the date of Financial Close or as amended with the prior written approval
of the Authority pursuant to clause 7.2 (Delivery of Initial and Changes Ancillary Documents and Financing Agreements);

**Senior Debt** means the financing provided by the Senior Lenders under the Senior Financing Agreements;

**Senior Debt Rate** means:

(a) in respect of the amount committed under the Commercial Facilities Agreement, the aggregate of the Margin and LIBOR (as such terms are defined in the Commercial Facilities Agreement);

(b) in respect of the amount committed under the Senior EIB Finance Contract A, the Fixed Rate (as defined in the Senior EIB Finance Contract A);

(c) in respect of the amount committed under the Senior EIB Finance Contract B, the Floating Rate (as defined in the Senior EIB Finance Contract B); and/or

(d) in respect of any other amount, the Prescribed Rate,

or such lower rate as the Parties may agree;

**Senior Debt Service Costs** has the meaning given to it in Part 6 of Schedule 14 (Insurances);

**Senior EIB Finance Contract A** means the finance contract dated on or around the Effective Date and entered into between the European Investment Bank and the Contractor setting out the terms of the senior term loan granted to the Contractor;

**Senior EIB Finance Contract B** means the finance contract dated on or around the Effective Date and entered into between the European Investment Bank and the Contractor setting out the terms of the equity bridge loan granted to the Contractor;

**Senior Financing Agreements** means those of the Financing Agreements listed in Part 2 of Schedule 16 (Financing Agreements) as at the date of Financial Close or, without prejudice to clause 7.2 (Delivery of Initial and Changed Ancillary Documents and Financing Agreements), as the same may be amended as allowed by clause 7 (Ancillary Documents and Financing Documents);

**Senior Lender** means:

(a) during the Interim Period, those persons proposed by the Contractor in the Interim Period to provide Senior Debt funding in relation to the Project under the Senior Financing Agreements at Financial Close; and/or

(b) following Financial Close, those persons providing finance to the Contractor under the Senior Financing Agreements.

**Service Availability** means that the Facility is Available and all of the Take Over Test Certificates can be issued in accordance with clause 21.4 (Issue of Take Over Certificate or Notice of Non Completion);
Service Commencement means, following the issue of a Take Over Test Certificate in respect of each of the AD Facility, MT Facility, EIW Facility and the Visitor Centre, the commencement of the Services;

Service Commencement Date means the date on which Service Commencement occurs in accordance with clause 21.5 (Effect of Issue of Take Over Test Certificate);

Service Period means the period specified in clause 3.1A;

Service Transfer Date means the transfer on a date agreed by the Parties to the Contractor of responsibility for provision of (or procuring the provision by Sub-Contractors of) the Services in accordance with this Agreement;

Services means the services required to satisfy the requirements of Schedule 1 (Authority’s Requirements) and Schedule 2 (Contractor’s Proposals);

Shareholder means any person from time to time holding share capital in the Contractor or Holdco;

Site means the area edged red on the Site Plan for the Facility;

Site Conditions means the conditions of the Site including (but not limited to) climatic, hydrological, hydro geological, ecological, environmental, geotechnical and archaeological conditions;

Site Plan means the plan of the Site set out in Schedule 20 (Site) to this Agreement;

Site Release Date means the date the Project is assigned or transferred to a Suitable Substitute Contractor;

Snagging Items means minor defects, deficiencies or omissions of a snagging nature which do not prevent the Independent Tester from issuing a Take Over Test Certificate in relation to the relevant Facility;

Snagging List means a list to be issued by the Independent Tester in accordance with clause 21.6 containing Snagging Items in relation to the relevant Facility;

Snagging Programme has the meaning given to it in clause 21.6.4;

Spare Capacity means any capacity (expressed in tonnes) at the Facility in excess of the Maximum Tonnage, but below the Contract Waste Threshold, which is not TPW Committed Capacity;

Specific Change in Law means any Change in Law which specifically refers to:

(a) the provision of works or services the same as or similar to the Services;

(b) the holding of shares in companies whose main business is providing services the same as or similar to the Services;

(c) the construction, operation and/or maintenance of the premises for the purpose of providing the Services;
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(d) emissions from industrial facilities or energy recovery from energy from waste and/or anaerobic digestion processes; or

(e) the receipt, handling, transport, storage, disposal (including disposal by any means of landfill or composting), processing, treatment, recycling or re-using of waste the same as or similar to Contract Waste or any physical products derived therefrom (including recyclates);

Strategy and Budget has the meaning given to it in Schedule 22 (Planning);

Sub-Contractor means any of the Construction Contractors and the Works and Operating Sub-Contractor or any other person engaged by the Contractor from time to time as may be permitted by this Agreement to procure the provision of the Works and/or the Services (or any of them). References to sub-contractors means sub-contractor's (of any tier) of the Contractor;

Sub-Contractor Breakage Costs means Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Agreement, but only to the extent that:

(a) the Losses are incurred in connection with the Project and in respect of the provision of Services or completion of the Works, including:

   i any materials or goods ordered or Sub-Contracts placed that cannot be cancelled without such Losses being incurred;

   ii any expenditure incurred in anticipation of the provision of the Services or the completion of the Works in the future;

   iii the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and

   iv redundancy payments,

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and

(c) the Contractor and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

Losses as referred to in this definition may, without prejudice to the generality of the other provisions of this definition, include Losses which relate to the breakage or cancellation of Off-Take Contracts and/or Third Party Waste Contracts but only to the extent that the terms of such Off-Take Contracts or Third Party Waste Contracts are in compliance with clause 66A of this Agreement and such contracts cannot be cancelled without incurring such Losses;

Sub-Contracts means the contracts entered into between the Contractor and the Sub-Contractors;

Submitted Item has the meaning given to it in paragraph 1.2 of Schedule 8 (Review Procedure);
Subordinated Financing Agreements means those of the Financing Agreements listed in Part 3 of Schedule 16 (Financing Agreements) as at the Effective Date or as amended with the prior written approval of the Authority;

Subordinated Lenders means a person who is providing finance under a Subordinated Financing Agreement;

Substitute Waste means waste (other than Contract Waste) which is the same as or similar to Contract Waste and which is received at the Facility to fulfill the requirements of a Substitute Waste Plan following the service of a Substitute Waste Notice;

Substitute Waste Notice has the meaning given in clause 26C.2.3 (Substitute Waste);

Substitute Waste Plan means the plan for the securing of Substitute Waste developed and updated in accordance with clause 26C.2.2 (Substitute Waste);

Suitable Substitute Contractor means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

(a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under this Agreement; and

(b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under this Agreement;

Supplier has the meaning given to it in clause 31.12.2 (VAT on Payments);

Supplemental Deed means the supplemental deed to be made between the Authority (1) the Landowner (2) and the Contractor (3) in the form set out in Part 6 of Schedule 27 (Land Issues);

Supplementary Contract Waste means Contract Waste (other than Additional Waste) in excess of the Maximum Tonnage;

Supplementary Contract Waste Notice has the meaning given to it in clause 26A.4.5;

Take Over Test Certificate means a certificate issued by the Independent Tester that the relevant Facility Take Over Test has been satisfactorily passed;

Tax means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Commencement Date and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

Tender Costs means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;

Tender Process means the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with clause 47.2 (Retendering Procedure);
**Tender Process Monitor** means a third party appointed by the Contractor pursuant to clause 47.2.5 (Retendering Procedure);

**Termination Date** means the date of early termination of this Agreement in accordance with its terms;

**Termination Date Discount Rate** means a discount rate expressed as:

$$[(1+R+B-A) \times (1+i)-1]$$

where:

- **R** = the Real Pre-tax Project IRR as set out in the Base Case;
- **i** = the agreed assumed forecast rate of increase in RPIX for the remaining term of the Agreement;
- **A** = the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt shown in the Base Case as at Financial Close; and
- **B** = the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt shown in the Base Case as at the Termination Date;

**Termination Notice** means a notice of termination issued in accordance with this Agreement including (where applicable) a Contractor Termination Notice;

**Termination Sum** means any compensation payable by the Authority to the Contractor on an early termination of this Agreement under clauses 45 (Compensation on Termination for Authority Default/Voluntary Termination), 47 (Compensation on Termination for Contractor Default), 48 (Compensation on Termination for Force Majeure), and 46 (Compensation on Corrupt Gifts, Fraud and Refinancing Breaches) (excluding the Adjusted Highest Compliant Tender Price) and any compensation payable as a result of a termination under clause 37.2 (Termination on Authority Default);

**Test Certificate** means a Readiness Test Certificate or a Take Over Test Certificate as appropriate;

**Tests** means the Readiness Tests and/or the Facility Take Over Tests, as appropriate;

**Third Party Claim** has the meaning given to it in clause 57.4 (Notification of Claims);

**Third Party Income** means the Contractor's and the Works and Operating Sub-Contractor's income from third parties (other than the Authority under this Agreement or the City of York Council) associated with the Project including, without limitation, that derived from the sale of electricity or recyclates;

**Third Party Income Compensation Payment** has the meaning given to it in Schedule 6 (Payment Mechanism);

**Third Party Waste Contract** means a contract for the treatment of Third Party Waste;
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Third Party Waste means waste which is accepted and treated at the Facility being sourced by the Contractor or (as the case may be) the Works and Operating Sub-Contractor from third parties including but not limited to Todd Waste Management Limited and Yorwaste Limited being waste that is not Contract Waste or Substitute Waste;

Threshold Equity IRR means [redacted];

Todd Waste Management Limited means Todd Waste Management Limited whose registered office is at Todds Green, Thirsk Industrial Park, Thirsk, North Yorkshire, YO7 3BX;

TPI means Third Party Income;

TPW Breakage Costs has the meaning given to it in clause 26A.4.8;

TPW Cancelled Capacity has the meaning given to it in clause 26A.4.8;

TPW Committed Capacity means any capacity (expressed in tonnes) at the Facility below the Contract Waste Threshold which applies in respect of the relevant Contract Year which:

(a) is committed to Third Party Waste customers pursuant to Third Party Waste Contracts entered into in accordance with the requirements of this Agreement; and

(b) cannot be cancelled unilaterally by the Contractor without the Contractor incurring TPW Breakage Costs;

Transfer means the transfer of the Lease in the form set out in Part 4 of Schedule 27 (Land Issues);

Transferring Employees has the meaning given to it in clause 27.4.2 (Termination of Agreement);

Trustee means Norddeutsche Landesbank Girozentrale (London Branch) (and any of its successors, assignees and transferees) in its capacity as security trustee for the Secured Creditors under the Senior Financing Agreements;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI No. 246);

Unadjusted Unitary Charge has the meaning given to it in Schedule 6 (Payment Mechanism);

Unavailability Deduction has the meaning given to it in Schedule 6 (Payment Mechanism);

Unavailable means the Services not being Available, and the term Unavailability will be construed accordingly;

Uninsurable means, in relation to a risk, either that:
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(a) insurance is not available to the Contractor in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or

(b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

Unitary Charge has the meaning given to it in Schedule 6 (Payment Mechanism);

Unsatisfactory Planning Permission has the meaning given to it in Schedule 22 (Planning);

VAT means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

Visitor Centre means a visitor centre provided pursuant to paragraph S2.4 of the Authority’s Requirements;

Waste Acceptance Protocol means the protocol set out in Schedule 23 (Waste Acceptance Protocol);

Waste Collection Authority or WCA means Ryedale District Council, Craven District Council, Hambleton District Council, Harrogate Borough Council, Richmondshire District Council, Scarborough District Council, Selby District Council and City of York Council;

Waste Disposal Authority means the Authority carrying out functions pursuant to section 51 of the EPA;


Waste Recycling Group means Waste Recycling Group (Yorkshire) Limited whose registered office is at Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northampton, NN4 7RG;

WET Act means Waste and Emissions Trading Act 2003;

Works means all of the works to be undertaken in accordance with this Agreement to satisfy the requirements of Schedule 1 (Authority’s Requirements);

Works and Operating Agreement means the contract relating to the Works and Services dated on or around the Effective Date and made between the Contractor and AmeyCespa (AWRP) ODC Limited;

Works and Operating Agreement Dispute has the meaning given to it in clause 62.16.1(a) (Similar Disputes);

Works and Operating Sub-Contractor means AmeyCespa (AWRP) ODC Limited (company registered number 09200149) whose registered office address is at The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ and any successor (in whole or in part) as Sub-Contractor;
Works Period means the period from the Effective Date to the Service Commencement Date;

WRG Permit means the permit issued to Waste Recycling Group by the regulator under regulation 13(1) of the Environmental Permitting (England and Wales) Regulations 2007 in relation to land occupied by Waste Recycling Group adjoining the Site;

WTS means Waste Transfer Station; and

Yorwaste Limited means Yorwaste Limited whose registered office is at Mount View, Standard Way, Northallerton, North Yorkshire, DL6 2YD.

1.2 Interpretation

In this Agreement except where the context otherwise requires:

1.2.1 the masculine includes the feminine and vice-versa;

1.2.2 the singular includes the plural and vice versa;

1.2.3 a reference to any clause, sub-clause, paragraph, Schedule, recital, annex or appendix is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, Schedule, recital, annex or appendix and to this Agreement;

1.2.4 save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;

1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;

1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

1.2.7 headings are for convenience of reference only;

1.2.8 words preceding include, includes, including and included shall be construed without limitation by the words which follow those words;

1.2.9 any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and

1.2.10 subject to any express provisions of this Agreement to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense.

1.3 Schedules

The Schedules to this Agreement form part of this Agreement.
1.4 **Indexation**

In this Agreement, save where otherwise provided, references to amounts expressed to be "indexed" are references to such amounts at Indexation Base Month prices multiplied by:

\[
\frac{I_1}{I_2}
\]

where I1 is the value of RPIX most recently published prior to the relevant calculation date, and I2 is the value of RPIX for the Indexation Base Month.

1.5 **Precedence of Documentation**

In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence. In the event of any inconsistency between Schedule 1 (Authority’s Requirements) and Schedule 2 (Contractor’s Proposals), Schedule 1 (Authority’s Requirements) shall take precedence.

1.6 **Responsibility for Related Parties**

Subject to the provisions of this Agreement, the Contractor shall be responsible as against the Authority for the acts and omissions of the Contractor Parties as if they were the acts and omissions of the Contractor and the Authority shall be responsible as against the Contractor for the acts and omissions of Authority Parties as if they were the acts and omissions of the Authority. The Contractor shall, as between itself and the Authority, be responsible for the selection of and pricing by any Contractor Party.

1.7 **Approval**

Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same, shall unless otherwise expressly stated in this Agreement, relieve the Contractor of any of its obligations under the Project Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.8 **Succession**

References to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Authority) shall include their successors and assignees.

1.9 **Conditions Precedent**

1.9.1 Not used

1.9.2 The rights and obligations of the Parties (save those in clauses 1 (Definitions) (to the extent required to give effect to the following clauses and schedules specified in this clause 1.9.2), 2 (Exclusion of Legislation), 5 (General Warranties and Indemnities), 6 (No Warranties by Authority), 7 (Ancillary
Documents and Financing Documents) (excluding any references to Initial Financing Agreements and Financing Agreement and clause 7.2.3), 8 (Property Provisions), 11 (Representatives), 18 (CDM Regulations), 19 (The Site), 26.3 (Contingency Plan), 26.4 (Mobilisation Plan), 42.2 (Termination of Agreement), 42.3 (Continuing Obligations), 52 (Partnership), 54 (Change in Law), 55 (Authority and Contractor Changes), 56 (Freedom of Information and Confidentiality), 62 (Dispute Resolution), 64.1 (Restrictions on Transfer of this Agreement by the Authority), 64.2 (Restriction on the Contractor), 64.3 (Exception), 66 (Financial Adjustments), clauses 67 (Audit Access) to 74 (Advertisements) (inclusive), clauses 77 (Interest on Late Payment), 80 (Governing Law and Jurisdiction) to 85 (Co-operation) (inclusive), Schedule 7 (Base Case), Schedule 8 (Review Procedure), Schedule 10 (Partnership), Schedule 13 (Commercially Sensitive Information), Schedule 19 (Foreseeable Waste Management Change in Law), Schedule 21 (Change Protocol), Schedule 22 (Planning), Schedule 24 (Funding Protocol), Schedule 25 (Unitary Charge Adjustment Protocol), Schedule 26 (Interim Period) and Schedule 27 (Land Issues)) shall be conditional upon the occurrence of the Effective Date.

1.10 The Parties shall use reasonable endeavours to procure satisfaction of each Condition Precedent and, save as provided in clause 1.11 (Conditions Precedent), no Condition Precedent may be waived except by an agreement in writing signed by each of the Parties.

1.11 The Authority and the Contractor shall evidence the fulfilment of each of the Conditions Precedent (or the waiver of any such Condition Precedent and the terms thereof) by delivery to the Contractor or the Authority (as appropriate) of a certificate signed, in the case of the Contractor, by a director of the Contractor, and in the case of the Authority, by the Authority's Representative, provided that the Contractor shall have the right by service of notice in writing on the Authority at any time on or after the date hereof to waive the Conditions Precedent set out in clause 1.12 (Conditions Precedent) below.

1.12 The Conditions Precedent are the occurrence of the last to occur of:

1.12.1 the expiry of the Challenge Period in relation to the Satisfactory Planning Permission for the Facility;

1.12.2 the entry into the Deed of Novation by the Authority, the Contractor and Allerton Waste Recovery Park Interim SPV Limited:

1.12.3 completion of the Lease with vacant possession; and

1.12.4 completion of the Supplemental Deed.

2 Exclusion of Legislation

2.1 Housing Grants, Construction and Regeneration Act

This Agreement is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of paragraph 4 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Contractor acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Project Document shall not affect the Parties' rights or obligations under this Agreement.
2.2 Third Party Rights

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

3 Commencement and Duration

3.1 Duration of Agreement

Subject to clause 1.9 (Conditions Precedent), this Agreement and the rights and obligations of the Parties shall take effect on the Effective Date (except to the extent they have earlier taken effect on the Commencement Date pursuant to clause 1.9 (Conditions Precedent)), and (subject to the provisions for early termination set out in this Agreement) shall continue until the Expiry Date.

3.1A The Service Period will commence on the Planned Service Commencement Date and terminate on the earlier of:

3.1.1A the Expiry Date; and

3.1.2A the Termination Date.

3.2 Extension of the Service Period

3.2.1 The Authority may extend the Service Period by a further five (5) years by providing to the Contractor twelve (12) months' notice in writing of its intention to extend the Service Period.

3.2.2 Where clause 3.2.1 applies, the Contractor shall (and shall use reasonable endeavours to ensure that its Sub-Contractors shall) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of the providing Services.

3.2.3 Where clause 3.2.1 above applies, the Joint Project Board shall meet to negotiate any variation to this Agreement which shall apply for the extension to the Service Period pursuant to the provisions of Schedule 10 (Partnership). The negotiation will be based on the following principles:

(a) subject to the provisions of this clause 3.2.3, the same terms and conditions of the Contract shall remain in full force and effect;

(b) the appropriate gate fee shall be negotiated by the Parties in good faith;

(c) the Services shall be substantially the same, subject to any change being proposed by the Authority pursuant to clause 55 (Authority and Contractor Changes).

3.2.4 If the parties do not reach an agreement regarding the extension to the Service Period following negotiation referred to in clause 3.2.3 or no appropriate gate fee is determined pursuant to clause 3.2.6, this Agreement shall expire pursuant to clause 3.1 (Duration of Agreement).

3.2.5 If the Parties so agree to the extension of the term or the appropriate gate fee is determined pursuant to clause 3.2.6 the duration of the Service Period will be extended to include the extended Service Period agreed.
3.2.6 If the parties do not reach agreement regarding the appropriate gate fee referred to in clause 3.2.3(b) herein following negotiation if the parties jointly agree, the matter shall be referred to clause 62 (Dispute Resolution).

4 Collateral Warranties

4.1 Collateral Warranties

The Contractor shall:

4.1.1 deliver the Collateral Warranties from the Construction Contractors and the Key Sub-Contractors to the Authority on the Effective Date;

4.1.2 not engage any new Key Sub-Contractor(s) (and shall procure that the Works and Operating Sub-Contractor shall not engage any new Construction Contractor(s)) in connection with the Project unless such person has delivered to the Authority a duly executed agreement substantially in the Agreed Form of the relevant Collateral Warranty duly executed as a deed and in each case such Collateral Warranty must be delivered to the Authority before such entity enters onto any Site;

4.1.3 ensure that the Collateral Warranties delivered to the Authority are in substantially the same form and from the same parties as those collateral warranties as are made available from time to time to the Finance Parties.

5 General Warranties and Undertakings

5.1 Contractor Warranties

The Contractor warrants and represents to the Authority that on the Effective Date:

5.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

5.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents;

5.1.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Project Documents has been taken or, in the case of any Project Document executed after the Effective Date, will be taken before such execution;

5.1.4 the obligations expressed to be assumed by the Contractor under the Project Documents are, or in the case of any Project Document executed after the Effective Date will be, legal, valid, binding and enforceable to the extent permitted by law and each Project Document is or will be in the proper form for enforcement in England;

5.1.5 the execution, delivery and performance by it of the Project Documents does not contravene any provision of:

(a) any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
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(b) the Memorandum and Articles of Association of the Contractor;

(c) any order or decree of any court or arbitrator which is binding on the Contractor; or

(d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;

5.1.6
the Contractor Warranted Data is true and accurate in all respects;

5.1.7
the Contractor has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;

5.1.8
no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;

5.1.9
it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;

5.1.10
no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

5.1.11
each of the Ancillary Documents is or, when executed, will be in full force and effect and constitutes or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties thereto; and

5.1.12
the copies of the Project Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents;

and the Authority relies upon such warranties and representations.

5.2
Contractor Undertakings

The Contractor undertakes with the Authority that for so long as this Agreement remains in full force:

5.2.1
it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware the same may be threatened or pending or with twenty (20) Business
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Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the Authority notice of such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the Project, the Contractor's ability to perform its obligations under this Agreement;

5.2.2 it will not without the prior written consent of the Authority (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Agreement;

5.2.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;

5.2.4 it will not undertake the performance of its obligations under this Agreement for the provision of the Services otherwise than through itself or a sub-contractor;

5.2.5 it shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services or Works;

5.2.6 it shall not without the written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Project Documents, Ancillary Documents and/or Financing Agreements; and

5.2.7 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Agreement.

5.3 Status of Warranties

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

6 No Warranties by Authority

6.1 No Warranty by Authority

Subject to clause 6.3 (Fraudulent Statements), the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

6.2 No Liability to Contractor
Subject to clause 6.3 (Fraudulent Statements), neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

6.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or

6.2.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

6.3 Fraudulent Statements

Nothing in this clause 6 (No Warranties by the Authority) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the Effective Date.

6.4 Rights and Remedies

The provisions of this clause 6 (No Warranties by the Authority) are without prejudice to the Contractor’s express rights and remedies under or pursuant to this Agreement.

6.5 Contractor’s Due Diligence

The Contractor shall, subject to the terms of this Agreement, be deemed to have:

6.5.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and

6.5.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed including:

(a) subject to the provisions of clause 19.2 (Site Conditions), information as to the nature, location and condition of the land (including hydrological, geological, geotechnical and sub-surface conditions):

(b) not used;

(c) information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures; and

(d) information relating to any Ministry of Defence or other aviation requirement.

6.6 No Relief

Subject to clause 6.3 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

7 Ancillary Documents and Financing Documents
Ancillary Documents

The Contractor shall not, without the prior written consent of the Authority (such consent not be unreasonably delayed or withheld):

7.1.1 terminate or agree to the termination of all or part of any Ancillary Document;

7.1.2 make or agree to any material variation to any Ancillary Document;

7.1.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Ancillary Document; or

7.1.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document,

if the same may reasonably be expected to have a materially adverse effect on the ability of the Contractor to perform its obligations under the Project Agreement.

Delivery of Initial and Changed Ancillary Documents and Financing Agreements

7.2.1 The Contractor has provided to the Authority copies of the Ancillary Documents and of the Initial Financing Agreements.

7.2.2 Without prejudice to the provisions of clause 7.1 (Ancillary Documents), 7.2 (Delivery of Initial and Changed Ancillary Documents and Financing Agreements) or to the definition of Senior Financing Agreements in clause 1 (Definitions), if at any time an amendment is made to any Ancillary Document or Financing Agreement, or the Contractor enters into a new Ancillary Document or Financing Agreement (or any agreement which affects the Interpretation or application of any Ancillary Document or Financing Agreement), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

7.2.3 Without prejudice to the provisions of clauses 7.2 (Delivery of Initial and Changed Ancillary Documents and Financing Agreements) and 32 (Refinancing), the Contractor shall not, without the prior written consent of the Authority, enter into new Financing Agreements or new Fee Letters or terminate, amend, waive its rights or otherwise deal with its Financing Agreements or Fee Letters if the same shall have the effect of increasing the Authority's liabilities on early termination of this Agreement unless it is an Additional Permitted Borrowing.

Review of Ancillary Documents prior to Financial Close

7.3.1 Without prejudice to the provisions of clauses 7.1, 7.2.1 and 7.2.2, the Authority shall be entitled to full and complete copies of the Ancillary Documents, any amendments to any Ancillary Document, any new Ancillary Document and documents referred to within the Ancillary Documents within a reasonable period of time prior to Financial Close.
The Authority shall be entitled prior to Financial Close to request reasonable amendments to the Ancillary Documents, amendments, agreements and documents provided pursuant to clause 7.3.1 in relation to any provisions, schedules and/or information relating to Architectural Enhancements (including, but not limited to rates) and the Contractor shall use reasonable endeavours to procure the agreement of the relevant counterparty to such amendments subject to the Contractor and/or the relevant counterparty not suffering any detriment as a result of such amendments.
PART 2 - Land Issues

8 Property provisions

8.1 Lease Transfer on Lease Transfer Date

8.1.1 The Lease shall be transferred on the Lease Transfer Date to the Authority or as it shall direct pursuant to clause 8.1.2 save where the Contractor is required to transfer its rights and obligations to the Suitable Substitute Contractor in which case the transferee shall be the Suitable Substitute Contractor.

8.1.2 Save as provided in clause 8.1.1, the Authority may direct the Contractor to transfer the Lease to an Approved Transferee, such direction to be confirmed in writing to the Contractor not less than five (5) working days prior to the Lease Transfer Date.

8.1.3 The Contractor will execute and deliver to the Authority a duly executed transfer deed in the form of the Transfer on the Lease Transfer Date (subject to the Authority executing and delivering or procuring that the transferee who it directs to accept the Transfer executes and delivers to the Contractor a duly executed counterpart of the Transfer on or before the Lease Transfer Date) together with all relevant title deeds and releases from any financial charges encumbering the Lease.

8.1.4 The Lease shall be transferred in accordance with Part 3 of Schedule 27 (Land Issues).

8.2 Commencement Date

On or before the Commencement Date the Authority:

8.2.1 delivered to the Allerton Waste Recovery Park Interim SPV Limited a certified copy of the completed Deed of Variation duly executed by the Authority and the Landowner; and

8.2.2 submitted a proper and complete application to the Land Registry for the entry of a unilateral notice in relation to the Deed of Variation against the registered title number for the Site and the Authority will following submission promptly deal with any requisitions which may be raised by the Land Registry in relation to that application.

8.3 Option Agreement and Deed of Variation

Except in the circumstances provided for in clause 64.1 (Restrictions on Transfer of this Agreement by the Authority), the Authority shall not without the Contractor's consent (such consent not to be unreasonably withheld or delayed) vary, surrender or assign the Option Agreement or the Deed of Variation and shall comply with the obligations on the part of the Authority under the Option Agreement and the Deed of Variation.
8.4 Completion of Lease and Supplemental Deed

8.4.1 Agreement to procure and accept Lease

(a) Promptly following whichever is the later of (i) the grant of Satisfactory Planning Permission and (ii) the WRG Trigger Date (as defined in the Option Agreement) the Authority shall serve the requisite notice in writing exercising the option granted pursuant to the Option Agreement with a view to completion of the Lease and the Supplemental Deed being effected on the Lease Completion Date (as defined in the Option Agreement) in accordance with the provisions of the Option Agreement.

(b) The Authority will on or before the Lease Completion Date and subject to the Option Agreement not having previously been terminated pursuant to clause 4.7 of the Option Agreement:

(i) execute the Supplemental Deed;

(ii) use reasonable endeavours to procure that the Lease and the Supplemental Deed are executed by the Landowner in accordance with the provisions of the Option Agreement.

(c) The Contractor will on or before the Lease Completion Date (subject as above) execute the counterpart Lease and Supplemental Deed.

(d) The Authority will so far as it is able to do so procure that the Lease and the Supplemental Deed are completed at the same time in accordance with the provisions of the Option Agreement provided that the Contractor shall not be obliged to accept or complete the Lease unless the Supplemental Deed is completed at the same time.

8.4.2 Engrossments and execution

The Authority will procure engrossments of the original and counterpart of the Lease and the Contractor will procure engrossments of the Supplemental Deed.

8.4.3 Completion: location

(a) The Lease and the Supplemental Deed will be completed on the Lease Completion Date.

(b) The Authority will direct the Landowner to grant the Lease to the Contractor and the Contractor accepts the Lease subject to the Lease being granted in accordance with the provisions of the Option Agreement.

8.5 Adverse Title Matters

Where any Adverse Title Matter impacts upon the Works and/or the Services, it shall be deemed to be a Compensation Event (and the provisions of clause 14 shall apply) and
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any work which is required or instructed to be done in consequence of it shall be deemed to be an Authority Change.

8.6 Registration of Lease

Promptly following completion of the Lease, the Contractor shall lodge a proper and complete application for registration of the Lease at the Land Registry (which application shall include an application to register a notice on the title to the Lease of the Authority's contractual right to have the Property transferred to the Authority pursuant to the provisions of this clause 8 (such notice to be subject to any prior charge in favour of the Finance Parties by way of security)) and shall provide to the Authority official copies of the register entries and filed plan immediately following completion of such registration.
PART 3 – The Works

9 The Works

9.1 Obligation to Carry Out

The Contractor shall or shall procure that the Construction Contractors (and any sub-contractors and/or consultants) shall carry out the design and the construction, completion, commissioning and testing of the Works so that:

9.1.1 the Services will be Available on or before the Planned Service Commencement Date provided that a breach of this clause 9.1.1 (Obligation to Carry Out) shall not, of itself, be capable of giving rise to a Contractor Default under either of limbs (a) or (b) of that definition;

9.1.2 the Works fully comply with and meet all the requirements of this Agreement, the Authority’s Requirements, the Contractor’s Proposals, Good Industry Practice, Guidance, all Necessary Consents, all applicable Authority’s Policies and Legislation. In the event that the Contractor enters into any subcontract in connection with the Works, it shall ensure that any such subcontractor complies with and meets all the requirements of Schedule 9 (Authority’s Policies);

9.1.3 new materials only will be used in carrying out the Works (unless the Authority agrees otherwise in writing or the contrary is set out in the Authority’s Requirements) and all goods used or included in the Works will be of satisfactory quality, and there will be used or included in the Works no products or materials that are not in conformity with relevant British or European Union Standards or codes of practice which at the time of use are widely known to construction contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;

9.1.4 all persons employed in connection with the performance of the Works will be skilled and experienced in their several professions, trades and callings or adequately supervised;

9.1.5 all aspects of the Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Agreement;

9.1.6 the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Site are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the Works; and

9.1.7 adequate retaining and supporting walls are provided to support any Adjoining Property during the carrying out of the Works.

9.1A Omission of IBA Facility

The Authority and the Contractor confirm their intention that, notwithstanding the provisions of Schedule 1 (Authority’s Requirements) and Schedule 2 (Contractor’s
9.2 Utilities

The Contractor shall in relation to the services and utilities required or affected as a result of the carrying out of the Works:

9.2.1 be responsible for determining the location of such services and utilities as may be at the Site and for the maintenance of access to such services and utilities at the Site;

9.2.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Site;

9.2.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities not within the Site;

9.2.4 pay to all Relevant Authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Site;

9.2.5 make connection into services and utilities outside the Site; and

9.2.6 otherwise do all that is required in relation to the utilities required for the purposes of carrying out the Works.

10 Construction Programme

10.1 Contractor’s Obligation

The Contractor shall procure that (subject to the terms of this Agreement) the Works are carried out in compliance to the extent reasonably practicable with the Construction Programme.

10.2 Notification of Delays in Progress of the Works

Without prejudice to the requirement of the Contractor to notify pursuant to clause 13 (Extensions of Time), if either:

10.2.1 the Contractor becomes aware at any time that the actual progress of the Works may become or has been significantly delayed or has fallen behind the Construction Programme; or

10.2.2 it appears to the Authority’s Representative at any time that the actual progress of the Works has been significantly delayed or has fallen behind the Construction Programme (and the Authority’s Representative requests the Contractor’s Representative to do so),
the Contractor's Representative shall submit to the Authority's Representative a report identifying the reasons for the delay and (where the Authority's Representative requires the Contractor's Representative to do so) the Contractor's Representative shall produce and submit to the Authority's Representative a revised Construction Programme showing the manner and the periods in which the Works will be carried out to achieve Service Availability by the Planned Service Commencement Date and/or showing the steps which are to be taken to eliminate or reduce the delay.

11 Representatives

11.1 Representatives of the Authority

11.1.1 The Authority's Representative shall be the Authority's Assistant Director of Waste and Countryside Services or such other person appointed pursuant to this clause. The Authority's Representative shall have full authority to act on behalf of the Authority for all purposes of this Agreement. The Contractor shall be entitled to treat any act of the Authority's Representative in connection with this Agreement as being expressly authorised by the Authority (save where the Authority has notified the Contractor that such authorisation has been revoked) and the Contractor shall not be required to determine whether any express authority has in fact been given.

11.1.2 The Authority's Representative shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the Authority's Representative and all references to the "Authority's Representative" in this Agreement (apart from this clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

11.1.3 The Authority may by notice to the Contractor change the Authority's Representative. The Authority shall (as far as practicable) consult with the Contractor prior to the appointment of any replacement for the Authority's Representative, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Agreement).

11.1.4 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.

11.2 Representative of the Contractor

11.2.1 The Contractor's Representative shall be Jay Doshi or such other person appointed pursuant to this clause. The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Agreement. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative
shall be entitled to treat any act of the Contractor's Representative in connection with this Agreement as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.

11.2.2 The Contractor may by notice to the Authority, change the Contractor's Representative. Where the Contractor wishes to do so it shall, by written notice to the Authority, propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

11.3 Appointment of Representatives

At any time the Authority may appoint up to two (2) Authority's Representatives and the Contractor may appoint up to two (2) Contractor's Representatives provided in each case the appointer provides written confirmation to the Contractor or Authority as appropriate of the extent of its Representative's authority.

12 Site Meetings

The Contractor shall procure that representatives of the Authority are afforded a reasonable opportunity to attend site meetings relating to the Works and (whether or not such representatives have attended) that a copy of the minutes of site meetings is promptly supplied to the Authority.

13 Extensions of Time

13.1 Notice

If at any time the Contractor becomes aware that there will be or is likely to be a delay in the Works such that Service Availability may not be achieved before the Planned Service Commencement Date, or (following the Planned Service Commencement Date) before the Longstop Date such that there is a delay in meeting the Planned Service Commencement Date, the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Business Days of becoming aware of the likely delay give notice to the Authority to that effect specifying:

13.1.1 the reason for the delay or likely delay; and

13.1.2 an estimate of the likely effect of the delay on the Works including the effect on the Planned Service Commencement Date or the Longstop Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with clause 13.3 (Duty to Mitigate)).

13.2 Supply of Information

Following service of a notice by the Contractor pursuant to clause 13.1 (Notice), the Contractor shall promptly supply to the Authority any further information relating to the delay which:

13.2.1 is received by the Contractor; or
13.2.2 is reasonably requested by the Authority.

13.3 Duty to Mitigate

The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to clause 13.1 (Notice).

14 Compensation Events

14.1 If, as a direct result of the occurrence of a Compensation Event:

14.1.1 the Contractor is unable to achieve Service Availability for the Facility on or before the Planned Service Commencement Date for the Facility, or following the Planned Service Commencement Date, before the Longstop Date; and/or

14.1.2 the Contractor is unable to comply with its obligations under this Agreement; and/or

14.1.3 the Contractor incurs costs or loses revenue (including Third Party Income),

then the Contractor is entitled to apply for an extension of time to the Planned Service Commencement Date and/or (following the Planned Service Commencement Date) to the Longstop Date and/or relief from its obligations and/or to claim compensation under this Agreement.

14.2 Procedure for Relief and Compensation

Subject to clause 14.4 (Late Provision of Notice or Information), to obtain relief, extension and/or claim compensation the Contractor must:

14.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement and/or the Contractor to incur costs or lose revenue (including Third Party Income), give to the Authority a notice of its claim for an extension of time to the Planned Service Commencement Date or (following the Planned Service Commencement Date) to the Longstop Date, payment of compensation and/or relief from its obligations under this Agreement;

14.2.2 within fifteen (15) Business Days of receipt by the Authority of the notice referred to in clause 14.2.1 (Procedure for Relief and Compensation) above, give full details of the Compensation Event and the extension of time and/or relief from its obligations under this Agreement and/or any Estimated Change in Project Costs claimed; and

14.2.3 demonstrate to the reasonable satisfaction of the Authority that:

(a) the Compensation Event was the direct cause of:

i the Estimated Change in Project Costs; and/or

ii any delay in achievement of Service Availability on or before the Planned Service Commencement Date or, (following the Planned
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Service Commencement Date but before the Longstop Date), any delay in the achievement of Service Availability; and/or

iii breach of the Contractor's obligations under this Agreement; and

(b) the Estimated Change in Project Costs, time lost, and/or relief from the obligations under this Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

14.3 Giving of Relief and Compensation

In the event that the Contractor has complied with its obligations under clause 14.2 (Procedure for Relief and Compensation), then:

14.3.1 in the case of a delay the Planned Service Commencement Date or, following the Planned Service Commencement Date, the Longstop Date, shall, be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay;

14.3.2 in the case of an additional cost being incurred or revenue (including Third Party Income) being lost by the Contractor:

(a) on or before the Service Commencement Date; or

(b) as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, in the case of Change in Revenue, without double counting, for revenue actually lost (clause 66.7 (Lost Third Party Income) shall be used for calculating lost Third Party Income) within twenty (20) Business Days of its receipt of a written demand by the Contractor supported by all relevant information;

14.3.3 in the case of a payment of compensation for the Estimated Change in Project Costs and, in the case of Change in Revenue, without double counting, for revenue actually lost that does not result in Capital Expenditure being incurred (clause 66.7 (Lost Third Party Income) shall be used for calculating lost Third Party Income) by the Contractor referred to in clause 14.3.2(b) (Giving of Relief and Compensation) but which reflects a change in the costs and/or without double counting, loss of revenue being incurred by the Contractor after the Service Commencement Date, the Authority shall compensate the Contractor in accordance with clause 14.6 (Method of Calculating Compensation) by an adjustment to the Unitary Charge in accordance with clause 66 (Financial Adjustments); and/or

14.3.4 the Authority shall give the Contractor such relief from its obligations under this Agreement as is reasonable for such a Compensation Event.
14.4 Late Provision of Notice or Information

In the event that information is provided after the dates referred to in clause 14.2 (Procedure for Relief and Compensation) then the Contractor shall not be entitled to any extension of time, compensation or relief from its obligations under this Agreement in respect of the period for which the relevant information is delayed.

14.5 Failure to Agree

If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Agreement, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under this clause 14 (Compensation Events), the Parties shall resolve the matter in accordance with clause 62 (Dispute Resolution).

14.6 Method of Calculating Compensation

Any payment of compensation referred to in clause 14.3 (Giving of Relief and Compensation) shall be calculated in accordance with clause 66 (Financial Adjustments).

15 Not used

16 Excusing Causes

16.1 If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Services, and provided that the effect of such Excusing Cause is claimed within thirty (30) Business Days of the date on which the Contractor becomes aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause then to the extent such failure or interference arises as a result of such Excusing Cause:

16.1.1 such failure by the Contractor to perform, and any poor performance of, any affected Service shall not constitute a breach of the provisions of this Agreement by the Contractor;

16.1.2 such interference shall not be taken account of in measuring the performance of the Services in accordance with clause 25 (Performance Monitoring) which shall be operated as though the relevant Services had been performed free from such adverse interference; and

16.1.3 any such failure to perform the Services shall be deemed not to have occurred,

so that the Contractor shall be entitled to payment under this Agreement as if there had been no such interference with the performance of the Services.

16.2 For the purposes of clause 16.1 (Excusing Causes), Excusing Cause means:

16.2.1 any breach of the Authority's obligations under this Agreement except where such obligation gives rise to a Compensation Event; or

16.2.2 the implementation of an Authority Change or a Qualifying Change in Law to the extent the same are implemented in accordance with agreed procedures.
16.2A Where a breach by the Authority gives rise to an Excusing Cause pursuant to clause 16.2.1 above, the Joint Project Board shall, in good faith, discuss and agree reasonable strategies for the mitigation of the effect of the Excusing Cause.

16.3 Insured Exposure

Without prejudice to clause 58 (Insurance), the Contractor shall not be entitled to any payment which would not have been due under this Agreement but for clause 16.1 (Excusing Causes) to the extent that the Contractor is, or should be able to, recover under any policy of insurance required to be maintained by the Contractor or any Contractor Party in accordance with this Agreement (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of an act or omission of the Contractor (or any Contractor Party), including, but not limited to, non-disclosure or under insurance) or any other policy of insurance which the Contractor has taken out and maintained.

16.4 Mitigation of an Excusing Cause

16.4.1 The Contractor shall take all reasonable steps to mitigate the consequences of an Excusing Cause on the Contractor's ability to perform its obligations under this Agreement. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to, and shall not receive, the relief specified in clause 16 (Excusing Causes).

16.4.2 For the avoidance of doubt, clause 16.2 shall not impose a general obligation on the Authority to take (or to procure that any Authority Party takes) steps to mitigate any Excusing Cause and shall apply (and be construed) solely for the purposes of establishing whether an Excusing Cause has occurred.

16.5 Late Provision of Information

In the event that information is provided after the date referred to in clause 16.1 above, then the Contractor shall not be entitled to any extension of time, compensation or relief from its obligations under this Agreement in respect of the period for which the information is delayed.

17 Protestor Action

17.1 The Contractor shall take such actions as are reasonable, proportionate and lawful to deal with Protestor Action and, where necessary, shall cooperate with the emergency services.

17.2 The Contractor shall use all reasonable endeavours to prevent Protestor Action affecting the Facility including, for the avoidance of doubt, providing appropriate security and security fencing, an appropriately manned weighbridge and providing reasonable additional security measures in the event that, and for so long as, there are reasonable grounds for believing that a higher risk of Protestor Action persists.

17.3 Notwithstanding the provisions of clause 17.2 (Protestor Action) above, in the event a Protestor Action arises at or around the Site or on the access road to the Site, the Contractor shall take such actions as are reasonable, proportionate and lawful to deal with Protestor Action and, where necessary, shall cooperate with the emergency services.
17.4 Save to the extent provided in clause 53 (Relief Events), the Contractor shall be responsible for the consequences of any delays or disruption consequent upon any such disruption.

18 CDM Regulations

18.1 Responsibility for Design

As between the Contractor and the Authority, the Contractor shall be entirely responsible for the safety of any design that forms part of the Works or the provision of the Services and for the adequacy, stability and safety of all site operations and methods of construction.

18.2 The Contractor as Client

In accordance with the CDM Regulations, the Authority, and the Contractor have elected that the Contractor shall be, and shall be treated as, the only client in respect of the Works and the Services pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Works, seek in any way to withdraw, terminate or derogate from such election.

18.3 Duties under CDM Regulations

The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties arising under the CDM Regulations in connection with the Works and the Services (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Planned Service Commencement Date, provide a certified copy of the final draft Health and Safety File (as defined in the CDM Regulations) for the Facility to the Authority and shall, within thirty (30) Business Days of issue of the final Take Over Test Certificate for the Facility, provide a certified copy of the full and complete Health and Safety File. The Contractor shall ensure that the Health and Safety File is revised as often as may be appropriate to incorporate any relevant new information in relation either to the Works or the Services during the Contract Period.

18.4 Authority to co-operate and provide information

Notwithstanding the election made under clause 18.2 (The Contractor as Client), the Authority shall continue to observe the duties that are, pursuant to Regulation 8 of the CDM Regulations, to remain with the Authority.

19 The Site

19.1 Access

If at any time the Contractor requires access to the Site or any interest in any land which does not form part of the Site or any additional rights beyond those which the Contractor has in relation to any part of the Site, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Contractor.

19.2 Site Conditions

19.2.1 Subject to the other terms of this Agreement (including the provisions of Schedule 28 (Environmental Provisions)), the Site Conditions shall be the
sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Agreement) the Contractor shall be deemed to have:

(a) carried out a ground physical and geophysical investigation and to have inspected and examined the Site and their surroundings and (where applicable) any existing structures or works on, over or under the Site;

(b) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Site, the load-bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of the Works;

(c) satisfied itself as to the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Site);

(d) satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority) with access to or use of, or rights in respect of, the Site with particular regard to the owners of any land adjacent to the Site; and

(e) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties.

19.2.2 Subject to the other terms of this Agreement (including the provisions of Schedule 28 [Environmental Provisions]), the Contractor accepts full responsibility for all matters referred to in clause 19.2 (Site Conditions) and the Contractor shall be responsible for, and hold the Authority harmless from, cleaning up or otherwise dealing with any Contamination at the Site (whether initially arising on site or off-site) in accordance with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

19.3 Consents and Planning Approval

Except as provided for in Schedule 22 (Planning), the Contractor shall at its own expense obtain, comply with, and maintain all Necessary Consents which may be required for the performance of the Project.

19.4 No Warranty

Except as otherwise expressly provided in this Agreement, the Contractor shall take the Site in the state and condition in all respects as at the Effective Date and nothing in this Agreement or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Site or any part thereof for the Works or for any other purpose.
19.5 Third Party Rights

The Contractor shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Site, and the Contractor shall ensure that the Works are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.

19.6 Not used

20 Monitoring and Inspection

20.1 Right of Inspection

The Contractor shall procure that the Authority or any representative or adviser of the Authority shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Works) to enter the Site in order to be updated on the progress the Works and/or the Services.

20.2 Health and Safety Requirements

The Authority and its representative shall at all times comply with all relevant health and safety procedures applicable to the Site and communicated to the Authority in advance.

20.3 Supply of Information

The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting any of the Site pursuant to clause 20.1 (Right of Inspection) such information in respect of the Works as may reasonably be required.

20A Commissioning

20A.1 The Contractor shall, not less than four (4) months before the start of commissioning of the Facility, provide the Authority with a Commissioning Plan (developed from the Outline Commissioning Plan in accordance with the methodology set out in Part 2 of Schedule 2).

20A.2 The Contractor shall give sufficient detail in the Commissioning Plan to satisfy the Authority (acting reasonably) that the sequence and duration of the proposed activities are logical, realistic and safe.

20A.3 The Commissioning Plan shall include details of the levels, timings and periods of deliveries of Contract Waste necessary for commissioning and testing of the Facility.

20B Commissioning of the Facility

20B.1 The Contractor shall carry out commissioning of the Facility in accordance with the Commissioning Plan.

20B.2 The Contractor shall notify the Authority in writing not less than twenty (20) Business Days prior to the anticipated date upon which the Contractor intends to commence commissioning of the Facility.

20B.3 Provided that:

20B.3.1 the Contractor has complied with its obligations under clause 20A; and
the Independent Tester has issued the first Readiness Test Certificate in respect of the Facility,

the Authority shall procure the delivery of the Agreed Commissioning Volumes for the Commissioning Period and shall use reasonable endeavours to procure the delivery of the Commissioning Volume Balance, in each case in accordance with the timings and periods for delivery set out in the Commissioning Plan. The Contractor shall keep the Authority informed as to the likely need for a further finite period of delivery of Contract Waste to the Facility to allow for further testing, provided that the Authority shall not be obliged to provide Contract Waste beyond the Agreed Commissioning Volumes and the Commissioning Volume Balance.

The Contractor shall be responsible for the handling and disposal of any Contract Waste delivered for the purposes of commissioning in accordance with the Commissioning Plan.

Where the Authority (having used reasonable endeavours) is unable to procure the Commissioning Volume Balance, the Contractor shall use its reasonable endeavours to secure such volumes of additional waste from third parties and/or manage waste provided to the Contractor by the Authority so as to ensure appropriate amounts of waste are available to enable testing of the Facility in accordance with the Facility Take Over Tests.

Where the Authority (having used its reasonable endeavours) is unable to procure the Commissioning Volume Balance and/or the Contractor (having used reasonable endeavours) is unable to secure the required volumes of additional waste from third parties to enable testing of the Facility at maximum capacity and throughput in accordance with the Facility Take Over Tests, the Parties agree that:

(a) the Facility Take Over Tests may be amended to enable the Independent Tester to issue the relevant Take Over Test Certificate(s) on the basis of the levels of waste actually available during the Commissioning Period;

(b) the Contractor shall prepare and issue the Revised Commissioning Plan to the Authority based on the Independent Tester's recommendations; and

(c) the Longstop Date and the Planned Service Commencement Date shall be extended by a period equivalent to the shorter of:

(i) six calendar months; and

(ii) the duration of the commissioning programme as set out in the Revised Commissioning Plan.

Payment During Commissioning

The provisions of paragraph 2 of Schedule 6 (Payment Mechanism) shall apply in relation to payment for Contract Waste Accepted during commissioning of the Facility.

Notification of Service Availability

Tests

Schedule 5 (Testing Regime) and the Independent Tester's Appointment in Part 1 of Schedule 15 (Project Documents) set out the two (2) stage certification process to be undertaken by the Independent Tester as follows:
21.2 Inspection of the Facility

21.2.1 The Contractor shall provide to the Authority and the Independent Tester not less than seven (7) Business Days' notice of the anticipated date upon which the Contractor considers that a Facility will be in a condition to proceed with the Tests and the Contractor shall keep the Authority informed of any alterations to the proposed date and each Party will act reasonably in relation to any delays to the timetable notified.

21.2.2 The Contractor shall under the supervision of the Independent Tester undertake the Tests in accordance with the provisions of Schedule 5 (Testing Regime).

21.2.3 The Independent Tester and the Authority shall be entitled to witness the performance of the Tests.

21.3 Independent Tester

The Parties shall on or prior to Financial Close in compliance with all Legislation relating to procurement which is applicable to either Party appoint (the Parties' agreement not to be unreasonably withheld or delayed by either Party) a suitably qualified and experienced consultant to act as the Independent Tester on the terms of the Independent Tester's Appointment. In the event the Parties fail to agree the identity of the Independent Tester two (2) months prior to anticipated date of Financial Close, then such disagreement shall be referred for resolution in accordance with the Dispute Resolution Procedure.

21.4 Issue of Take Over Test Certificate or Notice of Non Completion

21.4.1 If at any time after commencement of the Tests the Contractor anticipates that the relevant Test is unlikely to be satisfactorily passed, it may notify the Independent Tester and the Authority of the same.

21.4.2 If a notice is served pursuant to clause 21.4.1, the relevant Test shall terminate and the Contractor shall repeat the steps set out in clauses 21.1 and 21.2 until the relevant Test Certificate can be issued pursuant to clause 21.4.4(a) (save that for the purpose of repeating the step set out in clause 21.2.1, the words "two (2)" shall replace the words "seven (7)" and the Contractor shall provide not less than two (2) Business Days' notice under clause 21.2.1).

21.4.3 When the Contractor is of the opinion that the relevant Tests have been satisfactorily passed it shall forthwith promptly notify the Independent Tester and the Authority of the same.
21.4.4 The Parties shall procure in accordance with the Independent Tester’s Appointment that the Independent Tester shall, within the period of five (5) Business Days of its receipt of the Contractor’s notice given under clause 21.4.3 either:

(a) issue a Readiness Test Certificate and/or Take Over Test Certificate (as appropriate) stating the date upon which the relevant Tests were satisfactorily passed; or

(b) notify the Authority and the Contractor that the relevant Test or Tests have not been satisfactorily passed (a Notice of Non-Completion) providing a report setting out the respects in which it considers that such Tests have not been passed.

21.4.5 If the Independent Tester fails to issue the relevant Test Certificate in accordance with clause 21.4.4(a) or if there are certain aspects of the Independent Tester’s report provided pursuant to clause 21.4.4(b) (as the case may be) which the relevant Party wishes to challenge, the relevant Party shall be entitled to refer the matter for determination by an Adjudicator under clause 18 of the Independent Tester’s Appointment as if it constituted a dispute.

21.4.6 Without prejudice to the right of either Party to make a claim under the Independent Tester’s Appointment, the determination of the Independent Tester to issue the relevant Test Certificate shall be final, binding and enforceable upon the Parties other than in the case of manifest error, bias, malicious act or fraud and shall conclusively determine the Service Commencement Date.

21.4.7 If a Notice of Non-Completion is served pursuant to clause 21.4.4 the Contractor shall repeat the steps set out in clauses 21.1 and 21.2 until all outstanding matters have been attended to and the relevant Test Certificate can be issued pursuant to clause 21.4.4(a).

21.5 **Effect of Issue of Take Over Test Certificate**

The Service Commencement Date shall be the date on which the last Take Over Test Certificate is issued or in the event of referral for determination under the Dispute Resolution Procedure pursuant to clause 21.4.5 the date upon which it is determined that the last Facility passed the Facility Take Over Tests.

21.6 **Snagging Items**

21.6.1 Where the Contractor reasonably considers that Snagging Items will exist in respect of a Facility on the date upon which the associated Facility Take Over Tests are scheduled to commence, the Contractor shall procure that the Works and Operating Sub-Contractor (and not any Construction Contractor or any of their representatives, agents or subcontractors) prepares an initial list of the Snagging Items for such Facility. The Contractor shall provide such initial list of Snagging Items to the Independent Tester (copied to the Authority’s Representative) no later than the date which is five (5) Business Days prior to commencement of the relevant Facility Take Over Tests for review, development and/or approval by the Independent Tester.
21.6.2 As part of the Facility Take Over Tests for the relevant Facility, the Independent Tester shall review the Snagging Items described in the initial list provided by the Contractor pursuant to clause 21.6.1 and shall record any other issues which it considers to be Snagging Items in respect of the relevant Facility. In the event that the Contractor has failed to provide an initial list of Snagging Items in respect of the relevant Facility prior to commencement of the relevant Facility Take Over Tests and the Independent Tester considers that Snagging Items exist in respect of such Facility, the Independent Tester may instruct the Contractor (by submitting a written notice to the Contractor's Representative, copied to the Authority's Representative) to provide a list of Snagging Items for review, development and/or approval by the Independent Tester. The Contractor shall comply with any such instruction from the Independent Tester as soon as reasonably practicable and, in any event, within five (5) Business Days following receipt of the Independent Tester's instruction.

21.6.3 For the avoidance of doubt, the existence of Snagging Items shall not prevent the issue of the relevant Test Certificate and rectification of the Snagging Items shall be undertaken in accordance with this clause 21.6 (Snagging Items).

21.6.4 Where (in accordance with clause 21.6.1 or clause 21.6.2) the Contractor has provided an initial list of Snagging Items in respect of a Facility, the Independent Tester shall, at the same time as it issues the relevant Test Certificate or as soon as reasonably practicable thereafter, deliver to the Contractor and the Authority the Snagging List. Within five (5) Business Days of receipt from the Independent Tester of the Snagging List the Contractor shall provide to the Authority and the Independent Tester a reasonable programme for making good each Snagging Item set out in the Snagging List provided that such programme shall require that each Snagging Item shall be made good within twenty (20) Business Days of the date of provision of that programme or within such time as is reasonably practicable. The Parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under clause 62 (Dispute Resolution). Each programme agreed or determined in accordance with this clause 21.6 (Snagging Items) shall be known as the "Snagging Programme".

21.6.5 The Contractor shall procure that each Snagging Item is rectified in accordance with the Snagging Programme and to the satisfaction of the Independent Tester. If any Snagging Item has not been rectified by the date set out in the Snagging Programme then the Authority shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Contractor as a debt.
PART 4 - The Services

22 Principal Obligations

22.1 Standard of Performance

22.1.1 The Contractor will (at all times) ensure that the Services comply with, and meet, all the requirements of this Agreement, Schedule 1 (Authority's Requirements), Schedule 2 (Contractor's Proposals) Good Industry Practice, and Legislation.

22.1.2 The Contractor shall ensure, and shall procure that any Contractor Party shall ensure, that the Services are carried out in compliance with Schedule 9 (Authority's Policies).

22.1.3 The Contractor will at all times ensure that the Services are performed by appropriately qualified and trained personnel.

22.2 Changes to Schedule 2 (Contractor's Proposals)

22.2.1 The Contractor shall be permitted to propose changes or amendments to Schedule 2 (Contractor's Proposals) and any such proposed change or amendment shall be processed and (where appropriate) agreed and implemented in accordance with the instructions set out at the beginning of each of Part 1 and Part 2 of Schedule 2 (Contractor's Proposals).

22.3 NOT USED

22.4 NOT USED

23 Condition of the Facility

23.1 Maintenance

The Contractor shall ensure on a continuing basis that at all times its maintenance and operating procedures are and remain sufficient to ensure that:

23.1.1 the Facilities are Available as required by this Agreement, and Schedule 1 (Authority's Requirements);

23.1.2 the Facilities are kept in good order (subject to fair wear and tear) in accordance with this Agreement, Schedule 1 (Authority's Requirements) and Schedule 2 (Contractor's Proposals);

23.1.3 it can maintain the design intention of the Facilities to achieve their full working life as set out in this Agreement, Schedule 1 (Authority's Requirements) and Schedule 2 (Contractor's Proposals) for the duration of the Contract Period;

23.1.4 the Contractor can deliver the Services in accordance with this Agreement and Schedule 1 (Authority's Requirements); and

23.1.5 the Facilities are handed back to the Authority on the Expiry Date in a condition complying with the Handback Requirements.
23.2 Not used.

23.3 Programmed Maintenance

The Contractor shall undertake routine repair and maintenance of the Facility in accordance with the Schedule of Programmed Maintenance.

23.4 Schedule of Programmed Maintenance

23.4.1 Not later than two (2) months prior to the commencement of each subsequent Contract Year the Contractor shall provide a Schedule of Programmed Maintenance for that Contract Year to the Joint Project Board for review and agreement.

23.4.2 Each Schedule of Programmed Maintenance shall contain the following information (the Programmed Maintenance Information):

(a) details of the proposed start and end dates for each period of Programmed Maintenance, the works to be carried out and the proposed hours of work for the carrying out of the maintenance; and

(b) details of any effect of the Programmed Maintenance on the delivery of any of the Services.

23.4.3 Not later than twenty (20) Business Days prior to the end of any Contract Year, the Contractor may revise the Schedule of Programmed Maintenance for the relevant Contract Year. Such revised Schedule of Programmed Maintenance shall be deemed to be the Schedule of Programmed Maintenance in respect of that Contract Year.

23.4.4 The Contractor shall not carry out any Programmed Maintenance save in accordance with a Schedule of Programmed Maintenance.

24 Market Testing

The Parties agree that the provisions of Schedule 17 (Market Testing) shall apply to the Market Tested Services.

25 Performance Monitoring

The Contractor shall monitor its performance in the delivery of the Services in accordance with the provisions of Schedule 6 (Payment Mechanism) and Schedule 4 (Performance Framework).

26 Other Service Provisions

26A Acceptance of Contract Waste

26A.1 Obligation to Accept

26A.1.1 The Contractor shall Accept in accordance with the Authority's Requirements all Contract Waste delivered to it by or under the direction of the Authority subject at all times to the Waste Acceptance Protocol.
26A.2  Guaranteed Minimum Tonnage

26A.2.1  Without prejudice to clause 26A.1 or cause 26A.3, where the tonnage of Contract Waste delivered falls below the Guaranteed Minimum Tonnage:

(a)  the Guaranteed Minimum Tonnage shall apply in calculating the Monthly Unadjusted Unitary Charge as provided in paragraph 5 of Schedule 6 (Payment Mechanism);
the provisions of paragraph 18 (Third Party Income Compensation Payment) of Schedule 6 (Payment Mechanism) shall apply in calculating any Third Party Income Compensation Payment;

(c) the Authority shall not knowingly deliver and shall not direct WCAs to deliver waste which would otherwise be Contract Waste to any person other than the Contractor where the delivery or direction of such delivery of waste to such person is reasonably likely:

(i) to render the remaining volume of Contract Waste which is delivered to the Facility unsuitable for treatment at the Facility; and/or

(ii) to prevent the Contractor from complying with its obligations under the Agreement,

and the Authority further agrees that in the event of a breach of clause 26A.2.1(c) the provisions of clause 16 (Excusing Causes) and paragraphs 13.4, 13.5 and (if applicable) 18 of the Payment Mechanism shall apply.

26A.3 Additional Waste

26A.3.1 Where pursuant to clause 26A.1.4 Additional Waste is Accepted by the Contractor the Authority shall pay the Contractor for the management of such Additional Waste in accordance with (as applicable) paragraphs 6 and 12 of Schedule 6 (Payment Mechanism).

26A.3.2 In all circumstances where Additional Waste is Accepted by the Contractor any Deductions or other penalties arising in relation to the treatment and/or diversion of such waste from landfill shall not apply.

26A.4 Authority's Forecast Level of Contract Waste and Supplementary Contract Waste

26A.4.1 The Authority shall use its reasonable endeavours to provide no later than six (6) months before each Contract Year a fair and reasonable written estimate of the tonnage of Contract Waste which the Authority anticipates will be made available for Acceptance over the following Contract Year (the Authority's Forecast Level of Contract Waste). Any dispute in relation to whether the Authority's Forecast Level of Contract Waste is a fair and reasonable estimate of such tonnage shall be referred for determination in accordance with the Dispute Resolution Procedure. Until the Authority provides the Authority's Forecast Level of Contract Waste (or until any dispute in relation to the Authority's Forecast Level of Contract Waste is agreed or otherwise determined in accordance with the Dispute Resolution Procedure), the Authority's Forecast Level of Contract Waste for the immediately preceding Contract Year shall continue to apply.

26A.4.2 In the period from the Effective Date to the Service Commencement Date the Authority shall not later than 30 April in each calendar year provide the Contractor in writing the Authority's Forecast Level of Contract Waste for the calendar year commencing on the immediately preceding 1 April for record and information purposes only.
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26A.4.3 Notwithstanding the Authority’s notice under clause 26A.4.1 above, the Authority may from time to time notify the Contractor of the Authority’s reasonable estimates of the volumes of Contract Waste to be delivered by the Authority to the Contractor. Nothing in such notice shall operate to vary or supplement the Authority’s Forecast Level of Contract Waste notice issued under clause 26A.4.1.

26A.4.4 Without prejudice to clause 26A.1, the Authority’s Forecast Level of Contract Waste shall be used (inter alia) for calculating:

(a) the Monthly Tonnage Adjustment

(b) the Monthly Landfill Payment; and

(c) the Unavailability Deduction.

26A.4.5 Where the Authority wishes to deliver (or procure the delivery of) Supplementary Contract Waste, it shall provide the Contractor with a written notice specifying the proposed tonnage of Supplementary Contract Waste and the timings of providing such Supplementary Contract Waste (a Supplementary Contract Waste Notice). The Authority acknowledges and agrees that, pursuant to clause 26A.1.7, the Contractor shall not be required to treat at the Facility in any Contract Year any Supplementary Contract Waste above the Contract Waste Threshold which applies to such Contract Year.

26A.4.6 As soon as reasonably practicable and in any event within five (5) Business Days following receipt of a Supplementary Contract Waste Notice, the Contractor shall notify the Authority of the extent of the Spare Capacity and TPW Committed Capacity in respect of the period during which the Authority proposes to deliver (or procure the delivery of) Supplementary Contract Waste (an SCW Capacity Notice).

26A.4.7 Subject to clauses 26A.1.7 and 26A.4.8, from the date of receipt of a Supplementary Contract Waste Notice, the Contractor shall allocate any Spare Capacity at the Facility to the Authority which is needed to meet the requirements of the Authority set out in the Supplementary Contract Waste Notice when it becomes available and shall not enter into new or extend existing Third Party Waste Contracts in respect of such Spare Capacity.

26A.4.8 Subject to clause 26A.4.9, neither the Contractor nor the Waste and Operating Sub-Contractor shall be obliged to terminate any existing Third Party Waste Contract or reduce any TPW Committed Capacity specified in an SCW Capacity Notice unless the Authority has agreed to reimburse the Contractor for any costs payable to the relevant Third Party Waste customer under the associated Third Party Waste Contract as a result of such termination or reduction in TPW Committed Capacity (TPW Breakage Costs). Accordingly, where the Authority wishes to utilise TPW Committed Capacity, the Authority shall supply a written notice to the Contractor confirming the volume of TPW Committed Capacity which the Authority wishes to utilise and the associated timings. As soon as reasonably practicable and in any event within five (5) Business Days following receipt of such a notice from the Authority, the Contractor shall provide the Authority with a further written notice confirming the TPW Breakage Costs associated with making the relevant volume of TPW
Committed Capacity available to the Authority. Where the Authority agrees that it will compensate for the associated TPW Breakage Costs, the Authority shall notify the Contractor in writing and, as soon as reasonably practicable and in any event within five (5) Business Days thereafter, the Contractor shall (at its discretion) either terminate the relevant Third Party Waste Contract or reduce the relevant TPW Committed Capacity. Following termination of the relevant Third Party Waste Contract or reduction in the relevant TPW Committed Capacity:

(a) the volume requested by the Authority shall become TPW Cancelled Capacity which shall be allocated to the Authority in the manner agreed by the parties (both acting reasonably);

(b) the Contractor shall not enter into new or extend existing Third Party Waste Contracts in respect of such TPW Cancelled Capacity; and

(c) the Authority shall pay the TPW Breakage Costs to the Contractor within twenty (20) Business Days following receipt of a tax invoice in respect of the same.

26A.4.9 The Contractor shall use reasonable endeavours (without being required to incur material expenditure) to minimise the quantum of any TPW Breakage Costs payable by the Authority pursuant to clause 26A.4.8 provided always that where such TPW Breakage Costs are prescribed in such Third Party Waste Contracts, the Authority acknowledges that such duty to minimise shall not apply.

26A.4.10 Where the Contractor allocates:

(a) Spare Capacity to the Authority pursuant to clause 26A.4.7; and/or

(b) TPW Cancelled Capacity to the Authority pursuant to clause 26A.4.8.

the Contractor shall treat (up to the Contract Waste Threshold) any Supplementary Contract Waste (except Ad Hoc Waste) that is delivered to it by Authorised Users in accordance with the Authority's Requirements and the Contractor's Proposals in priority to Third Party Waste, provided that such Supplementary Contract Waste is delivered in accordance with the capacity and timing constraints associated with the Spare Capacity and/or TPW Cancelled Capacity (as appropriate).

26A.4.11 Where pursuant to clause 26A.4.10 Supplementary Contract Waste is accepted by the Contractor the Authority shall pay the Contractor for the treatment of such Supplementary Contract Waste subject to and in accordance with the provisions of Schedule 6 (Payment Mechanism).

26A.4.12 Where Supplementary Contract Waste above the Contract Waste Threshold is accepted by the Contractor, the Contractor shall not be obliged to treat such Waste (which shall constitute Over Threshold Contract Waste for the purposes of Schedule 6 (Payment Mechanism)).
26B **OWNERSHIP OF WASTE**

As between the Contractor and the Authority all Contract Waste received by or in the possession of or accepted by the Contractor or any of its sub-contractors (including without limitation the Works and Operating Sub-Contractor and its sub-contractors) shall thereupon become and be deemed to be acquired by and in the ownership of and at the risk of the Contractor who shall take full responsibility for it and shall handle and dispose of such Contract Waste in accordance with the terms of this Agreement.

26C **PRIORITY OF WASTE AND SUBSTITUTE WASTE**

26C.1 **Priority of Waste**

Subject to clauses 26.A.1 and 26.A.4, in all circumstances throughout the Commissioning Period and the Services Period the Contractor shall accept, handle and process Contract Waste in priority to Third Party Waste up to the lower of the Maximum Tonnage or the Contract Waste Threshold.

26C.2 **Substitute Waste**

26C.2.1 By no later than the date which shall be sixty (60) Business Days before the Planned Service Commencement Date the Contractor shall submit to the Authority the Substitute Waste Plan for review under the Review Procedure.

26C.2.2 The Contractor shall submit to the Authority for review under the Review Procedure within ten (10) Business Days of the beginning of each Contract Year following the Service Commencement Date an update of the Substitute Waste Plan to reflect the Contractor's proposals for sources of Substitute Waste.

26C.2.3 Where the Authority considers Contract Waste in the relevant Contract Year will fall below the Guaranteed Minimum Tonnage of Contract Waste for the relevant year or in the reasonable opinion of the Authority is likely to do so then the Authority shall at any time thereafter be entitled to notify the Contractor in writing (Substitute Waste Notice):

(a) that it considers Contract Waste in the relevant Contract Year will fall below the Guaranteed Minimum Tonnage for such Contract Year;

(b) the amount by which it considers there will be shortfall between the amount of Contract Waste being provided and the Guaranteed Minimum Tonnage (Contract Waste Shortfall); and

(c) the period during which the Contract Waste Shortfall shall subsist (Shortfall Period).

26C.2.4 Where the Contractor receives a Substitute Waste Notice the Contractor shall implement the Substitute Waste Plan and use reasonable endeavours to secure Substitute Waste for the Contract Waste Shortfall for the Shortfall Period at a price which is demonstrated to the Authority's satisfaction (acting reasonably) as being reasonably obtainable on market and arm's length terms for contracts of the nature and tenor proposed. For the avoidance of doubt, such waste (if any) accepted by the Contractor at the Facility shall not be deemed to be Substitute Waste until Third Party Waste has been delivered in
an amount in excess of the difference between the Guaranteed Minimum Tonnage and the tonnages assumed in the Base Case. For the purposes of this clause 26C.2.4, “reasonable endeavours” shall mean the Contractor (and the Works and Operating Sub-Contractor) shall act as a prudent commercial waste operator (in accordance with the principles, inter alia, of the Substitute Waste Plan) would act in order to secure waste for its own facility having the capability of the Facility.

26C.2.5 The provisions of paragraph 13 of Schedule 6 (Payment Mechanism) shall apply in relation to adjustments to the Unitary Charge in relation to Substitute Waste.

26D AD HOC WASTE

26D.1 In the event that the Authority delivers Ad Hoc Waste to the Contractor the provisions of Schedule 23 (Waste Acceptance Protocol) shall apply.

26D.2 Payment to the Contractor in respect of Ad Hoc Waste shall be calculated in accordance with paragraph 9 of Schedule 6 (Payment Mechanism).

26D.3 In all circumstances where Ad Hoc Waste is Accepted by the Contractor any Deductions or other penalties arising in relation to the treatment and/or diversion of such waste from landfill shall not apply.

26.1 Processing of Third Party Waste

The Contractor shall be entitled to accept, handle and process Third Party Waste at the Facility subject to the following provisions:

26.1.1 that the Contractor accepts, handles and processes such Third Party Waste in accordance with all Legislation, Good Industry Practice and using all reasonable skill and care;

26.1.2 that, subject to the provisions of clause 26A.4, the acceptance, handling and processing of such Third Party Waste will not prevent the Contractor from Accepting, handling and/or processing Contract Waste (up to the lower of the Maximum Tonnage or the Contract Waste Threshold) pursuant to and in accordance with the requirements of this Agreement; and

26.1.3 that any such Third Party Waste shall be of a nature which is compatible with the Facility and is such that it will not detrimentally affect the Contractor’s ability to achieve the KPIs.

26.2 Authorised Vehicles

The Authority shall propose a list of Authorised Vehicles to the Contractor’s Representative at least thirty (30) Business Days prior to the start of the Commissioning Period. The Authority’s Representative shall inform the Contractor’s Representative of any change to the list of Authorised Vehicles and upon so being informed of any addition to that list, the vehicle shall become an Authorised Vehicle for the purposes of this Agreement; any vehicle removed from the said list shall cease to be an Authorised Vehicle.
26.3 Contingency Plan

No later than three (3) months prior to the scheduled date of commencement of the Commissioning Period, the Contractor shall draw up for approval by the Authority a written contingency plan setting out all existing, implemented and proposed contingency arrangements in relation to the Services from the Service Commencement Date up to the Expiry Date (the Contingency Plan). The Contingency Plan shall be agreed with the Authority in accordance with Schedule 8 (Review Procedure). Once the Contingency Plan has been agreed by the Authority, it shall be annexed to the Contractor’s Proposals. The Contractor shall regularly review the Contingency Plan in accordance with the Contractor’s Proposals and propose amendments to it as appropriate and/or necessary to ensure that the Contingency Plan is capable of being operated to achieve the Authority’s Requirements at any time up to the Expiry Date. Any proposed amendments shall first be agreed with the Authority using Schedule 8 (Review Procedure). Copies of the Contingency Plan including any amendments and previous versions shall be provided to the Authority upon reasonable request.

26.4 Mobilisation Plan

Prior to Financial Close, the Contractor shall draw up for approval by the Authority a written mobilisation plan setting out all existing, implemented and proposed mobilisation arrangements in relation to the Works and the Services from Financial Close up to the Service Commencement Date (the Mobilisation Plan). The Mobilisation Plan shall be agreed with the Authority in accordance with Schedule 8 (Review Procedure). The Contractor shall regularly review the Mobilisation Plan and propose amendments to it as appropriate and/or necessary to ensure that the Mobilisation Plan is capable of being operated to achieve the Authority’s Requirements at any time up to the Service Commencement Date. Any proposed amendments shall first be agreed with the Authority using Schedule 8 (Review Procedure). Copies of the Mobilisation Plan including any amendments and previous versions shall be provided to the Authority upon reasonable request.

26.5 Expiry Plan

The Contractor shall draw up for approval by the Authority a written expiry plan setting out all arrangements for handback of the Facility at the Expiry Date and in accordance with Contractor’s Proposals (the Expiry Plan). The Expiry Plan shall be agreed with the Authority in accordance with Schedule 8 (Review Procedure). The Contractor shall regularly review the Expiry Plan and propose amendments to it as appropriate and/or necessary to ensure that the Authority’s Requirements are achieved. Any proposed amendments shall first be agreed with the Authority using Schedule 8 (Review Procedure). Copies of the Expiry Plan including any amendments and previous versions shall be provided to the Authority upon reasonable request.

26.6 Handback Requirements

The Contractor shall maintain the Facility so that at the Expiry Date:

26.6.1 the Contractor shall hand back the Facility in a fully operable condition in accordance with the provisions of Part 1 of Schedule 2 (Contractor’s Proposals) (subject to fair wear and tear);
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26.6.2 without prejudice to clause 26.6.1, the Facility shall also be in such a condition that it can be fully operated in accordance with the provisions of Part 1 of Schedule 2 (Contractor's Proposals) (subject to fair wear and tear) for an additional five (5) years after the Expiry Date with a normal maintenance regime;

26.6.3 spare parts included in the Final Equipment List shall be provided by the Contractor (the Handback Requirements); and

26.6.4 the Facility shall be in a condition which is Environmentally Acceptable.

26.7 Aftercare Plan

Not later than twelve (12) months prior to the Expiry Date or the end of any extension to the Service Period agreed or determined in accordance with clause 3.2 (Extension of the Service Period), the Contractor shall draw up for approval by the Authority a written aftercare plan setting out all arrangements for dismantling and aftercare of the Facility (including an estimate of associated costs) following its closure (the Aftercare Plan). The Aftercare Plan shall be agreed with the Authority in accordance with Schedule 8 (Review Procedure). The Contractor shall regularly review the Aftercare Plan and propose amendments to it as appropriate and/or necessary to ensure that the Authority's Requirements are achieved and the aftercare complies with Good Industry Practice, Guidance and Legislation. Any proposed amendments shall first be agreed with the Authority using Schedule 8 (Review Procedure). Copies of the Aftercare Plan including any amendments and previous versions shall be provided to the Authority upon reasonable request.

26.8 Health, Safety and Welfare Plan

Prior to the Commencement of Works at the Site, the Contractor shall draw up for approval by the Authority a health, safety and welfare plan dealing with all aspects of health, safety and welfare (including but not limited to management systems, plans, standards, appointments, risk assessments and training) and in accordance with the Contractor's Proposals in respect of the Works and the Services from Financial Close to the Expiry Date (the Health, Safety and Welfare Plan). The Health, Safety and Welfare Plan shall be agreed with the Authority in accordance with Schedule 8 (Review Procedure). The Contractor shall regularly review the Health, Safety and Welfare Plan and propose amendments to it as appropriate and/or necessary to ensure that the Health, Safety and Welfare Plan is in accordance with and meets all the requirements set out in Schedule 1 (Authority's Requirements), proposals set out in Schedule 2 (Contractor's Proposals), Good Industry Practice and Legislation. Any proposed amendments shall first be agreed with the Authority using Schedule 8 (Review Procedure). Copies of the Health, Safety and Welfare Plan including any amendments and previous versions shall be provided to the Authority upon reasonable request.

26.9 Equality Impact Assessment

Following Financial Close, the Contractor shall from time to time carry out equality impact assessments (Equality Impact Assessment) to assess the extent to which the delivery of the Services has regard to the matters mentioned in the Equality Act 2010 (Equality Matters). Following any Equality Impact Assessment, the Contractor shall take any necessary action in order ensure due regard is had to the Equality Matters.
TUPE and Employees

27.1 Relevant Transfers

27.1.1 The Authority warrants that there are no employees who will transfer to the Contractor or any Sub-Contractor pursuant to TUPE on or around the Service Transfer Date. The Authority shall indemnify and keep indemnified the Contractor from any Direct Losses suffered by the Contractor or any Sub-Contractor arising out of any allegation or claim by an employee or former employee of the Authority or sub-contractor of the Authority (including any interim Contractor) or finding by a court or tribunal that any employee or employee liability transferred to the Contractor or any Sub-Contractor pursuant to TUPE as a result of this Agreement.

27.1.2 The Authority and the Contractor agree that where the identity of a provider of any service which constitutes one of the Services is changed that change of identity shall constitute a Relevant Transfer and the contracts of employment (together with any collective agreement) of any affected employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider. On any such occasion (other than on expiry or termination of this Agreement) the Contractor shall procure that the former and the new Sub-Contractor shall both comply with their obligations under TUPE.

27.2 Termination related Transfer

27.2.1 The Contractor shall indemnify and keep indemnified the Authority, and at the Authority’s request each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Agreement (a Future Service Provider) against:

(a) all Direct Losses incurred by the Authority or any Future Service Provider in connection with any claim or demand against the Authority or any Future Service Provider by (i) any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services or (ii) any trade union or staff association or employee representative in respect of any such person, in either case where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor after the Service Transfer Date and prior to the earlier of the Termination Date or the Expiry Date; and

(b) all Direct Losses incurred by the Authority or any Future Service Provider in connection with any claim by any Relevant Employee, trade union or staff association or employee representative arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date.
27.3 Retendering Information

27.3.1 The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) months immediately preceding the expiry of this Agreement or following the service of a notice under clauses 37 (Termination of this Agreement) to 41 (Termination on Force Majeure) or as a consequence of the Authority notifying the Contractor of its intention to retender this Agreement:

(a) on receiving a written request from the Authority provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services (the Assigned Employees) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other material matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Sub-Contractor as the case may be until immediately before the Termination Date, would be Transferring Employees (the Retendering Information);

(b) provide the Retendering Information promptly and at no cost to the Authority;

(c) notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;

(d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);

(e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed); and

(f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

27.3.2 The Contractor shall indemnify and shall keep indemnified in full the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor or Sub-Contractor failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity
shall not apply to the extent that such information was originally provided to the Contractor by the Authority and was materially inaccurate or incomplete when originally provided.

27.3.3 The Authority agrees that it will not and will procure that any Future Service Provider will not (in respect of the expiry or termination of this Agreement) bring any claim against the Contractor relating to Regulations 11 and/or 12 of TUPE.

27.4 Termination of Agreement

27.4.1 On the expiry or earlier termination of this Agreement, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the law at the date of expiry or termination as the case may be and this clause is without prejudice to such determination.

27.4.2 For the purposes of this clause 27.4 Transferring Employees shall mean those employees whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or earlier termination of this Agreement for whatever reason (such date being termed the Return Date), the provisions of this clause 27.4 will apply:

(a) the Contractor shall or shall procure that all wages, salaries and other benefits of the Transferring Employees and other employees or former employees of the Contractor or the Sub-Contractors (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Contractor or Sub-Contractors up to the Return Date are satisfied;

(b) the Authority shall ensure or shall procure that all wages, salaries and other benefits of the Transferring Employees (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees on and after the Return Date are satisfied;

(c) without prejudice to clause 27.4.2(a), the Contractor shall:

i remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Contractor’s or Sub-Contractor’s employees (other than the Transferring Employees) on or after the time of expiry or termination of this Agreement and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Contractor’s or Sub-Contractor’s employees who do not constitute the Transferring Employees; and
ii in respect of those employees who constitute Transferring Employees the Contractor shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Transferring Employees in respect of the period after the Effective Date but on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) where such claim arises out of any act, fault or omission of the Contractor and/or any Sub-Contractor including but not limited to any failure by the Contractor or any Sub-Contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider.

27.4.3 The Authority shall be entitled to assign the benefit of the indemnities set out in clause 27.4.2 to any Future Service Provider.

27.4.4 The Authority shall indemnify the Contractor (for itself and for the benefit of each relevant Sub-Contractor) in respect of those employees who constitute Transferring Employees against all Direct Losses incurred by the Contractor or any relevant Sub-Contractor in connection with or as a result of any failure by the Authority or any Future Service Provider to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact so apply save to the extent that any such failure arises as a result of any act or omission of the Contractor or any relevant Sub-Contractor.

27.4.5 The Authority shall indemnify the Contractor in full from and against all Direct Losses and Indirect Losses which the Contractor or any Sub-Contractor incurs arising from:

(a) any act or omission of the Authority in relation to the Relevant Employees; or

(b) any representations made by the Authority or any Future Service Provider in relation to employment by the Authority or any Future Service Provider.

27.5 Offer of Employment on Expiry or Termination

27.5.1 If TUPE does not apply on the expiry or earlier termination of this Agreement, the Authority shall procure that each Future Service Provider (including the Authority) shall offer employment to the persons employed by the Contractor or a Sub-Contractor in the provision of the Services immediately before the Return Date.

27.5.2 If an offer of employment is made in accordance with clause 27.5.1, the employment shall be on the same terms and conditions as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the Authority or Future
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Service Provider may at its absolute discretion not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of clause 27.3.

27.5.3 Where any such offer as referred to in clause 27.5.1 is accepted, the Contractor shall indemnify and keep indemnified in full the Authority and/or any Future Service Provider on the same terms and conditions as those set out in clause 27.2 of this Agreement as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this clause 27 (TUPE and Employees) each and every such employee shall be treated as if they were a Transferring Employee.

27.5.4 Where any offer as referred to in clause 27.5.1 is not accepted and TUPE does not apply, the relevant employee shall remain an employee of the Contractor or Sub-Contractor as appropriate.

27.6 Sub-Contractors

In the event that the Contractor enters into any Sub-Contract in connection with this Agreement, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this clause 27 (TUPE and Employees) and to clause 28 (Employees – General) and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Contractor to comply with this clause and/or the Sub-Contractor’s failure to comply with such terms.

28 Employees – General

28.1 Resources and Training

The Contractor shall procure that:

28.1.1 there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and

28.1.2 all staff receive such training and supervision as is necessary to ensure the proper performance of the Services under this Agreement.

28.2 Personnel Policies and Procedures

The Contractor shall procure that there are set up and maintained by it and by all sub-contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Authority.
Operating Manual

Maintenance of Manual

The Contractor shall throughout the Service Period maintain and update an operating and maintenance manual setting out the procedures for providing the Services (the Operating Manual).

Access to Manual

The Contractor shall at the request of the Authority provide the Authority with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under clause 29.1 (Maintenance of Manual).

Copy on Termination

On termination of this Agreement (howsoever arising including expiry), the Contractor shall within ten (10) Business Days provide a copy of the Operating Manual to the Authority.

Quality Assurance

The Contractor shall procure that all aspects of the Works and the Services are the subject of, and are conducted in accordance with the approved quality assurance systems as set out in clauses 29.6 and 29.7 (Quality Assurance).

Not later than ten (10) Business Days following the Effective Date, the Contractor shall submit to the Authority’s Representative a proposed quality assurance system for the Works which shall be consistent with BS EN ISO 9001:2008 or any equivalent standard which is generally recognised as having replaced them (or either of them) or, where they do not so comply, the system set out in the Contractor’s Proposals (the Quality Assurance System).

The Contractor shall procure that the Construction Contractor implements or procures the implementation of the Quality Assurance System or such other quality assurance system acceptable to the Authority (acting reasonably) in relation to the Works.

The Contractor shall appoint (or shall procure the appointment of) as soon as reasonably practicable following commencement of the Works, a quality manager, who may be directly involved in the day-to-day performance of the Works and Services, and who shall in respect of the Works:

29.8.1 ensure the effective operation of and implementation of the Quality Assurance System;

29.8.2 audit the Quality Assurance System at regular intervals; and

29.8.3 review the Quality Assurance System at identified intervals to ensure their continued suitability and effectiveness.

The Authority may carry out periodic audits of the Quality Assurance System at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of the Contractor’s quality systems. The Contractor shall
procure that the Authority shall have a like right in respect of any relevant Sub-Contractors. The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this clause 29 (Operating Manual).

30 Authority Step-In

30.1 Right to Step-In

If the Authority reasonably believes that it needs to take action in connection with the Services:

30.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

30.1.2 to discharge a statutory duty,

then the Authority shall be entitled to take action in accordance with clauses 30.2 (Notice to the Contractor) to 30.5 (Step-In on Contractor Breach).

30.2 Notice to the Contractor

If clause 30.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:

30.2.1 the action it wishes to take;

30.2.2 the reason for such action;

30.2.3 the date it wishes to commence such action;

30.2.4 the time period which it believes will be necessary for such action; and

30.2.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.

30.3 Action by the Authority

30.3.1 Following service of such notice, the Authority shall take such action as notified under clause 30.2 (Notice to the Contractor) and any consequential additional action as it reasonably believes is necessary (together, the Required Action) and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

30.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Contractor against all Direct Losses (subject to the provisions of clause 66.7 (Lost Third Party Income) in relation to Lost Third Party Income) where it fails to do so.
30.4 Step-In without Contractor Breach

If the Required Action is taken other than as a result of breach of the obligations of the Contractor under this Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

30.4.1 the Contractor shall be relieved from its obligations to provide such part of the Services;

30.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

30.5 Step-In on Contractor Breach

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Agreement, then:

30.5.1 for so long as and to the extent that the Required Action is taken, and this prevents the Contractor providing any part of the Services:

(a) the Contractor shall be relieved of its obligations to provide such part of the Services; and

(b) in respect of the period in which the Authority is taking the Required Action, the Unitary Charge due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action; and

30.5.2 if, on or following the date on which the Required Action ceases, the Contractor can demonstrate that:

(a) there was a deterioration, during such period of Required Action, in the performance or availability of the Facility (or any part thereof) which was used by the Authority during such period; and

(b) such deterioration was caused by the Authority during such period of Required Action as a result of the Authority using the Facility (or any part thereof) other than in accordance with Good Industry Practice; and

(c) such deterioration in the performance or availability of the Facility (or any part thereof) is in excess of any deterioration that would have arisen if the Facility (or any part thereof) had continued to be used by the Contractor during such period for the proper performance of its obligations under, and in accordance with, the provisions of this Agreement,
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then such excess deterioration to the Facility (or any part thereof) shall be an Excusing Cause.
PART 5 - Payment

31 Payment Provisions

31.1 Report and Invoice in respect of the Monthly Unitary Charge

31.1.1 Within five (5) Business Days following the end of each Payment Period during the period from Financial Close until the commencement of the Commissioning Period and during the Commissioning Period, the Contractor shall submit to the Authority a report showing for that Payment Period:

(a) during the period from Financial Close until the commencement of the Commissioning Period the Pass Through Costs; and

(b) during the Commissioning Period:

i the Pass Through Costs; and

ii the Commissioning Payment; and

(c) any other payment required to be made under the Agreement and not referred to in clauses 31.1.1 (a) to (b) (inclusive) above.

31.1.1A Within five (5) Business Days following the start of each Payment Period following the Service Commencement Date, the Contractor shall submit to the Authority a report showing for that Payment Period:

(a) the Commissioning Payment (relating to the final month of the Commissioning Period only); and

(b) the Monthly Unitary Charge; and

(c) individually, each item taken into account in calculating the Monthly Unitary Charge pursuant to paragraph 4.2 of Schedule 6 (Payment Mechanism); and

(d) any other payment required to be made under the Agreement and not referred to in clauses 31.1.1A (a) to (c) (inclusive) above.

31.1.1A.1 The Parties acknowledge and agree that, no later than the date which is ten (10) Business Days following the Effective Date, the Authority will pay to the appropriate Relevant Authorities the sum of [redacted] and [redacted] (both amounts to be indexed in accordance with the Section 106 Agreement), being those amounts payable by the Contractor in respect of the Landscape and Cultural Heritage Fund and the Highway Maintenance Contribution (as those expressions are defined in the Section 106 Agreement) pursuant to the Section 106 Agreement. The Authority shall use all reasonable endeavours to procure that the appropriate Relevant Authorities issue to the Contractor, as soon as reasonably practicable following receipt of payment, written confirmation that the payment by the Authority of these sums has discharged the Contractor's obligations to pay the amounts due in respect of the Landscape and Cultural Heritage Fund and the Highway Maintenance Contribution (as those expressions are defined in the Section 106 Agreement) pursuant to the Section 106 Agreement.
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31.1.2 Within five (5) Business Days following the end of each Payment Period during the period from Financial Close until the commencement of the Commissioning Period and during the Commissioning Period, the Contractor shall submit to the Authority an invoice for the amount (if any) shown by the report submitted pursuant to clause 31.1.1 as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

31.1.2A Within five (5) Business Days following the start of each Payment Period following the Service Commencement Date, the Contractor shall submit to the Authority an invoice for the amount (if any) shown by the report submitted pursuant to clause 31.1.1A as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

31.2 Payment of the Monthly Unitary Charge

The Authority shall pay to the Contractor:

31.2.1 during the period from Financial Close until the commencement of the Commissioning Period, the Pass Through Costs in respect of each Payment Period in accordance with paragraph 8 (Pass Through Costs) of Schedule 6 (Payment Mechanism);

31.2.2 during the Commissioning Period:

(a) the Commissioning Payment in respect of each Payment Period calculated in accordance with paragraph 2 (Commissioning Payment) of Schedule 6 (Payment Mechanism); and

(b) the Pass Through Costs in respect of each Payment Period in accordance with paragraph 8 (Pass Through Costs) of Schedule 6 (Payment Mechanism); and

31.2.3 from the Service Commencement Date:

(a) any final Commissioning Payment (relating to the final month of the Commissioning Period only); and

(b) the Monthly Unitary Charge in respect of each Payment Period, calculated in accordance with paragraph 4 (The Monthly Unitary Charge) of Schedule 6 (Payment Mechanism); and

31.2.4 from the Commencement Date any other payment to be required to be made under the Agreement and not referred to in clauses 31.2.1 to 31.2.3 (above).

31.2A Subject to clause 31.6 (Disputed Amounts), the Authority shall pay the amount:

31.2A.1 stated in any invoice submitted under clause 31.1.2 (Report and Invoice in Respect of the Monthly Unitary Charge) within 15 Business Days of the date of such invoice; and

31.2A.2 stated in any invoice submitted under clause 31.1.2A (Report and Invoice in Respect of the Monthly Unitary Charge) within 15 Business Days of the date
of such invoice or if later, on or before the last Business Day of the Payment Period in which the invoice was issued.

ANNUAL RECONCILIATION PAYMENT

31.3 Report and Invoice in respect of the Annual Reconciliation Payment

Subject to clause 31.3A within forty (40) Business Days following the last day of each Contract Year following the Service Commencement Date the Contractor shall submit to the Authority:

31.3.1 the Annual Reconciliation Report; and

31.3.2 an invoice for the Annual Contractor Credit Balance and for any VAT payable by the Authority in respect of that amount.

31.3A Final Annual Reconciliation Report

31.3A.1 Notwithstanding the provisions of Appendix 1 (Reporting Requirements) to Schedule 1 (Authority's Requirements), the Parties acknowledge and agree that the Annual Reconciliation Report submitted following the Termination Date or Expiry Date (as appropriate) in respect of the final Contract Year shall incorporate the Final Contract Month Reconciliation Amount.

31.4 Payment of the Annual Reconciliation Payment

31.4.1 Subject to clause 31.5 (Payment of the Landfill Allowance Adjustment), where the Annual Reconciliation Report shows an Annual Contractor Credit Balance, the Authority shall pay to the Contractor the Annual Reconciliation Payment in respect of such Contract Year, calculated in accordance with Paragraph 11 of Schedule 6 (Payment Mechanism).

31.4.2 Subject to clause 31.6 (Disputed Amounts) and clause 31.5 (Payment of the Landfill Allowance Adjustment), the Authority shall pay the amount stated in any invoice submitted under clause 31.3 (Report and Invoice in Respect of the Annual Reconciliation Payment) within twenty (20) Business Days of the date of such invoice.

31.4.3 Subject to clause 31.6 (Disputed Amounts) and clause 31.5 (Payment of the Landfill Allowance Adjustment) where the Annual Reconciliation Report shows an Annual Authority Credit Balance, the Contractor shall pay such Annual Authority Credit Balance amount to the Authority within twenty (20) Business Days of the date of issue of the Annual Reconciliation Report.

31.5 Payment of the Landfill Allowance Adjustment

31.5.1 The Authority shall comply with its statutory obligations in respect of the Landfill Allowance Trading Scheme.

31.5.2 Where applicable, each Contract Year, within twenty (20) Business Days following receipt by the Authority of written confirmation from the Environment Agency of the Authority's performance under the Landfill Allowance Trading Scheme in respect of the previous Contract Year the Authority shall provide to the Contractor:
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(a) a copy of such written confirmation from the Environment Agency; and

(b) a report setting out the Landfill Allowance Adjustment payment due to the Contractor from the Authority calculated in accordance with paragraph 16.2 of Schedule 6 (Payment Mechanism).

31.5.3 Where applicable and subject to clause 31.6, within twenty (20) Business Days following receipt by the Contractor of the report under clause 31.5.2 above, the Contractor shall issue to the Authority an invoice in respect of the payment calculated as due to the Contractor under clause 31.5.2 above.

31.5.4 Where applicable and subject to clause 31.6 (Disputed Amounts), the Authority shall pay the amount stated in any invoice submitted under clause 31.5.3 within twenty (20) Business Days of the date of such invoice.

31.5A Authority Revenue Account

31.5A.1 Within twenty (20) Business Days of the Service Commencement Date the Contractor shall provide to the Authority the relevant details of the Authority Revenue Account.

31.5A.2 The Authority Revenue Account will be an interest bearing account with interest credited to the account as agreed with the relevant financial institution.

31.5A.3 The balance of the Authority Revenue Account will be accounted for in accordance with relevant accounting standards in the financial statements of the Contractor.

31.5A.4 Payments can be made into, and sums may be withdrawn, from the Authority Revenue Account by the Contractor in accordance with the provisions of paragraph 13 of Schedule 6 (Payment Mechanism) subject to not rendering the Authority Revenue Account overdrawn.

31.5A.5 A withdrawal requirement by the Contractor in excess of the balance of the Authority Revenue Account will be limited to leaving the Authority Revenue Account with a balance of zero. In this circumstance, the Contractor will maintain open and transparent records reflecting a notional overdrawn balance in the Authority Revenue Account. Payments into the Authority Revenue Account will be resumed once the notional overdrawn balance is restored to zero through future excess revenues generated by the Contractor.

31.5A.6 The Contractor will provide a report reconciling the movement in the Authority Revenue Account during the relevant Contract Year in accordance with the Annual Reporting requirements set out in Schedule 1 (Authority Requirements).

31.5A.7 In the event of termination of this Agreement, in accordance with clause 37, any surplus balance within the Authority Revenue Account will be remitted to the Authority directly.

31.6 Disputed Amounts

31.6.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor:
(a) under clause 31.1.2 (Report and Invoice in respect of Monthly Unitary Charge) or clause 31.1.2A in respect of any Payment Period; and/or

(b) under clause 31.3.2 (Report and Invoice in respect of Annual Reconciliation Payment) or 31.5 (Payment of the Landfill Allowance Adjustment) in respect of any Payment Period;

the provisions of this clause 31.6 shall apply.

31.6.2 In respect of disputes in relation to the Report and Invoice in respect of Monthly Unitary Charge, the Authority shall notify the Contractor in writing within ten (10) Business Days of receipt by the Authority of the relevant invoice and supporting report of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (a Disputed Amount) and submit to the Contractor such supporting evidence as the Authority may have.

31.6.3 In respect of disputes in relation to the Report and Invoice in respect of the Annual Reconciliation Payment, the Authority shall notify the Contractor in writing within twenty (20) Business Days of receipt by the Authority of the Annual Reconciliation Report of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (a Disputed Amount) and submit to the Contractor such supporting evidence as the Authority may have.

31.6.4 The Authority may withhold payment of any Disputed Amount until such time as agreement or determination of the Contractor's entitlement in relation to the Disputed Amount has been reached. The Authority shall pay any undisputed amounts on or before the due date.

31.7 Response to Authority Notice

31.7.1 Within ten (10) Business Days following receipt by the Contractor's Representative of any notice served by the Authority in accordance with clause 70 (Notices) and pursuant to clause 31.6 (Disputed Amounts), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

(a) to retain on a permanent basis any amounts withheld pursuant to clause 31.6 (Disputed Amounts); and

(b) to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded Quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after determination.

31.8 Dispute

If the Contractor responds (pursuant to clause 31.7 (Response to Authority Notice)) that it does not agree with all or any of the statements made in any notice served by the
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Authority pursuant to clause 31.6 (Disputed Amounts), the matter or matters in question shall be determined pursuant to clause 62.20 (Fast Track).

31.9 Determination of Dispute

If the determination of any dispute conducted pursuant to clause 31.8 (Dispute) shows that:

31.9.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or

31.9.2 the Contractor has claimed under clauses 31.1 and/or 31.3 (Report and Invoice) any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded Quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after determination.

31.10 Set Off

The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may (subject to clause 50.2 (Set Off on Termination)) retain or set off any amount owed to it by the Contractor under this Agreement which has fallen due and payable against any amount due to the Contractor under this Agreement.

31.11 Set Off and Disputed Amounts

If the payment or deduction of any amount referred to in clause 31.10 (Set Off) is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with clause 62.20 (Fast Track).

31.12 VAT on Payments

31.12.1 All amounts due under this Agreement are exclusive of VAT.

31.12.2 If any supply made or referred to in this Agreement is or becomes chargeable to VAT then the person receiving the supply (the Recipient) shall in addition pay the person making the supply (the Supplier) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

31.12.3 Where under this Agreement any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.

31.12.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Authority to the Contractor.
31.13 Indexation

The Unitary Charge shall be indexed in accordance with paragraph 19 (Indexation Provisions) of Schedule 6 (Payment Mechanism).

32 Refinancing

32.1 Requirement for Authority Consent

The Contractor shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Contractor shall at all times act in good faith with respect to any (a) any Refinancing or (b) any potential or proposed Refinancing under clause 32.9 (Authority Right to Request Refinancing).

32.2 Share of Gain

The Authority shall be entitled to receive:

32.2.1 a fifty percent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of one million pounds sterling (£1,000,000);

32.2.2 a sixty percent (60%) share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of three million pounds sterling (£3,000,000); and/or

32.2.3 a seventy percent (70%) share of any other Refinancing Gain arising from a Qualifying Refinancing.

32.3 No Withholding or Delay

The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in clause 32.2 (Share of Gain).

32.4 Contractor Details

The Contractor shall promptly provide the Authority with full details of any proposed Qualifying Refinancing including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing whether the Refinancing is a Qualifying Refinancing or not.

32.5 Receipt of Gain

The Authority shall have the right to elect to receive its share of any Refinancing Gain as either:

32.5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
32.5.2 a reduction in the Unitary Charge over the remainder of the Contract Period; or

32.5.3 a combination of the choices in clauses 32.5.1 (Receipt of Gain) and 32.5.2 (Receipt of Gain).

32.6 Method of Calculation

The Authority and the Contractor will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under clause 32.5 (Receipt of Gain)). If the Contractor and the Authority fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with clause 62 (Dispute Resolution).

32.7 Costs

The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority by the Contractor within twenty (20) Business Days of any Qualifying Refinancing.

32.8 Notifiable Financings

Without prejudice to the other provisions of this clause 32, the Contractor shall (i) notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same and (ii) include a provision in the Financing Agreements whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements.

32.9 Authority Right to Request Refinancing

32.9.1 If the Authority reasonably considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements, the Authority may, by notice in writing to the Contractor, require the Contractor to request potential funders to provide terms for a potential Refinancing (a Refinancing Notice).

32.9.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available. The Contractor and Authority shall meet to discuss the Refinancing Notice within twenty eight (28) days. Such a meeting will consider the evidence available to both Parties about the availability of funding terms for a potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten (10) days following the meeting.

32.9.3 If the Authority serve a Refinancing Notice which is not withdrawn pursuant to clause 32.9.2, then the Contractor shall:

(a) act promptly, diligently and in good faith with respect to the potential Refinancing;
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(b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that the Contractor shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in the United Kingdom to that operated by the Contractor, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of clause 32.7 (Costs); and

(c) either:

i as soon as reasonable practicable after receipt of the Refinancing Notice, provide to the Authority:

A full details of the proposed Refinancing, include a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction for the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in clause 32.9.3(b) above; and

B initial drafts of any changes to this Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or

ii if the Contractor reasonably believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements in accordance with the requirements of clause 32.9.3(b), provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction for the Authority that the Contractor has complied with its obligations in clauses 32.9.3(a) and (b).

32.9.4 Following receipt of the information referred to in clause 32.9.3(c)i, the Authority shall (in its absolute discretion) either:

(a) instruct the Contractor to implement the proposed Refinancing; or

(b) instruct the Contractor to discontinue the proposed Refinancing,

provided that if the Authority reasonably considers that the requirements of clause 32.9.3(c)i have not been satisfied, the Authority may require the Contractor to satisfy its obligations under clause 32.9.3(c)i whereupon the provisions of clauses 32.9.3 and 32.9.4 shall apply as if the Authority had served a Refinancing Notice.

32.9.5 If the Authority instructs the Contractor to implement the proposed Refinancing:

(a) the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;
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(b) such proposed Refinancing shall be deemed to be Qualifying Refinancing; and

c) the provisions of clauses 32.1 to 32.8 shall apply.

32.9.6 If:

(a) the Authority instructs the Contractor to discontinue the potential Refinancing pursuant to clause 32.9.4(b); or

(b) the requirements of clause 32.9.3(c)ii are satisfied,

then the Authority shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Authority within twenty eight (28) days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Contractor except insofar as:

(c) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties; and

(d) the Authority has, by prior written agreement, approved the use of such internal management resource.

32.9.7 The Authority shall be entitled to issue a Refinancing Notice under clause 32.9.1 (Authority Right to Request Refinancing) at any time, but not more than once in any two (2) year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under clause 32.9.2 has been issued for the purpose of this clause 32.9.7.

33 Not used

34 Not Used

35 Best Value and Continuous Improvement

35.1 Authority's Best Value Duty

35.1.1 The Contractor acknowledges that:

(a) the Authority is subject to the Best Value Duty; and

(b) the provisions of this clause 35 (Best Value) are intended to assist the Authority in discharging its Best Value Duty in relation to the Authority's statutory duties in respect of waste disposal.

35.1.2 The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in this Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
35.1.3 The Contractor shall undertake or refrain from undertaking such actions as the Authority shall reasonably request to enable the Authority to comply with Part 1 of the 1999 Act, including:

(a) complying with requests for information, data or other assistance made by the Authority in pursuance of its Best Value Duty including to:

i facilitate any inspection or audit undertaken by any Relevant Authority in connection with the Best Value Duty in respect of the Services, including any inspection undertaken with a view to verifying the Authority’s compliance with its Best Value Duty pursuant to Sections 10 and 11 of the 1999 Act;

ii facilitate the Authority preparing any statement, in response to an Authority’s auditor’s report;

iii assist the Authority in relation to any action taken by the Secretary of State;

iv enable the Authority to comply with any government departmental direction;

v enable the Authority to report on the Best Value Performance Indicators;

(b) complying with all requests by the Authority to procure the attendance of the Contractor’s Representative at any meetings of the Authority at which the Services are to be discussed (but not, otherwise than in exceptional circumstances, more than two (2) times in any one (1) Contract Year);

(c) permitting any Best Value Inspector or other Relevant Authority empowered to inspect the Authority’s compliance with Part 1 of the 1999 Act (in connection with the exercise of his statutory powers and duties) (upon reasonable notice), access to:

i the Facility;

ii any document or data relating to the Services; and/or

iii the Contractor’s Representative.

35.2 Annual Services Report and Annual Services Plan

35.2.1 Without prejudice to any other provision in this Agreement the Contractor shall, at its own cost, provide to the Authority a written report (the Annual Services Report) in accordance with the Authority Requirements and the Best Value Assistance and Reporting Method Statement.

35.2.2 The Contractor shall, upon a written request from the Authority, promptly provide such written evidence or other supporting information as the Authority may reasonably require in order to verify and audit the information and other material contained in the Annual Services Report.
35.2.3 If, in the Authority’s reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Services Report and the Best Value Duty, then the Authority may serve a written notice upon the Contractor (a **Best Value Services Change Notice**) stating the nature and timing of the changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires.

35.2.4 The Contractor shall, within thirty (30) Business Days of the date of receipt of the Best Value Services Change Notice, provide the Authority at its own cost with a written statement (the **Annual Services Plan**) containing the Services Delivery Proposals – amendments to the Contractor’s Proposals (Schedule 2) necessary to achieve the change to the Services (or the relevant part) in accordance with the Best Value Services Change Notice.

35.2.5 As soon as practicable after the Authority receives the Annual Services Plan, the Parties shall discuss and agree the issues set out in the Annual Services Plan. In such discussions the Authority may modify the Best Value Services Change Notice, in which case the Contractor shall, as soon as practicable, and in any event not more than twenty (20) Business Days after the receipt of such modification, notify the Authority of any consequential changes to the Annual Services Plan.

35.2.6 If the Parties cannot agree on the contents of the Annual Services Plan then the dispute will be determined in accordance with clause 62 (Dispute Resolution).

35.2.7 As soon as practicable after the content of the Annual Services Plan has been agreed or otherwise determined pursuant to clause 62 (Dispute Resolution) the Authority shall:

(a) confirm in writing the Annual Services Plan; or

(b) withdraw the Best Value Services Change Notice.

35.2.8 If the Authority does not confirm the Annual Services Plan within ten (10) Business Days of the Annual Services Plan having been agreed or otherwise determined pursuant to clause 62 (Dispute Resolution) then the Annual Services Plan shall be deemed to have been withdrawn.

35.2.9 If the Authority confirms the Annual Services Plan the Authority shall submit an Authority Change Notice.

35.2.10 The Contractor shall take all reasonable steps to mitigate any costs and maximise any savings arising as a consequence of a Best Value Services Change Notice and an Authority Change Notice served pursuant to clause 35.2.9 (Annual Services Report and Annual Services Plan).

35.2.11 Not Used.
PART 6 - Termination

36 Direct Agreement

The provisions set out in this Part 6 (Termination) of this Agreement are subject to the Direct Agreement.

37 Termination of this Agreement

37.1 Voluntary Termination by the Authority

37.1.1 The Authority may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations under clause 37.1.2 (Voluntary Termination by the Authority).

37.1.2 If the Authority wishes to terminate this Agreement under this clause 37.1 (Voluntary Termination by the Authority), it must give a Termination Notice to the Contractor stating:

(a) that the Authority is terminating this Agreement under this clause 37.1 (Voluntary Termination by the Authority);

(b) that this Agreement will terminate on the date specified in the notice, which must be a minimum of twenty (20) Business Days after the date of receipt of the notice; and

(c) whether the Authority has chosen to exercise its option under clause 37.1.3.

37.1.3 On termination, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in the Assets to the Authority or as directed by the Authority at no cost to the Authority (other than as set out in Part 7 of this Agreement).

37.1.4 This Agreement will terminate on the date specified in the Termination Notice referred to in clause 37.1.2 (Voluntary Termination by the Authority).

37.2 Termination on Authority Default

37.2.1 If an Authority Default has occurred and the Contractor wishes to terminate this Agreement, the Contractor must serve a termination notice (the Contractor Termination Notice) on the Authority within thirty (30) Business Days of becoming aware of the Authority Default.

37.2.2 The Contractor Termination Notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.

37.2.3 This Agreement will terminate on the day falling thirty (30) Business Days after the date the Authority receives the Contractor Termination Notice, unless the Authority rectifies the Authority Default within twenty (20) Business Days of receipt of the Contractor Termination Notice.

37.2.4 On termination, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in the Assets to the Authority or as
37.3 Termination on Contractor Default

37.3.1 Subject to clause 37.4 (Rectification), the Authority shall be entitled to terminate this Agreement by notice in writing to the Contractor if a Contractor Default has occurred.

37.3.2 On termination, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in the Assets to the Authority or as directed by the Authority at no cost to the Authority (other than as set out in Part 7 of this Agreement).

37.3.3 Notwithstanding the Contractor's obligation under clause 22.1.1, any failure to achieve the required Diversion Percentage of (on a mean average) [redacted]% or more in the first Contract Year shall be disregarded for the purposes of assessing any Contractor Default under limb (i) of the definition of Contractor Default.

37.4 Rectification

37.4.1 If a Contractor Default has occurred and the Authority wishes to terminate this Agreement, it must serve a Termination Notice on the Contractor.

37.4.2 The Termination Notice must specify:

(a) the type and nature of Contractor Default that has occurred, giving reasonable details; and

(b) that in the case of any Contractor Default falling within the limbs (a), (g), (h) and (m) of the definition of Contractor Default this Agreement will terminate on the day falling forty (40) Business Days after the date the Contractor receives the Termination Notice, unless:

i in the case of a breach under limb (a) of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within twenty (20) Business Days after the date the Contractor receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or

ii in the case of any Contractor Default falling within limbs (g), (h) and (m) of the definition of Contractor Default the Contractor rectifies the Contractor Default within forty (40) Business Days after the date the Contractor receives the Termination Notice; or

(c) that in the case of any other Contractor Default (not being limbs (a), (g), (h) and (m)), this Agreement will terminate on the date falling forty (40) Business Days after the date the Contractor receives the Termination Notice.

37.4.2A The Authority agrees that prior to determining whether to exercise any right of termination in respect of limb (a) of the definition of Contractor Default it shall,
acting reasonably and in good faith by reference to the nature and gravity of the breach, give all due consideration to taking action other than termination of this Agreement (including exercising its other contractual rights and remedies under this Agreement (having regard to the nature of such rights and remedies) to deal with the breach or circumstances giving rise to the breach).

37.4.3 If the Contractor either rectifies the Contractor Default within the time period specified in the Termination Notice, or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Agreement will continue.

37.4.4 If:

(a) in the case of a Contractor Default within limb (a) of the definition of that term no acceptable rectification programme has been put forward pursuant to clause 37.4.2(b)i and the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice; or

(b) in the case of a Contractor Default falling within limbs (g), (h), and (m) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice,

the Authority may give notice stating that this Agreement will, subject to the terms of the Direct Agreement, terminate on the date falling five (5) Business Days after the date of receipt of such notice.

37.4.5 If the Contractor fails to implement any rectification programme in accordance with its terms, this Agreement will, subject to the terms of the Direct Agreement, terminate on the date falling five (5) Business Days after the date of notification by the Authority to the Contractor of such failure to implement the rectification programme in accordance with its terms.

38 Termination for Persistent Breach by the Contractor

38.1 Warning Notice

If a particular breach during the period commencing on the Service Commencement Date and ending on the earlier of the Expiry Date and the Termination Date (other than any breach for which a Deduction could have been made), has continued for more than thirty (30) Business Days or occurred in four (4) or more months in a six (6) month period then the Authority may serve a notice on the Contractor:

38.1.1 specifying that it is a formal warning notice;

38.1.2 giving reasonable details of the breach; and

38.1.3 stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.
38.2 Final Notice

If, following service of a warning notice the breach specified has continued beyond thirty (30) Business Days or recurred four (4) or more times within the six (6) month period after the date of service, then the Authority may serve another notice (a Final Warning Notice) on the Contractor:

38.2.1 specifying that it is a Final Warning Notice;

38.2.2 stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and

38.2.3 stating that if the breach continues for more than thirty (30) Business Days or recurs four (4) or more times within the six (6) month period after the date of service of the Final Warning Notice, this Agreement may be terminated.

On termination, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in the Assets to the Authority or as directed by the Authority at no cost to the Authority (other than as set out in Part 7 of this Agreement).

38.3 Currency of Warning Notices

A warning notice may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.

38A Performance Failure Notice

38A.1 If any Performance Failure for which there is a Performance Failure Longstop Period is not rectified within the Relevant Resolution Period the Authority may issue to the Contractor a notice (Performance Failure Notice) requiring the Contractor to rectify the Performance Failure within the Performance Failure Longstop Period.

38A.2 A Performance Failure Notice shall identify the Performance Failure and the Performance Failure Longstop Period and shall state that it is a notice issued pursuant to clause 38A of this Agreement.

38A.3 If the Contractor does not rectify the Performance Failure within the Performance Failure Longstop Period the Authority may without prejudice to its right to make Deductions in respect of that Performance Failure issue a notice requiring the Contractor, at its own expense, to terminate with immediate effect the contract of the person or persons responsible for the failure to rectify the Performance Failure within the Performance Failure Longstop Period, whereupon the Contractor shall so terminate that contract.

39 Termination by the Authority for Breach of Refinancing Provisions

39.1 If the Contractor wilfully breaches clause 32.1 (Requirement for Authority Consent) then the Authority may terminate this Agreement at any time on or before the Expiry Date by complying with its obligations under this clause 39 (Termination by the Authority for Breach of Refinancing Provisions).

39.2 If the Authority wishes to terminate the Agreement under this clause 39 (Termination by the Authority for Breach of Refinancing Provisions), it must give notice to the Contractor stating:
that the Authority is terminating the Agreement under this clause 39 (Termination by the Authority for Breach of Refinancing Provisions);

39.2.2 that this Agreement will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice; and

39.2.3 whether the Authority has chosen to exercise its option under clause 39.4 (Termination by the Authority for Breach of Refinancing Provisions).

39.3 This Agreement shall terminate on the date falling twenty (20) Business Days after the date of receipt of the notice referred to in clause 39.2 (Termination by the Authority for Breach of Refinancing Provisions)

39.4 On termination, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in the Assets to the Authority or as directed by the Authority at no cost to the Authority (other than as set out in Part 7 of this Agreement).

40 Termination on Corrupt Gifts and Fraud

40.1 Corrupts Gifts and Fraud

The Contractor warrants that in entering into this Agreement it has not committed any Prohibited Act.

40.2 Termination for Corrupt Gifts and Fraud

40.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with the provisions of this clause 40.2.

40.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Agreement by giving notice to the Contractor.

40.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor terminates the employee’s employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

40.2.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor terminates the relevant Ancillary Document and procures the performance of such part of the Works and/or Services by another person.

40.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Sub-Contractor...
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terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

40.2.6 If the Prohibited Act is committed by any other persons not specified in clauses 40.2.2 to 40.2.5 (Termination for Corrupt Gifts and Fraud), then the Authority may give notice to the Contractor of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Works and/or Services by another person.

40.2.7 Any notice of termination under this clause 40.2 (Termination for Corrupt Gifts and Fraud) shall specify:

(a) the nature of the Prohibited Act;

(b) the identity of the party whom the Authority believes has committed the Prohibited Act;

(c) the date on which this Agreement will terminate, in accordance with the applicable provision of this clause; and

(d) the Authority's chosen option under clause 46 (Compensation on Termination for Corrupt Gifts, Fraud and Refinancing Breaches).

40.2.8 In this clause 40 (Termination for Corrupt Gifts and Fraud), the expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be).

40.2.9 On termination, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in the Assets to the Authority or as directed by the Authority at no cost to the Authority (other than as set out in Part 7 of this Agreement).

41 Termination on Force Majeure

41.1 Obligations

No Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Agreement for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to clauses 41.5 or 41.7).

41.2 Ability to Make Deductions
Nothing in clause 41.1 (Obligations) shall affect any entitlement to make Deductions in the period during which the Force Majeure Event is subsisting.

### 41.3 Notification for Force Majeure

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

### 41.4 Consultation

As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

### 41.5 Unable to Agree

If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and twenty (120) Business Days, then, subject to clause 41.6 (Consequences of Termination), either Party may terminate this Agreement by giving twenty (20) Business Days' written notice to the other Party.

### 41.6 Consequences of Termination

If this Agreement is terminated under clause 41.5 (Unable to Agree) or clause 41.7 (Notice to Continue):

1. compensation shall be payable by the Authority in accordance with clause 48 (Compensation on Termination for Force Majeure); and

2. on termination, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in the Assets to the Authority or as directed by the Authority at no cost to the Authority (other than as set out in Part 7 of this Agreement).

### 41.7 Notice to Continue

If the Contractor gives notice to the Authority under clause 41.5 (Unable to Agree) that it wishes to terminate this Agreement, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Agreement to continue. If the Authority gives the Contractor such notice (the Continuation Notice), then:

1. the Authority shall pay to the Contractor the Monthly Unitary Charge (together with Lost Third Party Income (calculated in accordance with clause 66.7.7)) from the day after the date on which this Agreement would have terminated under clause 41.5 (Unable to Agree) as if the Services were being fully provided; and

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41.7.2 this Agreement will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Contractor that it wishes this Agreement to terminate.

41.8 **Mitigation**

The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

41.9 **Cessation of Force Majeure Event**

The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

42 **Consequences of Termination**

42.1 **Compensation Provisions**

If this Agreement is terminated pursuant to:

42.1.1 clause 37.1 (Voluntary Termination by the Authority), the provisions of clause 45 (Compensation on Termination for Authority Default/ Voluntary Termination) shall apply;

42.1.2 clause 37.2 (Termination on Authority Default), the provisions of clause 45 (Compensation on Termination for Authority Default/ Voluntary Termination) shall apply;

42.1.3 clause 37.3 (Termination on Contractor Default), the provisions of clause 47 (Compensation on Termination for Contractor Default) shall apply;

42.1.4 clause 39 (Termination by the Authority for Breach of Refinancing Provisions), the provisions of clause 46 (Compensation on Termination for Corrupt Gifts, Fraud and Refinancing Breaches) shall apply;

42.1.5 clause 40 (Termination on Corrupt Gifts and Fraud), the provisions of clause 46 (Compensation on Termination for Corrupt Gifts, Fraud and Refinancing Breaches) shall apply;

42.1.6 clause 41 (Termination on Force Majeure), the provisions of clause 48 (Compensation on Termination for Force Majeure) shall apply;

42.1.7 clause 60 (Risks that become Uninsurable), the provisions of clause 48 (Compensation on Termination for Force Majeure) shall apply; or

42.1.8 clause 79.1 (Relevant Discharge Terms), the provisions of Schedule 12 (Relevant Discharge Terms) shall apply.
42.2 Termination of Agreement

Notwithstanding any other provisions of this Agreement, this Agreement shall only terminate in accordance with the express provisions of this Agreement.

42.3 Continuing Obligations

Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Agreement, and notwithstanding the provisions of clause 50.3 (Exclusivity of Remedy):

42.3.1 termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and

42.3.2 termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under clauses 8 (Land Issues), 27 (TUPE and Employees), 31 (Payment Provisions), 44 (Transition to Another Contractor), Part 7 (Compensation on Termination), clause 56 (Freedom of Information and Confidentiality), clause 57 (Indemnities, Guarantees and Contractual Claims), clause 58 (Insurance), clause 59 (Reinstatement), clause 60 (Risks that become Uninsurable), clause 62 (Dispute Resolution), clause 63 (Intellectual Property), clause 70 (Notices), clause 75 (Contractor’s Records), clause 77 (Interest on Late Payment) clause 80 (Governing Law and Jurisdiction) and clause 84 (Capacity) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

43 Surveys on Expiry and Retention Fund

43.1 Final Survey

43.1.1 Twenty four (24) months prior to the Expiry Date, the Authority shall be entitled to carry out or procure the carrying out of a final survey of the Assets to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under clause 23.1 (Maintenance).

43.1.2 The Authority shall notify the Contractor in writing a minimum of five (5) Business Days in advance of the date it wishes to carry out or procure the carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor’s ability to provide the Services.

43.2 Minimisation of Disruption

When carrying out the final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The
Contractor shall afford the Authority (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey. The costs of the final survey shall be borne by the Authority.

43.3 Results of Survey

If the final survey shows that the Contractor has not complied with or is not complying with its obligations under clause 23.1.5 (Maintenance) the Authority shall:

43.3.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Assets to the standard they would have been in if the Contractor had complied or was complying with its obligations under clause 23.1.5 (Maintenance) (the Required Standard);

43.3.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and

43.3.3 recover the cost of the survey from the Contractor by means of a withdrawal from the Retention Fund Account or deduction from the next payment of the Monthly Unitary Charge.

43.4 Maintenance Work

The Contractor shall carry out such rectification and/or maintenance work notified pursuant to clause 43.3.1 (Results of Survey) (the Outstanding Work) in order to reach the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

43.5 Retention Fund

If the Contractor has been notified under clause 43.3.1 (Results of Survey) that rectification and/or maintenance work is required, then twelve (12) months prior to the Expiry Date the Authority shall (to the extent the Outstanding Works have not been carried out in the interim) deduct the costs of that work as quantified by the survey referred to in clause 43.1 (Final Survey) from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Monthly Unitary Charge and pay such amount into an interest bearing account (the Retention Fund Account).

43.6 Costs

If and to the extent that the Contractor carries out the Outstanding Work to the Authority's reasonable satisfaction, the Authority, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Contractor. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Contractor's costs the Contractor shall bear the balance of such costs itself.

43.7 Failure to Carry Out Work
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If and to the extent that the Contractor fails to carry out the Outstanding Work within the period specified in clause 43.3.2 (Results of Survey), the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account or, where there is insufficient funds in the Retention Fund Account, make subject to clause 31.10 (Set Off) deductions from any subsequent payment of the Monthly Unitary Charge to pay for such rectification and/or maintenance work or recover such amounts from the Contractor as a debt payable on demand.

43.8 Balance of Fund

If:

43.8.1 all the rectification and/or maintenance work identified by the Authority or the person the Authority procures to carry out the final survey has been carried out to the Required Standard;

43.8.2 all such rectification and/or maintenance work has been paid for by the Contractor; and

43.8.3 no termination notice given in accordance with this Agreement is outstanding,

then the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

44 Transition to Another Contractor

44.1 Duty to Co-operate

During the final six (6) months of the Contract Period (where this expires by effluxion of time) or during the period of any Termination Notice of this Agreement, and in either case for a period of three (3) months thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Works and/or Services (or any of the Works and/or Services) to the Authority or any New Contractor of such works and/or services the same or similar to the Works and/or Services, and for the purposes of this clause 44 (Transition to Another Contractor) the meaning of the term co-operate shall include:

44.1.1 liaising with the Authority and/or any New Contractor, and providing reasonable assistance and advice concerning the Works and/or Services and their transfer to the Authority or to such New Contractor;

44.1.2 allowing any New Contractor access (at reasonable times and on reasonable notice) to the Facility but not so as to interfere with or impede the provision of the Works and/or Services;

44.1.3 (without prejudice to the obligations of the Contractor pursuant to clause 29 (Operating Manual)) providing to the Authority and/or to any New Contractor all and any information concerning the Site, the Facility and the Works and/or Services which is reasonably required for the efficient transfer of responsibility for their performance but information which is commercially sensitive to the Contractor shall not be provided (and for the purpose of this clause 44.1.3 (Duty to Co-operate), commercially sensitive shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby
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prejudice the business of the Contractor but shall not include any information referred to in clause 27 (TUPE and Employees)); and

44.1.4 transferring its rights, title and interest in and to the Assets to the New Contractor with effect on and from the Expiry Date.

44.2 Transfer of Responsibility

The Contractor shall use all reasonable endeavours:

44.2.1 so as to facilitate the smooth transfer of responsibility for the Works and/or Services to a New Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer; and

44.2.2 to transfer to the New Contractor, and shall provide all reasonable assistance to the New Contractor in relation to the transfer, of all Necessary Consents to the extent that the same are transferable by Legislation.
PART 7 – Compensation on Termination

45 Compensation on Termination for Authority Default/Voluntary Termination

45.1 On termination of this Agreement pursuant to clauses 37.1 (Voluntary Termination by the Authority) or 37.2 (Termination on Authority Default) or in the circumstances set out in Schedule 12 (Relevant Discharge Terms), the Authority shall pay the Contractor the Authority Default Termination Sum in accordance with clauses 50 (Miscellaneous Compensation Provisions) and 51 (Method of Payment). Subject to clauses 45.3 to 45.5 (Compensation on Termination for Authority Default/Voluntary Termination), the Authority Default Termination Sum shall be an amount equal to the aggregate of:

45.1.1 the Base Senior Debt Termination Amount;

45.1.2 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Agreement and any Sub-Contractor Breakage Costs; and

45.1.3 all amounts shown in the Base Case as payable by the Contractor on a post Contractor tax but pre Shareholder tax basis from the Termination Date, either in dividends or other distributions on the share capital of the Contractor or as payments of interest or repayments of principal made by the Contractor under the Subordinated Financing Agreements, each amount discounted back at the Base Case Equity IRR from the date on which it is shown to be payable in the Base Case to the Termination Date.

45.2 Not used.

45.3 If the aggregate of the amounts referred to in clauses 45.1.1 and clause 45.1.3 (Compensation on Termination for Authority Default/Voluntary Termination) is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in clause 45.1.2 (Compensation on Termination for Authority Default/Voluntary Termination) provided always that:

45.3.1 the amount referred to in clause 45.1.2 (Compensation on Termination for Authority Default/Voluntary Termination) shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

45.3.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.

45.4 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under clause 10.4.4.1 of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of
the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

45.5 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 10.4.4.2 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this clause 45 (Compensation on Termination for Authority Default/Voluntary Termination), then the Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

45 Compensation on Termination for Corrupt Gifts, Fraud and Refinancing Breaches

46.1 On termination of this Agreement in accordance with clauses 39 (Termination by the Authority for Breach of Refinancing Provisions) or 40 (Termination for Corrupt Gifts and Fraud) the Authority shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount.

46.2 Such amount shall be determined and paid in accordance with clauses 50 (Miscellaneous Compensation Provisions) and 51 (Method of Payment).

47 Compensation on Termination for Contractor Default

47.1 Retendering Election

47.1.1 Subject to clause 47.1.2 (Retendering Election), the Authority shall be entitled either to:

(a) retender the provision of the Project in accordance with clause 47.2 (Retendering Procedure); or

(b) require an expert determination in accordance with clause 47.3 (No Retendering Procedure).

47.1.2 The Authority shall be entitled to elect to retender the provision of the Project in accordance with clause 47.2 (Retendering Procedure) if:

(a) the Authority notifies the Contractor on or before the date falling twenty (20) Business Days after the Termination Date that it intends to retender; and

(b) there is a Liquid Market; and either:

i. the Finance Parties have not exercised their rights to step-in under clause 6 of the Direct Agreement; or

ii. the Contractor or the Finance Parties have not procured the transfer of the Contractor's rights and liabilities under this Agreement to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,
47.2 Retendering Procedure

If the Authority elects to retender the provision of the Project under clause 47.1 (Retendering Election), then the following provisions shall apply:

47.2.1 the objective of the retendering procedure shall be to establish and pay to the Contractor the Adjusted Highest Compliant Tender Price, as a result of the Tender Process;

47.2.2 the Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable;

47.2.3 the Authority shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms;

47.2.4 the Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under clause 56 (Freedom of Information and Confidentiality) that is reasonably required as part of the Tender Process;

47.2.5 the Contractor may, at its own cost, appoint a person (the Tender Process Monitor) to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Finance Parties on the Authority's compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price;

47.2.6 the Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with clause 62 (Dispute Resolution);

47.2.7 for all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:
(a) the Post Termination Service Amount for that month, on or before the
date falling ten (10) Business Days after the end of that month; and

(b) the Post Termination Service Amount for the period ending on the
Compensation Date, on or before the date falling twenty (20) Business
Days after the Compensation Date;

47.2.8 if any Post Termination Service Amount is less than zero (0), then it shall be
carried forward and shall be set off against any future positive Post
Termination Service Amounts. If any such Post Termination Service Amount
has not been set off on or before the Compensation Date then it shall be
taken into account in the calculation of the Adjusted Highest Compliant
Tender Price;

47.2.9 the Authority shall require bidders to bid on the basis that:

(a) they will receive the benefit of any outstanding claims under material
damage insurance policies and amounts (if any) standing to the credit
of the Joint Insurance Account on the date that the New Contract is
entered into; and

(b) the Authority shall transfer to the New Contractor (and the New
Contractor shall accept) the Lease on the basis that the New
Contractor will be responsible for paying:

i any stamp duty land tax associated with the Lease;

ii any overages associated with the Lease;

iii any rentals (including any arrears outstanding at the Termination
Date) associated with the Lease;

iv any payments required to be made by the Contractor under the
Supplemental Deed with effect from the date of the New Contract;

v (without double counting) any amounts paid by the Authority which
at the relevant time the Authority is entitled to deduct from future
payments of Pass Through Costs pursuant to paragraphs 8.8(b) and
8.8(c) of Schedule 6 (Payment Mechanism) but which have not been
recovered by the Authority from the Contractor;

47.2.10 as soon as practicable after tenders have been received or in the case of
paragraph 47.2.10 (b) below, following the expiry of the time stipulated for the
return of Tenders either:

(a) the Authority shall (acting reasonably) determine the Compliant
Tenders and shall notify the Contractor of the Adjusted Highest
Compliant Tender Price; or

(b) where the Authority has received no Compliant Tender within the time
stipulated for the return of such tenders, then the following provisions
47.2.11 to 47.2.18 (Retendering Procedure) shall not apply to the re-
tendering procurement in respect of that termination, and the provisions of clause 47.3 (No Retendering Procedure) shall apply;

47.2.11 if the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure, the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the element of the Adjusted Highest Compliant Tender Price that is not disputed no later than the date specified in clause 47.2.12 (Retendering Procedure) and the remainder on or before the date falling twenty (20) Business Days after it has been determined under the Dispute Resolution Procedure and the Authority shall pay interest to the Contractor at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which has been withheld from the date specified in clause 47.2.12 (Retendering Procedure) until the date specified in this clause 47.2.11 (Retendering Procedure). For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in clause 47.2.12 (Retendering Procedure) below, with the disputed amount being dealt with in accordance with this clause 47.2.11 (Retendering Procedure);

47.2.12 subject to clauses 47.2.11 (Retendering Procedure) and 47.2.15 (Retendering Procedure), the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the date of the New Contract;

47.2.13 the discharge by the Authority of its payment obligation in clauses 47.2.11 and/or 47.2.12 (Retendering Procedure) shall be in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Agreement and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;

47.2.14 subject to clauses 47.2.15 (Retendering Procedure) and 47.2.18 (Retendering Procedure), if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two (2) years after the Termination Date then the provisions of this clause 47.2 (Retendering Procedure) shall not apply to that termination and the provisions of clause 47.3 (No Retendering Procedure) shall apply instead;

47.2.15 if the Adjusted Highest Compliant Tender Price is zero (0) or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Agreement and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already
been taken into account in determining the Adjusted Highest Compliant Tender Price;

47.2.16 if the Adjusted Highest Compliant Tender Price is less than zero (0) then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract;

47.2.17 the Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under clause 47.3 (No Retendering Procedure) by notifying the Contractor that this election has been made; and

47.2.18 if the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days of such notification.

47.3 No Retendering Procedure

If either the Authority is not entitled to retender the provision of the Project under clause 47.1 (Retendering Election), or the provisions of clause 47.2.10(b) or clause 47.2.17 apply, or the Authority elects to require an expert determination in accordance with this clause 47.3 (No Retendering Procedure), then the following procedure shall apply:

47.3.1 subject to clause 47.3.2 (No Retendering Procedure), the Contractor shall not be entitled to receive any Post Termination Service Amount;

47.3.2 if the Authority elects to require an expert determination in accordance with this clause 47.3 (No Retendering Procedure) after it has elected to follow the procedure under clause 47.2 (Retendering Procedure), then the Authority shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with clause 47.2 (Retendering Procedure);

47.3.3 subject to clause 47.3.3A, in agreeing or determining the Estimated Fair Value of the Contract, the Parties shall be obliged to follow the principles set out below:

(a) all forecast amounts (including Third Party Income) shall be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement;

(b) the total of all future payments of the Unitary Charge forecast to be made (including all Third Party Income forecast to be made) shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate; and

(c) the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated
pursuant to clause 47.3.3(b) (No Retendering Procedure), such costs to include (without double counting):

i a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the Base Case;

ii the costs of the Service forecast to be incurred by the Authority in providing the Project to the standard required; and

iii any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Authority to complete construction or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the full Unitary Charge referred to in clause 47.3.3(b) (No Retendering Procedure):

47.3.3A for the purposes of calculating the Estimated Fair Value of the Contract, it shall be assumed that the Authority shall transfer to the New Contractor (and the New Contractor shall accept) the Lease on the basis that the New Contractor will be responsible for paying:

(a) any stamp duty land tax associated with the Lease;

(b) any overages associated with the Lease;

(c) any rentals (including any arrears outstanding at the Termination Date) associated with the Lease; and

(d) (without double counting) any amounts paid by the Authority which at the relevant time the Authority is entitled to deduct from future payments of Pass Through Costs pursuant to paragraphs 8.6(b) and 8.8(c) of Schedule 6 (Payment Mechanism) but which have not been recovered by the Authority from the Contractor;

47.3.4 if the Parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling twenty (20) Business Days after the date on which the Authority elected to require an expert determination in accordance with this clause 47.3 (No Retendering Procedure), then the Adjusted Estimated Fair Value of the Contract shall be determined in accordance with the Dispute Resolution Procedure;

47.3.5 the Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling forty (40) Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this clause 47.3 (No Retendering Procedure);

47.3.6 the discharge by the Authority of its obligation in clause 47.3.5 (No Retendering Procedure) is in full and final settlement of all the Contractor’s claims and rights against the Authority for breaches and/or termination of this Agreement or other Project Document whether in contract, tort, restitution or otherwise, save for any liability that arose prior to the Termination Date (but
47.3.7 to the extent that the Adjusted Estimated Fair Value of the Contract is less than zero (0), then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Contractor to the Authority on the Compensation Date.

48 Compensation on Termination for Force Majeure or Uninsurability

48.1 Amount

On termination of this Agreement under clause 41 (Termination on Force Majeure), or clause 60 (Risks that become Uninsurable) the Authority shall pay to the Contractor the Force Majeure Termination Sum in accordance with clauses 50 (Miscellaneous Compensation Provisions) and 51 (Method of Payment).

48.2 Subject to clauses 48.4 to 48.6 the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

48.2.1 the Base Senior Debt Termination Amount;

48.2.2 the Junior Debt less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;

48.2.3 all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the shareholders of the Contractor (save to the extent deducted under clause 48.2.2); and

48.2.4 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Agreement and any Sub-Contractor Breakage Costs.

48.3 If the amounts referred to in clauses 48.2.2 and/or 48.2.3 are less than zero (0), then, for the purposes of the calculation in clause 48.1 they shall be deemed to be zero (0).

48.4 If the aggregate of the amounts referred to in clauses 48.2.1, 48.2.2 and 48.2.3 (Amount) is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in clause 48.2.4 provided always that:

48.4.1 the amount referred to in clause 48.2.4 (Amount) shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

48.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract,
and for the avoidance of doubt, the amount of any Remediation Handback Costs payable in accordance with paragraph 2.3.2 (Application) of Schedule 28 (Environmental Provisions) shall not reduce the amount of the Force Majeure Termination Sum below the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in clause 48.2.4.

48.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under clause 10.4.4.1 of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

48.6 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 10.4.4.2 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this clause 48 (Compensation on Termination for Force Majeure), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

48.7 Payment

The Force Majeure Termination Sum payable pursuant to this clause 48 (Compensation on Termination for Force Majeure) shall be determined and paid in accordance with clauses 50 (Miscellaneous Compensation Provisions) and 51 (Method of Payment).

49 Assets

Where this Agreement expires due to effluxion of time then the Authority shall have the option to require the Contractor to transfer its rights, title and interest in and to the Assets to the Authority, or as directed by the Authority, at no cost to the Authority.

50 Miscellaneous Compensation Provisions

50.1 Gross Up of Termination Payments

If any amount of compensation payable by the Authority (whether payable as a lump sum or instalments) under clauses 48 (Compensation on Termination for Force Majeure), 45 (Compensation on Termination for Authority Default/Voluntary Termination) and 46 (Compensation on Termination for Corrupt Gifts, Fraud and Refinancing Breaches) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.
50.2 Set Off on Termination

Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or instalments) under clause 48 (Compensation on Termination for Force Majeure), clause 45 (Compensation on Termination for Authority Default/Voluntary Termination), and clause 46 (Compensation on Termination for Corrupt Gifts Fraud and Refinancing Breaches) save to the extent that after such an amount has been set off, the termination payment made would be an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

50.3 Exclusivity of Remedy

Any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Agreement or any Project Document. The compensation payable under this Part 7 (Compensation on Termination) shall be the sole remedy of the Contractor against the Authority in respect of the termination of the Agreement.

50.4 Changes to Financing Agreements and Ancillary Documents

No amendment, waiver or exercise of a right under any Financing Agreement or Ancillary Document shall have the effect of increasing the Authority’s liabilities on early termination of this Agreement unless:

50.4.1 the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this clause 50.4 (Changes to Financing Agreements and Ancillary Documents); or

50.4.2 it is an Additional Permitted Borrowing.

51 Method of Payment

51.1 Termination Sum

The Authority shall pay to the Contractor the Termination Sum, together with any interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate on or before the date falling forty (40) Business Days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with clause 51.2 (Instalments). Where this Agreement terminates pursuant to clause 37.2 (Termination on Authority Default) the Authority shall pay to the Contractor the Authority Default Termination Sum on the Termination Date.

51.2 Instalments

The Authority may, other than on an Authority Default or where this Agreement terminates in the circumstances set out at clause 78 (Local Government (Contracts) Act 1997), elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt
51.2.1 in instalments as follows:

(a) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal:

i in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal, on the dates (the Instalment Dates) and in the amounts that the Contractor would have been required to pay principal to the Finance Parties under the terms of the Senior Financing Agreements had the Termination Date not occurred; and

ii in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant), in equal instalments on the Instalment Dates;

(b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Finance Parties under the terms of the Senior Financing Agreements (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; or

51.2.2 as the Parties may otherwise agree.

51.3 Interest

From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

51.4 Payment of Outstanding Element

If the Authority has elected to pay in accordance with clause 51.2 (Instalments) it may (on twenty (20) Business Days' prior written notice to the Contractor) elect to pay any outstanding element of the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) together with any interest accrued pursuant to clause 51.3 (Interest) in full on any Instalment Date.

51.5 Authority Default in Payment
If the Authority:

51.5.1 fails to make a payment to the Contractor in accordance with clauses 51.1 (Termination Sum) and/or 51.2 (Instalments) and/or 51.3 (Interest); or

51.5.2 breaches clause 64.1 (Restrictions on Transfer of this Agreement by the Authority),

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) together with any accrued but unpaid interest to be immediately due and payable.
PART 8 - General

52 Partnership

The Parties shall give effect to the procedure set out in Schedule 10 (Partnership).

53 Relief Events

53.1 Occurrence

If and to the extent that a Relief Event:

53.1.1 is the direct cause of a failure by the Contractor to achieve Service Availability on or before the Planned Service Commencement Date or (following the Planned Service Commencement Date but before the Longstop Date) is the direct cause of a delay in achievement of Service Availability; or

53.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Agreement,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under clause 37.3 (Termination on Contractor Default) and its obligations under this Agreement.

53.2 Relief

Subject to clause 53.5 (Information), to obtain relief, the Contractor must:

53.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Authority a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

53.2.2 within fifteen (15) Business Days of receipt by the Authority of the notice referred to in clause 53.2.1 (Relief), give full details of the relief claimed and demonstrate to the reasonable satisfaction of the Authority that:

(a) the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

(b) the Relief Event directly caused:

i the delay in the achievement of Service Availability on or before the Planned Service Commencement Date or (following the Planned Service Commencement Date but before the Longstop Date) any delay in the achievement of Service Availability; and/or

ii the need for relief from other obligations under the Agreement;

(c) the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered.
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by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

(d) the Contractor is using reasonable endeavours to perform its obligations under this Agreement.

53.3 Consequences

In the event that the Contractor has complied with its obligations under clause 53.2 (Relief), then:

53.3.1 the Planned Service Commencement Date and/or following the Planned Service Commencement Date, the Longstop Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

53.3.2 the Authority shall not be entitled to exercise its right to terminate this Agreement under clause 37.3 (Termination on Contractor Default) and, subject to clause 53.4 (Deductions), shall give such other relief as has been requested by the Contractor.

53.4 Deductions

Nothing in clause 53.3 (Consequences) shall affect any entitlement to make Deductions during the period in which the Relief Event is subsisting provided that any such Deductions shall be disregarded for the purposes of the Authority's right to terminate this Agreement for a Contractor Default.

53.5 Information

In the event that information required by clause 53.2 (Relief) is provided after the dates referred to in that clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

53.6 Notice

The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

53.7 Disputes

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Planned Service Commencement Date and/or (following the Planned Service Commencement Date) to the Longstop Date and/or relief from other obligations under this Agreement, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.
54 Change in Law

54.1 Occurrence

The Contractor shall take all steps necessary to ensure that the Works and the Services are performed in accordance with the terms of this Agreement following any Change in Law.

54.2 Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

54.2.1 any necessary change to the Works or the Services;

54.2.2 whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;

54.2.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve Service Availability by the Planned Service Commencement Date in relation to the Facility and/or meet the Authority’s Requirements and/or the Contractor’s Proposals during the implementation of any relevant Qualifying Change in Law;

54.2.4 any loss of or increase in revenue (including Third Party Income on the basis provided for in clause 66.7 (Lost Third Party Income)) that will result from the relevant Qualifying Change in Law;

54.2.5 any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and

54.2.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect after the Service Commencement Date,

in each case giving in full detail the procedure for implementing the change in the Works or in the Services. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with clauses 54.3 (Parties to Discuss) to 54.7 (Adjustment to Unitary Charge).

54.3 Parties to Discuss

As soon as practicable after receipt of any notice from either Party under clause 54.2 (Qualifying Change in Law), the Parties shall apply Schedule 21 (Change Protocol) in order to discuss and agree the issues referred to in clause 54.2 (Qualifying Change in Law) and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law. In applying Schedule 21 (Change Protocol) the Contractor shall:

54.3.1 provide evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its sub-contractors to minimise any increase in costs and maximise any reduction in costs;
54.3.2 demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;

54.3.3 give evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business; and

54.3.4 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under clauses 54.2.5 (Qualifying Change in Law) and/or 54.2.6 (Qualifying Change in Law).

54.4 Change Agreed

If the Parties agree or it is determined under the Dispute Resolution Procedure that the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law, then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and to the Finance Parties.

54.5 Cumulative Capital Expenditure

Subject to the provisions of clause 54.4 (Change Agreed), the Cumulative Capital Expenditure agreed or determined to be required as a result of a General Change in Law shall be solely for the account of the Authority.

54.6 Financing

If the Contractor has used reasonable endeavours to obtain funding for the Capital Expenditure referred to in clause 54.4 (Change Agreed), but has been unable to do so within forty (40) Business Days of the date that the agreement or determination referred to in clause 54.4 (Change Agreed) occurred, then the Authority shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling twenty (20) Business Days after the Capital Expenditure has been incurred.

54.7 Adjustment to Unitary Charge

Any compensation payable under this clause 54 (Change in Law) by means of an adjustment to or reduction in the Unitary Charge shall be determined and made in accordance with clause 66 (Financial Adjustments).

54.8 Payment of Irrecoverable VAT

The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty (20) Business Days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this clause 54.8, Irrecoverable VAT means Input VAT incurred by the Contractor on any supply which is made to it which is used or to be used
exclusively in performing the Works or the Services or any of the obligations or provisions under this Agreement (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

55 Authority and Contractor Changes

Any Authority and/or Contractor Changes shall be implemented in accordance with the requirements of Schedule 21 (Change Protocol).

56 Freedom of Information and Confidentiality

56.1 Duty of Confidentiality

56.1.1 The Parties agree that the terms of this Agreement and each Project Document shall, subject to clause 56.1.2 (Duty of Confidentiality), not be treated as Confidential Information and may be disclosed without restriction.

56.1.2 Clause 56.1.1 (Duty of Confidentiality) shall not apply to the terms of this Agreement or a Project Document designated as Commercially Sensitive Information and listed in Part 1 of Schedule 13 (Confidential Information) to this Agreement which shall, subject to clause 56.2 (Permitted Disclosure), be kept confidential for the relevant periods specified in that Part.

56.1.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement and the Project Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

56.2 Permitted Disclosure

Clauses 56.1.2 and 56.1.3 (Duty of Confidentiality) shall not apply to:

56.2.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Agreement for the performance of those obligations;

56.2.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 56 (Freedom of Information and Confidentiality);

56.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its Sub-Contractors;

56.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing Party;

any provision of information to the Parties’ own professional advisers or insurance advisers or to the Finance Parties or the Finance Parties’ professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor in connection with carrying out its obligations under this Agreement, or may wish to acquire shares in the Contractor in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:

(a) any proposed new contractor, its advisers and lenders should the Authority decide to retender this Agreement; or

(b) any person in connection with a market testing in connection with Market Tested Services;

any application for registration or recording of the Necessary Consents and property registration required;

any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Agreement;

any disclosure for the purpose of:

(a) the examination and certification of the Authority’s or the Contractor’s accounts; or

(b) any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources; or

(c) complying with a proper request from either Party’s insurance advisers, or insurers on placing or renewing any insurance policies; or

(d) (without prejudice to the generality of clause 56.2.4 (Permitted Disclosure) compliance with the FOIA and/or the EIR,

provided that neither clauses 56.2.10(d) nor 56.2.4 (Permitted Disclosure) shall permit disclosure of Confidential Information otherwise prohibited by clause 56.1.3 (Duty of Confidentiality) where that information is exempt from disclosure under section 41 of the FOIA or Regulation 12 of the EIR; or

any disclosure to City of York Council.
56.3 **Obligations Preserved**

Where disclosure is permitted under clause 56.2 (Permitted Disclosure) (other than clauses 56.2.2, 56.2.4, 56.2.5, 56.2.8, and 56.2.10) the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

56.4 **Audit**

For the purposes of:

56.4.1 the examination and certification of the Authority's accounts;

56.4.2 the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts); and

56.4.3 an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has performed its functions,

the District Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractor and may require the Contractor and any Sub-Contractor to produce such oral or written explanations as he or it considers necessary.

56.5 **Exploitation of Information**

The Contractor shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of the Authority.

56.6 **Expiry**

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to waste data flows, including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority.

56.7 **Disclosure by Audit Commission**

The Parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.

56.8 The provisions of this clause 56 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

56.9 **Freedom of Information**

56.9.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 56.9.2 to 56.9.7 (Freedom of Information) (inclusive).
Redacted Copy

56.9.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf the Authority shall transfer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:

(a) provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

(b) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.

56.9.3 Following notification under clause 56.9.2 (Freedom of Information) and up until such time as the Contractor has provided the Authority with all the Information specified in clause 56.9.2(a) (Freedom of Information), the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

(a) whether the Information is exempt from disclosure under the FOIA and the EIR; and

(b) whether the Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly or allow its Sub-Contractors to respond directly to a Request for Information unless expressly authorised to do so by the Authority.

56.9.4 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least seven (7) years from the date it is acquired and shall permit the Authority to inspect such Information as requested from time to time.

56.9.5 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Business Days of receiving it.

56.9.6 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of FOIA and the EIR.

56.9.7 In the event of a request from the Authority pursuant to clause 56.9.2 (Freedom of Information), the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Contractor’s estimated costs of complying with the request to

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the extent these would berecoverable if incurred by the Authority under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authority is entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

56.9.8 The Contractor acknowledges that (notwithstanding the provisions of clause 56 (Freedom of Information and Confidentiality)) the Authority may, acting in accordance with the Code of Practice issued pursuant to section 45 of FOIA (the FOIA Code), be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Project:

(a) in certain circumstances without consulting with the Contractor; or

(b) following consultation with the Contractor and having taken its views into account,

provided always that, where clause 56.9.8(a) (Freedom of Information) applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

57 Indemnities, Guarantees and Contractual Claims

57.1 Contractor's Indemnity

57.1.1 The Contractor shall, subject to clause 57.2 (Contractor not Responsible), be responsible for, and shall release and indemnify the Authority or any Authority Party on demand from and against all liability for Direct Losses arising from:

(a) death or personal injury;

(b) loss of or damage to property (including property belonging to the Authority or for which it is responsible);

(c) third party actions, claims and/or demands brought against the Authority or any Authority Party (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the Facility or the performance or non-performance by the Contractor of its obligations under this Agreement or the presence on the Authority's property of the Contractor or any Contractor Party.
Redacted Copy

57.2 Contractor not Responsible

The Contractor shall not be responsible or be obliged to indemnify the Authority:

57.2.1 for any matter referred to in clause 57.1 (Contractor's Indemnity) that arises as a direct result of the Contractor acting on a written notice issued by the Authority (and, for the purposes of this clause 57.2.1, clause 1.6 (Responsibility for Related Parties) shall not apply save to the extent that they are referred to in clauses 57.2.2 and / or 57.2.3);

57.2.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Party or by the breach of the Authority of its obligations under this Agreement; or

57.2.3 for any claims made pursuant to clause 57.1 (Contractor's Indemnity) (but excluding claims made pursuant to clause 57.1.1(a)) relating to Losses arising from risks against which the Contractor is required to insure under the Required Insurances but only to the extent such claims exceed the maximum amount of cover specified for that Insurance policy in Schedule 14 (Required Insurances) (provided that the indemnity shall always extend to liability for any amounts that the Contractor is obliged to insure and to any excess or deductible under any policy of insurance); or

57.2.4 for any claims made pursuant to clause 57.1 (Contractor's Indemnity) (but excluding claims made pursuant to clause 57.1.1(a)) in excess of:

(a) two hundred thousand pounds sterling (£200,000) in respect of any uninsured Losses on any one (1) occurrence;

(b) seven hundred and fifty thousand pounds sterling (£750,000) in aggregate in respect of any uninsured Losses in any five (5) year period; or

(c) three million pounds sterling (£3,000,000) in respect of any uninsured Losses (in aggregate) during the Contract Period.

57.3 Limitation of Indemnity

An indemnity by either Party under any provision of this Agreement shall be without limitation to any indemnity by that Party under any other provision of this Agreement.
57.4 **Notification of Claims**

Where either Party (the *Indemnified Party*) wishes to make a claim under this Agreement against the other (the *Indemnifying Party*) in relation to a claim made against it by a third party (a *Third Party Claim*), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

57.5 **Conduct of Claims**

Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the indemnified Party have conduct of the Third Party Claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the Third Party Claim within a reasonable period, take any action to settle or prosecute the Third Party Claim.

57.6 **Costs of Claims**

The Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.

57.7 **Mitigation**

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Agreement.

57.8 **Sub-Contractor Losses**

Where:

57.8.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and

57.8.2 the Contractor subsequently makes a claim against the Authority under this Agreement in relation to such compensation and/or relief,

the Authority waives any right to defend the Contractor's claim on the ground that the Contractor is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that the same is recoverable from the Authority.

58 **Insurance**

58.1 **Requirement to Maintain**

58.1.1 The Contractor shall prior to the start of any Works, take out and maintain or procure the maintenance of the insurances described in Part 1 of Schedule 14 (Insurances) and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences.

58.1.2 The Contractor shall with effect from the Service Commencement Date and thereafter during the Service Period take out and maintain or procure the
58.2 Obligations on Parties

No party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur, in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

58.3 Nature of the Insurances

58.3.1 With the exception of any insurances required by law the insurances referred to in clause 58.1.1 and 58.1.2 (Requirement to Maintain) shall:

(a) subject to clause 58.3.1(b) below, name the Contractor as co-insured with any other insured party maintaining the insurance;

(b) provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 6 in Part 3 of Schedule 14 (Insurances);

(c) contain a clause waiving the insurer's subrogation rights against the Authority, its employees and agents in accordance with Endorsement 12 in Part 3 of Schedule 14 (Insurances);

(d) provide for thirty (30) days prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 7.2 in Part 3 of Schedule 14 (Insurances); and

(e) in respect of the Physical Damage Policies (as defined in clause 59.1 (Reinstatement)) provide for payment of any proceeds received by the Contractor to be applied in accordance with clause 59 (Reinstatement).

58.3.2 Whenever possible and where required by Schedule 14 (Insurances), the insurances referred to in clauses 58.1.1 and 58.1.2 (Requirement to Maintain) shall name the Authority as a co-insured for its separate interest.

58.4 Evidence of Policies

The Contractor shall provide to the Authority:

58.4.1 copies on request of all insurance policies in respect of the insurances referred to in clause 58.1.1 and 58.1.2 (Requirement to Maintain) (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and

58.4.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this clause 58 and Schedule 14 (Insurances).
Renewal Certificates

Renewal certificates and an updated broker’s letter of undertaking substantially in the form set out at Schedule 14, Part 4 (Broker’s Letter of Undertaking) in relation to the insurances referred to in clauses 58.1.1 and 58.1.2 (Requirement to Maintain) shall be obtained as and when necessary (and in any event whenever any Required Insurance is renewed) and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority and the Authority’s insurance broker (as notified to the Contractor from time to time) as soon as possible but in any event on or before the renewal date.

Breach

If the Contractor is in breach of clauses 58.1.1 and 58.1.2 (Requirement to Maintain) the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.

Notification of Claims

The Contractor shall give the Authority notification within thirty (30) days after any claim in excess of fifty thousand pounds sterling (£50,000) (indexed) on any of the insurance policies referred to in this clause 58 (Insurance) accompanied by full details of the incident giving rise to the claim.

Limit of Liability

Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Contractor of its other liabilities and obligations under this Agreement.

Premiums

Subject to the provisions of Part 6 (Insurance Premium Risk Sharing Schedule) of Schedule 14 (Insurances) the insurance premiums in respect of the insurances referred to in clauses 58.1.1 and 58.1.2 (Requirement to Maintain) shall be the responsibility of the Contractor.

Authority Approval

The insurances referred to in this clause 58 (Insurance) shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

Joint Insurance Account

The Contractor shall set up and at all times maintain an account in the joint names of the Authority and the Contractor (the Joint Insurance Account).

Reinstatement

Subject to clause 59.4 (Economic Test) all insurance proceeds received under any policy referred to in paragraph 1 of Parts 1 and 2 of Schedule 14 (Insurances) (the Physical Damage Policies) shall be applied to repair, reinstate and replace each part or parts of the Assets or other property in respect of which the proceeds were received.
59.2 All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of five hundred thousand pounds sterling (£500,000) (indexed) shall be paid into the Joint Insurance Account.

59.3 Subject to clause 59.4 (Economic Test), where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the Relevant Incident) in an amount in excess of five hundred thousand pounds sterling (£500,000) (indexed):

59.3.1 the Contractor shall deliver as soon as practicable and in any event within twenty eight (28) days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the Reinstatement Works) to repair, reinstate or replace (the Reinstatement Plan) the Assets or other property which are the subject of the relevant claim or claims in accordance with clause 59.3.3 (Reinstatement) below. The Reinstatement Plan shall set out:

(a) if not the Works and Operating Sub-Contractor (or (as applicable) the relevant Construction Contractor), the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority; and:

(b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Authority, which approval shall not be unreasonably delayed;

59.3.2 provided that the Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with clause 59.3.3 (Reinstatement) below within a reasonable timescale:

(a) the Reinstatement Plan will be adopted;

(b) the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Authority;

(c) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the Relevant Proceeds) (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in clause 59.3.2(b) (Reinstatement) above, and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;
the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this clause 59 (Reinstatement), and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in clause 59.3.2(b) (Reinstatement), it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds;

the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;

after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with clause 59.3.3 (Reinstatement) below the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under clause 59.3.2(c) (Reinstatement) above, in respect of the Relevant Incident, together with any interest accrued; and

subject to the provisions of clause 57 (Indemnities, Guarantees and Contractual Claims) the Contractor shall be solely responsible for the payment of any deficiency.

Where insurance proceeds are to be used, in accordance with this Agreement, to repair, reinstate or replace any Asset, the Contractor shall carry out the work in accordance with the Authority’s Requirements so that on completion of the work, the provisions of this Agreement are complied with.

Economic Test

If the Assets are destroyed or substantially destroyed in a single event and the insurance proceeds (when taken together with any other funds available to the Contractor) are equal to or greater than the amount required to repair or reinstate the Assets, then the Contractor shall calculate the senior debt loan life cover ratio as used in the Base Case (on the assumption that the Assets are repaired and reinstated in accordance with clause 22 (Principal Obligations)).

If the calculation referred to in clause 59.4.1 (Economic Test) shows that the senior debt loan life cover ratio is greater than or equal to the LLCR Default Level then the Contractor shall be subject to the procedure set out in clauses 58.11 (Joint Insurance Account) to 59.3 (Reinstatement).

If the calculation referred to in clause 59.4.1 (Economic Test) shows that the senior debt loan life cover ratio is less than the LLCR Default Level then subject to clause 59.4 (Economic Test) an amount equal to the lesser of:

(a) the insurance proceeds; and

(b) the Base Senior Debt Termination Amount, or, if any Additional Permitted Borrowing has been advanced, the Revised Senior Debt Termination Amount.
shall be released from the Joint Insurance Account to the Contractor.

59.4.4 If, pursuant to clause 59.4.3 (Economic Test) above, insurance proceeds are released from the Joint Insurance Account the Contractor shall be in breach of its obligations under this Agreement and shall not, pursuant to clause 53 (Relief Events), be relieved of its obligations unless it can demonstrate, to the satisfaction the Authority, that it can carry out the works necessary to repair, reinstate or replace the assets which are subject to the relevant claims in accordance with clause 59.3.3 (Reinstatement) and within a reasonable timescale.

59.4.5 Where clause 59.4.3 (Economic Test) applies, the Contractor shall notify the Authority that the Loan Life Cover Ratio is less than the LLCR Default Level. The Authority may within twenty (20) Business Days of receiving such notice elect to implement the following provisions, in which case clause 59.4.3 (Economic Test) shall cease to apply:

(a) the Contractor shall be subject to the procedure set out in clauses 59.1 to 59.3 (Reinstatement);

(b) the Authority shall provide relief from appropriate provisions of this Agreement (on such terms as are agreed with the Contractor as appropriate) to the extent required to ensure that the Loan Life Cover Ratio is equal to the LLCR Default Level (on the basis that the Contractor receives the insurance proceeds it would have been entitled to receive had such relief not been granted) until the earlier of:

i the date on which the EfW Facility is repaired or reinstated in accordance with the Reinstatement Plan (as defined in clause 59.3.1 (Reinstatement)); or

ii the date on which the EfW Facility is scheduled to be repaired or reinstated in accordance with the Reinstatement Plan.

60 Risks that become Uninsurable

60.1 Nothing in this clause 60 (Risks that become Uninsurable) shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Contractor or a Contractor Party.

60.2 If a risk, usually covered by construction “all risks” insurance, property damage insurance, engineering breakdown insurance, third party liability insurance, environmental impairment liability insurance, delay in start up insurance (but excluding loss of profit), business interruption insurance (but excluding loss of profit), marine cargo and marine cargo delay in start up insurances (but not loss of profits) or statutory insurances in each case as required under this Agreement becomes Uninsurable then:

60.2.1 the Contractor shall notify the Authority of any risk becoming uninsurable within five (5) Business Days of becoming aware of the same and in any event at least five (5) Business Days before expiry or cancellation of any existing insurance in respect of that risk; and
60.2.2 if both Parties agree, or it is determined in accordance with clause 62 (Dispute Resolution) that the risk is Uninsurable and that:

(a) the risk being Uninsurable is not caused by the actions of the Contractor or a Sub-Contractor; and

(b) the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

the Parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

60.3 If the requirements of clause 60.2 (Risks that become Uninsurable) are satisfied, but the Parties cannot agree as to how to manage or share the risk, then:

60.3.1 in respect of such third party liability insurance and environmental impairment liability insurance only the Authority shall (at the Authority’s option) either pay to the Contractor an amount equal to the amount set out in clause 48 (Compensation on Termination for Force Majeure) and the Agreement will terminate, or elect to allow the Agreement to continue and clause 60.3.2 (Risks that become Uninsurable) below shall thereafter apply in respect of such risk; and

60.3.2 in respect of such construction “all risks” insurance, property damage insurance, engineering breakdown insurance, third party liability insurance (if the Authority elects to allow the Agreement to continue in accordance with clause 60.3.1 (Risks that become Uninsurable)), environmental impairment liability insurance (if the Authority elects to allow the Agreement to continue in accordance with clause 60.3.1 (Risks that become Uninsurable)), delay in start up insurance (but not loss of profits), business interruption insurance (but not loss of profits) marine cargo and marine cargo delay in start up insurances (but not loss of profits) or statutory insurances the Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority’s option) either pay to the Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and the Agreement will continue, or an amount equal to the amount set out in clause 48 (Compensation on Termination for Force Majeure) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable to the Contractor whereupon the Agreement will terminate; and
where pursuant to clause 60.3.1 and/or 60.3.2 (Risks that become Uninsurable) this Agreement continues then the Unitary Charge shall be reduced in each year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Contractor in respect of the relevant risk in the year prior to it becoming Uninsurable (indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only the reduction in the Unitary Charge shall be pro rated to the number of months for which the risk is Uninsurable; and

where, pursuant to clause 60.3.1 and/or 60.3.2 (Risks that become Uninsurable) this Agreement continues, the Contractor shall approach the insurance market at least every four (4) months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Agreement; and

in respect of any period between the Authority receiving notification in accordance with clause 60.2.1 (Risks that become Uninsurable) that a third party liability risk, defined as a risk which is required to be insured under the third party liability insurance policies, has become Uninsurable and the Authority notification to the Contractor in accordance with clause 60.3 (Risks that become Uninsurable) in respect of such risk, provided it is ultimately agreed or determined that the requirements of clause 60.2.2 (Risks that become Uninsurable) are satisfied in respect of the uninsurable third party liability risk and subject to clause 60.3.6 below, clause 60.3.2 (Risks that become Uninsurable) shall apply in respect of the occurrence of the Uninsurable third party liability risk during such period unless the Parties otherwise agree how to manage the risk during this period; and

clause 60.3.5 shall only apply provided the Contractor does not unreasonably materially delay (a) agreement and/or determination in accordance with clause 62 (Dispute Resolution) as to whether the requirements of clause 60.2.2 (Risks that become Uninsurable) are satisfied in respect of the Uninsurable third party liability risk and/or (b) meeting with the Authority to discuss the means by which the risk should be managed.

If, pursuant to clause 60.3.2 (Risks that become Uninsurable), the Authority elects to make payment to the Contractor (such that the Agreement will terminate) (the Relevant Payment), the Contractor shall have the option (exercisable in writing within twenty (20) Business Days of the date of such election by the Authority (the Option Period)) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case the Agreement will continue (and the Relevant Payment will not be made by the Authority), and the Contractor’s payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.
Terms and Conditions that become unavailable

If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Agreement:

61.1.1 any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or

61.1.2 the insurance premium payable for Insurance Incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions or omissions of the Contractor and/or any sub-contractors) then clause 61.2 (Terms and Conditions that become unavailable) shall apply.

61.2 If it is agreed or determined that clause 61.1 (Terms and Conditions that become unavailable) applies then the Authority shall waive the Contractor's obligations in clauses 60.1 to 60.4 (Risks that become Uninsurable) and/or Schedule 14 (Insurances) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in clause 61.1 (Terms and Conditions that become unavailable) continue to apply to such Insurance Term.

61.3 To the extent that the Parties agree (acting reasonably), or it is determined pursuant to clause 62 (Dispute Resolution), that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Agreement, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Part 6 of Schedule 14 (Insurance Premium Risk Sharing Schedule).

61.4 The Contractor shall notify the Authority as soon as reasonably practicable and in any event within five (5) days of becoming aware that clause 61.1.1 and/or clause 61.1.2 (Terms and Conditions that become unavailable) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.

61.5 In the event that clause 61.1.1 and/or clause 61.1.2 apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four (4) months to establish whether clause 61.1.1 and/or clause 61.1.2 remain applicable to the Insurance Term. As soon as the Contractor is aware that clause 61.1.1 and/or clause 61.1.2 has ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of
insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Agreement.

61A Insurance Review Procedure

The provisions of Part 6 (Insurance Premium Risk Sharing Schedule) of Schedule 14 (Insurances) shall apply in respect of insurance premiums.

62 Dispute Resolution

62.1 Disputes

Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 62 (Dispute Resolution).

62.2 Consultation

If a dispute arises in relation to any aspect of this Agreement, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

62.3 Adjudication

Without prejudice to clause 62.2 (Consultation), either Party (the Referring Party) may give the other notice of its intention to refer the dispute to adjudication (the Notice of Adjudication) and the adjudicator shall be selected in accordance with clause 62.4 (Identity of Adjudicator) (the Adjudicator).

62.4 Identity of Adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be selected from the relevant Panel on the basis of which expert on the Panel in question is best qualified to consider the dispute. The Panels shall be selected in accordance with the following:

62.4.1 there shall be three (3) panels of experts, one (1) in respect of construction matters (the Construction Panel), one (1) in respect of operational and maintenance matters (the Operational Panel), and one (1) in respect of finance matters (the Finance Panel). All the experts on each panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-Contractor and any of the major competitors of the Contractor or relevant Sub-Contractor;

62.4.2 the Construction Panel shall comprise three (3) experts, who shall be selected jointly by the Contractor and the Authority. Such selection shall take place within twenty (20) Business Days of Financial Close;

62.4.3 the Operational Panel shall comprise three (3) experts, who shall be selected jointly by the Contractor and the Authority. Such selection shall take place within twenty (20) Business Days of Financial Close;

62.4.3A the Finance Panel shall comprise three (3) experts, who shall be selected jointly by the Contractor and the Authority. Such selection shall take place within twenty (20) Business Days of Financial Close;
62.4.4 if any member of a panel resigns during the Contract Period, a replacement expert shall be selected by the Contractor and the Authority as soon as practicable;

62.4.5 in the event that the nominated Adjudicator is unable or unwilling to confirm acceptance of his appointment as Adjudicator within two (2) Business Days of receipt of the Notice of Adjudication, then the Referring Party shall invite the person next in line to act as the Adjudicator. In the event that the second panel member is unwilling or unable to confirm acceptance of his appointment as Adjudicator within two (2) days or if the Parties disagree as to the relevant panel of experts to be used then the Referring Party may apply to the President for the time being of the Chartered Institute of Arbitrators who shall within three (3) Business Days of any such application nominate an Adjudicator to determine the issue set out in the Notice of Adjudication; and

62.4.6 if the Authority and the Contractor are unable to agree on the identity of the experts to be selected to the panels, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within thirty (30) days of any application for such appointment by either Party.

62.5 Referral of the Dispute

Within seven (7) days of the service of the Notice of Adjudication, or as soon thereafter as the Adjudicator is appointed, the Referring Party shall serve its statement of case (the Referral Notice) on the Adjudicator and the other Party (the Responding Party). The Referral Notice shall include a copy of this Agreement, details of the circumstances giving rise to the dispute as set out in the Notice of Adjudication, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

62.6 Response to the Referral

The Responding Party shall serve its statement of case (the Response) on the Adjudicator and the Referring Party within a period of time to be directed by the Adjudicator. The Response shall include any arguments in response to the Referral Notice of the dispute set out in the Notice of Adjudication and any additional evidence on which the Responding Party relies.

62.7 Procedure

Subject to clause 62.11 (Adjudicator's Powers), the Adjudicator shall have absolute discretion as to how to conduct the adjudication, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. The Parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.

62.8 Adjudicator's Decision

In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty eight (28) days after the date of receipt of the Referral Notice (or such other period as the Parties may agree). The Adjudicator shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the Referring Party. Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the English
courts, or by agreement between the Parties, the Adjudicator’s decision shall be binding on both Parties who shall forthwith give effect to the decision.

62.9 Adjudicator’s Costs

The Adjudicator’s costs of any referral shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.

62.10 Adjudicator as Expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

62.11 Adjudicator’s Powers

The Adjudicator shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

62.12 Confidentiality

All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 56 (Freedom of Information and Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator’s work.

62.13 Liability of Adjudicator

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

62.14 Reference to the Courts

Either Party may (within ninety (90) calendar days of receipt of the Adjudicator’s decision or where the Adjudicator fails to give a decision pursuant to clause 62.8 (Adjudicator’s Decision) give notice to the other Party of its intention to refer the dispute to the courts of England and Wales for final determination.

62.15 Parties’ Obligations

The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause.
Similar Disputes

62.16.1 If any dispute arising under this Agreement raises issues which relate to any dispute between the Contractor and the Works and Operating Sub-Contractor arising under the Works and Operating Agreement or otherwise affects the relationship or rights of the Contractor and/or the Works and Operating Sub-Contractor under the Works and Operating Agreement (the Works and Operating Agreement Dispute) then the Contractor may include as part of its submissions made to the Adjudicator or to the courts submissions made by the Works and Operating Sub-Contractor.

62.16.2 In the event of any similar dispute or any dispute subject to clause 62.16.1 (Similar Disputes) above gives rise to a dispute between the Authority and the Contractor under this Agreement, the Parties agree that the Adjudicator appointed in respect of the Works and Operating Agreement Dispute shall be appointed in respect of the resulting dispute under the Agreement.

Jurisdiction over Sub-Contractors

62.17 The Adjudicator shall not have jurisdiction to determine the Works and Operating Agreement Dispute but the decision of the Adjudicator and/or the courts shall, subject to clause 62.14 (Reference to the Courts), be binding on the Contractor and the Works and Operating Sub-Contractor insofar as it determines the issues relating to the Works and Operating Agreement Dispute.

Sub-Contractors' Submissions

62.18 Any submissions made by the Works and Operating Sub-Contractor shall:

62.18.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and

62.18.2 concern only those matters which relate to the dispute between the Authority and the Contractor under this Agreement.

Costs

62.19 Where the Works and Operating Sub-Contractor makes submissions in any reference before:

62.19.1 the Adjudicator, the Adjudicator’s costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third (1/3) by the Authority and two-thirds (2/3) by the Contractor; and

62.19.2 the courts, the costs of the litigation shall be in the discretion of the court.

Fast Track

62.20 If a dispute arises between the Parties in relation to payment pursuant to clause 31 (Payment Provisions), Schedule 6 (Payment Mechanism), Schedule 22 (Planning) or Schedule 24 (Funding Protocol) (a Fast Track Dispute), then the Parties shall refer the dispute to an Adjudicator from the Financial, Construction or Operational Panel as appropriate in accordance with the procedures set out in clauses 62.4 (Identity of Adjudicator) and 62.5
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(Referral of Dispute). The Adjudicator shall consider any representations made by the Parties in which either Party puts forward its own case or deals with that of the other Party and shall deliver his decision within ten (10) Business Days of referral of the Fast Track Dispute to him and shall in any event make his decision as soon as practicable in the particular circumstances of the Fast Track Dispute to which his decision relates. The Adjudicator shall give written notice of his decision and shall state the reasons for his decision to the Parties as soon as practicable thereafter.

62.20A Sub-Contractor Claims

Where:

(a) a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and

(b) the Contractor subsequently makes a claim against the Authority under this Agreement in relation to such compensation and/or relief,

the Authority waives any right to defend the Contractor’s claim on the ground that the Contractor is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that the same is recoverable from the Authority.

62.21 Authority’s Liability

The Authority shall have no liability to the Works and Operating Sub-Contractor arising out of or in connection with any decision of the Adjudicator or courts or in respect of the costs of the Works and Operating Sub-Contractor in participating in the resolution of any dispute under this Agreement.

62.22 Access to Documents

The Contractor shall not allow the Works and Operating Sub-Contractor access to any document relevant to issues in dispute between the Authority and the Contractor save where:

62.22.1 the document is relevant also to the issues relating to the Works and Operating Agreement Dispute as the case may be; and

62.22.2 the Contractor has first delivered to the Authority a written undertaking from the Works and Operating Sub-Contractor addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Agreement and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or the courts or any professional adviser engaged by the Works and Operating Sub-Contractor to advise in connection with the dispute.

63 Intellectual Property

63.1 Project Data

The Contractor shall make available to the Authority free of charge (and hereby irrevocably licences the Authority to use) all Project Data that might reasonably be required by the Authority and the Contractor shall ensure that it obtains all necessary licences, permissions and consents to ensure that it can make the Project Data available
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to the Authority on these terms, for the purposes, following termination of this Agreement, of the design or construction of the Facility, the operation, maintenance or improvement of the Facility and/or the provision of works and/or services the same as or similar to the Works and/or Services, (together, the Approved Purposes), and in this clause 63 use shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

63.2 Licence in Respect of Intellectual Property Rights

The Contractor:

63.2.1 hereby grants to the Authority, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Agreement or upon or at any time following termination of this Agreement) licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights which are or become vested in the Contractor (the Contractor IPR); and

63.2.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 63.2.1 (Licence in Respect of Intellectual Property Rights) to the Authority,

in both cases, solely for the Approved Purposes.

63.3 Vesting of Intellectual Property Rights

The Contractor shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest, and remain vested throughout the term of this Agreement, in, or are licensed to the Contractor and the Contractor shall enter into appropriate agreements with any Contractor Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

63.4 Maintenance of Data

To the extent that any of the data, materials and documents referred to in this clause are generated by or maintained on a computer or similar system, the Contractor shall:

63.4.1 use all reasonable endeavours to procure for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Contractor may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and

63.4.2 at the Authority's request enter into the National Computing Centre's then current multi-licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.
63.5 The Contractor shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in clause 63.4 (Maintenance of Data) in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall submit to the Authority's Representative for approval its proposals for the back-up and storage in safe custody of such data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. The Contractor shall comply, and shall cause all Contractor Parties to comply, with all procedures to which the Authority's Representative has given its approval. The Contractor may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Authority's Representative, who shall be entitled to object on the basis set out above.

63.6 Indemnity

63.6.1 Where a claim or proceeding is made or brought against the Authority because Contractor IPR infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Contractor IPR by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the Authority at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings and the provisions of clause 57 (Indemnities, Guarantees and Contractual Claims) shall apply.

63.6.2 Where a claim or proceeding is made or brought against the Contractor which arises out of the infringement of any Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with the Works or the Project infringes any rights in or to any Intellectual Property Rights of a third party then, if such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with the terms of this Agreement and otherwise than as a result of a breach of this clause 63 by the Contractor or arising out of infringement of Intellectual Property Rights provided by the Authority to the Contractor under clause 63.7 then the Authority shall indemnify the Contractor at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings.

63.7 Licence to Contractor

The Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Agreement only and only for purposes directly relating to the Project any Intellectual Property Rights relating to the Project which are or become vested in or are licensed to the Authority.

64 Assignment and Sub-Contracting

64.1 Restrictions on Transfer of this Agreement by the Authority

The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Agreement and having the legal capacity,
power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:

64.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

64.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement and the Direct Agreement; or

64.1.3 any other public body whose obligations under this Agreement and the Direct Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement and the Direct Agreement.

64.2 Restriction on the Contractor

Subject to clause 64.3 (Exception) and subject always to the provisions of the Direct Agreement, the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Agreement in whole or in part except with the prior written consent of the Authority.

64.3 Exception

64.3.1 The provisions of clause 64.2 (Restriction on the Contractor) do not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements or to the enforcement of the same.

64.3.2 Nothing in this Agreement shall prohibit the Contractor from providing or procuring the provision of the Works or the Services from a sub-contractor having the legal capacity, power and authority to become a party to and perform the obligations of the relevant sub-contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the sub-contractor under the relevant sub-contract and whose identity has been notified to the Authority (and who the Authority has approved, such approval not to be unreasonably withheld, and to be given (or withheld) within thirty (30) days of notice) prior to the appointment of such sub-contractor, provided that the Contractor shall remain primarily and directly liable for the Contractor's obligations under this Agreement. By entering into this Agreement, the Authority approves the Sub-Contractors appointed by the Contractor as at the Effective Date.

64.4 Contractor's Obligations

The Contractor shall perform its obligations under and observe all the terms of any Sub-Contract with a Key Sub-Contractor.

64.5 Sub-Contractors

Nothing in this Agreement shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.
64.6 Replacement of Sub-Contractors

The rights set out in clause 64.6.1 (Replacement of Sub-Contractors) may be exercised on no more than two (2) occasions during the Service Period and the rights set out in clause 64.6.3 (Replacement of Sub-Contractors) may be exercised no more than once in respect of the Works Period.

64.6.1 On the substitution or replacement of the defaulting Works and Operating Sub-Contractor or a defaulting sub-contractor to the Works and Operating Sub-Contractor (in both cases provided that the Contractor is acting in compliance with clause 7 (Ancillary Documents and Financing Documents)), the Contractor may elect that, for the purposes of clause 37.3 (Termination on Contractor Default) only:

(a) any accrued Unavailability Deductions; and/or
(b) any accrued Performance Deductions; and/or
(c) any warning notices or Final Warning Notices in respect of clause 38 (Termination for Persistent Breach by the Contractor); and/or
(d) any Performance Failure Points; and/or
(e) any Performance Failure Notices,

in each case relating to the relevant Services in respect of which the Works and Operating Sub-Contractor or any sub-contractor to the Works and Operating Sub-Contractor is being replaced, shall be cancelled. The Contractor shall notify the Authority on or before the appointment of any such substitute or replacement Works and Operating Sub-Contractor or sub-contractor to the Works and Operating Sub-Contractor whether it elects for this clause 64.6 (Replacement of Sub-Contractors) to apply on that occasion.

64.6.2 Where an election is made pursuant to clause 64.6.1 on the substitution or replacement of the defaulting Works and Operating Sub-Contractor or a defaulting sub-contractor to the Works and Operating Sub-Contractor then, for the purposes of clause 37.3 (Termination on Contractor Default) only:

(a) no Unavailability Deductions shall accrue for the purposes of limbs (a), (k), and (l) of the definition of Contractor Default;

(b) no Performance Deductions/Performance Failure Points shall accrue for the purposes of limbs (a), (k), and (l) of the definition of Contractor Default; and

(c) no warning notices or Final Warning Notices in respect of clause 38 (Termination for Persistent Breach by the Contractor) shall accrue for the purposes of limb (b) of the definition of Contractor Default,

in respect of a Service during a period of two (2) months from the date on which that Service is first provided by the replacement or substitute Works and Operating Sub-Contractor or sub-contractor to the Works and Operating Sub-Contractor as appropriate. Deductions shall still be made from the Monthly Unitary Charge during that period.
64.6.3 On the substitution or replacement of the defaulting Construction Contractor or a defaulting sub-contractor to the Construction Contractor (in both cases provided that the Contractor is acting in compliance with clause 7.1 (Ancillary Documents and Financing Documents)), the Contractor may elect that, for the purposes of clause 37.3 (Termination on Contractor Default) only any warning notices or Final Warning Notices in respect of clause 38 (Termination for Persistent Breach by the Contractor) in each case relating to the relevant Works in respect of which the Construction Contractor or any sub-contractor to the Construction Contractor is being replaced, shall be cancelled. The Contractor shall notify the Authority on or before the appointment of any such substitute or replacement Construction Contractor or sub-contractor whether it elects for this clause 64.6 (Replacement of Sub-Contractors) to apply on that occasion.

64.6.4 Where an election is made pursuant to clause 64.6.3 (Replacement of Sub-Contractors) on the substitution or replacement of the defaulting Construction Contractor or a defaulting sub-contractor to the Construction Contractor then, for the purposes of clause 37.3 (Termination on Contractor Default) only no warning notices or Final Warning Notices in respect of clause 38 (Termination for Persistent Breach by the Contractor) shall accrue for the purposes of limb (b) of the definition of Contractor Default in respect of the Works during a period of two (2) months from the date on which such Works are first provided by the replacement or substitute Construction Contractor or sub-contractor as appropriate.

64.7 For the avoidance of doubt, the Parties acknowledge and agree that for the purposes of clause 64.6 (Replacement of Sub-Contractors) any replacement of the Works and Operating Sub-Contractor (in whole or in part) permits the appointment of separate Sub-Contractors in relation to (respectively) the Works and/or the Services with such consequential amendments to this Agreement and/or any relevant Project Document as may be reasonably required to effect such separate appointments (but not further or otherwise) and the Parties shall enter into any documents to amend the Agreement or any relevant Project Document which are necessary to give effect to the said appointments.

65 Change in Ownership

65.1 Restricted Share Transfer

65.1.1 No Change in Ownership may occur during the Lock-in Period.

65.1.2 Any Change of Ownership arising as a consequence of:

(a) the grant or enforcement of security in favour of the Finance Parties over or in relation to any of the shares of the Contractor or Holdco, provided that any document conferring security over any of such shares has been approved by the Authority (such approval not to be unreasonably withheld or delayed);

(b) any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or

(c) a transfer by:
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i  any Shareholder to an Affiliate of such Shareholder; and/or

ii  by an Affiliate of a Shareholder to such Shareholder and/or another Affiliate of the Shareholder,

shall be disregarded for the purpose of clause 65.1.1 (Restricted Share Transfer) above.

65.1.3 Where clause 65.1.2(c) (Restricted Share Transfer) applies and subsequent to any such transfer (the Original Transfer) the transferee ceases to be an Affiliate of the original transferor, it shall be a breach of this clause 65.1 (Restricted Share Transfer) if the shares or interests which were the subject of the Original Transfer are not within twenty (20) days of the transferee ceasing to be an Affiliate of the original transferor transferred to that original transferor or any Affiliate of such transferor.

65.2 Notification

65.2.1 The Contractor shall provide the Authority with at least ten (10) Business Days’ prior written notice of any Change in Ownership contemplated by clause 65.1 (Restricted Share Transfer).

65.2.2 The Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, request that the Contractor inform it as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the Authority’s request for details of any Change in Ownership.

65.2.3 The Contractor’s obligation under clause 65.2.1 (Notification) shall, except where a legal transfer of shares is proposed, be limited to the extent of the Contractor’s awareness.

65.2.4 The Contractor’s obligation under clause 65.2.2 (Notification) shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor’s awareness having made all reasonable enquiry.

65.2.5 For the purposes of this clause 65.2 (Notification) any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000) shall be disregarded.

65.3 Contractor Warranty

The Contractor warrants and represents to the Authority that the legal and beneficial ownership of the Contractor and Holdco as at the Effective Date is as set out in Schedule 11, subject to the security interests created under the security documents, and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor or HoldCo.
Financial Adjustments

Updating the Base Case

Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Agreement or where the Parties agree otherwise) be determined in accordance with this clause 66 (Financial Adjustments). Where for the purposes of this clause 66 (Financial Adjustments) the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor, in consultation with the Authority, to reflect the cumulative impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken. In calculating the Estimated Change in Project Costs and in assessing other adjustments to be made to the Base Case arising from the Relevant Event, the Contractor shall be entitled to take into account, inter alia:

66.1.1 any Change in Costs and Change in Revenue;

66.1.2 reasonable economic assumptions prevailing at the time; and

66.1.3 changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the terms of this Agreement, including (to the extent so borne by the Contractor under this Agreement) changes in VAT rates, taxation rates, RPIX and the impact of Deductions.

Application to the Base Case

Where, pursuant to this Agreement, either Party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case (with the exception of payment of the Authority's share of any Refinancing Gain to which clause 32 (Refinancing) shall apply and payment of any lost Third Party Income to which clause 66.7 (Lost Third Party Income) shall apply), the adjustment to the Unitary Charge due shall be that required to ensure that, by reference to the Base Case adjusted under this clause 66 (Financial Adjustments), the Contractor is left in a no better and no worse position than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Unitary Charge required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

No Better and no Worse

66.3.1 Any reference in this Agreement to no better and no worse or to leaving the Contractor in a no better and no worse position shall be construed by reference to the Contractor's:

(a) rights, duties and liabilities under or arising pursuant to performance of this Agreement, the Financing Agreements and the Works and Operating Agreement; and
ability to perform its obligations and exercise its rights under this Agreement, the Financing Agreements and the Works and Operating Agreement,

so as to ensure that:

(c) the Contractor is left in a position which is no better and no worse in relation to the key ratios (to include loan life cover and debt service cover ratios) and internal rate of return by reference to the version of the Base Case applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

(d) the ability of the Contractor to comply with this Agreement is not adversely affected or improved as a consequence of the Relevant Event.

66.4 Replacement of Base Case

Any Base Case produced following adjustments in accordance with this clause 66 (Financial Adjustments) shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Agreement until its further amendment in accordance with this Agreement.

66.5 Amendments to Logic and/or Formulae

66.5.1 Where it is necessary to amend the logic or formulae incorporated in the Base Case to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles.

66.5.2 Where any amendment is made to the logic or formulae incorporated in the Base Case, the Base Case shall first be run as at the date immediately prior to amendment to ensure that the key ratios (to include loan life cover and debt service ratios) from the Base Case are maintained at no lower or no higher levels than the key ratios (to include loan life cover and debt service ratios) immediately post the amendment, and the difference in the Real Pretax Project IRR after and immediately prior to amendment does not differ by more than five (5) basis points (being zero point zero five percent (0.05%) as shown in the resulting figure).

66.6 Copies of the revised Base Case

Following any change to the Base Case under the provisions of this clause 66 (Financial Adjustments), the Contractor shall promptly deliver a copy of the revised Base Case to the Authority in the same form as is established at the Effective Date or in such other form as may be agreed between the Parties.

66.7 Lost Third Party Income

For the purposes of calculating the financial adjustment pursuant to the provisions of this clause 66 (Financial Adjustments) the following principles shall be applied:

66.7.1 if the Relevant Event arises from a Qualifying Change in Law (or any event that this Agreement deems to be a Qualifying Change in Law), subject to clause 66.7.2 the adjustment to the Unitary Charge due in respect of the
resulting lost Third Party Income (the Qualifying Change in Law TPI Adjustment), shall compensate the Contractor for the Third Party Income that would otherwise have been receivable but for the occurrence of a Qualifying Change in Law;

66.7.2 when taken together with all other Third Party Income receivable by the Contractor, the Qualifying Change in Law TPI Adjustment:

(a) where prior to the occurrence of the Qualifying Change in Law the Contractor has been generating Third Party Income at levels equal to or in excess of those forecast in the Base Case shall not result in the Third Party Income exceeding the levels forecast in the Base Case;

(b) where the Contractor has been generating Third Party Income at levels below those forecast in the Base Case, shall not result in Third Party Income exceeding an amount equal to the lower of:

i the Contractor’s share of the Third Party Income forecast in the Base Case; and

ii the average monthly Third Party Income received by the Contractor over the twenty-four (24) month period immediately prior to the occurrence of the Qualifying Change in Law;

66.7.3 if the Relevant Event arises from a Compensation Event (or an event the Agreement deems to be a Compensation Event), subject to clause 66.7.4 the adjustment to the Unitary Charge due in respect of the resulting lost Third Party Income (the Compensation Event TPI Adjustment) shall when taken together with all other Third Party Income receivable by the Contractor, put the Contractor in a no better, no worse position in respect of Third Party Income than would otherwise have been received but for the occurrence of the Compensation Event;

66.7.4 when taken together with all other Third Party Income receivable by the Contractor, the Compensation Event TPI Adjustment:

(a) where prior to the occurrence of the Compensation Event the Contractor has been generating Third Party Income at levels equal to or in excess of those forecast in the Base Case, shall not result in the Third Party Income exceeding the levels forecast in the Base Case; and

(b) where the Contractor has been generating Third Party Income at levels below those forecast in the Base Case, shall not result in Third Party Income exceeding an amount equal to the lower of:

i the Contractor’s share of Third Party Income forecast in the Base Case; and

ii the average monthly Third Party Income received by the Contractor over the twenty-four (24) month period immediately prior to the occurrence of the Compensation Event;
if the Relevant Event arises from an Authority Change the adjustment to the Unitary Charge shall take into account the resulting lost Third Party Income and any net change in the cost of generating such Third Party Income such that when taken together with all other Third Party Income receivable by the Contractor and the net cost of generating such Third Party Income, such adjustment puts the Contractor in a no better, no worse position;

if the Authority issues a notice to continue in accordance with clause 41.7 (Notice to Continue), subject to clause 66.7.7 the adjustment to the Unitary Charge due in respect of the resulting loss in Third party Income (the Force Majeure TPI Adjustment) shall compensate the Contractor for the Third Party Income that would otherwise have been receivable but for the occurrence of the Force Majeure Event;

when taken together with all other Third Party Income receivable by the Contractor, the Force Majeure TPI Adjustment:

(a) where prior to the occurrence of the Force Majeure Event the Contractor has been generating Third Party Income at levels equal to or in excess of those forecast in the Base Case, shall not result in Third Party Income exceeding the levels forecast in the Base Case; and

(b) where the Contractor has been generating Third Party income at levels below those forecast in the Base Case, shall not result in Third Party Income exceeding an amount equal to the lower of:

i the Third Party Income forecast in the Base Case; and

ii the average Third Party Income received by the Contractor over the twenty-four (24) month period immediately prior to the occurrence of the Force Majeure Event;

if the Authority takes Required Action pursuant to clause 30 (Authority Step-In) the Contractor shall be compensated as follows:

(a) in circumstances where the Contractor is not in breach, the Contractor's compensation for lost Third Party Income should be the higher of (i) the amount received by the Authority as a result of taking the Required Action and (ii) an amount relating to the period of the Required Action calculated on the basis of the lower of (A) the average Third Party Income received by the Contractor on a monthly basis in the twenty-four (24) month period immediately prior to the Required Action being taken and (B) the amount relating to Third Party Income set out in the Base Case, in each case less (without double counting) the Authority's cost of generating such income; and

(b) in circumstances where the Contractor is in breach the Contractor compensation shall be limited to any difference (if any) between the amount of Third Party Income that the Authority receives during the period of the Required Action less the Authority's costs of generating that income.
Where, in the case of clauses 66.7.2(b)(ii), 66.7.4(b)(ii), 66.7.7(b)(ii), and 66.7.8(a), there has been fewer than twelve (12) months since the Service Commencement Date, or where the Parties agree that there is insufficient data available for an average monthly Third Party Income to be calculated over twenty-four (24) months, the amount of any Third Party Income compensation payable pursuant to these clauses shall be as forecast in the Base Case.

Where, in the case of clauses 66.7.2(b)(ii), 66.7.4(b)(ii), 66.7.7(b)(ii), and 66.7.8(a), there has been more than twelve (12) months but fewer than twenty-four (24) months since the Service Commencement Date, or where the Parties agree that there is insufficient data available for an average monthly Third Party Income to be calculated over twenty-four (24) months, the applicable period in such clauses shall be reduced to such reasonable period as the Parties may agree. If, subsequently, the actual Third Party Income received during the period between months twelve (12) and twenty-four (24) of the Service Period is calculated as being less than the amount compensated then the amount by which the Contractor was over-compensated shall be deducted from the Contractor's share of excess Third Party Income.

For the avoidance of doubt, where any Relief Event or Excusing Cause has occurred during the initial twenty-four (24) months of the Service Period, the Parties agree that such time as the Relief Event or Excusing Cause is subsisting shall not be used when calculating the average Third Party Income for the purposes of clause 66.7A and 66.7B above.

Third Party Waste and Off-Take Contracts

Amendments to and conditions relating to Third Party Waste and Off-Take Contracts

No entry into, amendment, waiver or exercise of any right relating to a Third Party Waste Contract or an Off-Take Contract shall have the effect of increasing the Authority's liabilities on termination or on the occurrence of a Relevant Event and/or have a material adverse effect on the Authority's potential share of Third Party Income, unless the Contractor has obtained confirmation from the Authority that the Third Party Waste Contract or Off-Take Contract complies or continues to comply with clause 66A.1.2.

At any time after the Commencement Date, if and whenever the Contractor shall enter into or any Affiliate or Sub-Contractor enters into any Third Party Waste Contracts and/or Off-Take Contracts the Contractor shall ensure or procure as the case may be that any such contract is in writing and:

(a) is on reasonable arm's length terms including, for the avoidance of doubt, as regards the payment of income to the Contractor or Affiliate of the Contractor;

(b) contains provisions whereby the breakage costs in circumstances where they could be passed to the Authority are limited to those that a commercially prudent facility operator having regard to standard
market practice would accept in an arm’s length contract for the relevant contract and further are limited to Direct Losses;

(c) (where (the Contractor having used reasonable endeavours to achieve such agreement) agreed by the counter party) includes a right on the part of the Contractor or the relevant Affiliate as the case may be to assign, at the request of the Authority, free of charge the Contractor’s rights, title and interest in and to such of the Third Party Waste Contracts and Off-Take Contracts as are for a contract term exceeding two (2) years to the Authority (or Authority nominated person) on termination or expiry of this Agreement; and

(d) in relation to relevant Third Party Waste Contracts, that the provisions of clause 66A.3 (Third Party Waste Contracts) are complied with.

66A.2 Affiliates

The Contractor shall not enter into or amend a Third Party Waste Contract or an Off-Take Contract with a contract term exceeding two (2) years with an Affiliate unless the Authority has confirmed in writing (not to be unreasonably withheld or delayed) that it is satisfied that the provisions of clause 66A.1.2 have been complied with.

66A.3 Third Party Waste Contracts

66A.3.1 Where a Third Party Waste Contract is to be entered into with a local authority for a term greater than three (3) years (such contracts together with this Agreement being Qualifying Contracts), except where the Authority otherwise agrees (acting reasonably) the Contractor shall ensure that the provisions of clause 54 (Chance in Law) and part 6 (Insurance Premium Risk Sharing Schedule) of Schedule 14 (Required Insurances) are included in the relevant contract so that the compensation payable by the Authority under such aforementioned provisions is equal to the Authority Share (the Authority Share for such purpose being, as a percentage, the ratio which the Actual Level of Contract Waste in respect of such period bears to the maximum capacity of the Facility which is contracted under Qualifying Contracts).

66A.3.2 Where a Third Party Waste Contract is proposed to be entered into other than with a local authority then the Contractor’s obligations under clause 66A.3.1 shall be to use reasonable endeavours.

66A.4 IBA Off-Take Contracts

66A.4.1 The Contractor shall deliver to the Authority a conformed copy of any IBA Off-Take Contract or any amendment in respect of any IBA Off-Take Contract within ten (10) Business Days of the date of its execution or amendment (as the case may be), certified as a true copy by an officer of the Contractor.

67 Audit Access

The Contractor shall provide to the Authority’s Representative all information, documents, records and the like in the possession of, or available to, the Contractor and to this end the Contractor shall use all reasonable endeavours to procure that all such items in the possession of the Contractor or any Sub-Contractor shall be available to it and the Contractor shall (and shall procure that the Sub-Contractors shall) include appropriate
terms in contracts with all Sub-Contractors to this effect as may be reasonably requested by the Authority's Representative for any purpose in connection with this Agreement.

68 No Agency

68.1 No Partnership or Employment

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

68.2 Power to Bind

Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

68.3 Deemed Knowledge

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Contractor Party.

69 Entire Agreement

69.1 Prior Representations etc Superseded

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

69.2 Acknowledgements

Each of the Parties acknowledges that:

69.2.1 subject to clause 5.1 (Contractor Warranties), it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and

69.2.2 this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.
70.1 Form and Service of Notices

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, or leaving the same at:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>AmeyCespa (AWRP) SPV Limited</td>
<td>North Yorkshire County Council</td>
</tr>
<tr>
<td>The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ</td>
<td>County Hall, Racecourse Lane, Northallerton, DL7 8AH</td>
</tr>
<tr>
<td>Company Secretary</td>
<td>Assistant Chief Executive (Legal and Democratic Services)</td>
</tr>
</tbody>
</table>

70.2 Provision of Information to Representatives

Where any information or documentation is to be provided or submitted to the Authority's Representative or the Contractor's Representative it shall be provided or submitted by sending the same by first class post or by hand, or leaving the same at:

<table>
<thead>
<tr>
<th>Contractor's Representative</th>
<th>Authority's Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>[redacted]</td>
<td>Assistant Director of Waste and Countryside Services</td>
</tr>
<tr>
<td>The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ</td>
<td>North Yorkshire County Council</td>
</tr>
<tr>
<td></td>
<td>County Hall, Racecourse Lane, Northallerton, DL7 8AH</td>
</tr>
</tbody>
</table>

70.3 Change of Details

Either Party (and the Authority's Representative and Contractor's Representative) may change its nominated address by prior notice to the other Party.

70.4 Notices by Post

Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing.

71 Severability

Subject to the provisions of Schedule 12 (Relevant Discharge Terms), if any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity,
legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

72 **Waiver**

72.1 **Waiver to be Written**

No term or provision of this Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party.

72.2 **Extent of Waiver**

No waiver under clause 72.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

73 **Public Relations and Publicity**

73.1 **Restriction**

The Contractor shall not by itself, its employees or agents, and shall procure that its sub-contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement or the Project without the prior written approval of the Authority.

73.2 **Photographs**

No permission to photograph or film in or upon any property used in relation to the Project shall be given unless the Authority has given its prior written approval (such approval not to be unreasonably withheld or delayed).

74 **Advertisements**

The Contractor shall not exhibit or attach to any part of the Site any notice or advertisement without the prior written permission of the Authority’s Representative, save where otherwise required to comply with Legislation.

75 **Contractor’s Records**

75.1 **Records and Open Book Accounting**

The Contractor shall at all times:

75.1.1 maintain a full record of particulars of the costs of performing the Works and the Services;

75.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in clause 75.1.1 (Records and Open Book Accounting), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Agreement; and
75.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause.

75.2 Books of Account

Compliance with clause 75.1 (Records and Open Book Accounting) shall require the Contractor to keep (and where appropriate and only in respect of the matters specifically referred to in clause 75.2.4 (Books of Account) below shall procure that the Works and Operating Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to this Agreement, showing in detail:

75.2.1 administrative overheads;

75.2.2 payments to Sub-Contractors and by Sub-Contractors to their subcontractors;

75.2.3 capital and revenue expenditure; and

75.2.4 such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement,

and the Contractor shall have (and procure that, where appropriate and only in respect of the matters specifically referred to in clause 75.2.4 (Books of Account) above the Works and Operating Sub-Contractor shall have) the books of account evidencing the items listed in clauses 75.2.1 to 75.2.4 (Books of Account) inclusive, available for inspection by the Authority (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Authority as and when requested from time to time.

75.3 Maintenance of Records

75.3.1 The Contractor shall maintain or procure the maintenance of detailed records relating to the performance of the Works and the delivery of the Services, in each case in accordance with Good Industry Practice, the requirements of clause 29.4 (Quality Assurance) and any applicable Legislation.

75.3.2 Without prejudice to clause 75.3.1 (Maintenance of Records), the Contractor shall procure that the following are maintained:

(a) a full record of all incidents relating to health, safety and security which occur during the term of this Agreement; and

(b) full records of all maintenance procedures carried out during the term of this Agreement,

and the Contractor shall have the items referred to in clauses 75.3.2(a) (Maintenance of Records) and 75.3.2(b) (Maintenance of Records) available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a report of them to the Authority as and when requested from time to time.
75.4 Auditor

The Contractor shall permit all records referred to in this clause 75 (Contractor's Records) to be examined and copied from time to time by the Authority's auditor (whether internal or external) and the Audit Commission and their representatives and other representatives of the Authority who reasonably require access to the same.

75.5 Retention

The records referred to in this clause 75 (Contractor's Records) shall be retained for a period of at least five (5) years after the Contractor's obligations under this Agreement have come to an end.

75.6 Termination or Expiry

Upon termination or expiry of this Agreement, and in the event that the Authority wishes to enter into another agreement for the operation and management of a project the same as or similar to the Project, the Contractor shall (and shall use reasonable endeavours to ensure that its Sub-Contractors will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Facility.

75.7 Financing information

75.7.1 The Contractor shall:

(a) provide to the Authority on the 31st March, 30th June, 30th September, and 31st December each year a document listing all information provided by it to the Finance Parties during the preceding three (3) month period and, at the request of the Authority, provide to the Authority any information provided by it to the Finance Parties during the term of the Senior Financing Agreements and any other information relating to the Project that the Authority may reasonably require;

(b) provide to the Authority copies of its annual report and accounts within thirty (30) days of publication;

(c) provide to the Authority a copy of the Base Case at Financial Close and (as the same may be amended) within thirty (30) days of any amendment thereto;

(d) promptly upon the occurrence of a Financing Default notify the Authority of such Financing Default; and

(e) use all reasonable endeavours to assist the Authority in its preparation of any report required by Defra or HM Treasury from time to time.

75.7.2 The Authority may, in the circumstances referred to in clause 75.7.1(d) (Financing Information) (regardless of whether the Finance Parties have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Contractor to provide an interim project report and to attend, and use all reasonable endeavours to ensure that the Finance Parties attend, such meetings as the Authority may convene to discuss such interim project report and the circumstances giving rise to it.
75.8 Confidentiality

All information referred to in this clause 75 (Contractor’s Records) is subject to the obligations set out in clause 56 (Freedom of Information and Confidentiality).

76 Data Protection

76.1 General

76.1.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Project.

76.1.2 The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Project and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

76.2 No Disclosure

76.2.1 The Contractor shall not disclose Personal Data to any third parties other than:

(a) to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works and/or the Services; or

(b) to the extent required under a court order,

provided that disclosure under clause 76.2.1(a) (No Disclosure) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 76.2.1 (No Disclosure) and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data which either the Contractor or a Sub-Contractor is required to make under clause 76.2.1(b) (No Disclosure) immediately upon becoming aware of such a requirement.

76.2.2 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

76.2.3 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub-Contractors referred to in clause 76.2.2 (No Disclosure). Within twenty (20) Business Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

76.3 The Contractor shall indemnify and keep indemnified the Authority against all Direct Losses incurred by it in respect of any breach of this clause 76 (Data Protection) by the
Contractor and/or any act or omission of any sub-contractor which causes the Contractor to be in breach of this clause 76 (Data Protection).

77 Interest on Late Payment

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Agreement relating to the payment of compensation on termination of this Agreement following the occurrence of an Authority Default provide the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

78 Local Government (Contracts) Act 1997

78.1 Certification Requirements

The Certification Requirements are intended to be satisfied by the Authority with respect to this Agreement and the Direct Agreement before the end of the period relating to each agreement within which the Certification Requirements must be satisfied for the agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

79 Contractor's Consent

The Contractor hereby consents to the issue by the Authority of certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Agreement and the Direct Agreement.

79.1 Relevant Discharge Terms

The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in Schedule 12 (Relevant Discharge Terms).

80 Governing Law and Jurisdiction

The Agreement shall be governed by and construed in all respects in the accordance with the laws of England and Wales. Subject to clause 62 (Dispute Resolution), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

81 Sole Remedy

81.1 Common Law Rights for the Contractor

81.1.1 Without prejudice to any entitlement of the Contractor:

(a) to specific performance of any obligation under this Agreement;

(b) to injunctive relief; or
Redacted Copy

(c) to any other express right or remedy of the Contractor pursuant to this Agreement,

the Contractor's sole remedy in relation to matters for which an express right or remedy is stated in this Agreement shall be that right or remedy and the Contractor shall have no additional right or remedy arising by common law, in equity, by statute or otherwise.

81.1.2 Without prejudice to any entitlement of the Contractor:

(a) to specific performance of any obligation under this Agreement;
(b) to injunctive relief; or
(c) to any other express right or remedy of the Contractor pursuant to this Agreement,

the Contractor's sole remedy in relation to any Compensation Event during the Works Period that occurs prior to the Longstop Date shall be the operation of clause 14 (Compensation Events).

81.2 Common Law Rights of the Authority

81.2.1 Without prejudice to any entitlement of the Authority:

(a) to specific performance of any obligation under this Agreement; and
(b) the Authority's right to injunctive relief or specific performance of any obligations,

the sole remedy of the Authority in respect of a failure to provide the Services in accordance with this Agreement shall be the operation of Schedule 6 (Payment Mechanism) except in relation to any breach of this Agreement to the extent that this Agreement provides an express remedy in relation to the breach.

81.3 Nothing in these clauses 81.1 (Common Law Rights for the Contractor) and 81.2 (Common Law Rights for the Authority) shall prevent or restrict the right of the Parties to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

81.4 No Breach

The Contractor shall not be held to be failing to comply with its obligations under this Agreement to the extent that such failure to comply is a result of the Authority's breach of its obligations hereunder.

81.5 Indirect Losses

Save where stated to the contrary, the indemnities under this Agreement shall not apply and (without prejudice to the Authority's rights under Schedule 6 (Payment Mechanism)) there shall be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is for Indirect Losses. The Authority agrees that, notwithstanding the foregoing, any Losses of the
Contractor arising under the sub-contracts as originally executed (or as amended in accordance with the terms of this Agreement) which are not of themselves Indirect Losses, shall not be excluded from such a claim solely by reason of this clause.

No Double Recovery

Notwithstanding any other provisions of this Agreement, neither Party shall be entitled to recover compensation or make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise.

Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

Capacity

Without prejudice to the remedies and contractual rights of the Contractor in respect of a risk or liability or obligation expressly provided in this Agreement as being a risk, liability or obligation of the Authority (i) nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain, the Authority in any capacity other than as a Waste Disposal Authority and (ii) the exercise by the Authority of its duties powers and functions in any capacity other than as a Waste Disposal Authority shall not lead to any liability under this Agreement on the part of the Authority to the Contractor.

Co-operation

Each Party agrees to co-operate, at its own expense (but without being compelled to incur material expenditure), with the other Party in the fulfilment of the purposes and intent of this Agreement. Neither Party shall be under any obligation to perform any of the other's obligations under this Agreement.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Agreement.