SCHEDULE 7 - Redacted Copy

SCHEDULE 7

BASE CASE

Part 1 - CC Base Case

Attached as a CD and initialled by the Parties

[Redacted]
Part 2 - FC Base Case

Attached as a CD and initialled by the Parties

[Redacted]
1

REVIEW PROCEDURE

1.1 The provisions of this Schedule shall apply whenever any item, documents or course of action are required to be reviewed, approved or otherwise processed in accordance with the Review Procedure.

1.2 Each submission under the Review Procedure shall be accompanied by a copy of the document to be reviewed or a statement of the proposed course of action (the entire contents of a submission being referred to in the Schedule as a Submitted Item). In relation to each Submitted Item, the following procedure shall apply:

1.2.1 as soon as possible and, if the Submitted Item comprises:

(a) an item of Reviewable Design Data; or

(b) a revised Construction Programme; or

(c) a document seeking approval for a course of action submitted in an emergency,

within twenty (20) Business Days (or such other period as the Parties may agree in writing prior to the expiry of the twenty (20) Business Days acting reasonably and having regard to the nature of the Submitted Item) of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item of the Authority's Representative, the Authority's Representative shall return one copy of the relevant Submitted Item to the Contractor endorsed "no comment" (or in the case of Reviewable Design Data, endorsed "Level A – no comment") or (subject to and in accordance with the paragraph 3 of this Schedule (Grounds of Objection)) comments as appropriate; and

1.2.2 if the Authority's Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with sub-paragraph 1.2.1 of this Schedule, within ten (10) Business Days of the date of its submission to the Authority's Representative, then the Contractor may issue a notice to the Authority and the Authority's Representative requiring the Authority's Representative to return a copy of the relevant Submitted Item duly endorsed within such twenty (20) Business Days. If the Authority's Representative fails to return a copy of the Submitted Item (including any re-submitted item) duly endorsed in accordance with paragraph 1.2.1 of this Schedule 8 (Review Procedure) within twenty (20) Business Days (or within such other period as the Parties may agree in writing prior to the expiry of the twenty (20) Business Days (acting reasonably and having regard to the nature of the Submitted Item)) of the date of its submission to the Authority's Representative, the Authority's Representative shall be deemed to have returned the Submitted Item endorsed "no comment" (or in the case of Reviewable Design Data, endorsed "Level A – no comment").

1.3 If the Authority's Representative raises comments on any Submitted Item in accordance with paragraph 1.2 he shall state the ground upon which such comments are based and
SCHEDULE 8 - Redacted Copy

the evidence or other information necessary to substantiate that ground. To the extent that the Authority's Representative comments on a Submitted Item other than on the basis set out in this Schedule, or fails to comply with the provisions of this paragraph, the Contractor may, in its discretion, request written clarification of the basis for such comments and, if clarification is not received within five (5) Business Days of such request by the Contractor, refer the matter for determination in accordance with the Dispute Resolution Procedure.

2

FURTHER INFORMATION

2.1

The Contractor shall submit any further or other information, data and documents that the Authority's Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule. If the Contractor does not submit any such information, data and documents, the Authority's Representative shall be entitled to:

2.1.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or

2.1.2 object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the Authority's Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with this Schedule.

3

GROUNDS OF OBJECTION

3.1

The expression "raise comments" in this paragraph shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. The Authority's Representative may raise comments in relation to any Submitted Item on the grounds set out in paragraph 2 above or on the grounds that the Submitted Item would (on the balance of probabilities) breach any Legislation or not be in accordance with any Necessary Consent, but otherwise may raise comments in relation to a Submitted Item only as follows:

3.1.1 in relation to any Submitted Item:

(a) the Contractor's ability to perform its obligations under this Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or

(b) the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Agreement or its ability to enforce any such right;

3.1.2 in relation to any proposed variation to Schedule 2 (Contractor's Proposals) (in accordance with clause 22.2 (Changes to Schedule 2 (Contractor's Proposals))) relating to the Works:

(a) the Submitted Item would increase the likelihood of deductions being made pursuant to clause 31 (Payment Provisions) and Schedule 6 (Payment Mechanism) following the Service Commencement Date;
(b) save where such proposed variation is necessitated due to a Qualifying Change in Law a Compensation Event or an Authority Change, would lead to an increase in the Unitary Charge;

3.1.3 In relation to the submission of any revised Construction Programme on the ground that the revised Construction Programme would not (on the balance of probabilities) enable any part of the Works to be completed by the Planned Service Commencement Date;

3.1.4 In relation to the submission of any proposed revision or substitution for Schedule 2 (Contractor’s Proposals) on the grounds that:

(a) the proposed revision or substitution is not in accordance with Good Industry Practice;

(b) the performance of the relevant Services in accordance with the proposed revision or substitution would (on the balance of probabilities):

i be less likely to achieve compliance with relevant parts of the Authority’s Requirements;

ii would cause the Authority to incur material additional expense; or

(c) the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with Schedule 2 (Contractor’s Proposals) prior to such proposed revision or substitution.

3.1.5 Not used.

3.1.6 In relation to Reviewable Design Data submitted:

(a) the Submitted Item is not in accordance with the Authority’s Requirements, or

(b) the Submitted Item is not in accordance with Schedule 2 (Contractor’s Proposals) and/or the Construction Programme,

3.1.7 In relation to any submission and/or amendment in accordance with clause 26.3 (Contingency Plan) on the grounds that:

(a) the proposed Contingency Plan and/or any amendment shall not be in accordance with Good Industry Practice;

(b) the proposed Contingency Plan and/or any amendments to it would (on the balance of probabilities):

i be less likely to achieve compliance with relevant parts of the Authority’s Requirements; and

ii would cause the Authority to incur material additional expense; or
SCHEDULE 8 - Redacted Copy

(c) the proposed Contingency Plan and/or any amendment would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with Schedule 2 (Contractor's Proposals) prior to such proposed submission or amendment;

3.1.8 in relation to any submission and/or amendment in accordance with clause 26.4 (Mobilisation Plan) on the grounds that:

(a) the proposed Mobilisation Plan and/or any amendment shall not be in accordance with Good Industry Practice;

(b) the proposed Mobilisation Plan and/or any amendments to it would (on the balance of probabilities):

i be less likely to achieve compliance with relevant parts of the Authority's Requirements; and

ii would cause the Authority to incur material additional expense; or

(c) the proposed Mobilisation Plan and/or any amendment would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with Schedule 2 (Contractor's Proposals) prior to such proposed submission or amendment;

3.1.9 in relation to any submission and/or amendment in accordance with clause 26.5 (Expiry Plan) on the grounds that:

(a) the proposed Expiry Plan and/or any amendment shall not be in accordance with Good Industry Practice;

(b) the proposed Expiry Plan and/or any amendment would (on the balance of probabilities):

i be less likely to achieve compliance with relevant parts of the Authority's Requirements; and

ii would cause the Authority to incur material additional expense; or

(c) the proposed Expiry Plan and/or any amendment would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with Schedule 2 (Contractor's Proposals) prior to such proposed submission or amendment.

3.1.10 in relation to any submission and/or amendment in accordance with clause 26.7 (Aftercare Plan) on the grounds that:

(a) the proposed Aftercare Plan and/or any amendment shall not be in accordance with Good Industry Practice;

(b) the proposed Aftercare Plan and/or any amendment would (on the balance of probabilities):
SCHEDULE 8 - Redacted Copy

be less likely to achieve compliance with relevant parts of the Authority's Requirements; and

would cause the Authority to incur material additional expense; or

the proposed Aftercare Plan and/or any amendment would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with Schedule 2 (Contractor's Proposals) prior to such proposed submission or amendment;

3.1.11 in relation to any submission and/or amendment in accordance with clause 26.8 (Health, Safety and Welfare Plan) on the grounds that:

(a) the proposed Health, Safety and Welfare Plan and/or any amendment shall not be in accordance with Good Industry Practice;

(b) the proposed Health, Safety and Welfare Plan and/or any amendment would (on the balance of probabilities):

i be less likely to achieve compliance with relevant parts of the Authority's Requirements; and

ii would cause the Authority to incur material additional expense; or

(c) the proposed Health, Safety and Welfare Plan and/or any amendment would (on the balance of probabilities) result in an inferior standard of performance of the relevant Services to the standard of performance in accordance with Schedule 2 (Contractor's Proposals) prior to such proposed submission or amendment;

3.1.12 in relation to the submission of the Substitute Waste Plan pursuant to clause 26C.2.1 (Substitute Waste) and any subsequent revision thereto pursuant to clause 26C.2.2 (Substitute Waste) on the grounds that:

(a) the proposed Substitute Waste Plan does not comprehensively address the contents of a Substitute Waste Notice;

(b) the proposed Substitute Waste Plan does not include potential sources of waste which would be suitable for treatment at the Facility;

(c) the Authority is able to identify a source of waste which would result in a higher overall price;

(d) the proposed Substitute Waste Plan does not demonstrate that the Contractor will use reasonable endeavours;

(e) the Authority does not consider (acting reasonably) that the plan could be implemented and that the Contractor would be able to comply with the provisions of clause 26C.2.4 (Substitute Waste) in the event of a Contract Waste Shortfall.
SCHEDULE 8 - Redacted Copy

4 EFFECT OF REVIEW

4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority's Representative endorsed "no comment" (and in the case of Reviewable Design Data, endorsed "Level A – no comment") shall be complied with or implemented (as the case may be) by the Contractor.

4.2 In the case of any Submitted Item other than Reviewable Design Data if the Authority's Representative returns the Submitted Item to the Contractor endorsed "comments", the Contractor shall comply with such Submitted Item after amendment in accordance with the comments unless the Contractor disputes that any such comment is on grounds permitted by this Agreement, in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with clause 62 (Dispute Resolution).

4.3 The return or deemed return of any Submitted Item endorsed "no comment" (or in the case of Reviewable Design Data, endorsed "Level A – no comment") shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Agreement such return or deemed return of any Submitted Item shall not otherwise relieve the Contractor of its obligations under this Agreement nor is it an acknowledgement by the Authority that the Contractor has complied with such obligations.

5 DOCUMENT MANAGEMENT

5.1 The Contractor shall issue two (2) copies of all Submitted Items to the Authority's Representative and compile and maintain a register of the date and contents of the submission of all Submitted Items.

5.2 The Contractor shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority's Representative.

5.3 No review, comment or approval by the Authority shall operate to exclude or limit the Contractor's obligations or liabilities under this Agreement (or the Authority's rights under this Agreement).

6 VARIATIONS

6.1 Subject to paragraph 6.2 (below), no approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute an Authority Change save to the extent provided in this Schedule 8 (Review Procedure).

6.2 If, having received comments from the Authority's Representative, the Contractor considers that compliance with those comments would amount to an Authority Change, the Contractor shall, before complying with the comments, notify the Authority of the same and, if it is agreed by the Parties or determined pursuant to clause 62 (Dispute Resolution) Procedure that an Authority Change would arise if the comments were complied with, the Authority may, if it wishes, implement the Authority Change and it shall be dealt with in accordance with Schedule 21 (Change Protocol). Any failure by the Contractor to notify the Authority that it considers compliance with any comments of the Authority's Representative would amount to an Authority Change shall constitute an
irrevocable acceptance by the Contractor that any compliance with the Authority's comments shall be without cost to the Authority without any extension of time.

6.3 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall, subject to paragraph 6.1 (above), be construed or regarded as an Authority Change.

7 REVIEWABLE DESIGN DATA

7.1 The following documents shall be Reviewable Design Data:

7.1.1 documentation for comment:

(a) Commissioning Plan;

7.1.2 documentation for information only:

(a) general arrangement/Site layout drawings showing:
   i external works;
   ii external lighting details; and
   iii CCTV;

(b) all landscaping details;

(c) envelope finishes including specifications, samples and colours;

(d) layout drawings for the Visitor Centre; and

(e) layout drawings for the mess room and other facilities provided for Contractor and Authority employees, agents, and Sub-Contractors.
Authority's Policies

1.1 The Contractor and any Sub-Contractor employed by the Contractor shall adopt a policy to comply with employers' statutory obligations under the Equality Act 2010 and any subsequent legislation in respect of equalities which may be enacted during the Contract Period (the "Equalities Legislation"). Accordingly, the Contractor and any Sub-contractor employed by the Contractor will not discriminate directly or indirectly against any person because of their age, sex, disability, religious beliefs, sexual orientation, colour, race, nationality or national or ethnic origin in relation to decisions to recruit, train, promote, discipline or dismiss employees.

1.2 The Contractor and any Sub-Contractor employed by the Contractor shall observe as far as possible, the Commission for Racial Equality's Code of Practice for Employment as approved by Parliament in 2006 and/or any comparable statutory codes relating to the Equalities Legislation. This gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including monitoring of workforce matters and steps that can be taken to encourage people from minority groups to apply for jobs or take up training opportunities.

1.3 In the event of any finding of unlawful discrimination being made against the Contractor or any Sub-Contractor employed by the Contractor during the Contract Period by any court or industrial tribunal or in comparable proceedings in any other jurisdiction, or of an adverse finding in any formal investigation by the Commission for Racial Equality and/or any comparable statutory body relating to the Equalities Legislation over the same period, the Contractor shall inform the Authority of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

1.4 The Contractor shall, on request, provide the Authority with details of any steps taken under paragraph 1.3 above.

1.5 The Contractor shall comply with the Equalities Legislation and shall satisfy the Authority that:

1.5.1 Its working practices do not involve the treatment of one group or individual less favourably than any others because of their age, sex, colour, race, nationality, ethnic origin, disability, religious beliefs or sexual orientation on any decision relating to their recruitment or employment with the Contractor and in relation to the delivery of the Services under this Agreement;

1.5.2 policies on discrimination are set out:-

(a) in instructions to those concerned with recruitment, training and promotion;

(b) in documents available to employees, recognised trade unions or other representative groups of employees;

(c) in recruitment advertisements or other literature;

(d) in instructions to those concerned with the delivery of the Services.
1.6 The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor's compliance with this paragraph 1.6 including, if requested, examples of any instructions or other documents, recruitment advertisements or other literature containing details of monitoring of recruitment and employees. If this Agreement has been deemed to be of 'medium' or 'high' risk in terms of equality and diversity the Contractor shall provide such information at such times as the Authority may reasonably request as is set out in this Schedule, such information not to be unreasonably withheld or delayed.
### Title of Procurement

### Contracts Register Ref No

### Directorate

### Named Officers for Procurement Stage & Contract Management

### Is this assessment being carried out for one contract or a number of similar contracts?

Please answer all questions and add up the score to determine the level of equality and diversity risk relating to the contract.

<table>
<thead>
<tr>
<th>Question:</th>
<th>Score</th>
</tr>
</thead>
</table>
| **1. Will the County Council have an ongoing relationship with the contractor**  
for a specified duration of a contract or is it just a one off purchase of goods / works / services? |       |
| Yes - the contract will involve the ongoing provision of goods / works / services and will have a structured contract management process. | 10    |
| Possibly - the contract is for goods / works / services which are straightforward and will only require monitoring on an exception basis i.e. if contract conditions are not being met. | 5     |
| No - the contract is the one off purchase of goods / works / services       | 0     |
| **2. Have equalities impact assessments carried out within your directorate**  
highlighted this function as one which has an impact on equality and diversity?  
(If you are unsure please contact your directorate equality champion) |       |
| Yes – the function has been shown to have a significant impact on equalities | 10    |
| Possibly - the function has been shown to have some impact on equalities    | 5     |
| No – the function has been shown to not have a specific impact on equalities | 0     |
| **3. Does the contract involve working at County Council properties / sites**  
(including schools) or in the homes / living accommodation of individuals? |       |
| Yes – A significant level of work is to carried out at Council properties / sites  
(including schools) or in the homes / living accommodation of individuals | 10    |
| Possibly - Some work may involve working at Council properties / sites (including schools) or in the homes / living accommodation of individuals | 5     |
| No – Work will not be carried out at Council properties / sites (including schools) or in the homes / living accommodation of individuals or where it is it will be minimal and limited to tasks such as deliveries | 0     |
| **4. Does the contract involve contact with the public?**                   |       |
SCHEDULE 9 - Redacted Copy

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Yes – A significant part of the contract involves contract with the public.</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Possibly – There is some contact / or the potential for contact with the public involved in the contract. Work may take place in public places or privately owned premises that carry out work on behalf of the County Council where members of the public may have access.</td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>No – there is minimal or no contact with the public</td>
<td></td>
</tr>
</tbody>
</table>

Total: 15

Based on the total score for these questions then the contract has a high medium, low or minimum equality and diversity risk rating.

- **Minimum Risk:** Score 0-10: There is unlikely to be an equality and diversity impact through the contract.
- **Low Risk:** Score 11-20: There may be some equality and diversity impact through the contract.
- **Medium Risk:** 21-30: There is likely to be a significant level of equality and diversity impact through the contract.
- **High Risk:** 31-40: There is a very significant level of equality and diversity impact through the contract.

Please fill in a detailed description of what specific measures need to be put in place for each risk level.

**Risk level:**

If you feel that the result is not indicative of the actual level of equality and diversity risk then please add an explanation and specify the risk level that you would expect to re-grade the contract to.

**Additional comments / justification**

<table>
<thead>
<tr>
<th>Adjusted risk level</th>
</tr>
</thead>
</table>

**Completed by:**

**Date:**
SCHEDULE 9 - Redacted Copy

Equality and Diversity Standards for contractors carrying out medium or high equality and diversity risk contracts

<table>
<thead>
<tr>
<th>Companies with 5 or more employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>All firms with 5 or more employees must achieve criteria 1 – 4.</td>
</tr>
<tr>
<td>1. Written general equality policy, covering at least:</td>
</tr>
<tr>
<td>a) recruitment, selection, training, promotion, discipline, and dismissal;</td>
</tr>
<tr>
<td>b) victimisation, discrimination, and harassment as disciplinary offences;</td>
</tr>
<tr>
<td>c) a senior staff member responsible for effective implementation of the policy; and</td>
</tr>
<tr>
<td>d) communication of the policy to staff.</td>
</tr>
<tr>
<td>2. Effective implementation of the policy in the firm's recruitment practices, to include open recruitment methods such as the use of job centres, careers service, or press advertisements.</td>
</tr>
<tr>
<td>3. Regular reviews of the policy.</td>
</tr>
<tr>
<td>4. Regular equality monitoring of job applicants.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Companies with 50 or more employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>All firms with 50 or more employees must achieve criteria 1 – 8.</td>
</tr>
<tr>
<td>5. Written instructions to managers and supervisors on equality in recruitment, selection, etc (see criterion 1(a)).</td>
</tr>
<tr>
<td>6. Training in equality or equal opportunities for managers and staff responsible for recruitment and selection.</td>
</tr>
<tr>
<td>7. Equality monitoring of (i) job applicants and (ii) employees (by section and grade).</td>
</tr>
<tr>
<td>8. Where monitoring indicates under-representation of particular groups, action is taken to ensure that criteria 1 – 3 and 6 – 7 are being used effectively, making changes if necessary.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Companies with 250 or more employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>All firms with 250 or more employees must achieve criteria 1 – 8, and would also be encouraged to achieve criteria 9 – 12.</td>
</tr>
<tr>
<td>9. Regular consultation on equality issues within the workforce.</td>
</tr>
<tr>
<td>10. Regular equality monitoring of selection, transfer, training, promotion, discipline, and dismissal.</td>
</tr>
<tr>
<td>11. Mention in recruitment advertisements and corporate literature of arrangements for equal opportunities.</td>
</tr>
<tr>
<td>12. Where monitoring indicates under-representation of any group, the following action is taken:</td>
</tr>
<tr>
<td>a) check that criteria 1 – 3, 5, 6, 9, and 11 are being used effectively;</td>
</tr>
<tr>
<td>b) take advice from the CRE, racial equality councils, or the Equality in Employment Advisory Service; and</td>
</tr>
<tr>
<td>c) take appropriate action (including positive action) as a result of that advice.</td>
</tr>
</tbody>
</table>
### Equality and Diversity Contract Risk Checklist – Minimum Risk Contracts

Please complete the following as appropriate. Where there are crosses (x) or n/a please provide a short explanation in the comments box.

<table>
<thead>
<tr>
<th>The County Council must:</th>
<th>✓ / x / n/a and date completed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Before the contract is let</strong></td>
<td></td>
</tr>
<tr>
<td>Make sure the tender documentation refers to our equality policy and states the</td>
<td></td>
</tr>
<tr>
<td>appropriate web link to the NYCC Corporate Equality Plan and Equality Policy</td>
<td></td>
</tr>
<tr>
<td>Statement (available on the NYCC website) and/or a NYCC contact who can provide a</td>
<td></td>
</tr>
<tr>
<td>hard copy of the documents.</td>
<td></td>
</tr>
<tr>
<td>Make sure that PQQ / ITT documentation contains appropriate questions about</td>
<td></td>
</tr>
<tr>
<td>equality and diversity.</td>
<td></td>
</tr>
<tr>
<td>Make sure that the contract contains standard equality and diversity clauses. This</td>
<td></td>
</tr>
<tr>
<td>includes an expectation that contractors will meet relevant equality legislation.</td>
<td></td>
</tr>
<tr>
<td><strong>When the contract is let</strong></td>
<td></td>
</tr>
<tr>
<td>Make sure that when carrying out contract monitoring we ask whether the contractor</td>
<td></td>
</tr>
<tr>
<td>has been investigated / prosecuted under equality legislation in the previous year</td>
<td></td>
</tr>
<tr>
<td>(yearly as a minimum).</td>
<td></td>
</tr>
</tbody>
</table>

**Comments:**

**Completed by:**

<table>
<thead>
<tr>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title of Procurement</td>
</tr>
<tr>
<td>----------------------</td>
</tr>
<tr>
<td>Contracts Register Ref No</td>
</tr>
<tr>
<td>Directorate</td>
</tr>
<tr>
<td>Named Officers for Procurement Stage &amp; Contract Management</td>
</tr>
<tr>
<td>Is this assessment being carried out for one contract or a number of similar contracts?</td>
</tr>
</tbody>
</table>

The County Council must:  

**Before the contract is let**

- Make sure the tender documentation refers to our equality policy and states the appropriate web link to the NYCC Corporate Equality Plan and Equality Policy Statement (available on the NYCC website) and / or a NYCC contact who can provide a hard copy of the documents.
- Make sure that PQQ / ITT documentation contains appropriate questions about equality and diversity.
- Make sure that the contract contains standard equality and diversity clauses. This includes an expectation that contractors will meet relevant equality legislation.
- Request and receive a copy of the contractors equality policy prior to the contract being awarded i.e. at PQQ /ITT stage and make sure that this policy covers the following areas:
  - Recruitment, selection, training, promotion, discipline and dismissal;
  - Victimisation, discrimination and harassment as disciplinary offences;
  - A senior staff member responsible for effective implementation of the policy; and
  - Communication of the policy to staff.

**When the contract is let the County Council must:**

- Make sure that when carrying out contract monitoring we ask whether the contractor has been investigated / prosecuted under equality legislation in the previous year (yearly as a minimum).
- Ask to see evidence of annual review and, where appropriate, updates of the contractors equality policy when carrying out contract monitoring.

**Comments:**
<table>
<thead>
<tr>
<th>Completed by:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td></td>
</tr>
</tbody>
</table>
### Equality and Diversity Contract Risk Checklist – Medium Risk Contracts

<table>
<thead>
<tr>
<th>Title of Procurement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracts Register Ref No</td>
<td></td>
</tr>
<tr>
<td>Directorate</td>
<td></td>
</tr>
<tr>
<td>Named Officers for Procurement</td>
<td></td>
</tr>
<tr>
<td>Stage &amp; Contract Management</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Is this assessment being carried out for one contract or a number of similar contracts?</th>
<th>✓ / X / n/a and date completed</th>
</tr>
</thead>
</table>

At tender stage the County Council must:

Make sure the tender documentation includes:
- Generic information about NYCCs equality policy and states the appropriate web link to the NYCC Corporate Equality Plan and Equality Policy Statement (available on the NYCC website) and / or a NYCC contact who can provide a hard copy of the documents.
- Specific information about the equality and diversity requirements of this particular contract, as appropriate.

Make sure that PQQ / ITT documentation contains appropriate questions about equality and diversity.

Make sure that the contract contains:
- standard equality and diversity clauses. This includes an expectation that contractors will meet relevant equality legislation.
- specific clauses relating to equality and diversity requirements of this particular contract, where appropriate.

Ask the contractor relevant information about the number of staff they employ so that we let them know what we will expect them to undertake regarding equality and diversity information and monitoring.

Request and receive a copy of the contractors equality policy prior to the contract being awarded i.e. at PQQ / ITT stage and make sure that this policy covers the following areas:
- Recruitment, selection, training, promotion, discipline and dismissal
- Victimisation, discrimination and harassment as disciplinary offences
- A senior staff member responsible for effective implementation of the policy
- Communication of the policy to staff.

In addition: (Contractors must achieve each one up to their current staff level)

If the contractor has less than 5 employees

Make sure the contractor is prepared to sign up to our equality and diversity requirements if / when they have 5 employees

If the contractor has 5 or more employees

Let the contractor know that we expect them to (at least yearly)
- evidence that they effectively implement their policy in the firms recruitment
practices, to include open recruitment methods such as the use of job centres, careers service, or press advertisements
- review their equality policy.
- carry out equality monitoring of its staff by race, gender and age (as a minimum) and confirm this to us

If the contractor has 50 or more employees

Let the contractor know that we expect them to (at least yearly)
- Provide us evidence to show that there are written instructions to managers and supervisors on equality in recruitment, selection, etc
- to carry out equality monitoring of the following and report this to us
  - Job applicants
  - Employees (by section and grade)
- take action where monitoring information indicates under-representation of particular groups to ensure that the information and policies in place (as required above) are being used effectively and that external advice is sought if necessary.

Let the contractor know that we expect them to carry out a programme of training in equality and diversity for managers and staff responsible for recruitment and selection

If the contractor has 250 or more employees

Let the contractor know that we expect them to (at least yearly)
- consult with their workforce regarding equality and diversity issues.
- carry out regular monitoring and reporting on (at least yearly)
  - Selection, transfer, training, promotion, discipline and dismissal.
- Describe the arrangements for equal opportunities in recruitment advertisements and corporate literature
- take action where monitoring information indicates under-representation of particular groups to ensure that the information and policies in place (as required above) are being used effectively and that external advice is sought if it is sought and appropriate action (including positive action) is taken.

When the contract is let: the County Council must:

When carrying out contract monitoring we ask at least yearly
- whether the contractor has been investigated / prosecuted under equality legislation in the previous year
- to see the contractors equality policy and information on the yearly review / update.
- how many employees the contractor has and therefore can tell them which category within the scheme they fit into.

In addition:

if the contractor has less than 5 employees

Check that the contractor is prepared to sign up to our equality and diversity requirements if / when they have 5 employees

if the contractor has 5 or more employees

Request and receive at least yearly the following when carrying out contract monitoring
- the contractors equality policy (covering the following areas - recruitment, selection, training, promotion, discipline and dismissal; victimisation, discrimination and harassment as disciplinary offences; a senior staff member responsible for effective implementation of the policy; communication of the
SCHEDULE 9 - Redacted Copy

<table>
<thead>
<tr>
<th>If the contractor has 50 or more employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request and receive at least yearly the following when carrying out contract monitoring (in addition to above)</td>
</tr>
<tr>
<td>• evidence that the contractor has been carrying out training in equality and diversity for managers and staff responsible for recruitment and selection. This might include a training database showing names of staff undertaking training or a sample of staff training records.</td>
</tr>
<tr>
<td>• A report showing equality monitoring (race, gender, age as a minimum) of</td>
</tr>
<tr>
<td>➔ Job applicants</td>
</tr>
<tr>
<td>➔ Employees (by section and grade)</td>
</tr>
<tr>
<td>• Evidence that efforts have been made to analyse the monitoring information gathered and action taken to try to make sure that currently underrepresented groups are encouraged.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If the contractor has 250 or more employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request and receive at least yearly the following when carrying out contract monitoring (in addition to above)</td>
</tr>
<tr>
<td>• Evidence that the contractor consults with their workforce at least yearly on equality and diversity issues</td>
</tr>
<tr>
<td>• A report detailing equality monitoring (race, gender and age as a minimum) for the following</td>
</tr>
<tr>
<td>➔ Selection</td>
</tr>
<tr>
<td>➔ Transfer</td>
</tr>
<tr>
<td>➔ Training</td>
</tr>
<tr>
<td>➔ Promotion</td>
</tr>
<tr>
<td>➔ Discipline and dismissal</td>
</tr>
<tr>
<td>• Evidence that recruitment advertisements and corporate literature contains information on equality and diversity</td>
</tr>
<tr>
<td>• Evidence that efforts have been made to analyse the monitoring information gathered and action taken to try to make sure that currently underrepresented groups are encouraged. The help of external agencies should be sought and appropriate action (including positive action) taken.</td>
</tr>
</tbody>
</table>

Comments:

Completed by: 

Date: 

1433377.1 11 of 15
<table>
<thead>
<tr>
<th>Title of Procurement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracts Register Ref No</td>
<td></td>
</tr>
<tr>
<td>Directorate</td>
<td></td>
</tr>
<tr>
<td>Named Officers for Procurement</td>
<td></td>
</tr>
<tr>
<td>Stage &amp; Contract Management</td>
<td></td>
</tr>
<tr>
<td><strong>Is this assessment being carried out for one contract or a number of similar contracts?</strong></td>
<td>✓ / X / n/a and date completed</td>
</tr>
</tbody>
</table>

**At tender stage the County Council must:**

- **Make sure the tender documentation includes**
  - Generic information about NYCCs equality policy and states the appropriate web link to the NYCC Corporate Equality Plan and Equality Policy Statement (available on the NYCC website) and / or a NYCC contact who can provide a hard copy of the documents.
  - Specific information about the equality and diversity requirements of this particular contract, including information on the frequency at which monitoring will take place and the information that needs to be provided by the contractor.

- **Make sure that PQQ / ITT documentation contains appropriate questions about equality and diversity.**

- **Make sure that the contract contains**
  - Standard equality and diversity clauses. This includes an expectation that contractors will meet relevant equality legislation and the equality and diversity requirements outlined below.
  - Specific clauses relating to equality and diversity requirements of this particular contract and the information that needs to be provided by the contractor and an indication of how often they need to provide this.

- **Ask the contractor relevant information about the number of staff they employ so that we can let them know what we will expect them to undertake regarding equality and diversity information and monitoring.**

- **Request and receive a copy of the contractors equality policy prior to the contract being awarded i.e. at PQQ / ITT stage and make sure that this policy covers the following areas:**
  - Recruitment, selection, training, promotion, discipline and dismissal
  - Victimisation, discrimination and harassment as disciplinary offences
  - A senior staff member responsible for effective implementation of the policy
  - Communication of the policy to staff.

In addition: (Contractors must achieve each one up to their current staff level)
If the contractor has less than 5 employees

Make sure the contractor is prepared to sign up to our equality and diversity requirements if / when they have 5 employees

If the contractor has 5 or more employees

Let the contractor know that we expect them to (at least yearly)

- evidence that they effectively implement their policy in the firms recruitment practices, to include open recruitment methods such as the use of job centres, careers service, or press advertisements
- evidence that they continue to have an equality policy and that they regularly review / update it.
- evidence that they carry out equality monitoring of their staff by race, gender, disability and age (as a minimum)

If the contractor has 50 or more employees

Let the contractor know that we expect them to (at least yearly)

- Provide us evidence to show that there are written instructions to managers and supervisors on equality in recruitment, selection, etc
- Evidence that they carry out regular equality monitoring (race, gender, age and disability as a minimum) and reporting on the following
  - Job applicants
  - Employees (by section and grade)
- Evidence that they take action where monitoring information indicates under-representation of particular groups to ensure that the information and policies in place (as required above) are being used effectively and that external advice is sought if necessary.

Let the contractor know that we expect them to carry out a programme of training in equality and diversity for managers and staff responsible for recruitment and selection

If the contractor has 250 or more employees

Let the contractor know that we expect them to (at least yearly)

- evidence that they regularly consult with their workforce regarding equality and diversity issues.
- evidence that they carry out regular equality monitoring (race, gender, age and disability as a minimum) and reporting on the following
  - Selection, transfer, training, promotion, discipline and dismissal.
- describe the arrangements for equal opportunities in recruitment advertisements and corporate literature
- take action where monitoring information indicates under-representation of particular groups to ensure that the information and policies in place (as required above) are being used effectively and that external advice is sought and appropriate action (including positive action) is taken.

When the contract is let the County Council must:

Ask for specific information about the equality and diversity requirements of this particular contract (over and above the generic information required below) as included
When carrying out contract monitoring we ask

- whether the contractor has been investigated / prosecuted under equality legislation in the previous year
- to see evidence that they continue to have an equality policy and that they regularly review / update it.
- how many employees the contractor has so we can let them know which category within the scheme they fit into.

In addition:

if the contractor has less than 5 employees

Check that the contractor is prepared to sign up to our equality and diversity requirements if / when they have 5 employees

if the contractor has 5 or more employees

Request and receive at least yearly the following when carrying out contract monitoring

- evidence that the contractor continues to have an equality policy (covering the following areas - recruitment, selection, training, promotion, discipline and dismissal; victimisation, discrimination and harassment as disciplinary offences; a senior staff member responsible for effective implementation of the policy; communication of the policy to staff) and that it is regularly reviewed / updated (at least every three years)
- evidence to show equality monitoring of staff (by race gender, age and disability as a minimum) is being carried out on a regular basis

If the contractor has 50 or more employees

Request and receive at least yearly the following when carrying out contract monitoring (in addition to above)

- evidence that the contractor has been carrying out training in equality and diversity for managers and staff responsible for recruitment and selection. This might include a training database showing names of staff undertaking training or a sample of staff training records.
- evidence to show equality monitoring of the following (by race gender, age and disability as a minimum) is being carried out on a regular basis
  - Job applicants
  - Employees (by section and grade)
- Evidence that efforts have been made to analyse the monitoring information gathered and action taken to try to make sure that currently underrepresented groups are encouraged.

If the contractor has 250 or more employees

Request and receive at least yearly the following when carrying out contract monitoring (in addition to above)

- Evidence that the contractor consults with their workforce at least yearly on equality and diversity issues
- evidence to show equality monitoring of the following (by race gender, age and
disability as a minimum) is being carried out on a regular basis

- Selection
- Transfer
- Training
- Promotion
- Discipline and dismissal

- Evidence that recruitment advertisements and corporate literature contains information on equality and diversity
- Evidence that efforts have been made to analyse the monitoring information gathered and action taken to try to make sure that currently underrepresented groups are encouraged. The help of external agencies should be sought and appropriate action (including positive action) taken.

**Comments:**

**Completed by:**

**Date**
PARTNERSHIP

1 PARTNERING RELATIONSHIP

1.1 The Parties agree that they have a common purpose in ensuring the successful implementation of the Agreement. To achieve this common purpose, the Parties have agreed:

1.1.1 to establish a long term partnering relationship between the Authority and the Contractor to facilitate the Contractor's provision of high quality Works and a high quality Service in the most cost effective manner; and

1.1.2 to provide fora for liaison, discussion, review, and agreement of key functions under the Agreement.

2 PRINCIPLES

2.1 The Parties have identified high level principles which underpin the successful delivery of the Parties' obligations under the Agreement and have agreed key factors for a successful relationship. Whilst it is recognised that these principles and/or key factors are difficult to measure in isolation, the successful implementation of the Agreement will depend on the Parties' ability effectively to coordinate and combine their expertise, manpower and resources in order to deliver an integrated approach to the provision of the Works and Services under the Agreement.

2.2 The Parties have agreed that the high level principles and/or key factors referred to in paragraph 2.1 above shall be applied in dealing with any matter relating to the Agreement. These are as follows:

2.2.1 establishing a long term partnering relationship between the Parties;

2.2.2 providing a forum for the long term management of the Project;

2.2.3 fostering the provision of high quality Works and Services;

2.2.4 focusing on achieving the best value for money provision of the Works and Services;

2.2.5 promoting a close working relationship between the Parties at all levels;

2.2.6 recognising the Project stakeholders' capabilities, roles and responsibilities to achieve mutually beneficial outcomes;

2.2.7 assisting with the early recognition and resolution of differences, conflicts and disputes between the Parties in a "no surprises" environment;

2.2.8 promoting openness and trust in a transparent information and data sharing environment; and

2.2.9 setting in place business and cultural processes to enable the Parties to establish and monitor achievement of challenging objectives.

3 MUTUAL OBJECTIVES

3.1 In addition to the rights and obligations contained within the Agreement the Parties agree that the following mutual objectives shall be embraced:
3.1.1 the establishment of the Project as described in the Agreement;

3.1.2 the achievement of JMWMS "Lets Talk Less Rubbish";

3.1.3 the diversion of waste from landfill;

3.1.4 to discuss and agree with the Authority, where possible, early diversion strategies prior to the Contractor receiving a Satisfactory Planning Permission; and

3.1.5 to notify each other of long term goals.

4 REVIEW OF PRINCIPLES AND MUTUAL OBJECTIVES

4.1 The principles and/or key factors set out in paragraph 2 (above) and mutual objectives set out in paragraph 3 (above) will be kept under review through meetings and effective communications.

5 GENERAL APPLICATION OF PRINCIPLES AND MUTUAL OBJECTIVES

5.1 The principles and/or key factors set out in paragraph 2 (above) and mutual objectives set out in paragraph 3 (above) shall apply to all matters arising out of the Agreement.

6 RESOLUTION OF CHALLENGES

6.1 The Parties will adopt a systematic approach to resolving potential challenges and disagreements, recognising the principles and/or key factors set out in paragraph 2 (above) and mutual objectives set out in paragraph 3 (above) and which:

6.1.1 seeks solutions without apportioning blame;

6.1.2 is based on mutually beneficial outcomes;

6.1.3 treats the Parties as equals in the dispute resolution process;

6.1.4 contains a mutual acceptance that adversarial attitudes waste time and money; and

6.1.5 relies on more and better discussion with less paperwork and more constructive correspondence.

6.2 In order to reflect those principles outlined in paragraph 6.1 above the Parties agree that in the event of any dispute between the Parties, the dispute shall be referred initially for discussion and/or resolution by the Authority's Representative and the Contractor's Representative, except as provided in paragraph 6.3 below. If the dispute is not resolved by the Authority's Representative and the Contractor's Representative within ten (10) Business Days the matter shall be referred to the Joint Project Board for discussion and/or resolution. If the dispute is not resolved by the Joint Project Board within ten (10) Business Days (or such other period as the members of the Joint Project Board shall agree) the matter shall be referred for resolution pursuant to clause 62 (Dispute Resolution) of the Agreement.

6.3 To the extent that any dispute is deemed to be a Fast Track Dispute in accordance with clause 62.20 (Fast Track), such dispute shall be resolved in accordance to the provisions of clause 62.20 (Fast Track) without prior reference to the Authority's Representative and the Contractor's Representative pursuant to paragraph 6.2 above.
7  AUTHORITY’S REPRESENTATIVE AND CONTRACTOR’S REPRESENTATIVE

7.1 The Authority’s Representative and the Contractor’s Representative shall meet as and when required and shall deal with matters arising out of the Agreement in accordance with the principles and/or key factors and mutual objectives set out in this Schedule 10 (Partnership).

8  JOINT PROJECT BOARD

8.1 The joint project board shall consist of equal numbers of those representatives from the Authority and Contractor reasonably required to deal with any matter or potential challenges and disagreements arising out of or in connection with the Agreement (the Joint Project Board).

8.2 The Joint Project Board shall meet as and when required and shall deal with matters arising out of the Agreement in accordance with the principles and mutual objectives set out in this Schedule 10 (Partnership).

9  DISCUSSIONS

9.1 Subject to the terms of the Agreement, all discussions between the Parties shall be treated with mutual confidentiality, and in the spirit of a long-term partnership.

10  COST SHARING

10.1 Each Party shall bear their own costs arising from engaging in the partnering arrangements set out in this Schedule 10 (Partnership).
1 Registered Name of Contractor:

Company Name: AmeyCespa (AWRP) SPV Limited

2 Registered Office of Contractor:

Registered Office: The Sherard Building, Edmund Halley Road, Oxford Science Park, OX4 4DQ

3 Company Registration Number of Contractor:

08717850

4 Directors of Contractor:

Nicholas Mark Gregg (with Paul Greenwell as alternate)
Asif Ghafoor (with John Gerard Connolly as alternate)
William Haughey
Nicholas Cole
Fabio D'Alonzo
Richard Knight

5 Shareholders of Contractor (with respective shareholdings):

AmeyCespa (AWRP) Holding Co Limited: [REDACTED] shares

6 Registered Name of Holdco:

AmeyCespa (AWRP) Holding Co Limited

7 Registered Office of Holdco:

Registered Office: The Sherard Building, Edmund Halley Road, Oxford Science Park, OX4 4DQ

8 Company Registration Number of Holdco:

08717836

9 Directors of Holdco:

Nicholas Mark Gregg (with Paul Greenwell as alternate)
Asif Ghafoor (with John Gerard Connolly as alternate)

William Haughey

Nicholas Cole

Fabio D'Alonzo

Richard Knight

Shareholders of Holdco (with respective shareholdings):

Amey Ventures Asset Holdings Limited: [REDACTED] shares

Cespa Ventures Limited: [REDACTED] shares

Aberdeen Infrastructure Investments (No 5) Limited: [REDACTED] shares

Equitix Concessions 3 Ltd: [REDACTED] shares
SCHEDULE 12 - Redacted Copy

SCHEDULE 12

RELEVANT DISCHARGE TERMS

1 The sums referred to in paragraph 2.1 of this Schedule and the adjustment between the Parties of the rights and liabilities relating to the Assets referred to in paragraph 2.2 of this Schedule shall be the relevant discharge terms in relation to this Agreement for the purposes of Section 6 of the Local Government (Contracts) Act 1997.

2 In the event of the making of a determination or order by a court of final jurisdiction/no right of appeal remaining on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997), the result of which is that any part or all of this Agreement or any part or all of the Direct Agreement does not have effect or is otherwise unenforceable, then:

2.1 the Contractor shall be entitled to be paid by the Authority the sum which is the sum equivalent to the amount of compensation payable by the Authority to the Contractor pursuant to clause 45 (Compensation on Termination for Authority Default/Voluntary Termination); and

2.2 the Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

3 The Authority shall pay to the Contractor the sums referred to in paragraph 2 above within forty (40) Business Days of the determination or order of the court referred to in paragraph 2 above and the provisions of clause 50 (Miscellaneous Compensation Provisions) shall apply in respect of such sums.
## SCHEDULE 13

**SCHEDULE 13**

**COMMERCIAL SENSITIVE INFORMATION**

**Part 1**

**Commercially Sensitive Contractual Provisions**

<table>
<thead>
<tr>
<th>Column 1 - Commercially Sensitive Contractual Provisions</th>
<th>Column 2 - For period ending on date below:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The figures referred to in the following Definitions:</td>
<td>5 years after the Planned Service Commencement Date</td>
</tr>
<tr>
<td>Base Case Equity IRR</td>
<td></td>
</tr>
<tr>
<td>Contractor Default limbs k (figure only) and i</td>
<td></td>
</tr>
<tr>
<td>(percentage figure and time period)</td>
<td></td>
</tr>
<tr>
<td>Off-Site Expenditure (threshold figure)</td>
<td></td>
</tr>
<tr>
<td>Real Pre-tax Project IRR</td>
<td></td>
</tr>
<tr>
<td>Threshold Equity IRR</td>
<td></td>
</tr>
<tr>
<td>Agreed Commissioning Volumes</td>
<td></td>
</tr>
<tr>
<td>Commissioning Volume Balance</td>
<td></td>
</tr>
<tr>
<td>Clauses:</td>
<td>Until the Service Commencement Date.</td>
</tr>
<tr>
<td>26A1.2 (Obligation to Accept) in respect of the</td>
<td></td>
</tr>
<tr>
<td>tonnage figures only,</td>
<td></td>
</tr>
<tr>
<td>37.3.3 in respect of the % figure only</td>
<td></td>
</tr>
<tr>
<td>Schedule 4 (Performance Framework) in relation to the</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>following provisions only:</td>
<td></td>
</tr>
<tr>
<td>2.19 Repeated Failure multiplier Table 1</td>
<td></td>
</tr>
<tr>
<td>2.20 Schedule of Key Performance Indicators</td>
<td></td>
</tr>
<tr>
<td>Table 2 columns 8</td>
<td></td>
</tr>
<tr>
<td>Schedule 6 (Payment Mechanism) – Appendix A Contract</td>
<td>12 months after Financial Close</td>
</tr>
<tr>
<td>Rates</td>
<td></td>
</tr>
<tr>
<td>Appendix B Contract Metrics</td>
<td></td>
</tr>
<tr>
<td>Schedule 7 (Base Case)</td>
<td>5 years after the Planned Service</td>
</tr>
<tr>
<td></td>
<td>Commencement Date.</td>
</tr>
<tr>
<td>Schedule 22 (Planning) in relation to the following</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>Definitions of:</td>
<td></td>
</tr>
<tr>
<td>Appeal Contingency (numbers as words and figures)</td>
<td></td>
</tr>
<tr>
<td>Architectural Enhancements (limbs, a, b &amp; c only)</td>
<td></td>
</tr>
<tr>
<td>First Longstop Date (time period only),</td>
<td></td>
</tr>
<tr>
<td>First Payment (figure only),</td>
<td></td>
</tr>
<tr>
<td>Off Site Expenditure (threshold figure)</td>
<td></td>
</tr>
<tr>
<td>Planning Longstop Date (time period only),</td>
<td></td>
</tr>
<tr>
<td>Column 1 - Commercially Sensitive Contractual Provisions</td>
<td>Column 2 - For period ending on date below:</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>The following paragraphs:</td>
<td></td>
</tr>
<tr>
<td>2.6 (Appeal Contingency) – figures set out in the table only,</td>
<td></td>
</tr>
<tr>
<td>2.8 (Costs awarded in Proceedings) – figures set out in the table only,</td>
<td></td>
</tr>
<tr>
<td>2.6.5 (Appeal Contingency) – costs threshold only</td>
<td></td>
</tr>
<tr>
<td>3.7.6 (Architectural Enhancements) (whole paragraph)</td>
<td></td>
</tr>
<tr>
<td>4 (Contractor Risk) (whole paragraph)</td>
<td></td>
</tr>
<tr>
<td>5 (Conditions for Payment) (whole paragraph)</td>
<td></td>
</tr>
<tr>
<td>Appendix 1 – Items of expenditure not constituting Off-Site Expenditure (4th bullet point)</td>
<td></td>
</tr>
<tr>
<td>Schedule 23 (Waste Acceptance Protocol)</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>Definition of Ad Hoc Waste</td>
<td></td>
</tr>
<tr>
<td>Paragraph 7.11.2 (the table only) of Schedule 24 (Funding Protocol)</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>Schedule 25 (Unitary Charge Adjustment Protocol)</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>The following provisions of Schedule 26 (Interim Period)</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>Authority Voluntary Termination Sum (value only)</td>
<td></td>
</tr>
<tr>
<td>Contractor Voluntary Termination Sum (value only)</td>
<td></td>
</tr>
<tr>
<td>Interim Period CGF Termination Sum (value only)</td>
<td></td>
</tr>
<tr>
<td>Interim Period Force Majeure Termination Sum (value only)</td>
<td></td>
</tr>
<tr>
<td>The thirteenth definition</td>
<td></td>
</tr>
<tr>
<td>Paragraph 5.7.1 (value only)</td>
<td></td>
</tr>
<tr>
<td>Paragraph 5.7.2 (value only)</td>
<td></td>
</tr>
<tr>
<td>Paragraph 5.8 (Proviso only)</td>
<td></td>
</tr>
<tr>
<td>Paragraph 5.9.2 (d)</td>
<td></td>
</tr>
<tr>
<td>Paragraph 5.15</td>
<td></td>
</tr>
<tr>
<td>Schedule 28 (Environmental Provisions)</td>
<td>12 Months after Financial Close</td>
</tr>
<tr>
<td>Paragraph 2.3.1 (b)</td>
<td></td>
</tr>
<tr>
<td>Paragraph 2.3.2 (b)</td>
<td></td>
</tr>
<tr>
<td>Column 1 - Commercially Sensitive Material</td>
<td>Column 2 - For period ending on date below:</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>The following financial information relating to the Contractor's price: any build-up or breakdown of total cost, profit margins, contract sum analysis, overheads, overhead and profit element, and any financial information contained within the Senior Financing Agreements.</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>The Contractor's bid together with the correspondence and clarifications arising during the bid process and other documents concerning negotiations between the Authority and the Contactor prior to the Effective Date, to the extent that such correspondence, clarifications or documents were expressly designated confidential between the Authority and Contactor.</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>(Subject to any information required to be shared with other bidders by the Authority in accordance with its obligations under the Public Contracts Regulations 2006), assessment reports and the evaluation report on the Contractor's bid.</td>
<td>12 months after Financial Close.</td>
</tr>
<tr>
<td>The limits of liability and levels of insurance set out in any of the sub-contracts.</td>
<td>12 months after Financial Close.</td>
</tr>
</tbody>
</table>
SCHEDULE 14 - Redacted Copy

SCHEDULE 14

INSURANCES

This Schedule 14 comprises six Parts:

Part 1: Required Insurances (Works Period)

Part 2: Required Insurances (Service Period)

Part 3: Endorsements

Part 4: Broker's Letter of Undertaking

Part 5: Not Used

Part 6: Insurance Premium Risk Sharing Schedule
SCHEDULE 14 - Redacted Copy

Part 1

Required Insurances

Policies to be taken out by the Contractor and maintained during the Works Period

Common to each insurance specified in this Part 1 (unless stated otherwise):

**Insureds:**

(1) Authority

(2) Contractor

(3) Each Construction Contractor

(4) Works and Operating Sub-Contractor

(5) Sub-contractors of the Insureds at (2), (3) and (4) above of any tier

(6) Senior Lenders

(7) Subordinated Lenders

(8) Consultants - for their site activities only

each for their respective rights and interests in the Project

1 Contractors 'All Risks' Insurance ("CAR")

1.1 **Insured Property**

All permanent and temporary works, materials (including but not limited to equipment supplied by the Authority), goods, plant and equipment for incorporation in the Works (but excluding constructional plant, tools, accommodation and equipment other than that belonging to or the responsibility of the Contractor) and all other property used or for use in connection with Works associated with the Project.

1.2 **Coverage**

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

1.3 **Sum Insured**

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the Construction Contracts plus provision to include cover features and extensions as appropriate.

1.4 **Maximum Deductible**

Three hundred and fifty thousand pounds sterling (£350,000) each and every loss in respect of claims for defective design, materials, workmanship and during testing, commissioning and maintenance period reducing to one hundred thousand pounds sterling (£100,000) each and every loss in respect of storm, tempest and flood and reducing to fifty thousand pounds sterling (£50,000) for all other claims.
1.5 **Territorial Limits**

United Kingdom including offsite storage and during inland transit.

1.6 **Period of Insurance**

From the Effective Date until the Service Commencement Date and thereafter in respect of defects liability until expiry of the twenty four (24) months defects liability period.

1.7 **Cover Features and Extensions**

1.7.1 Terrorism.

1.7.2 Munitions of war clause.

1.7.3 Professional fees clause.

1.7.4 Additional costs of completion clause.

1.7.5 Debris removal clause.

1.7.6 72 hour clause.

1.7.7 European Union local authorities clause.

1.7.8 Free issue materials clause.

1.7.9 (10%) escalation clause.

1.7.10 Automatic reinstatement of sum insured clause.

1.7.11 Loss minimisation.

1.7.12 Plans and documents.

1.7.13 Expediting expenses.

1.7.14 Temporary repairs.

1.7.15 Marine 50/50.

1.7.16 Extended maintenance.

1.7.17 Payments on account.

1.7.18 Computer data reinstatement.

1.7.19 Testing and commissioning.

1.7.20 Fire joint code of practice.

1.7.21 Increased costs of constructing incomplete or unbuilt works.

1.7.22 Offsite storage and repairs.
1.8 **Principal Exclusions**

1.8.1 War and related perils (UK market agreed wording).

1.8.2 Nuclear/radioactive risks (UK market agreed wording).

1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

1.8.4 Wear, tear and gradual deterioration.

1.8.5 Consequential financial losses.

1.8.6 Cyber risks.

1.8.7 Inventory losses, fraud and employee dishonesty.

1.8.8 Design improvement DES/LEG3.

1.8.9 Piling conditions.

1.8.10 Refractory linings or brickwork clause.

1.8.11 Waste fuel quality clause.

1.8.12 Transmission and distribution lines clause.

1.8.13 Exclusion of live cultures in relation to anaerobic process.

2 **Delay in Start Up Insurance ("DSU")**

2.1 **Insureds**

2.1.1 Contractor

2.1.2 Works and Operating Sub-Contractor

2.1.3 Senior Lenders

2.1.4 Subordinated Lenders

2.1.5 Authority - (in respect of one million pounds (£1,000,000) additional cost of working only)

2.1.6 Named customers as declared to and agreed by insurers each for their respective rights and interests in the Project.

2.2 **Indemnity**

In respect of:

2.2.1 loss of anticipated revenue less variable costs saved during at least the Minimum Indemnity Period arising from a delay in completion of the Works as a result of loss or damage covered under the Contractors 'All Risks' Insurance
SCHEDULE 14 - Redacted Copy

effected in accordance with Section 1 of Part 1 of this Schedule 14, including loss or damage which would be indemnifiable but for the application of any deductible;

2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of revenue of the Contractor which without such expenditure would have taken place during the Minimum Indemnity Period.

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 Maximum Excess

Sixty (60) days

2.5 Minimum Indemnity Period

Twenty four (24) months.

2.6 Period of Insurance

As per the Contractors' "All Risks" insurance, excluding the defects liability period.

2.7 Cover Features and Extensions

2.7.1 Denial of access.

2.7.2 Utilities.

2.7.3 Terrorism.

2.7.4 Professional fees.

2.7.5 Specified suppliers.

2.7.6 Payments on account.

2.7.7 Additional increased cost of working – minimum £1,000,000 for the Authority.

2.7.8 Waiver of subrogation rights against the Authority and the Works and Operating Sub-Contractor.

2.7.9 Automatic reinstatement of Sum Insured and indemnity period (subject to insurance market availability).

2.8 Principal Exclusions

2.8.1 As per the Contractors 'All Risks' insurance, other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.
3 Construction Third Party Liability Insurance

3.1 Interest

To indemnify the Insureds in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury, illness, death, disease contracted by any person;
3.1.2 loss or damage to property;
3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the Period of Insurance and arising out of or in connection with the Works associated with the Project.

3.2 Limit of Indemnity

Not less than £50,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution liability.

3.3 Maximum Deductible

£25,000 for each and every occurrence of property damage. (Personal injury claims will be paid in full).

3.4 Territorial Limits

Europe (and elsewhere in the world in respect of non-manual visits).

3.5 Jurisdiction

Worldwide excluding USA and Canada.

3.6 Period of Insurance

As per the Contractors 'All Risks' Insurance including the defects liability period.

3.7 Cover Features and Extensions

3.7.1 Munitions of war.
3.7.2 Cross liability clause.
3.7.3 Contingent motor liability.
3.7.4 Legal defence costs.
3.7.5 Contractual liability.
3.7.6 Liability arising from CDM Regulations.
3.7.7 Health and Safety at Work Act(s) clause.
SCHEDULE 14 - Redacted Copy

3.7.8 Costs in addition to limit (other than USA and Canada).

3.7.9 Data Protection Act clause.

3.7.10 Insured to include directors, officers and employees of insured parties.


3.7.12 Libel and slander.

3.7.13 Infringement of privacy or wrongful arrest.

3.7.14 Defence, appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007.

3.8 Principal Exclusions

3.8.1 War and related perils (UK market agreed wording).

3.8.2 Nuclear / radioactive (UK market agreed wording).

3.8.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insureds.

3.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

3.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insureds.

3.8.6 Liability in respect of loss or damage to property in the care, custody and control of the Insureds but this exclusion is not to apply to any property belonging to the Authority which is in the care, custody and control of another Insured.

3.8.7 Events more properly covered under a professional indemnity policy.

3.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

3.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

3.8.10 Losses indemnified under the Contractor's 'All Risks' Insurance or Delay in Start Up Insurance or Marine Cargo Insurance and Marine Delay in Start Up Insurance.

3.8.11 Liability arising from asbestos.

3.8.12 Liability arising from toxic mould.
4 Environmental Impairment Liability Insurance

4.1 Insureds:
4.1.1 Authority
4.1.2 Contractor
4.1.3 Works and Operating Sub-Contractor
4.1.4 Senior Lenders
4.1.5 Subordinated Lenders

each for their respective rights and interests.

4.2 Interest

To indemnify the Insureds in respect of all sums that they may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (e.g. Local Authority or Environment Agency or a judicial authority) or a third party and resulting in a claim or claims first made against the Insureds and reported to the Insurer during the Period of Insurance. A pollution incident relates to either pre-existing (at the Effective Date) pollution exacerbated by the Contractor or its sub-contractors or pollution subsequently caused by the Contractor or its sub-contractors in connection with the carrying out of the Works in connection with the Project.

4.3 Limit of Indemnity

Not less than ten million pounds sterling (£10,000,000) any one (1) occurrence and twenty million pounds sterling (£20,000,000) in the aggregate for the period of the Works.

4.4 Maximum Deductible

Fifty thousand pounds sterling (£50,000) each and every occurrence.

4.5 Territorial Limits

United Kingdom.

4.6 Period of Insurance

As per the Contractors ‘All Risks’ Insurance.

4.7 Cover Features and Extensions

4.7.1 Regulatory or third party claims for on site clean-up of pre-existing and new conditions arising from the acts or omissions of the Insured.

4.7.2 Regulatory or third party claims for off-site clean-up of pre-existing and new conditions arising from the acts or omissions of the Insured.

4.7.3 Third party claims for on-site and off-site property damage from pre-existing and new conditions arising from the acts or omissions of the Insured.
4.7.4 Third party claims for on-site and off-site bodily injury from pre-existing and new conditions arising from the acts or omissions of the Insured.

4.7.5 Legal costs.

4.7.6 Retroactive date policy inception.

4.7.7 Emergency expenses.

4.7.8 Cross Liabilities clause.

4.8 Principal Exclusions

4.8.1 War and related perils (UK market agreed wording).

4.8.2 Nuclear/radioactive risks (UK market agreed wording).

4.8.3 Asbestos (exclusion not to extend to remediation costs with respect to soil and groundwater).

4.8.4 Deliberate, wilful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.

4.8.5 Criminal fines and penalties.

4.8.6 Known conditions.

5 MARINE CARGO INSURANCE

Marine Cargo Insurance shall only be a Required Insurance if any shipments of Insured Property fall outside the scope of the Contractor's 'All Risks' Insurance policy. In such circumstances, and at the relevant time, the Contractor shall be obliged to procure the placement of Marine Cargo Insurance for such shipments.

5.1 Insured Property

All property and interest of every description of a critical nature (that is, items that in event of loss would cause the commercial operation of the affected site to be delayed by in excess of ninety (90) days), and any other property and interest as appropriate, for all transits by sea or air of all goods intended for the works where such items are carried for the account and interest of the Insured from risk attachment at factory premises to site, including offsite storage.

5.2 Coverage

"All Risks" of physical loss or damage to the Insured Property unless otherwise excluded.

5.3 Limit of Indemnity

Not less than the full replacement value plus 10% for any one sending/any one voyage.

5.4 Maximum Deductible

£50,000 each occurrence.
5.5 **Territorial Limits**

Worldwide.

5.6 **Period of Insurance**

On an 'Open' cover basis, from the commencement of the relevant transits until the delivery to the site plus any deferred unpacking period.

5.7 **Cover Features and Extensions**

5.7.1 Terrorism.

5.7.2 Institute Cargo Clauses (A).

5.7.3 Institute War Clauses (Cargo).

5.7.4 Institute Strikes Clauses (Cargo).

5.7.5 Overland transit to the extent it is not covered under the Contractors 'All Risks' Insurance specified in Section 1 of Part I of this Schedule 10.

5.7.6 Institute Classification Clauses.

5.7.7 Institute War Cancellation Clauses, other non-cancellable.

5.7.8 Demurrage Clause, 200%.

5.7.9 Pre-shipment risks.

5.8 **Exclusions**

5.8.1 As in Institute Cargo Clauses (A).

5.8.2 Ordinary leakage ordinary loss in weight or volume or ordinary wear and tear of the subject matter insured.

5.8.3 Inherent vice or nature of the subject matter insured.

5.8.4 Insolvency or financial default of the owners managers charterers or operators of the vessel or aircraft, unless not material to the claim.

5.8.5 Un-seaworthiness of the vessel or craft, etc but only where the Insured is aware of the un-seaworthiness.

5.8.6 Insufficiency or unsuitability of packing.

5.8.7 Delay.

5.8.8 Vessel not ISM Code certified/SOLAS Convention.

5.8.9 War and Radioactivity on Land.
SCHEDULE 14 - Redacted Copy

6 Marine Cargo Delay in Start up Insurance

Marine Cargo Delay in Start Up Insurance shall only be a Required Insurance if any shipments are not covered by the Delay in Start Up Insurance policy. In such circumstances, and at the relevant time, the Contractor shall be obliged to procure the placement of Marine Cargo Delay in Start Up Insurance for such shipments.

6.1 Insureds

6.1.1 Contractor
6.1.2 Works and Operating Sub-Contractor
6.1.3 Senior Lenders

each for their respective rights and interests in the Project.

6.2 Indemnity

In respect of:

6.2.1 loss of anticipated revenue less variable costs saved and anticipated third party income during at least the Minimum Indemnity Period, including a sum sufficient to indemnify against losses borne by the Contractor under the terms of the Agreement, arising from a delay in completion of the works and losses borne by the Works and Operating Sub-Contractor under the Works and Operating Agreement in each case as a result of loss or damage covered under the Marine Cargo Insurance specified at paragraph 5 of Part I of this Schedule 14, including loss or damage which would be indemnifiable but for the application of any deductible;

6.2.2 the economic additional expenditure and increased cost of working necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of revenue of the Contractor which without such expenditure would have taken place during the Minimum Indemnity Period.

6.3 Sum Insured

At least an amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

6.4 Maximum Excess

Sixty (60) days.

6.5 Minimum Indemnity Period

Twelve (12) months.

6.6 Period of Insurance

On an 'Open' cover basis, from the commencement of the relevant transits until the delivery to the Site plus any deferred unpacking period.
6.7 **Cover Features and Extensions**

6.7.1 As per Marine Cargo Insurance specified at paragraph 5 of Part I of this Schedule 14.

6.7.2 Payments on account.

6.7.3 Repayment of liquidated and ascertained damages – In circumstances where the Contractor and/or the Works and Operating Sub-Contractor receives payment of liquidated and ascertained damages from the Construction Contractors in accordance with the terms of the Construction Contracts and/or the Contractor receives payment of liquidated and ascertained damages from the Works and Operating Sub-Contractor in accordance with the terms of the Works and Operating Agreement such damages shall not be taken into account when any settlement is made under this policy and Insurers shall waive all rights of recourse to liquidated and ascertained damages payable by the Construction Contractors.

6.8 **Principal Exclusions**

As per Marine Cargo Insurance specified at paragraph 5 of Part I of this Schedule 14 other than for consequential financial losses.
Required Insurances

Policies to be taken by the Contractor and maintained with effect from the Service Commencement Date and thereafter during the Service Period.

Common to each insurance specified in this Part 2 (unless stated otherwise):

Insureds:

(1) Authority;
(2) Contractor;
(3) Works and Operating Sub-Contractor
(4) Senior Lender;

each for their respective rights and interests in the Project.

1 Property Damage Insurance

1.1 Insured Property

The project assets which are the property of the Contractor or for which the Contractor is responsible including but not limited to the Facilities.

1.2 Coverage

"All risks" of physical loss or damage to the Insured Property from any cause not excluded, including engineering machinery breakdown and computer breakdown in respect of appropriate equipment.

1.3 Sum Insured

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include principal extensions as appropriate.

1.4 Maximum Deductible

£250,000 in respect of fire, lightening, explosion and engineering breakdown each and every claim and £100,000 each and every claim in respect of all other losses (escalated periodically as appropriate).

1.5 Territorial Limits

United Kingdom plus elsewhere in Europe whilst in inland transit.

1.6 Period of Insurance

From the Service Commencement Date or as otherwise specified in the Agreement until the end of the Contract Period and renewable on an annual basis unless agreed otherwise by the Parties.
1.7 Cover Features and Extensions

1.7.1 Terrorism.

1.7.2 Automatic reinstatement of Sum Insured clause.

1.7.3 Capital additions clause.

1.7.4 72 hour clause.

1.7.5 European Union local authorities clause.

1.7.6 Professional fees.

1.7.7 Debris removal.

1.7.8 Pollution and contamination to the Insured Property arising from an event which itself is not otherwise excluded.

1.7.9 Repair / reinstatement basis of claims settlement with cash option for non-reinstatement.

1.7.10 Plans and documents.

1.7.11 Loss minimisation.

1.7.12 Temporary repairs.

1.7.13 Munitions of war.

1.7.14 Expediting expenses.

1.7.15 Reinstatement of computer data.

1.7.16 Engineering Breakdown.

1.8 Principal Exclusions

1.8.1 War and related perils (UK market agreed wording).

1.8.2 Nuclear/radioactive risks (UK market agreed wording).

1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

1.8.4 Wear, tear and gradual deterioration.

1.8.5 Consequential financial losses.

1.8.6 Cyber risks.

1.8.7 Losses recovered under the CAR insurance.

1.8.8 Refractory lining exclusion

1.8.9 Fuel quality exclusion
2 Business Interruption Insurance

2.1 Insureds

2.1.1 Contractor
2.1.2 Works and Operating Sub-Contractor
2.1.3 Senior Lenders
2.1.4 Subordinated Lenders
2.1.5 Authority - (In respect of £1,000,000 additional cost of working only)
2.1.6 Named customers as declared to and agreed by insurers

each for their respective rights and interests in the Project

2.2 Indemnity

In respect of:

2.2.1 loss of revenue less variable costs saved during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under the Property Damage Insurance effected in accordance with Section 1 of Part 2 of this Schedule 14 including physical loss or damage which would be indemnifiable but for the application of any deductible;

2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of revenue of the Contractor which without such expenditure would have taken place during the Minimum Indemnity Period.

2.3 Sum Insured

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 Maximum Excess

Sixty (60) days.

2.5 Minimum Indemnity Period

Twenty four (24) months.

2.6 Period of Insurance

As per the Property Damage Insurance.

2.7 Cover Features & Extensions
2.7.1 Denial of access.
2.7.2 Terrorism.
2.7.3 Utilities.
2.7.4 Professional fees.
2.7.5 Automatic reinstatement of the Sum Insured and Indemnity Period (subject to insurance market availability).
2.7.6 Payments on account.
2.7.7 Specified suppliers.
2.7.8 Additional increased costs of working – minimum £1,000,000 for the Authority.
2.7.9 Waiver of subrogation rights against the Authority and Works and Operating Sub-Contractor.

2.8 Principal Exclusions

2.8.1 As per the Property Damage Insurance, other than for consequential financial losses.
2.8.2 Delayed response by a public body or state authority.

3 Third Party Public and Products Liability Insurance

3.1 Interest

To indemnify the Insureds in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

3.1.1 death, or bodily injury, illness, death, disease contracted by any person;
3.1.2 loss or damage to property;
3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause,

happening during the Period of Insurance and arising out of or in connection with the provision of the Services in relation to the Project.

3.2 Limit of Indemnity

Not less than £50,000,000 (escalated periodically as appropriate) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

3.3 Maximum Deductible

£25,000 (escalated periodically as appropriate) for each and every occurrence of property damage (personal injury claims will be paid in full).
3.4 Territorial Limits

United Kingdom (and elsewhere in the world in respect of non manual visits).

3.5 Jurisdiction

Worldwide (excluding USA and Canada).

3.6 Period of Insurance

As per the Property Damage Insurance.

3.7 Cover Features and Extensions

3.7.1 Munitions of war.

3.7.2 Cross liability clause.

3.7.3 Contingent motor.

3.7.4 Legal defence costs.

3.7.5 Contractual liability.

3.7.6 Health and Safety at Work Act(s) clause.

3.7.7 Costs in addition to limit (other than USA and Canada).

3.7.8 Data Protection Act clause.

3.7.9 Insured to include directors, officers and employees of the insured parties.


3.7.11 Libel and slander.

3.7.12 Infringement of privacy and wrongful arrest.

3.7.13 Defence, appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007.

3.8 Principal Exclusions

3.8.1 War and related perils (UK market agreed wording).

3.8.2 Nuclear / radioactive risks (UK market agreed wording).

3.8.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insureds.

3.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

3.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insureds.
SCHEDULE 14 - Redacted Copy

3.8.6 Liability in respect of loss or damage to property in the care, custody and control of the Insureds but this exclusion is not to apply to any property belonging to the Authority which is in the care, custody and control of another Insured.

3.8.7 Events more properly covered under a professional indemnity policy.

3.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

3.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

3.8.10 Losses indemnified under the Property Damage or Business Interruption insurances.

3.8.11 Liability arising from asbestos.

3.8.12 Liability arising from toxic mould.

3.8.13 Cyber risks.

4 Environmental Impairment Liability Insurance

4.1 Insureds:

4.1.1 Authority

4.1.2 Contractor

4.1.3 Works and Operating Sub-Contractor

4.1.4 Senior Lenders

4.1.5 Subordinated Lenders,

each for their respective rights and interests.

4.2 Interest

To indemnify the Insureds in respect of all sums that they may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (e.g. Local Authority or Environment Agency or a judicial authority) or a third party and resulting in a claim or claims first made against the Insureds and reported to the Insurer during the Insurance Period. A pollution incident relates to either pre-existing (at the Effective Date) pollution exacerbated by the Contractor or their sub-contractors or pollution subsequently caused by the Contractor or their sub-contractors in connection with the provision of the Services in connection with the Project.

4.3 Limit of Indemnity

Not less than £10,000,000 any one occurrence and £20,000,000 in the aggregate for the policy period, the policy period not to exceed three years (indexed at each renewal date to the nearest whole amount available in the insurance market).
4.4 **Maximum Deductible**

£100,000 (indexed at each renewal date to the nearest whole amount available in the insurance market) each and every occurrence.

4.5 **Territorial Limits**

United Kingdom.

4.6 **Period of Insurance**

From the Service Commencement Date or as otherwise specified in the Agreement until the end of the Contract Period, policy period not to exceed three (3) years.

4.7 **Cover Features and Extensions**

4.7.1 Regulatory or third party claims for on site clean-up of pre-existing and new conditions arising from the acts or omissions of the Insured.

4.7.2 Regulatory or third party claims for off-site clean-up of pre-existing and new conditions arising from the acts or omissions of the Insured.

4.7.3 Third party claims for on-site and off-site property damage from pre-existing and new conditions arising from the acts or omissions of the Insured.

4.7.4 Third party claims for on-site and off-site bodily injury from pre-existing and new conditions arising from the acts or omissions of the Insured.

4.7.5 Legal costs.

4.7.6 Retroactive date policy inception.

4.7.7 Emergency expenses.

4.7.8 Cross Liabilities clause.

4.8 **Principal Exclusions**

4.8.1 War and related perils.

4.8.2 Nuclear/radioactive risks.

4.8.3 Asbestos (exclusion not to extend to remediation costs with respect to soil and groundwater).

4.8.4 Deliberate, willful and intentional non-compliance with any statutory regulation ordinance or instruction of any government agency or body, or executive, judicial or administrative order.

4.8.5 Criminal fines and penalties.

4.8.6 Known conditions.
SCHEDULE 14 - Redacted Copy

Part 3

LENDERS' AND AUTHORITY'S ENDORSEMENTS

Notwithstanding any other provision of this Policy the following endorsement shall apply:

Section I: Definitions

1
In this endorsement, except to the extent that the context otherwise requires, the following terms shall have the meaning given to them below.

Authority means North Yorkshire County Council;

Borrower Insurance Proceeds Account means the account in the name of the Company with Norddeutsche Landesbank Girozentrale (London Branch) with account number [Redacted] and sort code [Redacted];

Common Terms Agreement means the common terms agreement dated 30 October 2014 and made between, amongst others, the Company, the Intercreditor Agent and the Senior Lenders;

Company means [insert relevant name];

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

Intercreditor Agent means Norddeutsche Landesbank Girozentrale (London Branch) in its capacity as intercreditor agent for the Senior Lenders and includes its successors in that capacity;

Insured means those parties so described in the Policy Schedule;

Joint Insurance Account means the account held in the joint names of Company and the Authority with Norddeutsche Landesbank Girozentrale (London Branch) with account number [Redacted] and sort code [Redacted];

Project has the meaning given to it in the Common Terms Agreement;

Project Co means AmeyCespa (AWRP) SPV Limited; and

Senior Lenders has the meaning given to it in the Common Terms Agreement and includes any permitted assignee, transferee, successor or novated replacement or additional creditor of or in relation to any of the foregoing.

Section II: Policy formation / basis

2
Separate Policy

2.1 This Policy shall operate as if there were a separate policy covering each Insured. Accordingly the liability of the Company under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

2.2 All the Sums Insured and Limits of Indemnity stated in the Schedule and all limits on the Company's liability stated elsewhere in this Policy shall be the maximum amount payable
by Company in the circumstances stated in the Schedule or elsewhere in the Policy irrespective of the number of persons entitled to indemnities under this Policy in respect of any insured event or during any Period of Insurance.

3

Interest of the Finance Parties and the Authority

3.1 The Company acknowledges that the Finance Parties and (in respect of third party liabilities) their respective directors and employees are each additional co-insureds under this Policy arising only from the risk which is the subject matter of this insurance and that the premium specified in this Policy provides consideration for their being co-insured parties.

3.2 The Company acknowledges that the Authority and (in respect of third party liabilities) its officers directors and employees are each additional co-insureds under the sections of this Policy relating to material damage risks and third party liability risks arising only from the risk which is the subject matter of this insurance and that the premium specified in this Policy provides consideration for their being co-insured parties.

4

Liability for premium

Neither the Intercreditor Agent, the Finance Parties nor the Authority shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This shall not relieve Project Co from its obligations to pay any premium under this Policy.

5

Disclosure

5.1 The Finance Parties shall have no duty of disclosure to the Company in relation to the Policy. Nevertheless on the written request of the Company the Finance Parties shall provide the Company with access to any relevant due diligence report(s) commissioned by the Finance Parties relating to the Project and the Company shall keep such report(s) confidential and shall accept such information without rights of recourse against the party / parties that prepared the said reports.

5.2 The Company acknowledge to the Finance Parties alone that (i) they have received adequate information in order to evaluate the risk of insuring Project Co in respect of the risks hereby insured on the assumption that such information is not materially misleading (ii) there is no information which has been relied on or is required by the Company in respect of their decision to co-insure the Finance Parties or their directors officers employees or agents and (iii) in agreeing to enter into this Policy they have not relied upon or taken into account any information supplied to them by any Finance Party. The acknowledgements provided by the Company in this clause 5.2 shall have no effect on any rights that the Company might have had under or in relation to the Policy against any party (including Project Co) other than the Finance Parties and the Intercreditor Agent in the absence of such acknowledgements.

5.3 Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.
Subject to clause 5.5 hereof, no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority.

Where any warranty, disclosure or representation is required from the Authority in connection with this policy the Company will contact the Authority in writing (in accordance with clause 15 hereof) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself). Save as set out in such a request from the Company to the Authority, the Authority shall have no duty to disclose any fact or matter to the Company in connection with the policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

Section III: Rights to avoid / cancel or change Policy terms

Non-vitiation

The Insurers agree that the Policy shall not be invalidated as regards the respective rights and interest of each Insured and that the Insurers will not seek directly or indirectly to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured (whether occurring before or after the inception of the policy), including (without limitation), any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured, any breach or non-fulfilment by any other insured whether or not any such act, neglect, error or omission, could, if known at any time, have affected the decision of the Insurers to grant the Policy, to agree to any particular term or terms of the Policy (including without limitation this provision) and the amount in relation to this Policy or to liability which might arise thereunder.

The Company agrees that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation non-disclosure want of due diligence or breach of any declaration terms Condition or warranty of this Policy (together “the Relevant Matter”) but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Company or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.

Cancellation

The Company agrees that they shall not seek to cancel or suspend the construction phases of this insurance except for (a) non payment of premium or (b) consistent non compliance by an insured party with insurer’s requirements relating to survey or loss control or if (c) there is a breach of the Joint Code of Practice.

The Company shall promptly notify the Intercreditor Agent and the Authority in writing in the event of any suspension cancellation termination or non-renewal of this Policy by the Company or by the Insured. The cover provided by this Policy shall continue in force and unaltered for at least thirty (30) days after written notice of such suspension cancellation termination or non-renewal is given to the Intercreditor Agent and the Authority. Nothing in this clause shall give the Company any right to suspend cancel or terminate this Policy which the Company does not otherwise have under this Policy.
SCHEDULE 14 - Redacted Copy

7.3 The Company shall promptly notify the Intercreditor Agent and the Authority in writing of:

7.3.1 any default in the payment of premium and shall give the Intercreditor Agent and the Authority at least thirty (30) days notice in writing before cancelling this Policy for non-payment of premium in order to give an opportunity for that premium to be paid within the notice period. However where no premium has been received cancellation will be effective from the date of first inception of this policy;

7.3.2 of any act, omission or event of which the Insurers have actual knowledge (including the non-payment of premium) which might invalidate or render unenforceable in whole or in part the insurance under this Policy, as soon as practicable after becoming aware of the same;

7.3.3 of any claim under this Policy where the claim is in a sum in excess of £50,000 (before deductibles).

8 Changes in cover

In no event shall the Company give the Intercreditor Agent and the Authority less than thirty (30) days prior notice in writing of any proposed reduction in cover or increase in excess or deductible under this Policy. Nothing in this clause shall give the Company any right which they do not otherwise have to reduce cover or increase any Insured’s contribution or deductible under this Policy.

9 Amendments to Endorsement

During the term of this Policy the provisions of this endorsement may only be amended by written agreement between Project Co, the Company, the Intercreditor Agent and the Authority, such amendment to be endorsed on the Policy.

Section IV: Claims

10 Notice of claims

10.1 Notice of claim by the Authority or the Finance Parties or any other party entitled to indemnity under the Policy shall in the absence of manifest error be accepted by Company as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

11 Claim Payments / Loss Payee

Payments made in accordance with this clause 11 shall to the extent of the payment discharge the Company’s liability to pay Project Co or any other Insured.

11.1 In respect of the insurance under this Policy of material damage risks only

All claim payments over £500,000 shall be paid into the Joint Insurance Account. Claims under this or return premium shall be paid into the Borrower insurance Account or to such other account as the Intercreditor Agent as loss payee may specify in writing. The Company may at its discretion deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by Project Co under or in relation to the Policy.

23 of 45
11.2 In respect of the insurance under this Policy of public liability risks only

All claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the legal liability insured against. Any return premiums shall be paid to the Borrower Insurance Proceeds Account or such other account as the Intercreditor Agent directs in writing.

11.3 In respect of the insurance under this Policy of loss of revenue risks only

All claim payments or return premiums shall be paid to the Borrower Insurance Proceeds Account or such other account as the Intercreditor Agent directs in writing.

12 Waiver of subrogation

The Company waives all rights of subrogation howsoever arising which it may have or acquire against any Insured described within the appropriate Schedules arising out of any event in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any:

12.1 Insured (or officer director employee agent or assign) who has caused or contributed to such an event or claim by fraud deliberate misrepresentation deliberate non-disclosure or deliberate breach of Policy condition; or

12.2 Insured to the extent that their professional errors omissions or activities not insured by this Policy have caused or contributed to an event covered under this Policy; or

12.3 supplier or manufacturer to the extent that their errors omissions or activities not insured by this Policy have caused or contributed to an event covered under this Policy; or

12.4 Insured to the extent that they are entitled to Indemnity in respect of an insured event failing within paragraphs 13.1.1 – 13.1.5 below (or would be so insured if cover in the terms set out in this Policy had not been taken out); or

12.5 in relation to losses paid under material damage and loss of revenue sections for the operational period any Insured (other than the Authority) who is not covered under those sections.

13 Primary insurance

13.1 For non-Environmental Impairment Liability covers:

The Company agrees that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured the Company agrees to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

13.1.1 excess layers of third party liability cover effected specifically for the Project;

13.1.2 any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy in which case the liability of the Company for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;

13.1.3 any claim under this Policy to which a Marine 50/50 Clause applies;
13.1.4 any claim made under a contingent motor liability extension to this Policy; or

13.1.5 any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:

(a) any other policy specifically effected for the construction or operational phase(s) of the Project; or

(b) a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project; or

(c) a related business interruption insurance policy.

13.2 For the Environmental Impairment Liability policy, the following applies:

This Policy is primary except in relation to sudden and accidental pollution cover afforded by the third party liability policy, where this Policy will act in excess of any claims monies paid by that policy.

Section V: Miscellaneous

14 Notice of Security Interest

The Company acknowledges that by an assignment contained in a debenture dated 30 October 2014 (the "Assignment") Project Co assigned by way of security to the Finance Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Company confirms that they have not been notified of any other assignment of or security interest in Project Co's interest in this insurance.

15 Notice

15.1 All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by the Company will be deemed to be given on the earlier of:

15.1.1 if by fax when transmitted but only if the sender's fax machine confirms successful transmission; and

15.1.2 if by post within two (2) business days of release from the relevant Company's office.

15.2 The address and fax number of the Intercreditor Agent for all notices under or in connection with the Policy are those notified from time to time by the Finance Parties for this purpose to the insurance broker at the relevant time the initial address and fax number of the Intercreditor Agent is as follows:

The Intercreditor Agent: Norddeutsche Landesbank Girozentrale (London Branch)

Address: One Wood Street, London, EC2V 7WT

Fax No: [Redacted]

Attention: [Redacted]
15.3 The address and fax number of the Authority for all notices under or in connection with the Policy are those notified from time to time by the Authority for this purpose to the insurance broker at the relevant time the initial address and fax number of the Authority is as follows:

**The Authority:** North Yorkshire County Council

**Address:** County Hall, Racecourse Lane, Northallerton, DL7 8AH

**Fax No:** [Redacted]

**Attention:** Assistant Chief Executive (Legal and Democratic Services)

16 General

16.1 The Insurers acknowledge that they have received consideration for their agreement to co-insure the Finance Parties and the Authority.

16.2 This endorsement overrides any conflicting provision in this Policy.
SCHEDULE 14 - Redacted Copy

Part 4

Broker’s Letter of Undertaking

To: North Yorkshire County Council

FAO: Assistant Chief Executive (Legal and Democratic Services)

Dear Sirs

Project Agreement dated [ ] 2014 entered into between AmeyCespa (AWRP) SPV Limited (the “Contractor”) and North Yorkshire County Council (the “Authority”) (the “Agreement”)

1 We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.

2 We act as insurance broker to the Contractor in respect of the insurances (which are defined in Clause 58 (Insurance) and Schedule 14 of the Agreement attached hereto as Appendix A) evidenced by the cover notes attached hereto as Appendix B ("Required Insurances") and in that capacity we confirm that the Required Insurances:

2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement each for their respective interests;

2.2 are, to the best of our knowledge and belief (after making all reasonable enquiries) as at today’s date, in full force and effect; and that

2.3 all premiums due as at today’s date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers’ current or future insolvency or ability to pay claims; and that

2.4 the endorsements set out in Part 3 to Schedule 14 of the Agreement attached hereto as Appendix C are to the best of our knowledge and belief as at today’s date in full force and effect.

3 We further confirm that the attached cover notes attached hereto as Appendix B confirm this position.

4 Pursuant to instructions received from the Contractor and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Required Insurances:

4.1 Notification Obligations

4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor to negotiate renewal and in the event of our receiving instructions to renew, to advise you as soon as reasonably practicable, and in any event within three working days, of the details thereof;
SCHEDULE 14 - Redacted Copy

4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to the Contractor unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable and in any event within three working days; and

4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind or for any reason all payments received in respect of claims received by us in relation to the Required Insurances as specified at clause 59.2 of the Agreement attached hereto as Appendix D.

4.2 Advisory Obligations

4.2.1 to notify you as soon as reasonably practicable, and in any event within three working days of any default in the payment of any premium by the Contractor to us for any of the Required Insurances;

4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least 30 (thirty) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 30 (thirty) days before it is to take effect;

4.2.3 to notify you as soon as reasonably practicable of any act or omission, breach or default of the Contractor of which those of our employees directly involved in the placement of the Required Insurances becomes actually aware in their capacity as brokers to the Contractor which acting reasonably they consider may invalidate or render unenforceable in whole or in part any of the Required Insurances or which may otherwise materially impact on the extent of cover provided under the Required Insurances; and

4.2.4 in accordance with our duty to the Contractor, to advise the Contractor of the its duties of disclosure to insurers including; and

(a) the types of facts, circumstances and beliefs that should generally be disclosed to insurers; and

(b) the obligation not to misrepresent any facts, matters or beliefs to insurers.

4.3 Disclosure Obligations

4.3.1 subject to the prior written consent of the Contractor (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information made available to those of our employees directly involved with the placement of the Required Insurances in their capacity as brokers to the Contractor and any fact, change of circumstances or occurrence made known to such employees which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers (in accordance with the Contractor's duty of disclosure to insurers) as soon as practicable after we are in receipt of such information and become aware of such fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and

4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Contractor or the
SCHEDULE 14 - Redacted Copy

Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances in discharge of our obligation set out at clause 4.3.1 of this letter. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 Administrative Obligations

4.4.1 to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;

4.4.2 subject to our lien over the policies for the Required Insurances to supply to the Authority and/or its insurance advisers (or the Authority or its authorised representatives) as soon as reasonably practicable copies of the documents set out in clause 4.4.1 of this letter, and to make available to such persons as soon as reasonably practicable upon the Authority's request the originals of such documents;

4.4.3 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate cleared funds from the Contractor, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;

4.4.4 to administer the payment of claims from insurers in respect of the Required Insurances (the "Insurance Claims") including:

(a) negotiating settlement of Insurance Claims presented in respect of the Required Insurances;

(b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances; and

(c) insofar as it is relevant and practicable, liaising with and reporting to the Authority throughout the settlement, payment and administration of such Insurance Claims.

4.4.5 to advise the Authority as soon as reasonably practicable upon receipt of notice of any material changes from the Contractor which we are instructed to make in the terms of the Required Insurances and which, if effected, in our reasonable opinion as insurance brokers would result in any material reduction in limits or coverage or in any material increase in deductibles, exclusions or exceptions;
SCHEDULE 14 - Redacted Copy

4.4.6 to advise the Authority in advance, to the extent we are actually aware in
advance, of any material change to the terms of, or any lapse, non-renewal
and/or cancellation of Required Insurances; and

Insurance Cost Reporting Procedures

4.4.7 to prepare following request, at the expense of the Contractor, a Joint
Insurance Cost Report on behalf of both the Contractor and the Authority in
accordance with the Insurance Review Procedure set forth in Part 6 of
Schedule 14 of the Agreement attached hereto as Appendix E. We shall
ensure that the information in the Joint Insurance Account is fairly represented,
based on the information available to us.

5 Notification Details

5.1 Our obligations at clause 4 of this letter to notify or inform you shall be discharged by
providing the requisite information in hard copy to:

Name: County Yorkshire County Council
Address: County Hall
Racecourse Lane
Northallerton
DL7 8AH

FAQ: Assistant Chief Executive (Legal and Democratic Services).

6 The undertakings given and obligations set out in this letter are given subject to any
liability we may incur to you arising out of or in connection with this letter whether in
contract, tort (including but not limited to negligence) or otherwise being limited in
aggregate to £5,000,000 (five million pounds).

7 All liability we may incur to you, whether in contract, tort (including but not limited to
negligence) or otherwise for loss of profit, loss of savings, loss of opportunity or any
indirect or consequential loss is hereby expressly excluded.

8 No limit of liability shall apply in the case of death or personal injury caused by our
negligence, or in respect of any loss caused by our fraud.

9 The undertakings given and obligations set out in this letter are given subject to insurers
right to cancel the Required Insurances, are given solely in our capacity as broker to the
Contractor, relate only to the Required Insurances, are subject to our lien, if any, on the
Insurances for premiums, fees or commissions due under the Required Insurances and
are subject to our continuing appointment as broker to the Contractor. Following
termination of such appointment, we are, for the avoidance of doubt and without
prejudice to your accrued rights, released from all our ongoing obligations set out in this
letter.

10 You may not rely on any advice which we have given to the Contractor and we do not
represent that any of the Required Insurances are suitable or sufficient to meet your
needs and you must take steps and advice of your own as you consider necessary in
order to protect your own position.
SCHEDULE 14 - Redacted Copy

11 In the event that this letter is disclosed to any third party, any and all liability howsoever arising to such third party is hereby expressly excluded to the extent permitted in law.

12 No person, except you, has any rights arising out of this letter under the Contract (Rights of Third Parties) Act 1999.

13 This letter shall be governed by and construed in all respects in accordance with the laws of England and Wales.

14 This letter is given by us at the request of the Contractor and with the Contractor's full knowledge and consent as to its terms, who confirms that we are authorised to give and comply with the undertakings and acknowledges that compliance with the undertakings may be in conflict with the interests of the Contractor, as evidenced by the Contractor's signature below.

Yours faithfully

........................................................................
For and on behalf of [Contractor's broker]

Accepted for and on behalf of the Contractor

........................................................................
Appendix A - Insurances

[To be inserted]
Appendix B – Cover Notes

[To be inserted]
Appendix C - Endorsements

[To be inserted]
Appendix D – Claims Made

[To be inserted]
Appendix E – Joint Insurance Cost Report

[To be inserted]
SCHEDULE 14 - Redacted Copy

Part 5

Not Used
Definitions

For the purposes of this Part 6 of this Schedule 14 (Insurances), the following words and expressions shall bear the following meanings:

**Actual Relevant Insurance Cost** means the aggregate of the annual insurance premiums reasonably incurred by the Contractor to maintain the Relevant Insurance during the Insurance Review Period but excluding insurance premium tax and all broker’s fees and commissions;

**Base Cost** means £1,681,200 at October 2009 being the amount agreed which represents the insurance costs (which excludes amounts in respect of insurance premium tax and all brokers’ fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Service Commencement Date;

**Base Relevant Insurance Costs** means, the aggregate of the Base Costs which were (at October 2009) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPIX from October 2009 up to the dates on which the Relevant Insurance was placed or renewed either immediately before or during the Insurance Review Period (as applicable in respect of the year in question) less any Base Relevant Insurance Reduction;

**Base Relevant Insurance Reduction** means the reduction to be made to the Base Relevant Insurance Cost in respect of a risk which has become Uninsurable or a term or condition which is no longer available and shall be an amount that is either:

(a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at October 2009 (which amount, for the avoidance of doubt, can be £0); or

(b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:

i the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the "Actual Reduction");

ii the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and

iii the effects of RPIX since October 2009;

**Business Interruption Insurance** means the insurance cover required to be held by the Contractor pursuant to paragraph 2 (Business Interruption Insurance) of Part 2 of Schedule 14 (Insurances) in respect of business interruption;
Construction Period Insurance means the Required Insurance in respect of the period from the commencement of the Construction Period to the Service Commencement Date;

Exceptional Cost means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;

Exceptional Saving means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;

First Insurance Review Date means the first Business Day following the first anniversary of the Relevant Insurance Inception Date;

Insurance Cost Decrease means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;

Insurance Cost Differential shall, subject to the Insurance Review Procedure, be determined as follows:

\[ \text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (\text{PIC})^{1} \]

where:

ARIC is the Actual Relevant Insurance Cost

BRIC is the Base Relevant Insurance Cost

PIC is the Project Insurance Change;

Insurance Cost Increase means the Insurance Cost Differential if the value thereof is greater than zero;

Insurance Cost Index means any index introduced by the United Kingdom Government or the Office of National Statistics after the Effective Date and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;

Insurance Review Date means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance prior to the end of the Contract Period;

Insurance Review Period means a two (2) year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Contract Period;

---

1 In accordance with the definition of Project insurance Change, the PIC may have either a positive or a negative value. In the event that the PIC is positive then the PIC is subtracted from the difference of the ARIC and the BRIC. If the PIC is negative, then the double negative means that the value of the PIC (ignoring the negative sign) is added to the difference for the ARIC and the BRIC.
Insurance Review Procedure means the procedure set out in paragraph 2 of Part 6 of Schedule 14 (Insurances);

Insurance Summary Sheet has the meaning given to it in paragraph 2.2.3 of Part 6 of Schedule 14 (Insurances);

Joint Insurance Cost Report shall bear the meaning ascribed to it in paragraph 2.2 of Part 6 of Schedule 14 (Insurances);

Portfolio Cost Saving means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a standalone project specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings. A Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;

Power and Engineering Insurance Market means the insurance market that insures or reinsures the majority of all European Based Relevant Assets and at the Effective Date the Power and Engineering Insurance Market is in Europe;

PPP Insurance Market means the insurance market which insures the majority of all PPP projects across all PPP sectors (as determined by the number of PPP projects, but excluding all waste PPP projects). At the Effective Date the PPP Insurance Market is in the United Kingdom;

Project Insurance Change means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:

(a) the claims history or re-rating of the Contractor or any Contractor Party;

(b) the effect of any change in deductible unless the following applies:

i such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and

ii the deductible, further to such change, is either greater than or equal to the maximum in parts 1 and 2 of Schedule 14 (Insurances);

(c) any other issue or factor other than circumstances generally prevailing in the Relevant Insurance Market, except for any Portfolio Cost Saving;

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase, the Project Insurance Change shall have a positive value. In the event that there is a net decrease the Project Insurance Change shall have a negative value;

Relevant Assets means assets in European Member States insured and/or reinsured in the Power and Engineering Insurance Market, including:

(a) municipal solid waste technology and other renewable technology;

(b) coal fired plants;
SCHEDULE 14 - Redacted Copy

(c) oil fired plants;
(d) gas turbine power plants;
(e) coal/oil refineries;
(f) chemical plants;
(g) petrochemical plants;
(h) gas plants; and
(i) overhead transmission lines and underground cabling;

Relevant Insurance means the Required Insurance and any other insurances as may be required by law other than:

(a) Construction Period Insurances;
(b) Business Interruption Insurance except to the extent that it relates to Unavoidable Fixed Costs; and
(c) Insurances required by law prior to the Service Commencement Date;

Relevant Insurance Inception Date means the date on which the Relevant Insurance is first providing active insurance cover to the Contractor, being a date no earlier than the Service Commencement Date;

Relevant Insurance Market means the PPP Insurance Market and the Power and Engineering Insurance Market, weighted respectively as to 5% PPP and 95% Power & Engineering, save that:

(a) in respect of the third party public and products liability insurance set out in paragraph 3 of Part 2 of Schedule 14 (Insurance) and the environmental impairment liability insurance set out at paragraph 4 of Part 2 of Schedule 14 (Insurance): means the PPP Insurance Market; and

(b) in respect of the property damage insurance set out in paragraph 1 of Part 2 of Schedule 14 (Insurance) and the business interruption insurance set out at paragraph 2 of Part 2 of Schedule 14 (Insurance): means the Power and Engineering Insurance Market;

Required Insurances shall bear the meaning ascribed to it in clause 1 (Definitions) of the Agreement;

RPIX shall bear the meaning ascribed to it in clause 1 (Definitions) of the Agreement;

Revenue means the projected Unavoidable Fixed Costs and Senior Debt Service Costs of the Contractor;

Senior Debt Service Costs shall mean interest and debt service costs incurred in respect of the Senior Financing Agreements less:

(a) sums which are in arrears; and
(b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Senior Financing Agreements;

Unavoidable Fixed Costs means the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding:

(a) costs which could have reasonably been mitigated or avoided by the Contractor;

(b) payments to the Contractor's Associated Companies;

(c) payments which are not entirely at arm's length;

(d) payments to holders of equity in the Contractor, Subordinated Lenders and any other financing costs other than Senior Debt Service Costs;

(e) Indirect Losses suffered or allegedly suffered by any person;

(f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;

(g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability;

(h) payments to the extent that the Contractor has available to it:

i reserves which the Contractor can draw upon without breaching the Senior Financing Agreement;

ii standby or contingent facilities or funds of Senior Debt or equity which the Contractor is entitled to have available; and

(i) payments representing any profits of the Project (to the extent not already excluded in (e) above).

2 Insurance Review Procedure

2.1 This procedure shall be used to determine whether the Authority shall bear any increase or benefit from any decrease in Relevant Insurance Costs.

2.2 The Contractor's insurance broker shall prepare a report on behalf of both the Contractor and the Authority (the Joint Insurance Cost Report). The Joint Insurance Cost Report is to be prepared at the Contractor's expense and should, as a minimum, contain the following information for the relevant Insurance Review Period:

2.2.1 A full breakdown of the Actual Relevant Insurance Cost;

2.2.2 A full breakdown of the Base Relevant Insurance Cost;

2.2.3 A spreadsheet (the Insurance Summary Sheet) detailing separately:

(a) the sum(s) insured/limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;
SCHEDULE 14 - Redacted Copy

(b) the premium rate for each of the Relevant Insurances;

(c) the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);

(d) the deductible(s) for each Relevant Insurance;

(e) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of £50,000 (indexed), being the amount stated in clause 58.7;

2.2.4 An assessment and quantification of each Project Insurance Change together with reasons therefore;

2.2.5 Full details of any Portfolio Cost Savings;

2.2.6 Any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;

2.2.7 The opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above. To the extent such information is available and having used all reasonable endeavours to obtain such information, the insurance broker's assessment should include:

(a) an assessment of the magnitude of, and reasons for, insurance rate movement generally prevailing in the European Engineering Insurance Market, including full details of the information underpinning the assessment. This should include:

i feedback received further to discussions with at least three lead underwriters at each insurance renewal or placement during the relevant Insurance Review Period;

ii premium rate change information broadly corresponding to the same period further to a view of insurance cost data for a representative sample of Relevant Assets in various European Member States for which the Relevant Insurance has been renewed by the Contractor's insurance broker during the six (6) Months prior to the relevant Insurance Review Date;

iii all additional available evidence of any changes to circumstances generally prevailing in the Power and Engineering Insurance Market that are deemed to have contributed to any Insurance Cost Differential. This should include details of movements in any other index which both Parties agree is relevant to the Power and Engineering Market which is or becomes available.

(b) an assessment of the magnitude of, and reasons for insurance rate movements generally prevailing in the PPP Insurance Market, including all available evidence of changes to circumstances generally prevailing
SCHEDULE 14 - Redacted Copy

in the PPP Insurance Market that are deemed to have contributed to any Insurance Cost Differential. This should include details of movements in the CBS Private Capital non-marine index, plus, if available from other appropriate sources, details of changes in insurance cost across the PPP Insurance market as a whole; and

(c) the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation.

2.2.8 The Contractor shall, as soon as is reasonably practicable, notify the Authority if the Contractor's insurance broker is unable to obtain any of the information required under paragraph 2.2.6 (above). The Authority shall be entitled to provide the Contractor's insurance broker with any such information for inclusion in the Joint Insurance Cost Report and the Contractor shall reimburse the Authority's costs that have been reasonably and properly incurred in obtaining and providing such information.

2.3 The Contractor shall procure that the broker, no later than the date which is twenty five (25) Business Days after the Insurance Review Date, delivers to the Authority at the same time as it delivers to the Contractor at least two copies of the Joint Insurance Cost Report. Following receipt of the Joint Insurance Cost Report the Authority shall notify the Contractor in writing within twenty five (25) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Authority does not provide such notification and/or details of any disagreement to the Contractor within twenty five (25) Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority disagrees with any item in the Joint Insurance Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within forty five (45) Business Days from the date it was delivered to the Authority, the matter shall be resolved in accordance with clause 62 (Dispute Resolution Procedure), provided always that references in clause 62 (Dispute Resolution Procedure) to an expert shall be construed as references to an independent insurance expert agreed by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.

2.4 The Authority may make the Joint Insurance Cost Report available to any of its or HM Treasury's agents or advisors or other bodies nominated by HM Treasury for insurance cost verification, benchmarking or similar purpose.

3 Sharing of Exceptional Cost and Exceptional Saving

3.1 If, following the implementation and completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Authority shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor equal to 85% of the Exceptional Cost.

3.2 If, following the implementation and completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within thirty (30) days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Authority equal to 85% of the Exceptional Saving.
3.3 Following the completion of the Insurance Review Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the Contractor.

4 Insurance Cost Index

If at any time an Insurance Cost Index is published and intended for use in PPP contracts of a similar nature to this Agreement, the Parties shall meet with a view to agreeing (a) its application to the Project, taking into account any relevant guidance issued by HM Treasury and (b) how a Portfolio Cost Saving may be accounted for when the index is in use.
**SCHEDULE 15**

**PROJECT DOCUMENTS AND ANCILLARY DOCUMENTS**

**Part 1**

**Project Documents**

<table>
<thead>
<tr>
<th>Document</th>
<th>Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funders' Direct Agreement</td>
<td>The Authority, Intercreditor Agent, Security Trustee, and the Contractor.</td>
</tr>
<tr>
<td>Independent Tester Appointment</td>
<td>The Contractor, the Works and Operating Sub-Contractor, the Authority, the Intercreditor Agent and the Independent Tester.</td>
</tr>
<tr>
<td>Authority/Works and Operating Sub-Contractor Collateral Warranty</td>
<td>The Authority, the Contractor and Works and Operating Sub-Contractor.</td>
</tr>
<tr>
<td>Authority/Construction Contractor Collateral Warranty (AD Facility)</td>
<td>The Authority, Works and Operating Sub-Contractor, and Organic Waste Systems n.v.</td>
</tr>
<tr>
<td>Authority/Construction Contractor Collateral Warranty (EfW Facility)</td>
<td>The Authority, Works and Operating Sub-Contractor, and Vinci Environment UK Limited.</td>
</tr>
<tr>
<td>Authority/Construction Contractor Collateral Warranty (MT Facility)</td>
<td>The Authority, Works and Operating Sub-Contractor, and Stadler UK Limited.</td>
</tr>
<tr>
<td>Authority/Construction Contractor Collateral Warranty (civils works)</td>
<td>The Authority, Works and Operating Sub-Contractor, and Vinci Construction UK Limited.</td>
</tr>
</tbody>
</table>
SCHEDULE 15 - Redacted Copy

Schedule 15

Part 1: Form of Funders' Direct Agreement
Dated 2014

(1) NORTH YORKSHIRE COUNTY COUNCIL

AND

(2) NORDDEUTSCHE LANDESBank GIROZENTRALE (LONDON BRANCH),
as Intercreditor Agent

AND

(3) NORDDEUTSCHE LANDESBank GIROZENTRALE (LONDON BRANCH),
as Security Trustee

AND

(4) AMEYCESPA (AWRP) SPV LIMITED

FUNDERS DIRECT AGREEMENT
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. INTERPRETATION</td>
<td></td>
</tr>
<tr>
<td>2. CONSENT TO SECURITY</td>
<td>3</td>
</tr>
<tr>
<td>3. NOTICE OF TERMINATION AND EXISTING LIABILITIES</td>
<td>9</td>
</tr>
<tr>
<td>4. NO LIQUID MARKET</td>
<td>10</td>
</tr>
<tr>
<td>5. REPRESENTATIVE</td>
<td>11</td>
</tr>
<tr>
<td>6. STEP-IN PERIOD</td>
<td>11</td>
</tr>
<tr>
<td>7. STEP-OUT</td>
<td>12</td>
</tr>
<tr>
<td>8. NOVATION</td>
<td>13</td>
</tr>
<tr>
<td>9. AUTHORITY RIGHTS</td>
<td>14</td>
</tr>
<tr>
<td>10. MISCELLANEOUS</td>
<td>15</td>
</tr>
<tr>
<td>11. ASSIGNMENT</td>
<td>24</td>
</tr>
<tr>
<td>12. THIRD PARTY RIGHTS</td>
<td>24</td>
</tr>
<tr>
<td>13. ENTIRE AGREEMENT</td>
<td>25</td>
</tr>
<tr>
<td>14. COUNTERPARTS</td>
<td>26</td>
</tr>
<tr>
<td>15. WAIVER</td>
<td>26</td>
</tr>
<tr>
<td>16. SEVERABILITY</td>
<td>26</td>
</tr>
<tr>
<td>17. NOTICES</td>
<td>28</td>
</tr>
<tr>
<td>18. LOCAL GOVERNMENT (CONTRACTS) ACT 1997</td>
<td>28</td>
</tr>
<tr>
<td>19. DISPUTE RESOLUTION</td>
<td></td>
</tr>
<tr>
<td>20. GOVERNING LAW</td>
<td>30</td>
</tr>
</tbody>
</table>
BETWEEN

(1) NORTH YORKSHIRE COUNTY COUNCIL whose principal premises are at County Hall, Racecourse Lane, Northallerton DL7 8AH ("Authority");

(2) NORDDEUTSCHE LANDES_BANK GIROZENTRALE (LONDON BRANCH) as intercreditor agent for all Finance Parties ("Intercreditor Agent");

(3) NORDDEUTSCHE LANDES_BANK GIROZENTRALE (LONDON BRANCH) as security trustee for the Finance Parties ("Security Trustee"); and

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

each a "Party" and together the "Parties".

BACKGROUND

A Under the Senior Financing Agreements dated on or around today's date, the Senior Lenders have agreed to make available certain credit facilities to the Contractor.

B Under the Project Agreement, the Authority and the Contractor have agreed the terms on which the Contractor will carry out the Works and provide the Services.

C This Agreement sets out certain agreements between the Authority, the Intercreditor Agent and the Security Trustee.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

"Accrued Rights" has the meaning given to that term in clause 9.10 (Authority Rights);

"Accrued Rights Value" means each of the ODC Accrued Rights Value, the EPC Accrued Rights Value, the Civils Accrued Rights Value, the MT Accrued Rights Value and the AD Accrued Rights Value;

"AD Accrued Rights Value" means the amounts that would count against the AD Contractor's Liability Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under clause 9.16, as the same may be adjusted in accordance with clause 19 (Dispute Resolution);

"AD Contract" means the contract for the construction of the AD Facility made between AmeyCespa Limited and the AD Contractor (as novated to the Works and Operating Sub-Contractor and varied on or about the date of this Agreement) and/or any novation thereof pursuant to the Authority AD Collateral Warranty;

"AD Contractor" means Organic Waste Systems n.v;

"AD Contractor Default" has the meaning given to it in the AD Contract;
"AD Contractor's Liability Cap" has the meaning given to it in the AD Contract;

"Appointed Representative" means a Representative that has assumed the Contractor's rights under the Project Agreement pursuant to clause 5.10 (Representative);

"Authority AD Collateral Warranty" means the Collateral Warranty between (1) the Authority, (2) the Works and Operating Sub-Contractor and (3) the AD Contractor;

"Authority AD Liability Cap" means the AD Contractor's Liability Cap less the AD Accrued Rights Value;

"Authority Civils Collateral Warranty" means the Collateral Warranty between (1) the Authority, (2) the Works and Operating Sub-Contractor and (3) the Civils Contractor;

"Authority Civils Liability Cap" means the Civils Contractor's Liability Cap less the Civils Accrued Rights Value;

"Authority EPC Collateral Warranty" means the Collateral Warranty between (1) the Authority, (2) the Works and Operating Sub-Contractor and (3) the EPC Contractor;

"Authority EPC Liability Cap" means the EPC Contractor's Liability Cap less the EPC Accrued Rights Value;

"Authority Liability Cap" means each of the Authority ODC Liability Cap, the Authority EPC Liability Cap, the Authority Civils Liability Cap, the Authority MT Liability Cap and the Authority AD Liability Cap;

"Authority MT Collateral Warranty" means the Collateral Warranty between (1) the Authority, (2) the Works and Operating Sub-Contractor and (3) the MT Contractor;

"Authority MT Liability Cap" means the MT Contractor's Liability Cap less the MT Accrued Rights Value;

"Authority ODC Collateral Warranty" means the Collateral Warranty between (1) the Authority, (2) the Contractor and (3) the Works and Operating Sub-Contractor;

"Authority ODC Liability Cap" means the Works and Operating Sub-Contractor's Liability Cap less the ODC Accrued Rights Value;

"Civils Accrued Rights Value" means the amounts that would count against the Civils Contractor's Liability Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under clause 9.16, as the same may be adjusted in accordance with clause 19 (Dispute Resolution);

"Civils Contract" means the contract made between AmeyCespa Limited and the Civils Contractor (as novated to the Works and Operating Sub-Contractor and varied on or about the date of this Agreement) and/or any novation thereof pursuant to the Authority Civils Collateral Warranty;

"Civils Contractor" means Vinci Construction UK Limited;

"Civils Contractor Default" has the meaning given to it in the Civils Contract;
"Civils Contractor's Liability Cap" has the meaning given to it in the Civils Contract;

"Common Terms Agreement" means the agreement so titled and entered into between, inter alia, the Contractor, the Intercreditor Agent and the Finance Parties dated on or about the date hereof;

"EPC Accrued Rights Value" means the amounts that would count against the EPC Contractor's Liability Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under clause 9.16, as the same may be adjusted in accordance with clause 19 (Dispute Resolution);

"EPC Contract" means the engineering procurement and construction contract made between AmeyCespa Limited and the EPC Contractor (as novated to the Works and Operating Sub-Contractor and varied on or about the date of this Agreement) and/or any novation thereof pursuant to the Authority EPC Collateral Warranty;

"EPC Contractor" means Vinci Environment UK Limited;

"EPC Contractor Default" has the meaning given to it in the EPC Contract;

"EPC Contractor's Liability Cap" has the meaning given to it in the EPC Contract;

"Expert" means an expert appointed pursuant to clause 19 (Dispute Resolution) to determine a dispute relating to this Agreement;

"Fair Value" means 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 liquidation or sale;

"Final Certificate" shall have the meaning given to it in the Works and Operating Agreement;

"Instalment Default" has the meaning given to it in clause 9.18A;

"Monthly Services Payment" shall have the meaning given to it in the Works and Operating Agreement;

"MT Accrued Rights Value" means the amounts that would count against the MT Contractor's Liability Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under clause 9.16, as the same may be adjusted in accordance with clause 19 (Dispute Resolution);

"MT Contract" means the contract made between AmeyCespa Limited and the MT Contractor (as novated to the Works and Operating Sub-Contractor and varied on or about the date of this Agreement) and/or any novation thereof pursuant to the Authority MT Collateral Warranty;

"MT Contractor" means Stadler UK Limited;

"MT Contractor Default" has the meaning given to it in the MT Contract;

"MT Contractor's Liability Cap" has the meaning given to it in the MT Contract;
"ODC Accrued Rights Value" means the amounts that would count against the Works and Operating Sub-Contractor's Liability Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under clause 9.16, as the same may be adjusted in accordance with clause 19 (Dispute Resolution);

"Payment Mechanism" means the payment mechanism set out in schedule 6 to the Project Agreement;

"Physical Damage Policies" means the Required Insurances described in paragraph 1 (Contractor's "All Risks' Insurance) of Part 1 and paragraph 1 (Property Damage Insurance) of Part 2 of Schedule 14 (Insurances) of the Project Agreement;

"Project Agreement" means the project agreement dated on or about the date of this Agreement between the Authority and the Contractor;

"Relevant Required Insurances" means the Required Insurances described in paragraph 2 (Delay in Start Up Insurance) of part 1 and paragraph 2 (Business Interruption Insurance) of part 2 of Schedule 14 (Insurances) of the Project Agreement;

"Relevant Sub-Contractor" means a sub-contracting party to a Works/Services Contract;

"Relevant Year" means the contract year in which the Termination Date occurs;

"Representative" means:

(a) the Intercreditor Agent, the Security Trustee, any Finance Party and/or any of their Affiliates;

(b) an administrator, administrative receiver, receiver or receiver and manager of the Contractor appointed under the Security Documents;

(c) a person directly or indirectly owned or controlled by the Intercreditor Agent, the Security Trustee, and/or any Finance Party; or

(d) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed);

"Required Period" means subject to clause 4 (No Liquid Market) the period starting on the date of a Termination Notice and:

(a) prior to and including the Service Availability date, ending one hundred and twenty (120) days after the date of the Termination Notice;

(b) after the Service Availability date, ending ninety (90) days after the date of the Termination Notice; or

(c) in either case, ending on such earlier date as the Intercreditor Agent may specify by written notice to the Authority;

"Senior Debt Discharge Date" means the date on which all amounts which may be or become owing by the Contractor to each Finance Party under the Senior Financing Agreements have been irrevocably paid in full;
"Step-In Date" means the date on which the Intercreditor Agent takes any action under clause 5.1 (Representative);

"Step-In Period" means the period from the Step-In Date up to and including the earlier of:

(a) the Step-Out Date;
(b) the date of any transfer under clause 8 (Novation);
(c) the date of any termination for breach under clause 6 (Step-in Period); and
(d) the date of expiry of the Project Agreement;

"Step-Out Date" has the meaning given to it in clause 7 (Step-Out);

"Termination Notice" means a notice given by the Authority to the Intercreditor Agent under clause 3.1 (Notice of Termination and Existing Liabilities);

"Unrestricted Assets" means those Assets, excluding any revenues or cash balances or rights accrued as at the Termination Date under or pursuant to or in connection with any of the Relevant Required Insurances (but not other Required Insurances), any Works/Services Contract or any Project Document, which are required by the Authority or its nominee or any replacement of the Contractor for the purposes of the construction, operation or maintenance of the Facility following termination of the Project Agreement assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Project Agreement;

"Warning Notice" means a formal warning notice served by the Authority under clause 38.1 (Warning Notice) of the Project Agreement;

"Works and Operating Agreement" means the Works and Operating Agreement as defined in the Project Agreement and/or any novation thereof pursuant to the Authority ODC Collateral Warranty;

"Works and Operating Sub-Contractor" means AmeyCespa (AWRP) ODC Limited;

"Works and Operating Sub-Contractor Default" has the meaning given to it in the Works and Operating Agreement;

"Works and Operating Sub-Contractor’s Liability Cap" has the meaning given to it in the Works and Operating Agreement;

"Works/Services Contract" means a contract relating to the provision of Works or Services which is the subject of a Collateral Warranty.

The following terms have the meaning given to them in the Project Agreement:

"AD Facility"

"Additional Permitted Borrowing"

"Adjusted Estimated Fair Value of the Contract"

"Adjudicator"
SCHEDULE 15 - Redacted Copy

"Unitary Charge"

"Works"

1.3 The following terms have the meaning given to them in the Common Terms Agreement:

"Direct Agreement"

"Event of Default"

"Finance Party"

"Senior Lender"

"Sterling Proceeds Account"

"Security Document"

1.4 Interpretation

In this Agreement except where the context otherwise requires:

1.4.1 the masculine includes the feminine and vice-versa;

1.4.2 the singular includes the plural and vice-versa;

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

1.4.4 save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;

1.4.5 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;

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

1.4.7 headings are for convenience of reference only; and

1.4.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

2 CONSENT TO SECURITY

2.1 The Authority acknowledges notice of, and consents to, the security interest granted over the Contractor's rights under the Project Documents effected by the Contractor in favour of each Finance Party under the Security Documents.

2.2 The Authority confirms that it has not received notice of any other security interest granted over the Contractor's rights under the Project Documents.
SCHEDULE 15 - Redacted Copy

2.3 Without prejudice to the provisions of clause 65 (Change in Ownership) of the Project Agreement the Authority acknowledges notice of and consents to the security interest granted by Holdco in favour of each Finance Party over the entire issued share capital of the Contractor.

2.4 Notwithstanding the terms of the Senior Financing Agreements, the Parties agree and shall, to the extent it is within their power, direct that all insurance proceeds receivable or received by the Contractor under the Physical Damage Policies in respect of a single event or series of related events in an amount in excess of £500,000 (indexed) shall be paid into the Joint Insurance Account and shall be applied in accordance with the Project Agreement.

2.4A Notwithstanding the terms of the Senior Financing Agreements, the Parties agree and shall, to the extent it is within their power, direct that all amounts standing to the credit of the Authority Revenue Account on termination of the Project Agreement are remitted to the Authority in accordance with the Project Agreement.

2.5 Subject to clause 2.4 the Contractor and the Intercreditor Agent hereby instruct the Authority (and the Authority agrees) to pay all sums payable by the Authority to the Contractor under the Project Documents into the Sterling Proceeds Account. Following the occurrence of an Event of Default, if so directed by the Intercreditor Agent or the Security Trustee upon giving reasonable notice, the Authority shall, subject to clause 2.4, pay any sum which it is obliged to pay to the Contractor under the Project Documents to a bank account specified by the Intercreditor Agent or the Security Trustee (as appropriate).

3 NOTICE OF TERMINATION AND EXISTING LIABILITIES

3.1 The Authority shall not terminate or give notice terminating the Project Agreement on the grounds of Contractor Default without giving to the Intercreditor Agent:

3.1.1 at least the Required Period of prior written notice stating:

3.1.1.1 the proposed Termination Date; and

3.1.1.2 the grounds for termination in reasonable detail, and

3.1.2 not later than the date falling twenty (20) Business Days after the date of a Termination Notice or (if earlier) the date falling twenty (20) Business Days after the date on which the Intercreditor Agent informs the Authority that an Event of Default has occurred, a notice containing details of any amount owed by the Contractor to the Authority and any other existing liabilities or unperformed obligations of which the Authority is aware (having made reasonable enquiry):

3.1.2.1 at the time of the Termination Notice or the notification of an Event of Default; and/or

3.1.2.2 (if relevant) which will fall due on or prior to the end of the Required Period,

under the Project Documents.
SCHEDULE 15 - Redacted Copy

3.2 The Authority shall notify the Intercreditor Agent in writing as soon as reasonably practicable of:

3.2.1 any change in the amounts, liabilities or obligations referred to in clause 3.1.2; and

3.2.2 any further amounts, liabilities or obligations falling due and payable to the Authority but unpaid or falling due for performance or discharge by the Contractor and unperformed or not discharged (as the case may be),

in each case, of which the Authority is or becomes aware before the earlier of the Step-In Date and (if relevant) the expiry of the Required Period but after the date of a notice given under clause 3.1.2 and, if such details are provided within the last ten (10) Business Days of the Required Period, then the Required Period shall be extended by ten (10) Business Days.

4 NO LIQUID MARKET

4.1 At any time during the Required Period the Intercreditor Agent may issue a written notice ("No Liquid Market Notice") to the Authority setting out the reasons why the Intercreditor Agent does not believe that a Liquid Market exists.

4.2 On or before the date falling fourteen (14) days after the date on which a No Liquid Market Notice is received by the Authority, the Authority shall notify the Intercreditor Agent of its opinion as to whether or not a Liquid Market exists. Where the Authority believes that a Liquid Market does exist, such notice shall set out the reasons for the Authority’s belief. If the Parties do not agree whether or not a Liquid Market exists, then either Party may refer the dispute to be determined in accordance with clause 19 (Dispute Resolution).

4.3 If the Parties agree or it is determined in accordance with clause 19 (Dispute Resolution) that no Liquid Market exists, the Project Agreement shall automatically terminate and the provisions of clause 47.3 (No Retendering Procedure) of the Project Agreement shall apply.

4.4 If any dispute relating to this clause 4 is determined under clause 19 (Dispute Resolution), the Required Period shall be extended by the period of time spent determining such dispute pursuant under clause 19.

5 REPRESENTATIVE

5.1 Without prejudice to the rights of the Intercreditor Agent or Security Trustee under the Security Documents, at any time:

5.1.1 during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or

5.1.2 during the Required Period,

the Intercreditor Agent or Security Trustee may procure that a Representative assumes, jointly and severally with the Contractor, all of the Contractor’s rights under the Project Documents.
SCHEDULE 15 - Redacted Copy

5.2 The Intercreditor Agent or Security Trustee (as appropriate) shall give the Authority five (5) Business Days prior written notice of any action to be taken by it referred to in this clause 5.

6 STEP-IN PERIOD

6.1 Without prejudice to clause 3 (Notice of Termination and Existing Liabilities) but subject to clause 6.2 below, the Authority shall not terminate the Project Agreement during the Step-In Period on grounds:

6.1.1 that the Intercreditor Agent or the Security Trustee has taken any action referred to in clause 5 (Representative) or enforced any Security Documents; or

6.1.2 arising prior to the Step-In Date of which the Authority is aware (having made reasonable enquiry and whether or not continuing at the Step-In Date); or

6.1.3 arising solely in relation to the Contractor or HoldCo,

unless, in the case of clause 6.1.2 above:

(a) the grounds arose prior to the Service Availability date and construction is not completed on or before the date falling twenty four (24) months after the date on which the Authority would have been entitled to terminate the Project Agreement for non-completion; or

(b) the grounds arose after the Service Availability date and neither the Appointed Representative nor the Contractor is using all reasonable endeavours (including implementation of any remedial programme) to remedy any breach of the Project Agreement that:

(i) arose prior to the Step-In Date; and

(ii) is continuing (and capable of remedy); and

(iii) would have entitled the Authority to terminate the Project Agreement.

6.2 The Authority shall be entitled to terminate the Project Agreement by written notice to the Contractor and the Appointed Representative:

6.2.1 if permitted by clause 6.1;

6.2.2 if any amount referred to in clause 3.1.2 (Notice of Termination and Existing Liabilities) has not been paid to the Authority on or before the Step-In Date;

6.2.3 if any amount referred to in clause 3.1.2 (Notice of Termination and Existing Liabilities) has not been paid on or before the last day of the Required Period;

6.2.4 if amounts, of which the Authority was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Event of Default, subsequently become payable and are not discharged on or before the later of:
SCHEDULE 15 - Redacted Copy

6.2.4.1 the date falling twenty (20) Business Days after the date on which the liability for these amounts is notified to the Intercreditor Agent;

6.2.4.2 the date falling twenty (20) Business Days after the date on which the liability for these amounts falls due; and

6.2.4.3 the end of the Required Period; or

6.2.5 on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement provided that, subject to clause 7 (Step-Out), for the purposes of termination under the Project Agreement (and without prejudice to the rights of the Authority to make Deductions pursuant to the Payment Mechanism) any Deductions, Warning Notices, Final Warning Notices and Performance Failure Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but shall be taken into account after the Step-Out Date.

6.3 The Authority shall deal with the Appointed Representative and not the Contractor during the Step-In Period.

7 STEP–OUT

7.1 The Appointed Representative will, on the earlier of:

7.1.1 the date specified in a written notice from the Intercreditor Agent or the Appointed Representative to the Authority (which date shall be at least twenty (20) Business Days after such notice is received by the Authority);

7.1.2 the expiry of the Step-In Period,

(such date being the “Step-Out Date”), be released from all of its obligations and liabilities to the Authority under the Project Documents arising prior to the Step-Out Date and rights of the Appointed Representative against the Authority will be cancelled.

7.2 The Contractor shall continue to be bound by the terms of the Project Documents, notwithstanding the occurrence of the Step–Out Date.

7.3 If following the Step-Out Date the Authority is satisfied (acting reasonably) that the circumstances giving rise to the Intercreditor Agent electing to exercise its rights under clause 5 (Representative) have been remedied in full, then for the purposes of termination of the Project Agreement only, and without prejudice to the rights of the Authority to make Deductions pursuant to the Payment Mechanism, any Deductions, Warning Notices, Final Warning Notices and Performance Failure Notices that arose prior to the Step-In Date shall be immediately cancelled, provided that where, during the Step-In Period, the Contractor has substituted or replaced the defaulting Works and Operating Sub-Contractor or a defaulting sub-contractor to the Works and Operating Sub-Contractor, and has elected to exercise its rights under clause 64.6 (Replacement of Sub-Contractors) of the Project Agreement, the provisions of clause 64.6 (Replacement of Sub-Contractors) of the Project Agreement will apply from the date of substitution or replacement of that Works and Operating Sub-Contractor or sub-contractor to that Works and Operating Sub-Contractor. If separate Sub-
Contractors are appointed in relation to (respectively) the Works and/or the Services pursuant to clause 64.7 (Replacement of Sub-Contractors) of the Project Agreement, this clause 7.3 shall have effect as if references to "Works and Operating Sub-Contractor" were to the Sub-Contractor appointed in relation to the Works or the Services, as the case may be.

8 NOVATION

8.1 Subject to clause 8.2, at any time:

8.1.1 during which an Event of Default is subsisting; or

8.1.2 during the Step-In Period,

the Intercreditor Agent or the Security Trustee may, on at least twenty (20) Business Days prior written notice to the Authority and any Appointed Representative, procure the transfer of the Contractor's rights and liabilities under the Project Documents to a Suitable Substitute Contractor.

8.2 The Authority shall notify the Intercreditor Agent or the Security Trustee (as applicable to the Party serving the notice pursuant to clause 8.1) as to whether any person to whom the Intercreditor Agent or the Security Trustee proposes to transfer the Contractor's rights and liabilities under the Project Documents is a Suitable Substitute Contractor, on or before the date falling twenty (20) Business Days after the date of receipt of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.

8.3 The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor.

8.4 On any transfer referred to in clause 8.1 becoming effective:

8.4.1 the Contractor and the Appointed Representative shall be released from any obligations arising under or in connection with this Agreement and the Project Documents from that date and the new contractor shall become liable for obligations arising on or after that date;

8.4.2 any Deductions, Warning Notices, Final Warning Notices or Performance Failure Notices incurred subsisting shall, for the purposes of termination of the Project Agreement only, and without prejudice to the rights of the Authority to make Deductions pursuant to the Payment Mechanism, be cancelled;

8.4.3 any then subsisting ground for termination of the Project Agreement by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked; and

8.4.4 the Authority shall enter into a direct agreement with the Intercreditor Agent and the security trustee of the finance parties providing senior debt financing to the new contractor on substantially the same terms as this Agreement.
9 AUTHORITY RIGHTS

9.1 Notwithstanding any provision in the Collateral Warranties to the contrary, and without prejudice to clause 9.11, the Authority agrees that it will not exercise or seek to exercise any of its step-in rights or other rights under or in respect of any Collateral Warranty prior to termination of the Project Agreement until the earlier of:

9.1.1 the Senior Debt Discharge Date; and

9.1.2 the date on which the Intercreditor Agent has given its written consent to such exercise following a request from the Authority or otherwise.

9.2 The Authority shall not, prior to the Senior Debt Discharge Date:

9.2.1 do anything pursuant to the Collateral Warranties or the Works/Services Contracts following the Termination Date (including any act which gives rise to any cross claim, counterclaim, set off, variation or waiver) to prejudice the Accrued Rights relating to the Works/Services Contracts;

9.2.2 claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amounts (including any costs, claims, damages, losses and liabilities) to which the Accrued Rights relate under, pursuant to or in connection with the Collateral Warranties and/or the Works/Services Contracts;

9.2.3 take any action to wind-up, dissolve, appoint an administrator, trustee, receiver (of any type), compulsory manager or similar officer, or sanction a voluntary arrangement or scheme of arrangement (or similar) in relation to the Contractor or take any other similar or analogous step relating to the insolvency of the Contractor;

9.2.4 take any action to wind-up, dissolve, appoint an administrator, trustee, receiver (of any type), compulsory manager or similar officer, or sanction a voluntary arrangement or scheme of arrangement (or similar) in relation to any Relevant Sub-Contractor or any of their respective guarantors or take any other similar or analogous step relating to the insolvency of any such person in each case on grounds (whether in whole or in part) relating to the Project;

9.2.5 save with the prior written consent of the Intercreditor Agent, compete with the rights of the Finance Parties on grounds (whether in whole or in part) relating to the Project (by virtue of a claim under any of the Collateral Warranties, the Project Agreement or any other Project Document or otherwise) on any formal insolvency of the Contractor, any Relevant Sub-Contractor or any of their respective guarantors, nor claim to be subrogated to any rights of any of the Finance Parties.

9.3 The Parties agree that:

9.3.1 the request by the Authority that a Relevant Sub-Contractor accept the instructions of the Authority to the exclusion of the Contractor pursuant to and in accordance with the relevant Collateral Warranty; and

9.3.2 the exercise by the Authority of its rights pursuant to and in accordance with:
SCHEDULE 15 - Redacted Copy

9.3.2.1 clauses 9.5.1 and 9.5.2 to make deductions, retention or set-off against the Monthly Services Payment and/or Final Certificate under and in accordance with the Works and Operating Agreement;

9.3.2.2 clause 9.5.3 to terminate and claim termination compensation under and in accordance with the Works and Operating Agreement;

9.3.2.3 clauses 9.6.1 and 9.6.2 to make deductions, retention or set-off against payments falling due under and in accordance with the EPC Contract;

9.3.2.4 clause 9.6.3 to terminate and claim termination compensation under and in accordance with the EPC Contract;

9.3.2.5 clauses 9.7.1 and 9.7.2 to make deductions, retention or set-off against payments falling due under and in accordance with the Civils Agreement;

9.3.2.6 clause 9.7.3 to terminate and claim termination compensation under and in accordance with the Civils Agreement;

9.3.2.7 clauses 9.8.1 and 9.8.2 to make deductions, retention or set-off against payments falling due under and in accordance with the MT Agreement;

9.3.2.8 clause 9.8.3 to terminate and claim termination compensation under and in accordance with the MT Agreement;

9.3.2.9 clauses 9.9.1 and 9.9.2 to make deductions, retention or set-off against payments falling due under and in accordance with the AD Agreement; or

9.3.2.10 clause 9.9.3 to terminate and claim termination compensation under and in accordance with the AD Agreement,

shall not prejudice the Accrued Rights.

9.4 The Authority agrees and undertakes that if it claims, recovers, retains or receives any amount:

9.4.1 in contravention of the provisions of clauses 9.2, 9.5, 9.6, 9.7, 9.8 and/or 9.9; or

9.4.2 pursuant to clause 9.5.4.2 or 9.6.4.2 or 9.7.4.2 or 9.8.4.2 or 9.9.4.2 which the final determination of any Accrued Rights Value demonstrates is in excess of the relevant Authority Liability Cap,

it will promptly turn the same over to the Security Trustee and pending such payment, hold the same on trust for the Intercreditor Agent and the Finance Parties.

9.5 In addition to its rights under clause 9.1, and subject to clauses 9.2 and 9.3, where the Project Agreement has been terminated, the Authority shall, from the Termination
Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority ODC Collateral Warranty, provided that:

9.5.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority ODC Collateral Warranty and or Works and Operating Agreement other than the making of deductions or withholdings against (and only to the amount of) each Monthly Services Payment and/or Final Certificate under and in accordance with clauses [Redacted] of the Works and Operating Agreement in respect of (as applicable) Works or Services carried out following the Termination Date;

9.5.2 if and to the extent that realisation of the Accrued Rights would count against the Works and Operating Sub-Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to clause 9.5.1, to the extent that such deductions or withholdings, when aggregated with any termination compensation claimed pursuant to clause 9.5.2, do not exceed the Authority ODC Liability Cap;

9.5.3 if and to the extent that realisation of the Accrued Rights would count against the Works and Operating Sub-Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the Works and Operating Agreement (pursuant to [Redacted] thereof) and to claim termination compensation (pursuant to clause [Redacted] thereof), to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to clause 9.5.1, does not exceed the Authority ODC Liability Cap;

9.5.4 if the Authority and the Intercreditor Agent do not agree the ODC Accrued Rights Value:

9.5.4.1 either of the Authority or the Intercreditor Agent may refer the dispute for resolution in accordance with clause 19 (Dispute Resolution); and

9.5.4.2 pending agreement or determination of the ODC Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority ODC Collateral Warranty subject always to clause 9.4; and

9.5.5 unless permitted by clause 9.15, the Authority shall not be able to exercise any rights under or in respect of the Authority ODC Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of Works and Operating Sub-Contractor Default.

9.6 In addition to its rights under clause 9.1, and subject to clauses 9.2 and 9.3, where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority EPC Collateral Warranty, provided that:

9.6.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority EPC Collateral Warranty and or EPC Contract other than the making of deductions or withholdings against (and only to the amount of)
SCHEDULE 15 - Redacted Copy

each payment falling due under and in accordance with clause [Redacted] of the EPC Contract in respect of Works carried out following the Termination Date;

9.6.2 if and to the extent that realisation of the Accrued Rights would count against the EPC Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to clause 9.6.1, to the extent that such deductions or withholdings, when aggregated with any termination compensation claimed pursuant to clause 9.6.3, do not exceed the Authority EPC Liability Cap;

9.6.3 if and to the extent that realisation of the Accrued Rights would count against the EPC Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the EPC Contract (pursuant to clause [Redacted] thereof) and to claim termination compensation (pursuant to clause [Redacted] thereof), to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to clause 9.6.1, does not exceed the Authority EPC Liability Cap;

9.6.4 if the Authority and the Intercreditor Agent do not agree the EPC Accrued Rights Value:

9.6.4.1 either of the Authority or the Intercreditor Agent may refer the dispute for resolution in accordance with clause 19 (Dispute Resolution); and

9.6.4.2 pending agreement or determination of the EPC Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority EPC Collateral Warranty, subject always to clause 9.4; and

9.6.5 unless permitted by clause 9.15, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority EPC Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of EPC Contractor Default.

9.7 In addition to its rights under clause 9.1, and subject to clauses 9.2 and 9.3, where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority Civils Collateral Warranty, provided that:

9.7.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority Civils Collateral Warranty and or Civils Contract other than the making of deductions or withholdings against (and only to the amount of) each payment falling due under and in accordance with clause [Redacted] of the Civils Contract in respect of Works carried out following the Termination Date;

9.7.2 if and to the extent that realisation of the Accrued Rights would count against the Civils Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to clause 9.5.1, to the extent that such deductions or withholdings, when aggregated with any termination
SCHEDULE 15 - Redacted Copy

Compensation claimed pursuant to clause 9.5.2, do not exceed the Authority Civils Liability Cap;

9.7.3 If and to the extent that realisation of the Accrued Rights would count against the Civils Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the Civils Contract (pursuant to clause [Redacted] thereof) and to claim termination compensation (pursuant to clause [Redacted] thereof), to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to clause 9.5.1, does not exceed the Authority Civils Liability Cap;

9.7.4 If the Authority and the Intercreditor Agent do not agree the Civils Accrued Rights Value:

9.7.4.1 Either of the Authority or the Intercreditor Agent may refer the dispute for resolution in accordance with clause 19 (Dispute Resolution); and

9.7.4.2 Pending agreement or determination of the Civils Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority Civils Collateral Warranty, subject always to clause 9.4; and

9.7.5 Unless permitted by clause 9.15, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority Civils Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of Civils Contractor Default.

9.8 In addition to its rights under clause 9.1, and subject to clauses 9.2 and 9.3, where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority MT Collateral Warranty, provided that:

9.8.1 The Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority MT Collateral Warranty and or MT Contract other than the making of deductions or withholdings against (and only to the amount of) each payment falling due under and in accordance with clause [Redacted] of the MT Contract in respect of Works carried out following the Termination Date;

9.8.2 If and to the extent that realisation of the Accrued Rights would count against the MT Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to clause 9.8.1, to the extent that such deductions or withholdings, when aggregated with any termination compensation claimed pursuant to clause 9.8.3, do not exceed the Authority MT Liability Cap;
SCHEDULE 15 - Redacted Copy

9.8.3 if and to the extent that realisation of the Accrued Rights would count against the MT Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the MT Contract (pursuant to clause [Redacted] thereof) and to claim termination compensation (pursuant to clause [Redacted] thereof), to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to clause 9.8.1, does not exceed the MT Liability Cap;

9.8.4 If the Authority and the Intercreditor Agent do not agree the MT Accrued Rights Value:

9.8.4.1 either of the Authority or the Intercreditor Agent may refer the dispute for resolution in accordance with clause 19 (Dispute Resolution); and

9.8.4.2 pending agreement or determination of the MT Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority MT Collateral Warranty, subject always to clause 9.4; and

9.8.5 unless permitted by clause 9.15, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority MT Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of MT Contractor Default.

9.9 In addition to its rights under clause 9.1, and subject to clauses 9.2 and 9.3, where the Project Agreement has been terminated, the Authority shall, from the Termination Date, be entitled to exercise any of its step-in rights or other rights under or in respect of the Authority AD Collateral Warranty, provided that:

9.9.1 the Authority may not claim, recover, retain or receive (or seek to claim, recover, retain or receive) an amount under, pursuant to or in connection with the Authority AD Collateral Warranty and or AD Contract other than the making of deductions or withholdings against (and only to the amount of) each payment falling due under and in accordance with clause [Redacted] of the AD Contract in respect of Works carried out following the Termination Date;

9.9.2 if and to the extent that realisation of the Accrued Rights would count against the AD Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to clause 9.9.1, to the extent that such deductions or withholdings, when aggregated with any termination compensation claimed pursuant to clause 9.9.3, do not exceed the Authority AD Liability Cap;

9.9.3 if and to the extent that realisation of the Accrued Rights would count against the AD Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the AD Contract (pursuant to clause [Redacted] thereof) and to claim termination compensation (pursuant to clause [Redacted] thereof), to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to clause 9.9.1, does not exceed the Authority AD Liability Cap;
SCHEDULE 15 - Redacted Copy

9.9.4 if the Authority and the Intercreditor Agent do not agree the AD Accrued Rights Value:

9.9.4.1 either of the Authority or the Intercreditor Agent may refer the dispute for resolution in accordance with clause 19 (Dispute Resolution); and

9.9.4.2 pending agreement or determination of the AD Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority AD Collateral Warranty, subject always to clause 9.4; and

9.9.5 unless permitted by clause 9.15, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority AD Collateral Warranty where the event giving rise to termination of the Project Agreement is an event of AD Contractor Default.

9.10 Notwithstanding the terms of the Collateral Warranties or any other provisions of this clause 9, each of the Relevant Sub-Contractors, together with any guarantors thereof, shall remain responsible, and be liable, to the Contractor and the Finance Parties in respect of all costs, claims, damages, losses and liabilities which have arisen out of or in connection with the Works/Services Contracts, or the Security Documents and Direct Agreements relating thereto, in respect of the period prior to and including the Termination Date and the Contractor and the Finance Parties (and the Intercreditor Agent and/or the Security Trustee acting on behalf of the Contractor and/or the Finance Parties) shall retain the benefit of all their respective rights to all such costs, claims, damages, losses and liabilities ("Accrued Rights").

9.11 In addition to its other rights under this clause 9, where following service of a Termination Notice but before expiry of the Required Period a Relevant Sub-Contractor has served a notice of termination, discontinuance or suspension on its contracting counterparty (whether the Contractor or otherwise) in accordance with the terms of the relevant Works/Services Contract, the Authority may pay directly, or undertake to make a payment directly, to the Relevant Sub-Contractor, amounts properly due, payable and undisputed under or pursuant to the relevant Works/Services Contract and may set off such sums after they have been paid against any amounts payable by the Authority to the Contractor under the Project Agreement, so as to satisfy them pro tanto, provided that the Authority shall not be able to exercise its rights pursuant to this clause 9.11, in circumstances where the Finance Parties:

9.11.1 have stepped-in to, or otherwise, directly or indirectly, taken control over the relevant Works/Services Contract and not stepped out of it or otherwise relinquished control; or

9.11.2 are seeking to preserve continuity of the service or build obligation (as relevant) under the relevant Works/Services Contract or otherwise with reasonable diligence.

9.12 To the extent that the Authority makes a payment under clause 9.11, the Authority shall not be entitled to make double recovery by making a deduction from the Unitary Charge under the Project Agreement in respect of performance failure by the
SCHEDULE 15 - Redacted Copy

Relevant Sub-Contractor without making an equivalent deduction against the payment made direct by the Authority to the Relevant Sub-Contractor.

9.13 On early termination of the Project Agreement for any reason the Authority shall be entitled to set-off any payments made to sub-contractors under clause 9.11 (to the extent not previously set-off in accordance with that clause) against any payments made under the Project Agreement (subject to clause 10.7 of this Agreement and clause 50.2 (Set-Off on Termination) of the Project Agreement).

9.14 Where:

9.14.1 the Finance Parties do not have any Accrued Rights in respect of the Relevant Sub-Contractor;

9.14.2 all claims which may arise from any Accrued Rights in respect of the Relevant Sub-Contractor have been settled or written off by the Senior Finance Parties or become exhausted; or

9.14.3 the Intercreditor Agent fails to comply with clause 9.16 having been given notice thereof and given a reasonable opportunity to remedy the same,

the Authority may exercise its rights under the relevant Collateral Warranty without restriction. The Intercreditor Agent shall notify the Authority as soon as claims arising from the Accrued rights are settled or written off by the Senior Finance Parties, or become exhausted.

9.15 On and after the earlier of:

9.15.1 the Senior Debt Discharge Date; and

9.15.2 the date on which the Intercreditor Agent has given its written consent,

the Authority shall be entitled to exercise its rights under the Collateral Warranties in connection with the Works and Operating Agreement, EPC Contract, Civils Contract, MT Contract, AD Contract or other Works/Services Contract in accordance with the Collateral Warranties without restriction.

9.16 Following termination of the Project Agreement, the intercreditor Agent shall, as soon as practicable and within fifteen (15) Business Days of receipt of a written request from the Authority, provide to the Authority written details of all Accrued Rights of which it is aware, having made enquiry of the Contractor and the Finance Parties:

9.16.1 that the Contractor may claim against the Relevant Sub-Contractor; and

9.16.2 that any Finance Party may claim against the Relevant Sub-Contractor,

together with an indicative non-binding assessment of the relevant Accrued Rights Values.
9.17 Prior to the Senior Debt Discharge Date but following termination of the Project Agreement, where the Senior Secured Creditors have enforced their security and a receiver appointed by or on behalf of the Senior Secured Creditors has made a prescribed part of the Contractor's net property available for the satisfaction of unsecured debts (under section 176A of the Insolvency Act 1986) the Authority may claim as an unsecured creditor against the Contractor for a share of such prescribed part.

9.18 Notwithstanding the terms of the Project Agreement and Security Documents, the Intercreditor Agent and the Security Trustee agree that the Authority may exercise its rights to have transferred any Unrestricted Assets to the Authority or its nominee following the Expiry Date or Termination Date (as the case may be) and (subject to clause 9.18A) neither the Intercreditor Agent nor the Security Trustee shall exercise or seek to exercise any enforcement rights and shall each release its security over them in accordance with clause 10.2 and/or clause 10.3.

9.18A Notwithstanding the terms of the Project Agreement and Security Documents, the Intercreditor Agent and the Security Trustee agree that, where the Authority has elected to pay the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Termination Sum in instalments in accordance with clause 51 (Method of Payment) of the Project Agreement, neither the Intercreditor Agent nor the Security Trustee shall exercise or seek to exercise any enforcement rights in respect of the Unrestricted Assets prior to the date upon which the associated security is released in accordance with clause 10.2 and/or clause 10.3, unless:

9.18A.1 the Authority has failed to pay any such instalment on or prior to the relevant Instalment Date (an "Instalment Default"); and

9.18A.2 the Authority has failed to remedy any such Instalment Default within twenty (20) Business Days following receipt of a written notice from the Intercreditor Agent or the Security Trustee confirming that:

9.18A.2.1 an Instalment Default has occurred; and

9.18A.2.2 the Intercreditor Agent and Security Trustee shall become entitled to enforce the relevant parts of their security in respect of the Unrestricted Assets in the event that the Instalment Default is not remedied within twenty (20) Business Days of the date of the notice.

9.19 Notwithstanding the terms of the Project Agreement, and subject to clause 9.20, the Authority agrees that it will not exercise or seek to exercise any of its rights to require a transfer of any revenues or cash balances or rights accrued as at the Termination Date under or pursuant to or in connection with any of the Relevant Required Insurances, any Works/Services Contract or any Project Document comprised in the Assets to the Authority or its nominee on or following the Termination Date until the Senior Debt Discharge Date.

9.20 The Authority may, at its option, and subject to agreement of the value of any such revenues, cash balances, or claims by the Intercreditor Agent in its absolute discretion, and payment of such sum to the Security Trustee, require a transfer of any revenues or cash balances or rights accrued as at the Termination Date under or
SCHEDULE 15 - Redacted Copy

pursuant to or in connection with any Works/Services Contract comprised in the Assets to the Authority or its nominee on or following the Termination Date.

10 MISCELLANEOUS

10.1 The Authority shall, at the Contractor’s expense, take whatever action the Intercreditor Agent, an Appointed Representative or a Representative taking a transfer in accordance with clause 8.1 (Novation) may require for perfecting any transfer or release under clauses 5 (Representative), 7 (Step-Out) and 8 (Novation) including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Intercreditor Agent, Appointed Representative or Representative reasonably requires.

10.2 Subject always to the continuing obligations of the Parties under clause 1, clause 2.5, clause 9 (including clause 9.18A), clause 10.3.1 and clauses 11 to 19, this Agreement shall remain in effect until the date on which all amounts which may be or become owing by the Authority to the Contractor under Part 7 (Compensation on Termination) of the Project Agreement are irrevocably paid in full whereupon the Intercreditor Agent or Security Trustee (as relevant) agrees on behalf of itself and the Finance Parties to release any security granted in their favour over the Unrestricted Assets.

10.3

10.3.1 On the Expiry Date the Intercreditor Agent or Security Trustee (as relevant), acting on behalf of itself and the Finance Parties, shall release any security granted in its favour over any Unrestricted Assets which have not previously been assigned to the Authority.

10.3.2 On the Senior Debt Discharge Date the Intercreditor Agent or Security Trustee (as relevant), acting on behalf of itself and the Finance Parties, shall release any security granted in its favour over any Assets which have not previously been assigned to the Authority and this Agreement shall terminate in full.

10.4 The Intercreditor Agent, in respect of clauses 10.4.1, 10.4.2 and 10.4.3, and the Contractor in respect of clause 10.4.4, shall promptly notify the Authority of:

10.4.1 any decisions to accelerate the maturity of any amounts owing by the Contractor to the Senior Lenders under the Senior Financing Agreements and/or demand repayment;

10.4.2 the Senior Debt Discharge Date on or before the date falling twenty (20) Business Days after its occurrence;

10.4.3 the details and amount of any proposed Additional Permitted Borrowing, including:

10.4.3.1 the circumstances giving rise to it and reasons for it; and

10.4.3.2 the terms on which it will be borrowed; and
10.4.4 on the first Business Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Financing Agreements (as the same may be amended (whether or not with the approval of the Authority)), and, to the extent it is aware (having made reasonable and proper enquiry):

10.4.4.1 the amount of any Distribution made by the Contractor; and

10.4.4.2 the amount of any credit balance on any account of the Contractor.

10.5 The Contractor joins in this Agreement, inter alia, to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any Party from enforcing its rights under this Agreement.

10.6 For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement shall prevail.

10.7 If the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Senior Debt element of any Termination Sum in instalments in accordance with clause 51 (Method of Payment) of the Project Agreement, the Authority shall not subsequently set off against or make any deduction from any instalment or interest relating thereto in respect of any claim or liability of which the Authority becomes aware after the Termination Sum has been finally agreed or determined, save to the extent that after such amount has been set off or deducted, the termination payment made (excluding interest payable pursuant to clause 51 (Method of Payment) of the Project Agreement) 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 the time.

11 ASSIGNMENT

11.1 No Party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement, save that:

11.1.1 each of the Intercreditor Agent and the Security Trustee may assign or transfer its rights and obligations under this Agreement to a successor intercreditor agent or security trustee (as appropriate) in accordance with the Senior Financing Agreements without the consent of the Authority;

11.1.2 any Finance Party may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements; and

11.1.3 the Authority shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any public body to which the Authority assigns, novates or otherwise transfers its rights and/or obligations under the Project Agreement in accordance with clause 64.1 (Restrictions on Transfer of this Agreement by the Authority) of the Project Agreement.

11.2 If clause 11.1.3 applies then the Authority shall enter into a direct agreement with the new intercreditor agent or security trustee (as relevant) on substantially the same terms as this Agreement.
SCHEDULE 15 - Redacted Copy

12 THIRD PARTY RIGHTS

A person who is not a Party to this Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

13 ENTIRE AGREEMENT

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.

14 COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

15 WAIVER

15.1 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.

15.2 Extent of Waiver

No waiver under clause 15.1 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.

16 SEVERABILITY

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.

17 NOTICES

17.1 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, facsimile or by hand, or leaving the same at:

<table>
<thead>
<tr>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant Chief Executive (Legal and Democratic Services)</td>
</tr>
<tr>
<td>North Yorkshire County Council</td>
</tr>
<tr>
<td>County Hall</td>
</tr>
</tbody>
</table>

14434767.1  26
<table>
<thead>
<tr>
<th><strong>Northallerton</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>North Yorkshire</td>
</tr>
<tr>
<td>DL7 8AD</td>
</tr>
<tr>
<td>[Redacted]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Intercreditor Agent</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>[Redacted]</td>
</tr>
<tr>
<td>Norddeutsche Landesbank</td>
</tr>
<tr>
<td>Girozentrale (London Branch)</td>
</tr>
<tr>
<td>1 Wood Street, London,</td>
</tr>
<tr>
<td>EC2V 7WT</td>
</tr>
<tr>
<td>[Redacted]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Security Trustee</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>[Redacted]</td>
</tr>
<tr>
<td>Norddeutsche Landesbank</td>
</tr>
<tr>
<td>Girozentrale (London Branch)</td>
</tr>
<tr>
<td>1 Wood Street, London,</td>
</tr>
<tr>
<td>EC2V 7WT</td>
</tr>
<tr>
<td>[Redacted]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Contractor</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Company Secretary</td>
</tr>
<tr>
<td>AmeyCespa (AWRP) SPV Limited</td>
</tr>
<tr>
<td>The Sherard Building</td>
</tr>
<tr>
<td>Edmund Halley Road</td>
</tr>
<tr>
<td>Oxford OX4 4DQ</td>
</tr>
<tr>
<td>[Redacted]</td>
</tr>
</tbody>
</table>
17.2 Change of Details

A Party to this Agreement may change its nominated address or facsimile number by prior notice to the other Parties.

17.3 Notices by Post

Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

17.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9.00am and 4.00pm; or

17.3.2 by 11.00am on the next following Business Day, if sent after 4.00pm on a Business Day but before 9.00am on that next following Business Day.

18 LOCAL GOVERNMENT (CONTRACTS) ACT 1997

18.1 The Certification Requirements are intended to be satisfied by the Authority with respect to this Agreement before the end of the period within which the Certification Requirements must be satisfied for this Agreement to be a certified contract for the purposes of the Local Government (Contracts) Act 1997.

18.2 The Intercreditor Agent, Security Trustee and the Contractor 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 Agreement.

18.3 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 Project Agreement. Where such terms apply and the Contractor is entitled to compensation pursuant to the Project Agreement, the Parties acknowledge that no additional compensation shall be payable by the Authority pursuant to this Agreement.

19 DISPUTE RESOLUTION

19.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 19.

19.2 If a dispute arises in relation to any aspect of this Agreement, the Parties shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

19.3 Without prejudice to clause 19.2, and subject to clause 19.4 either of the Authority or the Intercreditor Agent (or, if relevant, the Security Trustee) may give the other notice of its intention to refer the dispute to an Expert for determination ("Notice of Expert Determination"). The Notice of Expert Determination shall include a brief statement of the issue to be referred and the redress sought.
19.4 If a dispute arises in relation to determination of any Accrued Rights Value in accordance with clause 9.16 (Authority's Rights), either of the Authority or the Intercreditor Agent (or, if relevant, the Security Trustee) may refer the dispute directly to the courts of England and Wales for final resolution. If such a reference is made the Parties shall not (unless they agree otherwise) be required to comply with the dispute resolution procedure set out in the remainder of this clause 19.

19.5 The Authority and the Intercreditor Agent (or, if relevant, the Security Trustee) shall attempt to agree the identity of the Expert within five (5) Business Days of the date of issue of the Notice of Expert Determination. In the event that the Authority and the Intercreditor Agent (or, if relevant, the Security Trustee) cannot agree the identity of the Expert within such period, either of them may request the President for the time being of the Chartered Institute of Arbitrators to nominate a suitable individual, and such individual shall be the Expert for the purposes of this clause 19. The Expert shall (unless otherwise agreed) be an independent individual with knowledge of and experience in Private Finance Initiative education projects. The Party giving the Notice of Expert Determination ("Referring Party") shall send a copy of the Notice of Expert Determination to the Expert as soon as he has been appointed.

19.6 Within five (5) Business Days of the service of the Notice of Expert Determination, or as soon thereafter as the Expert is appointed, the Referring Party shall serve its statement of case ("Referral Notice") on the Expert and the other party ("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 Expert Determination, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

19.7 The Responding Party shall serve its statement of case ("Response") on the Expert and the Referring Party within a period of time to be directed by the Expert. The Response shall include any arguments in response to the Referral Notice and any additional evidence on which the Responding Party relies.

19.8 The Expert shall have absolute discretion as to how to conduct resolution of the dispute, including whether a meeting is necessary. He shall establish the procedure and timetable subject to any limitation within this Agreement. He shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Parties shall comply with any request or direction of the Expert in relation to resolution of the dispute.

19.9 The Expert shall provide to the Authority and the Intercreditor Agent (or, if relevant, the Security Trustee) his written decision on the dispute within ten (10) Business Days after the date of receipt of the Referral Notice (or such other period as the parties may agree). The Expert shall state the reasons for his decision. Unless and until revised, cancelled or varied by the courts of England and Wales, the Expert's decision shall be binding on all Parties who shall forthwith give effect to the decision.

19.10 The Expert's costs shall be borne as the Expert shall specify or, in default, equally by the Authority and the Intercreditor Agent (or, if relevant, the Security Trustee). Each Party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.

19.11 All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment as Expert shall be treated
SCHEDULE 15 - Redacted Copy

as confidential. The Expert shall not 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 Expert's work.

19.12 Either of the Authority or the Intercreditor Agent (or, if relevant, the Security Trustee) may within ninety (90) days of receipt of the Expert's decision give notice to the other of its intention to refer the dispute to the courts of England and Wales for final determination.

19.13 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 19 and shall give effect forthwith to every decision of the Expert and the courts delivered under this clause 19.

20 GOVERNING LAW

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to clause 19 (Dispute Resolution) the courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS is executed as a deed and delivered on the date stated at the beginning of this Agreement.

The COMMON SEAL of NORTH YORKSHIRE COUNTY COUNCIL was hereunto affixed this day of 2014 in the presence of:

Authorised Signatory
EXECUTED as a DEED on behalf of NORDDEUTSCHE LANDES BANK GIROZENTRALE (LONDON BRANCH) as Intercreditor Agent

acting by its duly authorised delegated attorney

Name:

In the presence of a witness

Name:

Address:

EXECUTED as a DEED on behalf of NORDDEUTSCHE LANDES BANK GIROZENTRALE (LONDON BRANCH) as Security Trustee

acting by its duly authorised delegated attorney

Name:

In the presence of a witness

Name:

Address:
Signed as a deed by

For and on behalf of

ArmeanCespa (AWRP) SPV Limited

in the presence of a witness:

Signature of witness:

Name:

Address:

Occupation
Schedule 15

Part 1: Form of Independent Tester's Appointment
dated

AmeyCespa (AWRP) SPV Limited
and
AmeyCespa (AWRP) ODC Limited
and
North Yorkshire County Council
and
Norddeutsche Landesbank Girozentrale (London Branch)
and
Mott MacDonald Limited

Appointment of Independent Tester

To provide independent tester services in respect of the AWRP Waste Treatment PPP Project
This Deed is made on 2014

Between

(1) AmeyCespa (AWRP) SPV LIMITED (Company number 08717850) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (AmeyCespa SPV);

(2) AmeyCespa (AWRP) ODC LIMITED (Company number 9200149) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ (AmeyCespa ODC);

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

(4) Norddeutsche Landesbank Girozentrale (London Branch) as agent for and on behalf of the Senior Lenders (the Agent); and

(5) Mott MacDonald Limited (Company number 1243967) whose registered office is at Mott MacDonald House, 8 - 10 Sydenham Road, Croydon, Surrey, CR0 2EE (the Independent Tester).

Whereas

(A) AmeyCespa SPV is about to enter into the project agreement with the Authority under which AmeyCespa SPV will deliver the Works and Services (as defined in the Project Agreement) in connection with the Project (as defined in the Project Agreement).

(B) AmeyCespa ODC is about to enter into the Works and Operating Contract with AmeyCespa SPV under which AmeyCespa ODC will deliver the Works and Services (as defined in the Works and Operating Contract).

(C) AmeyCespa SPV and the Agent have entered into (among others) the Common Terms Agreement pursuant to which the Finance Parties have agreed to provide financing arrangements to AmeyCespa SPV in relation to the Project.

(D) The Construction Contractors (as defined in the Project Agreement) and AmeyCespa ODC are about to enter into the Construction Contracts (as defined in the Project Agreement) under which the Construction Contractors will deliver the Facility.

(E) The Independent Tester is an independent adviser willing to provide services to AmeyCespa SPV, AmeyCespa ODC, the Authority and the Agent in relation to the Project Agreement.

(F) AmeyCespa SPV, AmeyCespa ODC, the Authority and the Agent (together and severally known as the "Appointers") have agreed to engage the Independent Tester to carry out the duties and obligations ascribed to the Independent Tester in the Project Agreement and upon the terms of this Deed.
WHEREBY IT IS AGREED as follows:

1 Definitions and Interpretation

1.1 Definitions

In this Deed words and expressions defined in the Project Agreement have the same meanings when used in this Deed (unless otherwise defined in this Deed) and the following terms have the following meanings:

Basic Services means the services set out in Schedule 1;

Fee means the fee as set out in Schedule 2 payable for the proper performance of the Basic Services as varied from time to time in accordance with clause 3.3 to clause 3.5, which includes the Service Fee and Disbursements/Expenses capped at a maximum sum as set out in Schedule 2.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from skilled and experienced person engaged as the case may be in the same type of undertaking as the Independent Tester under the same or similar circumstances at the relevant time for such exercise;

Joint Notice means a written notice signed by a duly authorised representative of each of the Appointers;

Project Agreement means the project agreement entered into on or about the date hereof by AmeyCespa SPV and the Authority;

Service Fee means the fee for the provision of Tester Services as detailed in Schedule 2;

Tester Services has the meaning given to it in clause 1.3.2; and

Works and Operating Contract means the agreement entered into on or about the date hereof by AmeyCespa SPV and AmeyCespa ODC.

1.2 Interpretation

1.2.1 Any schedules shall form part of this Deed and any references to this Deed shall include them.

1.2.2 Unless the context requires otherwise, all references to clauses and schedules are references to clauses of and schedules to this Deed.

1.2.3 References to this Deed or any other document are to this Deed or that document in force from time to time and as amended from time to time in accordance with this Deed or that document (as the case may be).

1.2.4 A reference to a statute or statutory provision shall be construed as including a reference to any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under that statute or statutory provision (whether before or after the date of this Deed).
1.2.5 A reference to a statute, statutory provision or subordinate legislation (as so defined) shall be construed as including a reference to that statute, provision or subordinate legislation as in force at the date of this Deed and as from time to time modified or consolidated, superseded or replaced (whether with or without modification) after the date of this Deed.

1.2.6 Words importing a gender include every gender, references to the singular include the plural and vice versa and words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case wherever resident and for whatever purpose) and vice versa.

1.2.7 A reference to a "party" shall be a reference to a party to this Deed unless the context requires otherwise.

1.2.8 Words preceding "includes", "including", "in particular" or any similar expression shall be construed without limitation by the words which follow those words.

1.2.9 The headings in this Deed are for ease of reference only and shall not affect its construction or interpretation.

1.3 Appointment

1.3.1 The Appointers jointly engage the Independent Tester and the Independent Tester agrees to perform the obligations and tasks which are both ascribed to the Independent Tester under the Project Agreement and which are set out in schedule 1 (the "Basic Services") upon the terms and conditions set out below.

1.3.2 The Independent Tester shall provide the Basic Services and any additional services to be provided in accordance with this Deed (together referred to in this Deed as the "Tester Services") independently, fairly and impartially to and as between the Appointers at such times and at such locations as the Appointers and the Independent Tester shall agree from time to time. Whilst the Independent Tester may take account of any representations made by the Appointers the Independent Tester shall not be bound to comply with any such representations made by them in connection with any matter on which the Independent Tester is required to exercise its professional judgement.

1.3.3 The Independent Tester shall promptly and efficiently provide the Tester Services:

(a) with the degree of skill, care and diligence reasonably to be expected of a properly qualified and competent professional adviser who has experience of rendering such services for projects of a similar size, nature, scope, complexity and value to the Project; and

(b) in compliance with all Legislation and Good Industry Practice.
1.3.4 The Independent Tester acknowledges that it owes a duty of care pursuant to and as set out in clause 1.3 to the Appointers in the provision by it of the Tester Services pursuant to clause 1.3.2.

1.3.5 Subject to the provisions of clauses 1.3.9(b), 4 and 5 of this Deed, all instructions to the Independent Tester in respect of the Tester Services shall be given in writing by AmeyCespa SPV and/or the Authority (the "Notifying Party") as the case may be, and the Notifying Party shall provide a copy of the same to the other Appointers immediately following issue. The Independent Tester shall promptly and fully comply with all reasonable instructions given to it by the Notifying Party except and to the extent that:

(a) the Independent Tester reasonably considers that any such instructions vary or might vary the Basic Services or its authority or responsibilities under this Deed or prejudices or might prejudice the exercise by the Independent Tester of its professional judgement in accordance with clauses 1.3.2 and 1.3.3; or

(b) the Independent Tester reasonably considers that there is a conflict between the instructions it has received from one Notifying Party and the instructions it has received from another Notifying Party.

1.3.6 The Independent Tester shall notify and consult with the Appointers as soon as reasonably practicable in order to resolve the conflict before acting upon the instruction. In the event of the Parties being unable to resolve the conflict then either Party may submit the matter for resolution in accordance with clause 18 (Dispute Resolution Procedure).

1.3.7 The Authority, AmeyCespa SPV, and AmeyCespa ODC agree to (and AmeyCespa SPV and AmeyCespa ODC shall use all reasonable endeavours to procure that any of their sub-contractors shall) co-operate with and provide reasonable assistance to the Independent Tester, to familiarise the Independent Tester with all necessary aspects of the Project and to enable the Independent Tester to carry out its obligations under this Deed or duties under the Project Agreement.

1.3.8 The Independent Tester acknowledges that it has been provided with a complete copy of the Project Agreement, the Works and Operating Contract, the Common Terms Agreement and the Construction Contracts (the "Project Documents"). Accordingly, the Independent Tester shall be deemed to have full knowledge of the provisions of the Project Documents and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of the Appointers which are set out in the Project Documents. The Independent Tester further acknowledges that any breach by it of this Deed may result in the Appointers incurring liabilities under the Project Documents and other costs and losses and all such liability, costs and losses are hereby agreed to be within the contemplation of the Independent Tester as being the probable result of any such breach by the Independent Tester.

1.3.9 Subject to clauses 1.3.9(a) and 1.3.9(b), the Independent Tester shall use [Redacted] in connection with the performance of the Tester Services, who shall
be available to the extent that and for so long as may be necessary to ensure the proper performance by the Independent Tester of the Tester Services. Such person shall have full authority to act on behalf of the Independent Tester for all purposes in connection with this Deed.

(a) Subject to clause 1.3.9(b), the person specified in this clause 1.3.9 shall not be removed or replaced by the independent Tester unless he ceases to work as a director or employee of the Independent Tester or is unable to work because of death, ill health or other exceptional circumstances. The Independent Tester shall, as soon as reasonably practicable, notify the Appointers of any such circumstances and shall be responsible for finding a replacement who shall previously have been approved in writing by the Appointers, provided that such approval shall not be unreasonably withheld or delayed. The replacement shall be of equal standing, experience and technical competence as the person previously appointed.

(b) The Independent Tester shall, within fifteen (15) Business Days of receipt of a Joint Notice issued by the Appointers, remove and replace the person specified in this clause 1.3.9 provided that such notice shall have been jointly issued by the Appointers on reasonable grounds.

1.3.10 Nothing in this Deed shall be construed as imposing on the Independent Tester liability in respect of design work prepared by others for the Project, provided that the Independent Tester shall not be relieved by virtue of this clause 1.3.10 from his duty to notify the Appointers of any issues adversely affecting the Project of which the Independent Tester becomes aware in the course of performing the Tester Services.

1.3.11 The Independent Tester shall provide the Appointers upon reasonable request with:

(a) copies of any reports and correspondence issued or required to be provided by the Independent Tester in accordance with this Deed and/or the Tester Services; and

(b) any other information relating to the Project which is in its possession,

and shall regularly update the Appointers as to progress in the carrying out of its Tester Services and shall provide to the Appointers copies of minutes of all meetings it attends relating to the Project.

2 Duration

This Deed shall have effect as from the date hereof in relation to all Tester Services performed by the Independent Tester (whether before or after the date hereof) and shall continue until all the Tester Services have been performed or this Deed is otherwise terminated in accordance with the terms of this Deed. For the avoidance of doubt, the Independent Tester shall commence the performance of the Tester Services at the beginning of the third month following the date of this Deed.
3 Payment

3.1 AmeyCespa SPV shall pay to the Independent Tester the Fee as full remuneration for the delivery of the Basic Services in accordance with this clause 3 and schedule 2.

3.2 The Fee shall, subject to the provisions of clauses 3.3 to 3.5, be deemed to be inclusive payment for the Basic Services and for all costs and expenses of every kind incurred by the Independent Tester in connection therewith. Subject to the provisions of clauses 3.3 to 3.5, AmeyCespa SPV and/or AmeyCespa ODC shall have no liability to pay to the Independent Tester any monies in excess of the Fee.

3.3 If the Independent Tester is required to provide any additional services in connection with the Project which do not form part of the Basic Services, then the Independent Tester and AmeyCespa SPV shall agree in writing a fair and reasonable additional payment to the Independent Tester calculated by reference to the extent of such additional services and the hourly and daily rates set out at part 2 of schedule 2 provided that the Independent Tester has notified the Appointers in advance of undertaking any such additional service that he is or may be entitled to payment in respect of such additional services and, so far as is possible, the amount of such payment shall be agreed in writing by AmeyCespa SPV and the Independent Tester prior to performance of any such additional services.

3.4 If the Independent Tester is required materially to modify or revise any document by reason of the issue of an Authority Change, then AmeyCespa SPV and the Independent Tester shall agree in writing a fair and reasonable additional payment to the Independent Tester for the additional work performed by the Independent Tester by reason of such Authority Change by reference to the hourly and daily rates set out at part 2 of schedule 2, provided always that the Independent Tester has notified the Appointers in advance of undertaking any such additional service that it is or may be entitled to payment in respect of such additional services, and so far as is possible, the amount of such payment shall be agreed in writing by AmeyCespa SPV and the Independent Tester prior to performance of any such additional services.

3.5 In the event of any significant damage to or destruction of the Project or any part thereof during the course of construction and as a result of which the Independent Tester is required to provide services in connection with the reinstatement of the Project or such part thereof, AmeyCespa SPV and the Independent Tester shall agree a fair and reasonable additional payment to the Independent Tester for the additional services provided by the Independent Tester by reason of such damage or destruction by reference to the hourly and daily rates set out at part 2 of schedule 2, provided that the Independent Tester has notified the Appointers in advance of undertaking any such additional service that he is or may be entitled to payment in respect of such additional services and, so far as is possible, the amount of any such payment shall be agreed between the Independent Tester and AmeyCespa SPV prior to performance of any such additional services.

3.6 In the event of the Parties being unable to agree the amount of payment for the additional services set out in clauses 3.4 and 3.5 above, then either Party may submit the matter for resolution in accordance with clause 18 (Dispute Resolution Procedure).

3.7 Nothing in this Deed shall make the Authority or the Agent or AmeyCespa ODC liable to the Independent Tester for any payment or other sum due to the Independent Tester pursuant to this clause 3 and liability for any such payment or other sums shall remain exclusively with AmeyCespa SPV.
3.8 The provisions of clauses 3.2 to 3.4 in relation to additional payment shall not apply where and to the extent that any such additional work or services shall have been necessitated, in whole or in part, by any negligence, omission or default on the part of the Independent Tester in the performance of the Tester Services.

3.9 The Fee shall be paid by instalments as specified in part 1 of schedule 2 in accordance with the provisions of clauses 3.11 to 3.16 (inclusive).

3.10 The Independent Tester shall submit to AmeyCespa SPV accounts from time to time as and when any sums become due to the Independent Tester under this Deed (but no more frequently than monthly) showing:

3.10.1 the instalment of the Fee which is due to the Independent Tester;

3.10.2 the instalments of the Fee previously paid by AmeyCespa SPV to the Independent Tester; and

3.10.3 any other sums due to the Independent Tester under this Deed;

Such account shall be supported by such documents, vouchers and receipts as shall be reasonably necessary for computing the same or as may be reasonably required by AmeyCespa SPV to verify and understand the same.

3.11 Subject to clause 3.12 and/or 3.13, AmeyCespa SPV is entitled to make any deductions or set-offs in respect of any sums that are due and owing to AmeyCespa SPV for its own account under the terms of this Deed or otherwise at law. Payment shall become due to the Independent Tester (who for this purpose is the payee) following fourteen (14) days of receipt by AmeyCespa SPV (who for this purpose is the payer) of the payee's valid application for a payment (setting out what the payee considers to be due on the Due Date and the basis on which that sum is calculated; and for applications for payment of the Fee, in accordance with the provisions of clause 3.10), the "Due Date".

The final date for payment shall be thirty (30) days following the relevant Due Date (the "Final Date"). For the purposes of this clause 3.11, an account or valid application shall be deemed to have been received (if posted) forty-eight (48) hours after posting and (if sent by facsimile) on confirmation of transmission being delivered to the payee's facsimile machine, provided that if such confirmation is timed at later than 5.00 p.m. on a Business Day, the facsimile shall be deemed to have been received at 9.00 a.m. on the next Business Day. Any payment which is not made by the Final Date for payment shall thereafter bear simple interest at a daily rate equivalent to two percent (2%) per annum above the Royal Bank of Scotland plc base rate from time to time until the date of actual payment.

3.12 The payer may, not later than five (5) days after the Due Date, give the payee written notice stating the amount which the payer considers to have been due and the basis on which that amount is calculated (the "Payment Notice"). Where no such notice is given, then the payee's valid application for payment shall be treated as the Payment Notice.

3.13 If the payer intends to pay less than the amount stated in the Payment Notice (or, where no Payment Notice has been issued, the payee's valid application for payment) the payer shall give written notice to the payee no later than five (5) days before the Final Date for
payment. The notice must state the amount the payer considers to be due on the date the notice is served and the basis on which that sum is calculated (the "Pay Less Notice").

3.14 Subject to clause 3.15, the payer shall pay the amount stated in any Payment Notice or, if issued, the Pay Less Notice (or if more than one Pay Less Notice, the amount stated in the last Pay Less Notice issued) by the Final Date for payment. AmeyCesda SPV shall pay to the Independent Tester the total amount of value added tax properly chargeable by the Independent Tester on the supply of the Tester Services under this Deed.

3.15 In the event that the Independent Tester suffers an event described in clauses 5.1.4 to 5.1.10 or becomes insolvent as defined by section 113 of the Housing Grants Construction and Regeneration Act 1996 (as amended) before the date when, in respect of any given application process for monies due pursuant to this Deed, AmeyCesda SPV could have issued a Pay Less Notice then, subject to AmeyCesda SPV serving a valid Pay Less Notice, no monies shall be payable or due to the Independent Tester.

3.16 Notwithstanding any other provision of this Deed, AmeyCesda SPV may in any subsequent payment to the Independent Tester delete, correct and/or modify any sum or sums previously paid by it.

4 Limitations on Authority

4.1 The Independent Tester shall not, without the written consent (in the form of a Joint Notice) of the Appointers:

4.1.1 make or purport to make any alteration or addition to or omission from the design of the Works (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project;

4.1.2 consent or agree to any waiver or release of any obligation of AmeyCesda SPV or the Authority under the Project Agreement or of any contractor or professional consultant employed or engaged in connection with the Project;

4.1.3 consent or agree to any waiver or release of any obligation of AmeyCesda SPV or the AmeyCesda ODC under the Works and Operating Contract or of any contractor or professional consultant employed or engaged in connection with the Project;

4.1.4 sanction, approve or accept any design submitted by AmeyCesda SPV or AmeyCesda ODC or any other contractor or professional consultant employed or engaged in connection with the Project; or

4.1.5 issue any instruction or give any approval or make any agreement which, save as may be necessary for the performance of the Tester Services, would or might delay completion of the Project or increase the cost to AmeyCesda SPV of the Project.
Termination

5.1 The Appointers may by issuing a Joint Notice to the Independent Tester immediately terminate the Independent Tester’s appointment under this Deed if the Independent Tester:

5.1.1 is in breach of any of the terms of this Deed which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Tester within fourteen (14) days of receipt by the Independent Taster of a Joint Notice specifying the breach and requiring its remedy;

5.1.2 is incompetent, guilty of gross misconduct and/or any gross negligence or delay in the provision of the Tester Services (where gross negligence shall mean something more fundamental than a failure to exercise proper skill and/or care constituting negligence capable of embracing not only conduct undertaken with actual appreciation of the risks involved but also serious disregard of, or indifference to, an obvious risk);

5.1.3 fails to comply with clause 1.3.9;

5.1.4 is unable to admit its inability to pay its debts when they become due within the circumstances specified in section 123(1)(c) of the Insolvency Act 1986 without the need to prove any fact or matter to the satisfaction of the Court as provided thereon;

5.1.5 enters into a voluntary arrangement under Part I of the Insolvency Act 1986 or enters into a scheme of arrangement with its creditors generally in satisfaction of its debt;

5.1.6 makes any arrangement or composition with creditors generally, other than for the purposes of a solvent internal reorganisation;

5.1.7 is the subject of an administration order made under Part II of the Insolvency Act 1986;

5.1.8 is subject to an encumbrancer taking possession or undergoes the appointment of a receiver or manager (including an administrative receiver) either under section 248 of the Enterprise Act 2002 or under the Law of Property Act 1925 or otherwise (and in the case of a receiver only, not being discharged within twenty one (21) days of his appointment);

5.1.9 is the subject of the passing of a resolution to wind up or a provisional liquidator is appointed or a winding-up order is made under Part IV of the Insolvency Act 1986 (except for a voluntary winding up solely for the purpose of amalgamation or reconstruction, the terms of which have previously been notified to and approved in writing by the Appointers);

5.1.10 is the subject of a proposal made for a scheme of arrangement under part 26 of the Companies Act 2006; or
5.1.11 fails or refuses after written warning to perform the Tester Services or any of the other duties of the Independent Tester under this Deed reasonably and properly required of him.

5.2 The Appointers may by issuing a Joint Notice to the Independent Tester suspend the Independent Tester's appointment at any time. During the period of any such suspension payment of the Fee by AmeyCespa SPV shall be pursuant to clause 4.

5.3 If the Project Agreement is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, the Independent Tester's appointment under this Deed may be terminated by Joint Notice and with immediate effect.

5.4 Following any termination of the Independent Tester's appointment under this Deed:

5.4.1 the Independent Tester shall (subject to AmeyCespa SPV's rights under clause 3.11) be entitled to be paid in full and final settlement of any claim which the Independent Tester may have in consequence thereof, any fees due under clause 3 in respect of the Tester Services carried out in accordance with this Deed prior to the date of termination; and

5.4.2 the Independent Tester shall be relieved of its obligation to continue with the performance of the Tester Services and shall take immediate steps to bring to an end the Tester Services in an orderly manner but with all reasonable speed and economy and, in the event that a replacement Independent Tester has been appointed to complete the performance of the Tester Services, shall cooperate fully with such replacement to the extent that it is reasonable to do so.

5.5 Termination of this Deed shall be without prejudice to any party's accrued rights and obligations under this Deed as at the date of termination (including the right of the Appointers to recover damages from the Independent Tester).

5.6 If this Deed is terminated pursuant to clause 5.1, the independent Tester shall pay to the Appointers, as the case may be, any reasonable incremental loss, damage or additional costs suffered by each of them including but not limited to any liability under the Project Documents as contemplated by the provisions of clause 1.3.8 and any incremental costs reasonably and necessarily incurred by the Appointers in engaging a replacement consultant to provide services equivalent to the Tester Services.

5.7 Each party's further rights and obligations shall cease immediately on termination except that termination of this Deed shall not affect the continuing rights and obligations of the Appointers under clauses 6 (Confidential Information), 7 (Professional Indemnity Insurance), 10 (Limitation of Liability), 18 (Disputes Resolution Procedure) and this clause 5 or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

5.8 The Independent Tester shall only be entitled to terminate its appointment under this Deed with immediate effect by written notice to the Appointers where:

5.8.1 AmeyCespa SPV fails to make payment in accordance with clause 3 to the Independent Tester within twenty (20) Business Days following the Final Date;
after expiry of the period set out in clause 5.8.1 the Independent Tester has served notice on each of the Appointers indicating that this sum remains unpaid; and

such sum remains unpaid for a period of twenty (20) Business Days from the date of service by the Independent Tester of the notice pursuant to clause 5.8.2.

5.9

The Authority or the Agent or AmeyCespa ODC may elect to make payment to the Independent Tester of the monies owed by AmeyCespa SPV pursuant to clause 3 before the expiry of the period set out in clause 5.8.3 (or at any time thereafter prior to the termination of this Deed by the Independent Tester in accordance with clause 5.8) provided that the Authority or the Agent or AmeyCespa ODC gives five (5) Business Days' notice to the other Appointers of its election to make such payment to the Independent Tester. Upon receipt of such payment the Independent Tester's right to terminate this Deed under clause 5.8 shall cease.

5.10

If the Authority elects to make payment to the Independent Tester of the monies owed by AmeyCespa SPV pursuant to clause 3 before the expiry of the period set out in clause 5.8.3 (or at any time thereafter prior to the termination of this Deed by the Independent Tester in accordance with clause 5.8), the Authority shall be entitled to deduct any such sums from the Unitary Charge.

6

Confidential Information

6.1

Save as may be necessary for the proper provision of the Tester Services by the Independent Tester under this Deed, the Independent Tester shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information relating to the Project or to any of the Appointers' or the Construction Contractors' technology or other know-how, business plans or finances or any such information relating to a subsidiary, supplier, customer or client of any of the Appointers or the Construction Contractors where the information was received during the period of this Deed.

6.2

Upon termination of this Deed for whatever reasons the Independent Tester shall deliver up to the Appointers (as appropriate) all working papers, computer disks and tapes or other material and copies provided to the Independent Tester, together with copies of any document or report produced by the Independent Tester, pursuant either to this Deed or to any previous obligation owed to the Appointers. The Independent Tester shall retain in safe storage at its own cost, for a period of not less than twelve (12) years following the earlier of completion of the Tester Services or termination of this Deed, all working papers, computer disks, tapes and other material arising out of its performance of this Deed.

6.3

Tha provisions of clause 6.1 shall not apply to any information which:

6.3.1 enters (otherwise than through a breach of this Deed by the Independent Tester) or is at the time of disclosure, in the public domain;

6.3.2 has lawfully been provided to the Independent Tester by a third party who is not in breach of any obligation of confidence without restriction as to its disclosure; or
6.3.3 is required to be disclosed by law (whether by statute or other rules or regulation, by order of a court, arbitral tribunal or competent regulatory authority or otherwise).

6.4 The provisions of clause 6.1 shall continue in force for a period of three (3) years from the earlier of: (a) the date of completion of the Tester Services; and (b) the termination of this Deed.

7 Professional Indemnity Insurance

7.1 The Independent Tester hereby covenants with the Appointers to:

7.1.1 take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be not less than ten million pounds sterling (£10,000,000) in respect of any one claim or series of claims arising out of or attributable to the same originating cause in respect of any neglect, error or omission on the Independent Tester's part in the performance of its obligations under this Deed and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after the earlier of:

(a) the date of completion of the Tester Services; and

(b) the termination of this Deed,

provided that such insurance is generally available in the market to members of the Independent Tester's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Independent Tester's own claims record or other acts, omissions, matters or things peculiar to the Independent Tester will be deemed to be within the reasonable rates;

7.1.2 provide certificates (as and when reasonably required by the Appointers) as evidence that the Professional Indemnity insurance referred to in clause 7.1.1 is in full force and effect from the date of this Deed (such evidence to include details of the cover);

7.1.3 provide the Appointers with notice of:

(a) any cancellation of the Professional Indemnity insurance referred to in clause 7.1.1 as soon as is reasonably practicable upon becoming aware of the relevant cancellation; and

(b) any adverse material changes to or suspension of cover relevant to the Tester Services not less than thirty (30) days prior to the relevant change or suspension; and

7.1.4 inform the Appointers as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 7.1.1 in respect of the Tester Services in excess of one million pounds sterling (£1,000,000) and provide such information to the Appointers as the Appointers may reasonably
require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

7.2 In the event that the insurance referred to in clause 7.1.1 ceases to be available at commercially reasonable rates and on commercially reasonable terms (excluding any increase in rates or changes in terms resulting from the Independent Tester's own claims record or other acts, omissions, matters or things peculiar to the Independent Tester) the Independent Tester shall notify the Appointers in accordance with clause 7.1 and, as soon as reasonably practicable thereafter, the Independent Tester and the Appointers shall meet to discuss the best means of protecting each party's position and the Independent Tester shall, if requested by the Appointers, take out such insurance with such a limit of indemnity as is available in the market at commercially reasonable rates and on commercially reasonable terms (excluding any increase in rates or changes in terms resulting from the Independent Tester's own claims record or other acts, omissions, matters or things peculiar to the Independent Tester).

7.3 The obligations in this clause 7 shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Appointers.

8 Copyright

8.1 The copyright in all reports, statements, summaries, certificates, calculations and other similar documents provided by or on behalf of the Independent Tester in connection with the Project (the "Documents") shall remain vested in the Independent Tester, but the Appointers shall have an irrevocable, royalty-free transferable licence to copy and use the Documents and to reproduce their contents for any purpose related to the Project, including but without limitation, the construction, completion, maintenance, operation, reinstatement, extension and repair of the Project. The Independent Tester shall not be liable for any misuse by the Appointers of the Documents (which shall be determined by reference to, inter alia, the purposes for which the same were prepared).

8.2 The licence referred to in clause 8.1 shall carry the right to grant sub-licences and shall be transferable to third parties. The Independent Tester shall, if so requested by the Appointers, at any time execute such documents and perform such acts as may be required fully and effectively to assure to the Appointers (as the case may be) the rights referred to in clause 8.1.

8.3 Where a claim or proceeding is made or brought against the Appointers which arises out of the infringement of any copyright, unless such infringement has arisen out of the use of the Documents by or on behalf of the Appointers otherwise than in accordance with the terms of this Deed, the Independent Tester shall indemnify the Appointers at all times from and against all such claims and proceedings.

9 Quality Assurance

9.1 The Independent Tester shall visit the Works sufficiently frequently to enable it to perform the Tester Services in accordance with this Deed.

9.2 The Independent Tester shall give reasonable notice to the Appointers and the Construction Contractors in writing of the date and time of any inspection of the Works and of the Tests and shall allow all parties to accompany the independent Tester on the inspection.
Redacted Copy

9.3 The Independent Tester shall implement a quality system in a form reasonably acceptable to the Appointers in respect of the Tester Services, to comply with the requirements of this Deed and the Project Agreement (and such quality system shall, as a minimum, comply with the standards set out in ISO 9000 and ISO 9001). Implementation and compliance with the quality system or acceptance by the Appointers of the quality system shall not relieve the Independent Tester of its responsibility for the performance of its obligations in accordance with this Deed.

10 Limitation of Liability

10.1 No action or proceedings under or in respect of this Appointment shall be commenced against the Independent Tester after the expiry of twelve (12) years from the earlier of:

10.1.1 the date of the completion of the Tester Services; or

10.1.2 the termination of this Deed,

save in relation to any claims made by any Appointer against the Independent Tester and notified by the relevant Appointer to the Independent Tester in writing prior thereto.

10.2 Notwithstanding any other provision of this Deed, the Independent Tester's maximum liability to the Appointers for all claims under or in connection with this Deed (including, without limitation, any collateral warranty issued pursuant to clause 12A) whether such claims arise in contract, in tort (including negligence), for breach of statute or statutory duty, by way of indemnity or otherwise shall be limited to:

10.2.1 [Redacted] in respect of any indirect, special or consequential loss (including, but not limited to, loss of profit, whether direct or indirect, loss of production, loss of contracts, loss of use, loss of business and loss of business opportunity) ("Indirect Losses") incurred by the AmeyCespa SPV and/or the AmeyCespa ODC; and

10.2.2 [Redacted] in respect of any Indirect Losses incurred by the Authority and/or the Agent and/or the Finance Parties (including any amounts due and payable to the Finance Parties which the AmeyCespa SPV is unable to pay resulting from a breach of the Independent Tester's obligations pursuant to this Deed); and

10.2.3 [Redacted] in the aggregate (including, for the avoidance of doubt, any claims for Indirect Losses).

10.3 For the avoidance of doubt, the Independent Tester's liability under this Deed shall not be reduced, diminished or otherwise limited in any way by its performance of other services that it provides, directly or indirectly, in connection with the Project.

10.4 Nothing in this clause 10 shall operate to exclude or limit the Independent Tester's liability for death or personal injury to any person or for fraud or wilful default.

11 Notice

11.1 A notice or other communication under or in connection with this Deed shall be in writing and shall be either delivered personally, sent by first class post, pre-paid recorded delivery (and air mail if overseas) or by facsimile, as follows:
11.1.1 AmeyCespa (AWRP) SPV Limited:
Address: The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ
Fax: [Redacted]
Attention: Company Secretary and Contractors Representative

11.1.2 AmeyCespa (AWRP) ODC Limited:
Address: The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ
Fax: [Redacted]
Attention: AmeyCespa ODC's Representative

11.1.3 Agent: NORD/LB
Address: NORD/LB, Norddeutsche Landesbank (London Branch), One Wood Street, London, EC2V 7WT
Fax: [Redacted]
Attention: [Redacted]

11.1.4 Authority: North Yorkshire County Council
Address: County Hall, Northallerton, North Yorkshire DL7 8AD
Fax: [Redacted]
Attention: Assistant Director, Waste and Countryside Services

11.1.5 Independent Tester: Mott MacDonald Limited
Address: Spring Bank House, 33 Stamford Street, Altrincham, WA14 1ES
Fax: [Redacted]
Attention: [Redacted]

or to such other address or facsimile number as a party to this Deed may notify in writing to the other parties to this Deed.

12 Assignment

12.1 The Independent Tester shall not assign or transfer, or purport to assign or transfer, any of its rights or obligations under this Deed or sub contract the whole or any part of the Tester Services.

12.2 The Independent Tester's consent shall not be required in the case of any assignment or transfer by AmeyCespa SPV or the Agent of all or any of AmeyCespa SPV's or the Agent's rights and obligations arising out of or under this Deed to any party providing finance in relation to the Project or to any such party's nominee.
12.3 The Authority shall be permitted to assign, novate or otherwise transfer any of its rights or obligations under this Deed to any person to whom the Authority is allowed to assign, novate or otherwise transfer its rights and obligations under the Project Agreement.

12A Collateral Warranties

The Independent Tester shall provide a collateral warranty in favour of each of the Construction Contractors, in a form as stated at Schedule 4 of this Deed, if requested to do so by the Appointers within five (5) Business Days of such a request in relation to each of the Construction Contractors as the case may be from time to time.

13 Cumulative Rights and Enforcement

13.1 Any rights and remedies provided for in this Deed whether in favour of AmeyCespa SPV, AmeyCespa ODC, the Agent, the Authority or the Independent Tester are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

13.2 The duties and obligations of the Independent Tester arising under or in connection with this Deed are owed to the Appointers jointly and severally and the Appointers may accordingly enforce the provisions hereof and, subject to clause 10, pursue their respective rights hereunder in their own name, whether separately or with each other.

13.3 The Appointers covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Deed which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, which consent shall not be unreasonably withheld or delayed.

13.4 The parties to this Deed agree that the Authority and the Agent and AmeyCespa ODC shall have no liability to the Independent Tester in respect of any act or omission of, or breach of this Deed by AmeyCespa SPV.

14 Waiver

The failure of any party at any one time to enforce any provision of this Deed shall in no way affect its right thereafter to require complete performance by any other party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

15 Severability

In the event that any term, condition or provision contained in this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this Deed and the rest of this Deed shall stand, without affecting the remaining clauses.

16 Variation

A variation of this Deed is valid only if it is in writing and signed by or on behalf of each party.
Third Party Rights

Save where expressly provided for in this Deed, no person who is not a party to this Deed (including any employee, officer, agent, representative or sub-contractor of any party to this Deed) shall have right to enforce any term of this Deed which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties to this Deed.

Dispute Resolution Procedure

18.1 If a dispute or difference arises between the Appointers (or AmeyCespa SPV and/or the Agent and/or the Authority and/or the AmeyCespa ODC independently) and the Independent Tester under this Deed, such a dispute or difference will be dealt with by adjudication in accordance with the Scheme for Construction Contracts (SI 1998 No 649 as amended by SI 2011 No 1715). Any dispute which does not concern the Independent Tester shall not be governed by or otherwise subject to this clause 18.

18.2 The nomination of the adjudicator shall be done by agreement between the parties, or if no such agreement is reached within five (5) days of service of the notice of intention to refer a dispute to adjudication, the Adjudicator shall be nominated by the President or Vice President for the time being of the Chartered Institute of Arbitrators.

18.3 The parties to the adjudication shall continue to comply with, observe and perform all their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause 18 and shall give immediate effect to every decision of the adjudicator or the courts delivered under this clause.

Not used

Governing Law and Jurisdiction

20.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England.

20.2 Subject to clause 18, the parties to this Deed submit to the exclusive jurisdiction of the courts of England and Wales.

Anti-Corruption

21.1 For the purposes of this clause 21, "Bribery Act" shall mean the Bribery Act 2010 which shall include all regulations and orders made under the statute and, unless the context otherwise requires any statute, regulations or orders amending, consolidating or replacing them in force from time to time.

Independent Tester

21.2 The Independent Tester confirms to the Appointers that:

21.2.1 it has not and shall not engage in any "Corrupt Activity" (which for the purposes of this clause 21 mean extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering and/or any similar activity including, without limitation, any activity, practice and/or
conduct which would constitute an offence under Sections 1, 2 and/or 6 of the Bribery Act) in relation to the Tester Services, the Project and/or this Deed; and

21.2.2 it has not and shall not engage in any activity, practice and/or conduct which could place the Appointers in breach of Section 7(1) of the Bribery Act; and

21.2.3 it has and will maintain in place adequate procedures designed to prevent any "Associated Person" (which for the purposes of this clause 21 means a person (including an employee, agent and/or subsidiary who performs services for the Independent Tester or on its behalf) from undertaking any conduct that would give rise to an offence under Section 7 of the Bribery Act.

21.3 The Independent Tester warrants that it has complied with its obligations under clauses 21.2.1 to 21.2.3 inclusive and it expressly acknowledges that the Appointers are entitled to rely on such for the purposes of its compliance with its obligations under and or pursuant to the Bribery Act and legislation governing any Corrupt Activity.

21.4 The Independent Tester undertakes to inform the Appointers immediately in writing should such aforementioned acknowledgment change or cease to be an accurate and complete representation of its engagement in any Corrupt Activity in such manner and at such times with the intent that no omission and/or default of the Independent Tester in relation thereto shall constitute, cause or contribute to any breach by the Appointers of their obligations under or pursuant to the Bribery Act and/or any legislation in respect of Corrupt Activity.

AmeyCespa SPV and AmeyCespa ODC

21.5 AmeyCespa SPV and AmeyCespa ODC confirm to the Independent Tester that, respectively:

21.5.1 they have not and shall not engage in any Corrupt Activity in relation to the Tester Services, the Project and/or this Deed; and

21.5.2 they have not and shall not engage in any activity, practice and/or conduct which could place the Independent Tester in breach of Section 7(1) of the Bribery Act; and

21.5.3 they have and will maintain in place adequate procedures designed to prevent any Associated Person who performs services for the AmeyCespa SPV and AmeyCespa ODC from undertaking any conduct that would give rise to an offence under Section 7 of the Bribery Act.

21.6 AmeyCespa SPV and AmeyCespa ODC warrant to the Independent Tester that they have complied with their respective obligations under clauses 21.5.1 to 21.5.3 inclusive and they expressly acknowledge that the Independent Tester is entitled to rely on such for the purposes of its compliance with its obligations under and or pursuant to the Bribery Act and legislation governing any Corrupt Activity.

21.7 AmeyCespa SPV and AmeyCespa ODC undertake to inform the Independent Tester immediately in writing should such aforementioned acknowledgment change or cease to be an accurate and complete representation of its engagement in any Corrupt Activity in such manner and at such times with the intent that no omission and/or default of AmeyCespa SPV and AmeyCespa ODC in relation thereto shall constitute, cause or
contribute to any breach by the Independent Tester of their obligations under or pursuant to the Bribery Act and/or any legislation in respect of Corrupt Activity.

Counterparts

This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
Schedule 1

The Basic Services

Part A

The Basic Services to be performed by the Independent Tester under this Deed shall, without prejudice to clause 1.3 of this Deed, comprise (and the Independent Tester shall carry out and complete) all of the duties, tasks, functions and obligations attributed to the "Independent Tester" and the "Independent Certifier" in the Project Agreement, the Works and Operating Contract and the Construction Contracts and any other agreement(s) notified to the Independent Tester by AmeyCespa SPV prior to the commencement of the Tester Services (and, subject to the terms of this Deed, complying with any time limits specified in such contracts), including, but not limited to, the particular services, tasks and duties set out below:

[Redacted]
Schedule 1

Tests on Completion

Part B: Readiness Tests

Readiness Tests

The parties to this Deed acknowledge and agree that where amendments are made to the Readiness Tests contained within part 1 of schedule 5 of the Project Agreement in accordance with the terms of the Project Agreement, corresponding amendments shall be made to this Part B of Schedule 1.

1 Prior to the issue of any Readiness Test Certificate, AmeyCespa SPV shall satisfy the Independent Tester that:

1.1 the pre commissioning tests for the MT Facility, the AD Facility and the EfW Facility (as set out in the Commissioning Plan) have been performed and satisfactorily completed; and

1.2 all Necessary Consents, including but not limited to a Planning Permission and an Environmental Permit, have been obtained for the Facility and are maintained and in force.

2 For the avoidance of doubt, it is acknowledged by all Parties that any construction activities that are in progress at the date of the relevant Readiness Test which do not prejudice the ability of the relevant Facility to receive and safely treat waste in accordance with any Necessary Consents shall not prevent the issue of the relevant Readiness Test Certificate.

3 Readiness Tests for the MT Facility

3.1 AmeyCespa SPV shall provide to the Independent Tester (with a copy to the Authority’s Representative) the following documentary package no less than ten 10 Business Days prior to undertaking any Readiness Tests for the MT Facility. These are documents to be prepared by or on behalf of AmeyCespa SPV. The documentary package shall be sufficiently developed and detailed to enable the Independent Tester to perform its obligations pursuant to Appendix 3 of Part 2 of Schedule 2 (Contractor’s Proposals) of the Project Agreement, this Schedule 1 (Tests on Completion) and this Independent Tester’s Appointment and shall incorporate:

3.1.1 general arrangement, section and elevation drawings for the MT Facility;

3.1.2 relevant process and instrumentation drawings for the MT Facility;

3.1.3 electrical single line drawings for the MT Facility; and

3.1.4 relevant process operating standards.

3.2 Sufficient Works shall have been completed and operational processes are available to enable the MT Facility to comply with all relevant Legislation and Necessary Consents and to safely accept waste in accordance with the Commissioning Plan, the Waste Acceptance Protocol and the Health Safety and Welfare Plan.
3.3 Relevant staff training has taken place in accordance with paragraphs 58, 62 and 75 of Schedule 2 Part 1 of Schedule 2 (Contractor's Proposals) of the Project Agreement and signed records of training are available for inspection.

4 Readiness Tests for the AD Facility

4.1 AmeyCespa SPV shall provide to the Independent Tester (with a copy to the Authority's Representative) the following documentary package no less than ten 10 Business Days prior to undertaking any Readiness Tests for the AD Facility. These are documents to be prepared by or on behalf of AmeyCespa SPV. The documentary package shall be sufficiently developed and detailed to enable the Independent Tester to perform its obligations pursuant to Appendix 3 of Part 2 of Schedule 2 (Contractor's Proposals) of the Project Agreement, this Schedule 1 (Tests on Completion) and this Independent Tester's Appointment shall incorporate:

4.1.1 general arrangement, section and elevation drawings for the AD Facility;

4.1.2 relevant process and instrumentation drawings for the AD Facility;

4.1.3 electrical single line drawings for the AD Facility; and

4.1.4 relevant process operating standards.

4.2 Sufficient Works have been completed and operational processes are available to enable the AD Facility to comply with all relevant Legislation and Necessary Consents to safely accept waste in accordance with the Commissioning Plan, the Waste Acceptance Protocol and the Health Safety and Welfare Plan.

4.3 Relevant staff training has taken place in accordance with paragraphs 58, 62 and 75 of Schedule 2 Part 1 of Schedule 2 (Contractor's Proposals) of the Project Agreement and signed records of training are available for inspection.

5 Readiness Tests for the EfW Facility

5.1 AmeyCespa SPV shall provide to the Independent Certifier (with a copy to the Authority's Representative) the following documentary package no less than ten 10 Business Days prior to undertaking any Readiness Tests for the Energy from Waste plant. These are documents to be prepared by or on behalf of AmeyCespa SPV. The documentary package shall be sufficiently developed and detailed to enable the Independent Tester to perform its obligations pursuant to Appendix 3 of Part 2 of Schedule 2 (Contractor's Proposals) of the Project Agreement, this Schedule 1 (Tests on Completion) and this Independent Tester's Appointment shall incorporate:

5.1.1 general arrangement, section and elevation drawings for the EfW Facility;

5.1.2 relevant process and instrumentation drawings and heat balance diagram for the EfW Facility;

5.1.3 electrical single line drawings for the EfW Facility; and

5.1.4 relevant process operating standards.
5.2 Sufficient Works have been completed and operational processes are available to enable the EIW Facility to comply with all relevant Legislation and Necessary Consents to safely accept waste in accordance with the Commissioning Plan, the Waste Acceptance Protocol and the Health Safety and Welfare Plan.

5.3 Relevant staff training has taken place in accordance with paragraphs 58, 62 and 75 of Schedule 2 Part 1 of Schedule 2 (Contractor's Proposals) of the Project Agreement and signed records of training are available for inspection.

6 Readiness Test for the Visitor Centre (Claro House)

6.1 AmeyCespa SPV shall provide to the independent Certifier (with a copy to the Authority's Representative) the following documentary package no less than ten 10 Business Days prior to undertaking the Readiness Tests for the Visitor Centre. These are documents to be prepared by or on behalf of AmeyCespa SPV. The documentary package shall be sufficiently developed and detailed to enable the Independent Tester to perform its obligations pursuant to Appendix 3 of Part 2 of Schedule 2 (Contractor's Proposals) of the Project Agreement, this Schedule 1 (Tests on Completion) and this Independent Tester's Appointment, and shall incorporate:

6.1.1 general arrangement, section and elevation drawings for the Visitor Centre civils works;

6.1.2 electrical single line drawings for the Visitor Centre; and

6.1.3 relevant process operating standards.

6.2 The Visitor Centre works comply with all relevant Legislation and Necessary Consents have been provided in accordance with the Commissioning Plan, Health, Safety and Welfare Plan.

6.3 Relevant staff training has taken place in accordance with paragraphs 58, 62 and 75 of Schedule 2 Part 1 of Schedule 2 (Contractor's Proposals) of the Project Agreement and signed records of training are available for inspection.
The parties to this Deed acknowledge and agree that where amendments are made to the Facility Take Over Tests contained within part 2 of schedule 5 of the Project Agreement in accordance with the terms of the Project Agreement, corresponding amendments shall be made to this Part C of Schedule 1.

1  **MT Facility Take Over Tests**

   The “**MT Facility Take Over Tests**” shall mean:

1.1 The Readiness Tests for the MT Facility set out in paragraph 3 (Readiness Tests for the MT Facility) in Part B (Readiness Tests) of this schedule 1 (Tests on Completion) have been satisfactorily passed.

1.2 First draft issues of "as built drawings" and operation and maintenance manuals for the MT Facility are available for inspection.

1.3 The MT Facility complies with the relevant aspects of the Authority's Requirements in relation to the Works.

1.4 The MT Facility complies with the relevant requirements of Part D to this schedule 1.

1.5 The MT Take Over Test (as defined in Schedule 2, Part 2, Appendix 3 of the Project Agreement) has been satisfactorily passed.

1.6 AmeyCespa SPV has satisfied the Independent Tester that the MT Facility Take Over Tests set out in paragraphs 1.1 to 1.5 (inclusive) above have been performed in accordance with any relevant requirements and/or parameters set out in the Commissioning Plan.

2  **AD Facility Take Over Tests**

   The “**AD Facility Take Over Tests**” shall mean:

2.1 The Readiness Tests for the AD Facility set out in paragraph 4 (Readiness Test for AD Facility) in Part B (Readiness Tests) of this schedule 1 (Tests on Completion) have been satisfactorily passed.

2.2 First draft issues of "as built drawings and operation and maintenance manuals for the AD Facility are available for inspection.

2.3 The AD Facility complies with the relevant aspects of the Authority's Requirements in relation to the Works.

2.4 The AD Facility complies with the relevant requirements of Part D to this schedule 1.

2.5 The AD Take Over Test (as defined in Schedule 2, Part 2, Appendix 3 of the Project Agreement) has been satisfactorily passed.
2.6 AmeyCespa SPV has satisfied the Independent Tester that the AD Facility Take Over Tests set out in paragraphs 2.1 to 2.5 (inclusive) above have been performed in accordance with any relevant requirements and/or parameters set out in the Commissioning Plan.

3 EFW Facility Take Over Tests

The "EFW Facility Take Over Tests" shall mean:

3.1 The Readiness Tests for the EFW Facility set out in paragraph 5 (Readiness Test for the EFW Facility) in Part B (Readiness Tests) of this schedule 1 (Tests on Completion) have been satisfactorily passed.

3.2 First draft issues of "as built drawings" and operation and maintenance manuals for the EFW Facility are available for inspection.

3.3 The EFW Facility complies with the relevant aspects of the Authority's Requirements in relation to the Works.

3.4 The EFW Facility complies with the relevant requirements of Part D to this schedule 1.

3.5 The EFW Take Over Test (as defined in Schedule 2, Part 2, Appendix 3 of the Project Agreement) has been satisfactorily passed.

3.6 AmeyCespa SPV has satisfied the Independent Tester that the EFW Facility Take Over Tests set out in paragraphs 3.1 to 3.5 (inclusive) above have been performed in accordance with any relevant requirements and/or parameters set out in the Commissioning Plan.

4 Visitors Centre Facility Take Over Tests

The "Visitor Centre Facility Take Over Tests" shall mean:

4.1 The Readiness Tests for the Visitor Centre set out in paragraph 6 (Readiness Test for the Visitor Centre) in Part B (Readiness Tests) of this schedule 1 (Tests on Completion) have been satisfactorily passed.

4.2 First draft issues of as built drawings and operation and maintenance manuals for the Visitor Centre are available for inspection.

4.3 The Visitors Centre is in accordance with the relevant aspects of the Authority's Requirements in relation to the Works.

4.4 The Visitors Centre complies with the relevant requirements of Part D to this schedule 1.

4.5 The Visitor Centre Take Over Test (as defined in Schedule 2, Part 2, Appendix 3 of the Project Agreement) has been satisfactorily passed.

4.6 AmeyCespa SPV has satisfied the Independent Tester that the Visitor Centre Facility Take Over Tests set out in paragraphs 4.1 to 4.5 (inclusive) above have been performed in accordance with any relevant requirements and/or parameters set out in the Commissioning Plan.
Part D: Relevant requirements from Schedule 2 (Contractor’s Proposals) of the Project Agreement

The parties to this Deed acknowledge and agree that where amendments are made to the elements of the Facility Take Over Tests contained within part 3 of schedule 5 of the Project Agreement in accordance with the terms of the Project Agreement, corresponding amendments shall be made to this Part D of Schedule 1.

A. MT Facility

1. The MT Facility includes the following items of plant and equipment, arranged as two parallel treatment lines, allowing independent operation:

   - two in-feed chain belt conveyors with two hoppers;
   - two primary trommels;
   - two bag openers;
   - two organic waste trommels;
   - two ballistic separators five Near Infrared (NIR) units;
   - x-ray sorting unit;
   - four overbelt magnet separators;
   - three eddy current separators;
   - metal baler;
   - a paper and cardboard shredder;
   - two flip flop type screens;
   - an automatic baler;
   - a moving floor – Recylates Storage Bunkers discharging system;
   - two waste handling crane systems;
   - a sorting cabin;
   - two compressor units;
   - a de-dusting system for the Processing Hall;
   - a process control system;
   - a compressed air system for optical separation; and
Redacted Copy

- all associated conveyor belts. At least two complete sets of repair parts for conveyor belts are available on Site.

2. The waste conveyor system forming part of the MT Facility allows for a complete bypass of the AD Facility.

B. AD Facility

1. The AD Facility includes the following items of plant and equipment:
   - one dosing unit;
   - four screw conveyors;
   - two feeding and one extraction pump;
   - one reactor;
   - one process water tank;
   - one hydraulic group;
   - one pneumatic group;
   - one gas storage unit with water seal;
   - one flare;
   - one biogas cooling unit;
   - two blowers;
   - one iron chloride dosing unit;
   - one steam generator;
   - two biogas engines/generators;
   - switch cabinets;
   - one PLC and two PCs with software; and
   - connection of the two gas engines to the 400V power supply.

C. EfW Facility

1. The EfW Facility includes the following features and items of plant and equipment:
   - waste storage bunkers;
   - reloading hopper;
   - furnace;
• boiler and economiser;
• DeNOx System;
• Air Pollution Control (APC) system;
• turbine and Air Cooled Condenser (ACC);
• ash handling system;
• the grate dimensions are 10m in length and 5m in width, and the grate will utilise six (6) rollers;
• a start-up burner, located at the bottom of the grate;
• a support burner in the lateral wall at the inlet of the first pass; and
• a cladding of Inconel, starting in the first pass 0.3m before the top refractory limit, including the roof, and finishing at the entrance of the second pass. The first three rows of the final superheater will also be covered by an Inconel cladding.

2. The steam turbine is equipped with a bypass to enable the boiler to operate without the turbine.

3. Without prejudice to paragraph E1 below, the EfW Facility shall constitute an R1 energy recovery plant fulfilling the EU energy efficiency requirements (R1 Energy Efficiency formula in Annex II of the Waste Framework Directive).

D. Visitor Centre

1. A Visitor Centre is provided for business, educational and community visits in association with the development and to facilitate waste awareness activities.

2. The Visitor Centre will provide access to a visitor’s viewing walkway inside the MT and EfW buildings.

E. Additional items of the Works to be subject to Take Over Certification

The Parties acknowledge and agree (and shall make the Independent Tester aware) that the Facility Take Over Tests in respect of the final Facility to be subjected to its Facility Take Over Tests shall include review and certification by the Independent Tester of the following requirements which relate to the Facility generally:

Environmental Permit:

1. The Facility meets the following requirements of the Environmental Permit:

   • The Continuous Emission Monitors employed in the EfW Facility have been certified by MCERTS.

   • For the period of the EfW Take Over Test as set out in Appendix 3 of Part 2 of Schedule 2 the EfW Facility has successfully met the requirements of the Environmental Permit relating to point source emissions to air-emission limits and monitoring (Table S3.1 in Schedule 3 to the Environmental Permit).
• Each of the pre-operational conditions within the Environmental Permit have been successfully completed prior to commissioning (and where required by the Environmental Permit after completion of furnace design or before any furnace operation).

Performance:

2. Having regard to the as built design of the MT Facility and EfW Facility, the relevant Facility is in the opinion of the Independent Tester (such opinion to be provided in accordance with the requirements of the Independent Tester's Appointment) capable of satisfying the following minimum performance requirements:

• recyclates removal: five percent (5%) of Contract Waste; and
• diversion of Contract Waste from landfill: ninety percent (90%) of Contract Waste.

Waste Reception:

3. Provision has been made for the quarantining of vehicles and/or wastes arriving at the Facility.

4. The database which is accessed via the computerised data logging and transmission equipment provided with the weighbridges is capable of recording the following categories of data for each waste and product (i.e. outgoing) consignment:

• transaction date;
• origin – i.e. council, HWRC, etc.:
• sequential transaction number (or weighbridge ticket if different);
• destination or origin Site name;
• licence number;
• description of waste in accordance with the European Waste Catalogue;
• time weighed in;
• vehicle registration;
• driver's reference;
• transfer note number, if issued;
• gross weight;
• net weight;
• actual tare weight; and
• time weighed off.

5. All weighbridges are EU approved - Directive Number 90/384 EEC.
6. There is storage capacity on Site equivalent to a volume of 17,000 m3 for at least seven (7) days of maximum Contract Waste design throughput (circa 5,800 tonnes).

7. There are six (6) tipping bays for the MT Facility and four (4) tipping bays for the EfW Facility.

8. The tipping hall is fully enclosed save for the requisite door openings and has a functioning negative pressure system installed.

9. The tipping hall has an internal clearance providing ready access to all the bunkers with a minimum tipping height of eight (8) metres and access and exit ramps are designed to appropriate clearances.

10. The tipping hall includes:

   - marked tipping bays of equal width which will be distributed evenly across the face of the bunker, with a minimum clearance from wheel-stop to bunker wall of 2.5m;

   - tipping chutes protected with wear plates;

   - tipping bays to accommodate all Contract Waste haulage and delivery vehicles, providing turning capability for the largest 44 tonne gross vehicle weight (gvw) Authorised Vehicles, a vehicle reversing guide with clear markers for reversing delivery vehicles;

   - safety features (such as wheel kerbs or beams) to prevent vehicles backing into the bunker, striking walls or structures, and to prevent any collisions between the waste crane and a vehicle in its fully extended tipping position;

   - automatic fast-acting doors that can be opened manually in emergencies;

   - independent operation of each tipping bay, so all bays can be used simultaneously for a combination of vehicles; and

   - a concrete walkway, with a protective vehicle barrier where appropriate around the entire external perimeter of the tipping apron.

Documentation:

11. A Schedule of Programmed Maintenance has been developed and is available for inspection at the Site.
## Schedule 2

### Payments

#### Part 1 - Payments

<table>
<thead>
<tr>
<th>Month (following financial close)</th>
<th>Fee £</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 (Jan 2015)</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>4</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>5</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>6</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>7</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>8</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>9</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>10</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>11</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>12</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>13</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>14</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>15</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>16</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>17</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>18</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>19</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>20</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>21</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>22</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>23</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>24</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>25</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>26</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>27</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>28</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>29</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>30</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>31</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>32</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>33</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>34</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>35</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>36</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>37</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>38</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>Month (following financial close)</td>
<td>Fee £</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>39</td>
<td>[Redacted]</td>
</tr>
</tbody>
</table>

Total Fee: £[Redacted] (excluding VAT)
Redacted Copy

Part 2 - Hourly Rates

(Clauses 4.2 to 4.5)

Additional services provided by the Independent Tester shall be charged at the following rates:

<table>
<thead>
<tr>
<th>Role</th>
<th>Hourly Rate</th>
<th>Daily Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>Senior Consultant</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>Consultant</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>Project Engineer</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
</tr>
<tr>
<td>CAE Engineer</td>
<td>[Redacted]</td>
<td>[Redacted]</td>
</tr>
</tbody>
</table>

Mott MacDonald's staff hourly rates for additional works are provided above. The rates quoted are exclusive of VAT and expenses, and are subject to adjustment on 01 January 2015 and thereafter annually on 01 January each year to account for inflation. Adjustments shall be applied at [Redacted].
**Schedule 3**

**Form of Certificate in relation to completion of [Readiness Tests/Facility Take Over Tests]**

**Acceptance Certificate**

<table>
<thead>
<tr>
<th>Project:</th>
<th>North Yorkshire County Council Waste Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority:</td>
<td>North Yorkshire County Council</td>
</tr>
<tr>
<td>Project Co:</td>
<td>[AmeyCespa SPV]</td>
</tr>
<tr>
<td>Contractor:</td>
<td>[AmeyCespa ODC]</td>
</tr>
<tr>
<td>Construction Contractor:</td>
<td></td>
</tr>
<tr>
<td>Independent Tester:</td>
<td>[Clause 21 and Schedule 5 of the Project Agreement]</td>
</tr>
<tr>
<td>Certificate Issued pursuant to:</td>
<td>[Clause [Redacted] of the Works and Operating Contract]</td>
</tr>
<tr>
<td>Date of Acceptance:</td>
<td>[Clause [ ] of [insert relevant Construction Contract]]</td>
</tr>
</tbody>
</table>

We hereby certify that the [Specify] Facility has achieved the [Readiness Test/Facility Take Over Test]. All matters certified herein are given pursuant to the provisions and requirements set out in, and subject to the terms of our appointment deed date [insert date].

Signed:

on behalf of:

Date:
Schedule 4

Form of Collateral Warranty

THIS DEED is made on [ ]

BETWEEN:

(1) [INDEPENDENT TESTER] (Company No. [ ]) whose registered office is at [ ] (the "Independent Tester")

(2) [CONSTRUCTION CONTRACTOR] (Company No. [ ]) whose registered office is at [ ] (the "Beneficiary"); and

BACKGROUND

(A) By a contract dated [ ] (the "Project Agreement") the Authority has appointed AmeyCespa (AWRP) SPV Limited (the "Contractor") to carry out, at the Site, the provision of residual waste treatment facilities to the Authority as contemplated by the Project Agreement including the carrying out of the design, construction, commissioning and testing of the Works and the provision of the Services.

(B) AmeyCespa (AWRP) ODC Limited (the "ODC Contractor") has been appointed by the Contractor under a contract dated [ ] (the "ODC Contract") to carry out, at the Site, the design, construction, commissioning and testing of the Works and the provision of the Services.

(C) The ODC Subcontractor is about to enter into the Construction Contracts under which the Construction Contractors (including the Beneficiary) will deliver the Facility.

(D) The Independent Tester has been jointly appointed by the Authority, the Contractor, the Facility Agent and the ODC Contractor (the "Independent Tester's Appointment") to carry out certain duties under the Project Agreement.

(E) The Independent Tester is obliged under the Independent Tester's Appointment to give a warranty in this form in favour of the Construction Contractor.

1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:

"AD Facility" means the anaerobic digestion facility constructed by the relevant Construction Contractor in relation to the Project;

"Authority" means North Yorkshire County Council;

"Civils Works" means the civil construction works undertaken by the relevant Construction Contractor in relation to the Project;

"EFW Facility" means the energy from waste facility constructed by the relevant Construction Contractor;
"MT Facility" means the mechanical treatment facility constructed by the relevant Construction Contractor in relation to the Project;

"Tester Services" means the services provided by the Independent Tester under the Independent Tester’s Appointment;

"Visitor Centre" means the visitor centre at Claro House constructed by the relevant Construction Contractor in relation to the Project; and

"Works" means all of the works to deliver the AD Facility, the Civils Works, the EIW Facility, the MT Facility and the Visitor Centre and all supporting infrastructure including associated plant and amenities.

1.2 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Independent Tester’s Appointment.

2 OPERATIVE PROVISIONS

In consideration of the payment of ten pounds (£10.00) by the Beneficiary to the Independent Tester, receipt of which the Independent Tester acknowledges, the Independent Tester covenants to the Beneficiary as set out in this warranty.

3 INDEPENDENT TESTER’S WARRANTY AND LIABILITY

3.1 The Independent Tester warrants to the Beneficiary that it has carried out and will continue to carry out its duties under the Independent Tester’s Appointment in accordance with the Independent Tester’s Appointment and that it has exercised and will continue to exercise, in carrying out such duties, the level of skill, care and diligence reasonably to be expected from an appropriately qualified and competent professional independent tester providing those services in relation to a project of a similar size, value, complexity and scope to the Works.

3.2 The Independent Tester shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Appointers under the Independent Tester’s Appointment, and shall have no liability under this Deed that is of greater or of longer duration than it would have had if the Beneficiary had been a party to the Independent Tester’s Appointment as joint employer with the Appointers. Upon the expiration of twelve (12) years from the date of completion of the Tester Services in accordance with the Independent Tester’s Appointment, the liability of the Independent Tester under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Independent Tester and notified by the Beneficiary to the Independent Tester in writing prior thereto.

3.3 Further and without prejudice to the aforesaid limit of liability any such liability of the Independent Tester for any loss or damage ("the loss or damage") in respect of any claim or claims shall be limited to such sum or sums as it would be just and equitable for the Independent Tester to pay having regard to the Independent Tester’s responsibility for the same and on the basis that:

3.3.1 all other parties appointed or to be appointed by the Authority and/or Contractor to perform related services in connection with the Project shall be deemed to have provided undertakings on terms no less onerous than in the Independent
Tester's Appointment and shall be deemed to have paid to the Authority and/or Contractor such contribution as it would be just and equitable for them to pay having regard to their responsibility for the loss or damage; and

3.3.2 it shall be deemed that all such other parties appointed by the Authority and/or Contractor as referred to in clause 3.3.1 above have not limited or excluded their liability to the Authority and/or Contractor for the loss or damage in any way which may be prejudicial to the Independent Tester's liability under this clause.

4 NOT USED

5 INSURANCE

5.1 The Independent Tester hereby covenants with the Beneficiary to:

5.1.1 take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be not less than ten million pounds sterling (£10,000,000) in respect of any one claim or series of claims arising out of or attributable to the same originating cause in respect of any neglect, error or omission on the Independent Tester's part in the performance of its obligations under the Independent Tester's Appointment and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after the earlier of:

(a) the date of completion of the Tester Services; and

(b) the termination of this Deed,

provided that such insurance is generally available in the market to members of the Independent Tester's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Independent Tester's own claims record or other acts, omissions, matters or things peculiar to the Independent Tester will be deemed to be within the reasonable rates;

5.1.2 provide certificates (as and when reasonably required by the Beneficiary) as evidence that the Professional Indemnity insurance referred to in clause 5.1.1 is in full force and effect from the date of the Independent Tester's Appointment (such evidence to include details of the cover);

5.1.3 provide the Beneficiary with notice of:

(a) any cancellation of the Professional Indemnity insurance referred to in clause 5.1.1 as soon as is reasonably practicable upon becoming aware of the relevant cancellation; and

(b) any adverse material changes to or suspension of cover relevant to the Tester Services not less than thirty (30) days prior to the relevant change or suspension;
inform the Beneficiary as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 5.1.1 in respect of the Tester Services in excess of one million pounds (£1,000,000) and provide such information to the Beneficiary as the Beneficiary may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

5.2 The obligations in this clause 5 shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Beneficiary.

6 NOTICES

Any notice to be given by any party will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45 pm on a Business Day and otherwise on the next Business Day.

7 ASSIGNMENT

The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Independent Tester on two occasions only and the Beneficiary will notify the Independent Tester in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Independent Tester will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8 BENEFICIARY’S REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Independent Tester including without prejudice to the generality of the foregoing any remedies in negligence.

9 INSPECTION OF PROJECT DOCUMENTS

The Independent Tester's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for its benefit or on its behalf.
APPLICABLE LAW AND JURISDICTION

This Deed and any non-contractual obligations arising out of or in connection with it will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the courts of England and Wales.

THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

EXECUTED AS A DEED by the Independent Tester acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Beneficiary acting by a Director and its Secretary/two Directors:

Director

Director/Secretary
EXECUTED as a DEED by the parties hereto or their appointed representatives and delivered on the date of this Agreement.

SIGNED as a deed by:

for and on behalf of

AmeyCespa (AWRP) SPV LIMITED

in the presence of a witness:

Signature of Witness
Name:
Address:
Occupation:

SIGNED as a deed by:

for and on behalf of

AmeyCespa (AWRP) ODC LIMITED

in the presence of a witness:

Signature of Witness
Name:
Address:
Occupation:
The **COMMON SEAL** of **NORTH YORKSHIRE COUNTY COUNCIL**
was hereunto affixed this [   ] day of [   ] 2014 in the presence of:

**Authorised Signatory**

**EXECUTED** as a deed and )
delivered by **NORDDEUTSCHE** )
**LANDESBANK GIROZENTRALE** )
(LONDON BRANCH) as )
Intercreditor Agent acting by two )
of its directors or a director and its )
secretary:

**Director**

**Director/Secretary**
EXECUTED and DELIVERED as a deed by MOTT MACDONALD LIMITED acting by the signatures of:

............................................................
Director

............................................................
Director/Secretary
Schedule 15

Part 1: Form of Works and Operating Sub-Contractor Collateral Warranty
dated

AmeyCespa (AWRP) SPV Limited
and
North Yorkshire County Council
and
AmeyCespa (AWRP) ODC Limited

Authority/Works and Operating Contractor
Collateral Warranty
Warranty

dated 2014

Parties

(1) AmeyCespa (AWRP) SPV Limited a company incorporated in England and Wales (company registered number 08717850) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (the Contractor),

(2) North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton DL7 8AH (the Beneficiary), and

(3) AmeyCespa (AWRP) ODC Limited a company incorporated in England and Wales (registered number 09200149) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (the Works and Operating Contractor).

Background

(A) The Beneficiary desires to obtain waste treatment services in North Yorkshire (the Project).

(B) By an agreement of even date (the Project Agreement) the Beneficiary has appointed the Contractor for the carrying out of the Project.

(C) By an agreement of even date (the Works and Operating Contract) the Contractor has appointed the Works and Operating Contractor in relation to the Works and Services to be carried out for the purposes of the Project.

(D) The Works and Operating Contractor is obliged under the Works and Operating Contract to give a warranty in this form in favour of the Beneficiary.

1 Operative Clauses

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Works and Operating Contractor, receipt of which the Works and Operating Contractor acknowledges and the covenants contained herein, the parties to this Deed agree as follows:

2 Definitions and Interpretation

2.1 Terms used in this Deed that are defined in the Works and Operating Contract shall have the meanings given to them in the Works and Operating Contract as appropriate, unless otherwise defined herein.

2.2 Save to the extent that the context or the express provision of this Deed otherwise require:

2.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed,

2.2.2 all references to clauses are references to clauses of this Deed,
2.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time,

2.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision,

2.2.5 any reference to time of day shall be a reference to London time,

2.2.6 the words, herein, hereto and hereunder refer to this Deed as a whole and not to the particular clause in which such word may be used,

2.2.7 words importing the singular include the plural and vice versa,

2.2.8 words importing a particular gender include all genders,

2.2.9 person includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association,

2.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation,

2.2.11 references to party means a party to this Deed and references to parties shall be construed accordingly,

2.2.12 all monetary amounts are expressed in pounds sterling,

2.2.13 references to the word includes or including are to be construed without limitation, and

2.2.14 the obligations of any party under this Deed are to be performed at that party’s own cost and expense.

3 Works and Operating Contractor’s Warranty and Liability

3.1 The Works and Operating Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Works and Operating Contract in accordance with the Works and Operating Contract.

3.2 The Works and Operating Contractor shall have no liability under this Deed which when aggregated with any liability under the Works and Operating Contract is greater or of a longer duration than it would have had if the Beneficiary had been a party to the Works and Operating Contract as joint Contractor.
Documents

4.1 In relation to all Project Data, the Works and Operating Contractor where legally able and subject to using reasonable endeavours to obtain any necessary third party consents hereby grants (or, if such grant cannot legally take place until a later date, agrees to use reasonable endeavours to grant) subject to clause 4.3 to the Beneficiary with effect from the date of this Deed or in the case of the Project Data not yet in existence with effect from the creation thereof, a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of the Works and Operating Contract or determination of the employment of the Works and Operating Contractor under the Works and Operating Contract or the abandonment or completion of the Works or of its obligations under the Works and Operating Contract or any dispute thereunder or hereunder) to use and to reproduce all Project Data for the Approved Purposes. Such licence will carry the right to grant sub-licences and will be transferable (but only to any person to whom the Beneficiary assigns or otherwise disposes of its rights under the Project Agreement).

4.2 The Beneficiary shall not hold the Works and Operating Contractor liable for any use the Beneficiary or its sub-licensees may make of the Project Data other than the Approved Purposes unless the Works and Operating Contractor authorises such use and confirms that the Project Data is suitable for it.

4.3 The Works and Operating Contractor makes available to the Beneficiary free of charge (and hereby irrevocably licences the Beneficiary to use) all Project Data that might reasonably be required by the Beneficiary, and the Works and Operating Contractor shall ensure that it obtains all necessary licences permissions and consents to ensure that it can make the Project Data available to the Beneficiary on those terms for the Approved Purposes and in this clause 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.

4.4 The Works and Operating Contractor warrants to the Beneficiary that no infringement of any patent, trade mark, registered design, copyright or other registrable or proprietary intellectual property rights of any kind whether in the United Kingdom or elsewhere will result from the performance of the Works and Operating Contract or the operation or ownership of the Works by the Beneficiary.

4.5 Subject to clauses 4.1 and 4.3, the copyright in the Project Data is and shall remain vested in the Works and Operating Contractor or the originator thereof.

Insurance

5.1 The Works and Operating Contractor hereby covenants with the Beneficiary to take out and maintain professional indemnity insurance cover with a limit of indemnity of not less than £10,000,000 for any one occurrence or series of occurrences arising out of any one event in relation to the Works and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until 12 years after practical completion of the Works, to the extent that such insurance is generally available in the European market to design and build contractors.

5.2 As and when reasonably required by the Beneficiary the Works and Operating Contractor shall produce for inspection documentary evidence to the reasonable satisfaction of the
SCHEDULE 15 - Redacted Copy

Beneficiary that the insurance referred to in clause 5.1 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

5.3 The Works and Operating Contractor shall inform the Beneficiary if the insurance required by clause 5.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Works and Operating Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

6 Notices

6.1 All notices under this Deed shall be in writing and all certificates, notices or written instructions to be given under the terms of this Deed shall be served by sending the same by first class post or by hand, leaving the same at in the case of the Contractor at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ, FAO Company Secretary, in the case of the Beneficiary at County Hall, Racecourse Lane, Northallerton DL7 8AH, FAO Assistant Chief Executive (Legal and Democratic Services), and in the case of the Works and Operating Contractor at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ, FAO Company Secretary.

6.2 Notices shall be effective:

6.2.1 by post, upon the earlier of actual receipt and five Business Days after mailing; or

6.2.2 by hand, upon delivery.

7 Assignment

Without prejudice to the provisions of clause 11, the Beneficiary may, without the consent of any other party, transfer all of its rights and obligations under this Deed to any person to whom the Beneficiary assigns or otherwise disposes of its rights under the Project Agreement. The Beneficiary shall notify the Works and Operating Contractor promptly in writing following any such transfer specifying the name and address of the transferee and the date of the transfer.

8 Beneficiary's Remedies

Subject to clause 3.2, the rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Works and Operating Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

9 Inspection of Documents

The Works and Operating Contractor's liabilities under this Deed shall not be in any way reduced or extinguished by reason of any inspection or approval of the Documents, or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure be made for its benefit or on its behalf.
SCHEDULE 15 - Redacted Copy

10 Standards of Products and Materials

10.1 The Works and Operating Contractor warrants that it has exercised and shall exercise reasonable skill and care in accordance with this Deed to see that new materials only will be used in carrying out the Works (unless otherwise agreed or required in accordance with the Project Agreement) and all goods used or included in the Works will be of satisfactory quality and that 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 works and operating contractors or members of the relevant 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.

10.2 If in the performance of its duties under the Works and Operating Contract the Works and Operating Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Works and Operating Contractor shall notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Works and Operating Contractor to inspect or check the work of others which is not required by the Works and Operating Contract.

11 Step-in Rights

In this clause 11:

Direct Agreement means the agreement between the Works and Operating Contractor, the Contractor and the Trustee relating to the Works and Services, and

Trustee has the meaning given in the Project Agreement.

11.1 The Beneficiary acknowledges that the Contractor and the Works and Operating Contractor have entered into the Direct Agreement pursuant to which the Trustee may exercise certain rights of step-in, step-out and substitution (as more particularly described therein). The Works and Operating Contractor undertakes to provide to the Beneficiary:

11.1.1 a copy of any notice of termination that the Works and Operating Contractor gives to the Contractor under the Works and Operating Contract;

11.1.2 a copy of any notice that the Works and Operating Contractor gives to the Trustee in accordance with the provisions of the Direct Agreement (including all accompanying details); and

11.1.3 a copy of any notice of suspension that the Works and Operating Contractor gives to the Contractor under the Works and Operating Contract.

11.2 The Works and Operating Contractor undertakes not to exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Works and Operating Contract or its employment under it without first giving to the Beneficiary not less than twenty (20) Business Days’ prior written notice specifying:
SCHEDULE 15 - Redacted Copy

11.2.1 the Works and Operating Contractor's ground for terminating or treating as terminated or repudiated the Works and Operating Contract or its employment under it;

11.2.2 the amount (if any) of moneys outstanding under the Works and Operating Contract which the Works and Operating Contractor has actual knowledge are due and payable but unpaid by the Contractor; and

11.2.3 any other material obligations or liabilities, of which the Works and Operating Contractor has actual knowledge which should have been performed or discharged by the Contractor under the Construction Sub-Contract.

11.3 Within the period of twenty (20) Business Days referred to in clause 11.2:

11.3.1 the Beneficiary may give written notice to the Works and Operating Contractor that the Beneficiary shall henceforth become the Contractor under the Works and Operating Contract to the exclusion of the Contractor and thereupon the Works and Operating Contractor shall admit that the Beneficiary is the Contractor and the Works and Operating Contract shall be and remain in full force and effect notwithstanding any of the said grounds;

11.3.2 if the Beneficiary has given such notice as aforesaid under clause 11.3.1 or a notice under clause 11.6, the Beneficiary shall as soon as practicable thereafter remedy any outstanding breach by the Contractor which property has been included in the Works and Operating Contractor's specified grounds pursuant to clause 11.2.1 and which is capable of remedy by the Beneficiary;

11.3.3 if the Beneficiary has given such notice as aforesaid or under clause 11.3.1 or clause 11.6, the Beneficiary shall from the service of such notice become responsible for all sums properly payable to the Works and Operating Contractor under the Works and Operating Contract but the Beneficiary shall in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Works and Operating Contract; and

11.3.4 the Beneficiary shall perform any outstanding obligations notified under clause 11.2.3.

11.4 On receipt of any notice under clause 11.3.1, the Works and Operating Contractor shall inform the Beneficiary in writing as soon as reasonably practicable of:

11.4.1 any change in sums, obligations or liabilities referred to in clause 11.2; and

11.4.2 any further sums, obligations or liabilities thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or undischarged (as the case may be),

in each case of which the Works and Operating Contractor has actual knowledge before the date of step-in.

11.5 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Works and Operating Contractor, the Beneficiary shall not be under any obligation to the Works and Operating Contractor nor shall the Works and Operating Contractor have any claim or cause of action against the
Beneficiary unless and until the Beneficiary has given written notice to the Works and Operating Contractor pursuant to clause 11.3.1 or clause 11.6.

11.6 The Works and Operating Contractor further covenants with the Beneficiary that if the Project Agreement is terminated by the Beneficiary, the Works and Operating Contractor shall, if requested by the Beneficiary, by notice in writing and subject to clauses 11.3.2 and 11.3.3 accept the instructions of the Beneficiary to the exclusion of the Contractor in respect of the Works and/or Services upon the same terms and conditions as the Works and Operating Contract and shall if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Contractor under the Works and Operating Contract.

11.7 Where the Works and Operating Contractor has given rights in relation to the Works and Operating Contract similar to those contained in this clause 11 to any person other than the Trustee then if the Beneficiary serves notice under clauses 11.3.1 or 11.6 and any such other person serves equivalent notice under any agreement between the Works and Operating Contractor and such other person, the notice served by the Beneficiary shall prevail over any notice served by any other person.

11.8 The Contractor acknowledges that:

11.8.1 the Works and Operating Contractor shall be entitled to rely on a notice given to the Works and Operating Contractor by the Beneficiary under clause 11.6 as conclusive evidence that the Project Agreement has been terminated by the Beneficiary;

11.8.2 the Works and Operating Contractor shall be entitled to accept instructions from the Beneficiary to the exclusion of the Contractor in respect of the Works upon the same terms and conditions as the Works and Operating Contract; and

11.8.3 the Contractor shall, if so requested, following termination of the Project Agreement enter into a novation agreement whereby the Beneficiary is substituted for the Contractor under the Works and Operating Contract.

11.9 The Beneficiary may by notice in writing to the Works and Operating Contractor appoint another person to exercise its rights under this clause 11 subject to the Beneficiary remaining liable to the Works and Operating Contractor as guarantor for its appointee in respect of its obligations under this Deed.

12 Third Party Rights

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13 Counterparts

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.
Waiver

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

Severability

If any condition, any clause or provision of this Deed not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.

Amendments

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the parties.

Applicable Law and Jurisdiction

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

SIGNED as a deed by:  

)  

)  

)  

for and on behalf of

AMEYCESPA (AWRP) SPV LIMITED

in the presence of a witness:

Signature of Witness

Name:

Address:

Occupation:
The COMMON SEAL of NORTH  
YORKSHIRE COUNTY COUNCIL  
was hereunto affixed this  
day of  
2014 in the presence  
of:  

Authorised Signatory  

SIGNED as a deed by:  

for and on behalf of  

AMEYCESPA  (AWRP)  ODC  
LIMITED  

in the presence of a witness:  

Signature of Witness  

Name:  

Address:  

Occupation:
Schedule 15

Part 1: Form of Authority/Construction Contractor Collateral Warranty (AD Facility)
dated

AmeyCespa (AWRP) ODC Limited
and
North Yorkshire County Council
and
Organic Waste Systems N.V.

Authority Collateral Warranty
Warranty
dated

Parties

(1) AmeyCespa (AWRP) ODC Limited a company incorporated in England and Wales (registered number 9200149) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ (the Works and Operating Contractor),

(2) North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton, DL7 8AH (the Beneficiary), and

(3) Organic Waste Systems N.V. (national number 0433270195) of Dok-Noord 5, B-9000 Gent. Belgium (the Sub-Contractor).

Background

(A) The Beneficiary desires to obtain waste treatment services in North Yorkshire (the Project).

(B) By an agreement dated 26 August 2011 the Beneficiary appointed Allerton Waste Recovery Park Interim SPV Limited (company registered number 07580751) for the carrying out of the Project (the Project Agreement).

(C) The Project Agreement has been novated to AmeyCespa (AWRP) SPV Limited (company registered number 08717850) (the Contractor).

(D) By an agreement dated on or around the date of this Deed (the Works and Operating Contract) the Contractor has appointed the Works and Operating Contractor to carry out certain works in relation to the Project.

(E) By an agreement dated 26 August 2011 between the Sub-Contractor and AmeyCespa Limited (company registered number 07333225), but novated to the Works and Operating Contractor on or around the date of this Deed (the Contract), the Works and Operating Contractor has further appointed the Sub-Contractor to carry out certain works in relation to the Project (the Works).

(F) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

1 Operative Provisions

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges and the covenants contained herein, the parties to this Deed agree as follows.

2 Definitions and Interpretation

2.1 Terms used in this Deed that are defined in the Contract shall have the meanings given to them in the Contract as appropriate, unless otherwise defined herein.

2.2 Save to the extent that the context or the express provision of this Deed otherwise require:
Redacted Copy

2.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed,

2.2.2 all references to clauses are references to clauses of this Deed,

2.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time,

2.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision,

2.2.5 any reference to time of day shall be a reference to London time,

2.2.6 the words herein, hereto and hereunder refer to this Deed as a whole and not to the particular clause in which such word may be used,

2.2.7 words importing the singular include the plural and vice versa,

2.2.8 words importing a particular gender include all genders,

2.2.9 person includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association,

2.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation,

2.2.11 references to party means a party to this Deed and references to "parties" shall be construed accordingly,

2.2.12 all monetary amounts are expressed in pounds sterling,

2.2.13 references to the word includes or including are to be construed without limitation, and

2.2.14 the obligations of any party under this Deed are to be performed at that party's own cost and expense.

3 Sub-Contractor’s Warranty and Liability

3.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its duties and obligations under the Contract in accordance with the Contract.
3.2 The Sub-Contractor shall have no liability under this Deed which when aggregated with any liability under the Contract is greater or of a longer duration than it would have had if the Beneficiary had been a party to the Contract as Joint Works and Operating Contractor.

3.3 The Sub-Contractor shall be entitled in any action or proceeding by the Beneficiary to rely on any limitation in the Contract and to raise equivalent rights in defence of liability to those which it would have against the Works and Operating Contractor under the Contract.

4 Documents

4.1 The Sub-Contractor where legally able and subject to using reasonable endeavours to obtain any necessary third party consents hereby grants (or, if such grant cannot legally take place until a later date, agrees to use reasonable endeavours to grant) to the Beneficiary with effect from the date of this Deed, a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of the Contract or determination of the employment of the Sub-Contractor under the Contract or any dispute thereunder or hereunder) to use all the Project Data for any of the Approved Purposes and in this clause "used" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "right to use" shall be construed accordingly.

4.2 The Beneficiary shall not hold the Sub-Contractor liable for any use the Beneficiary or its sub-licensees may make of the Project Data for any purpose other than one of the Approved Purposes unless the Sub-Contractor authorises such use and confirms that the Project Data is suitable for it.

4.3 The Sub-Contractor agrees on reasonable request at any time and following reasonable prior written notice to give the Beneficiary or those authorised by it access to the Project Data and to provide copies (including copy negatives and CAD disks) thereof at the Sub-Contractor's expense.

4.4 The Sub-Contractor warrants to the Beneficiary that the Project Data (save to the extent duly appointed sub-consultants and sub-contractors have been used to prepare the same) is its own original work or that the Sub-Contractor is duly licensed to use the same for the Works including all requirements of onward licenses required under this Deed and that in any event their use (whether or not sub-consultants and/or sub-contractors have been used to prepare them) in connection with the Works shall not infringe the rights of any third party.

5 Insurance

5.1 The Sub-Contractor hereby covenants with the Beneficiary to take out and maintain professional indemnity insurance cover with a limit of indemnity of not less than ten million euros (€10,000,000) for each and every claim and in the aggregate in relation to the Works and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until 12 years after practical completion of the Works, to the extent that such insurance is generally available in the European market to design and build contractors.

5.2 As and when reasonably required by the Beneficiary the Sub-Contractor shall produce for inspection documentary evidence to the reasonable satisfaction of the Beneficiary that the
insurance referred to in clause 5.1 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

5.3 The Sub-Contractor shall inform the Beneficiary if the insurance required by clause 5.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub-Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

6 Notices

6.1 All notices under this Deed shall be in writing and all certificates, notices or written instructions to be given under the terms of this Deed shall be served by sending the same by first class post or by hand, leaving the same at in the case of the Works and Operating Contractor at The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ FAO The Company Secretary, in the case of the Beneficiary at North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton, DL7 8AH FAO Assistant Chief Executive (Legal and Democratic Services) and in the case of the Sub-Contractor at Dok-Noord 5, B-9000 Gent, Belgium FAO The Company Secretary.

6.2 Notices shall be effective:

6.2.1 by post, upon the earlier of actual receipt and five Business Days after mailing, or

6.2.2 by hand, upon delivery.

7 Assignment

7.1 Without prejudice to the provisions of clause 11, the Beneficiary may, without the consent of any other party, transfer all of its rights and obligations under this Deed to any person to whom the Beneficiary assigns or otherwise disposes of its rights under the Project Agreement. The Beneficiary shall notify the Sub-Contractor promptly in writing following any such transfer specifying the name and address of the transferee and the date of the transfer.

7.2 The Sub-Contractor shall not contend that any transferee referred to in clause 7.1 is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is a transferee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

8 Beneficiary's Remedies

8.1 Subject to clause 3.2, the rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

9 Inspection of Documents
9.1 The Sub-Contractor's liabilities under this Deed shall not be in any way reduced or extinguished by reason of any inspection or approval of the Documents, or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure be made for its benefit or on its behalf.

10 Standards of Products and Materials

10.1 The Sub-Contractor warrants that new materials only will be used in carrying out the Works (unless otherwise agreed or required in accordance with the Project Agreement) and all goods used or included in the Works will be of satisfactory quality and that there will be used or included in the Works no products or materials that are not in conformity with the relevant British or European Union standards or codes of practice which at the time of use are widely known to members of the Sub-Contractor's 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.

10.2 If in the performance of its duties under the Contract the Sub-Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Sub-Contractor shall notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Sub-Contractor to inspect or check the work of others which is not required by the Contract.

11 Step-in

In this clause 'Security Trustee' has the meaning given to it in the Seniors Lenders Collateral Warranty.

11.1 The Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Beneficiary not less than fourteen (14) days' prior written notice (the Notice Period) specifying the Sub-Contractor's ground for terminating or treating as terminated or repudiated the Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Contract. Within the Notice Period:

11.1.1 the Beneficiary may give written notice to the Sub-Contractor that the Beneficiary will thenceforth become the client under the Works and Operating Contract and thereupon the Sub-Contractor will admit that the Beneficiary is its client under the Contract and the Contract will be and remain in full force and effect notwithstanding any of the said grounds;

11.1.2 subject to clause 11.4, if the Beneficiary has given such notice as aforesaid or under clause 11.3 below, the Beneficiary will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Sub-Contractor's specified grounds and which is capable of remedy by the Beneficiary; and

11.1.3 subject to clause 11.4, if the Beneficiary has given such notice as aforesaid or under clause 11.3 below, the Beneficiary will from the service of such notice
become responsible for all sums properly payable to the Sub-Contractor under the Contract accruing due after the service of such notice but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Contract.

11.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor, the Beneficiary will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Sub-Contractor pursuant to clause 11.1.1 or clause 11.3 of this Deed.

11.3 The Sub-Contractor further covenants with the Beneficiary that if the Project Agreement is terminated, the Sub-Contractor, if requested by the Beneficiary by notice in writing and subject to clause 11.1.2 and clause 11.1.3, will accept the instructions of the Beneficiary to the exclusion of the Works and Operating Contractor in respect of its duties under the Contract upon the terms and conditions of the Contract and will if so requested enter into agreement whereby the Beneficiary is substituted for the Works and Operating Contractor under the Contract and will if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Works and Operating Contractor under the Contract.

11.4 If two (2) or more valid notices are received during the Notice Period, the following order of priority shall apply:

11.4.1 notice service by the Contractor;

11.4.2 notice served by the Security Trustee;

11.4.3 notice served by the Beneficiary.

All notices received shall take effect in accordance with the above order of priority and no other relevant notice will bind the Sub-Contractor, subject to clause 11.6 below.

11.5 The Works and Operating Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 11.3 as conclusive evidence that the Project Agreement has been terminated.

11.6 The Beneficiary may by notice in writing to the Sub-Contractor appoint another person to exercise its rights under this clause 11 subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

12 Third Party Rights

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13 Counterparts

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

14 Waiver
Redacted Copy

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

**Severability**

If any condition, any clause or provision of this Deed not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.

**Amendments**

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the parties.

**Applicable Law and Jurisdiction**

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.
This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

signed as a deed by AmeyCespa (AWRP) ODC Limited
acting by its attorney
under a power of attorney dated
in the presence of: Attorney:

witness signature:
name:
address:
occupation:

Executed as a deed by Organic Waste Systems N.V. acting by , a director
in the presence of: 

witness signature:
name:
address:
occupation:

THE COMMON SEAL of North )
Yorkshire County Council was )
affixed in the presence of: )

Authorised Signatory
SCHEDULE 15 - Redacted Copy

Schedule 15

Part 1: Form of Authority/Construction Contractor Collateral Warranty (EfW Facility)
dated

AmeyCespa (AWRP) ODC Limited

and

North Yorkshire County Council

and

Vinci Environment UK Limited

Authority Collateral Warranty
Warranty

dated

Parties

(1) AmeyCespa (AWRP) ODC Limited a company incorporated in England and Wales (registered number 9200149) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ (the Works and Operating Contractor),

(2) North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton, DL7 8AH (the Beneficiary), and

(3) Vinci Environment UK Limited (Company number: 06248053) with registered address Astral House, Imperial Way, Watford, Hertfordshire WD24 4WW (the Sub-Contractor).

Background

(A) The Beneficiary desires to obtain waste treatment services in North Yorkshire (the Project).

(B) By an agreement dated 26 August 2011 the Beneficiary appointed Allerton Waste Recovery Park Interim SPV Limited (company registered number 07580751) for the carrying out of the Project (the Project Agreement).

(C) The Project Agreement has been novated to AmeyCespa (AWRP) SPV Limited (company registered number 08717850) (the Contractor).

(D) By an agreement dated on or around the date of this Deed (the Works and Operating Contract) the Contractor has appointed the Works and Operating Contractor to carry out certain works in relation to the Project.

(E) By an agreement dated 26 August 2011 between the Sub-Contractor and AmeyCespa Limited (company registered number 07333225), but novated to the Works and Operating Contractor on or around the date of this Deed (the Contract), the Works and Operating Contractor has further appointed the Sub-Contractor to carry out certain works in relation to the Project (the Works).

(F) The Sub-Contractor is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

1 Operative Provisions

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges and the covenants contained herein, the parties to this Deed agree as follows.

2 Definitions and Interpretation

2.1 Terms used in this Deed that are defined in the Contract shall have the meanings given to them in the Contract as appropriate, unless otherwise defined herein.

2.2 Save to the extent that the context or the express provision of this Deed otherwise require:
2.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed,

2.2.2 all references to clauses are references to clauses of this Deed,

2.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time,

2.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision,

2.2.5 any reference to time of day shall be a reference to London time,

2.2.6 the words herein, hereto and hereunder refer to this Deed as a whole and not to the particular clause in which such word may be used,

2.2.7 words importing the singular include the plural and vice versa,

2.2.8 words importing a particular gender include all genders,

2.2.9 person includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association,

2.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation,

2.2.11 references to party means a party to this Deed and references to "parties" shall be construed accordingly,

2.2.12 all monetary amounts are expressed in pounds sterling,

2.2.13 references to the word includes or including are to be construed without limitation, and

2.2.14 the obligations of any party under this Deed are to be performed at that party's own cost and expense.

3 Sub-Contractor's Warranty and Liability

3.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out its duties under the Contract in accordance with the Contract and that it has exercised and will continue to exercise, in carrying out the design of the Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to a project of a similar size and scope to the Works. In particular and without limiting the generality of the foregoing the
Sub-Contractor covenants with the Beneficiary that it has carried out and will carry out and complete the Works in accordance with the Contract and duly observe and perform all its duties and obligations thereunder.

3.2 The Sub-Contractor shall have no liability under this Deed which when aggregated with any liability under the Contract is greater or of a longer duration than it would have had if the Beneficiary had been a party to the Contract as joint Works and Operating Contractor.

3.3 The Sub-Contractor shall be entitled in any action or proceeding by the Beneficiary to rely on any limitation in the Contract and to raise equivalent rights in defence of liability to those which it would have against the Works and Operating Contractor under the Contract.

3.4 The Sub-Contractor shall have no liability to the Beneficiary in respect of any delay in the completion of the Works howsoever caused save to the extent that the liability arises under the Contract and the Beneficiary shall have exercised its right to step in under Clause 11. Any claim in relation to a delay in completion of the Works but not otherwise will be extinguished to the extent that the Sub-Contractor has had deducted liquidated damages under clause [Redacted] of the Contract.

4 Documents

4.1 The Sub-Contractor where legally able and subject to using reasonable endeavours to obtain any necessary third party consents hereby grants (or, if such grant cannot legally take place until a later date, agrees to use reasonable endeavours to grant) to the Beneficiary with effect from the date of this Deed, a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of the Contract or determination of the employment of the Sub-Contractor under the Contract or any dispute thereunder or hereunder) to use all the Project Data for any of the Approved Purposes and in this clause “used” shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term “right to use” shall be construed accordingly. Such licence will carry the right to grant sub licences on same terms and conditions as applicable to the licence and will only be transferable by the Beneficiary on the same terms and conditions as applicable to the licence to third parties subject to the prior written notice to the Sub-Contractor.

4.2 The Beneficiary shall not hold the Sub-Contractor liable for any use the Beneficiary or its sub-licensees may make of the Project Data for any purpose other than one of the Approved Purposes unless the Sub-Contractor authorises such use and confirms that the Project Data is suitable for it.

4.3 The Sub-Contractor agrees on reasonable request at any time and following reasonable prior written notice to give the Beneficiary or those authorised by it access to the Project Data and to provide copies (including copy negatives and CAD disks) thereof at the Sub-Contractor's expense.

4.4 The Sub-Contractor warrants to the Beneficiary that the Project Data (save to the extent duly appointed sub-consultants and sub-contractors have been used to prepare the same) is its own original work or that the Sub-Contractor is duly licensed to use the same for the Works including all requirements of onward licenses required under this Deed and that in any event their use (whether or not sub-consultants and/or sub-contractors have been used to prepare them) in connection with the Works shall not infringe the rights of any third party.
Insurance

5.1 The Sub-Contractor hereby covenants with the Beneficiary to take out and maintain professional indemnity insurance cover with a limit of indemnity of not less than £10,000,000 for any one occurrence or series of occurrences arising out of any one event in relation to the Works and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until 12 years after practical completion of the Works, to the extent that such insurance is generally available to members of the Sub-Contractor's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Sub-Contractor will be deemed to be within the reasonable rates.

5.2 As and when reasonably required by the Beneficiary the Sub-Contractor shall produce for inspection documentary evidence to the reasonable satisfaction of the Beneficiary that the insurance referred to in clause 5.1 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

5.3 The Sub-Contractor shall inform the Beneficiary if the insurance required by clause 5.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub-Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

6 Notices

6.1 All notices under this Deed shall be in writing and all certificates, notices or written instructions to be given under the terms of this Deed shall be served by sending the same by first class post or by hand, leaving the same at in the case of the Works and Operating Contractor at The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ FAO The Company Secretary, in the case of the Beneficiary at North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton. DL7 8AH FAO Assistant Chief Executive (Legal and Democratic Services) and in the case of the Sub-Contractor at Astral House, Imperial Way, Watford, Hertfordshire WD24 4WW FAO The Company Secretary.

6.2 Notices shall be effective:

6.2.1 by post, upon the earlier of actual receipt and five Business Days after mailing, or

6.2.2 by hand, upon delivery.

7 Assignment

7.1 Without prejudice to the provisions of clause 11, the Beneficiary may, without the consent of any other party, transfer all of its rights and obligations under this Deed to:

7.1.1 a Minister of the Crown pursuant to an Order under the Minsters of the crown act 1975;
7.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Beneficiary under the Project Agreement;

7.1.3 any other public body whose obligations under the Project Agreement are unconditionally and irrevocably guaranteed by the Beneficiary 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 Beneficiary under the Project Agreement

7.1.4 on two further occasions to any person to whom the Beneficiary assigns or otherwise disposes of its rights under the Project Agreement.

The Beneficiary shall notify the Sub-Contractor promptly in writing following any such transfer specifying the name and address of the transferee and the date of the transfer.

7.2 The Sub-Contractor shall not contend that any transferee referred to in clause 7.1 is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is a transferee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

8 Beneficiary's Remedies

8.1 Subject to clause 3.2, the rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

9 Inspection of Documents

9.1 The Sub-Contractor's liabilities under this Deed shall not be in any way reduced or extinguished by reason of any inspection or approval of the Documents, or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure be made for its benefit or on its behalf.

10 Standards of Products and Materials

10.1 The Sub-Contractor warrants that, unless the Works and Operating Contractor agrees otherwise in writing or recycled materials are allowable in accordance with industry standards as identified in Schedule A, new materials only will be used in carrying out the Works and all goods used or included in the Works will be of satisfactory quality and that there will be used or included in the Works no products or materials that are not in conformity with the relevant British or European Union standards or codes of practice which at the time of use are widely known to members of the Sub-Contractor's 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.

10.2 If in the performance of its duties under the Contract the Sub-Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Sub-Contractor shall
notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Sub-Contractor to inspect or check the work of others which is not required by the Contract.

11

Step-in

In this clause 'Security Trustee' has the meaning given in the Senior Lenders Collateral Warranty.

11.1

The Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Beneficiary not less than seven (7) days notice, if the grounds are that sums which are due have not been paid by the final date for payment and no effective pay less notice has been given to the Sub-Contractor, otherwise not less than fourteen (14) days' prior written notice (the Notice Period) specifying the Sub-Contractor's ground for terminating or treating as terminated or repudiated the Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Contract. Within the Notice Period:

11.1.1

the Beneficiary may give written notice to the Sub-Contractor that the Beneficiary will henceforth become the client under the Contract and thereupon the Sub-Contractor will admit that the Beneficiary is its client under the Contract and the Contract will be and remain in full force and effect notwithstanding any of the said grounds;

11.1.2

subject to clause 11.4, if the Beneficiary has given such notice as aforesaid or under clause 11.3 below, the Beneficiary shall accept liability for the Works and Operating Contractor's obligations under the Contract and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Sub-Contractor's specified grounds and which is capable of remedy by the Beneficiary; and

11.1.3

subject to clause 11.4, if the Beneficiary has given such notice as aforesaid or under clause 11.3 below, the Beneficiary will from the service of such notice become responsible for all sums properly payable to the Sub-Contractor under the Contract accruing due after the service of such notice but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Contract.

11.2

Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor, the Beneficiary will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Sub-Contractor pursuant to clause 11.1.1 or clause 11.3 of this Deed.

11.3

The Sub-Contractor further covenants with the Beneficiary that if the Project Agreement is terminated, the Sub-Contractor, if requested by the Beneficiary by notice in writing and subject to clause 11.1.2 and clause 11.1.3, will accept the instructions of the Beneficiary to the exclusion of the Works and Operating Contractor in respect of its duties under the Contract upon the terms and conditions of the Contract and will if so requested enter into
agreement whereby the Beneficiary is substituted for the Works and Operating Contractor under the Contract and will if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Works and Operating Contractor strictly in accordance with the Contract.

11.4 If two (2) or more valid notices are received during the Notice Period, the following order of priority shall apply:

11.4.1 notice served by the Security Trustee;

11.4.2 notice served by the Contractor;

11.4.3 notice served by the Beneficiary.

All notices received shall take effect in accordance with the above order of priority and no other relevant notice will bind the Sub-Contractor, subject to clause 11.6 below.

11.5 The Works and Operating Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 11.3 as conclusive evidence that the Project Agreement has been terminated.

11.6 The Beneficiary may by notice in writing to the Sub-Contractor appoint another person to exercise its rights under this clause 11 subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

12 Third Party Rights

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13 Counterparts

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

14 Waiver

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

15 Severability

If any condition, any clause or provision of this Deed not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.

16 Amendments
Redacted Copy

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the parties.

Applicable Law and Jurisdiction

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.
COLLATERAL WARRANTY EXECUTION PAGE

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

signed as a deed by AmeyCespa (AWRP) ODC Limited
acting by its attorney
under a power of attorney dated
in the presence of: Attorney:
witness signature:
name:
address:
occupation:

Executed as a deed by Vinci Environment UK Limited acting by , a director
in the presence of: Director:
witness signature:
name:
address:
occupation:

THE COMMON SEAL of North Yorkshire County Council was affixed in the presence of:

Authorised Signatory
Part 1: Form of Authority/Construction Contractor Collateral Warranty (MT Facility)
dated

AmeyCespa (AWRP) ODC Limited

and

North Yorkshire County Council

and

Stadler UK Limited

Authority Collateral Warranty
Warranty

dated 200[ ]

Parties

(1) AmeyCespa (AWRP) ODC Limited a company incorporated in England and Wales (registered number 9200149) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ (the Works and Operating Contractor),

(2) North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton, DL7 8AH (the Beneficiary), and

(3) Stadler UK Limited, a company incorporated in England and Wales (registered number: 06388781) whose registered office is at 16 Great Queen Street, Covent Garden, London, WC2B 5AH (the Sub-Contractor).

Background

(A) The Beneficiary desires to obtain waste treatment services in North Yorkshire (the Project).

(B) By an agreement dated 26 August 2011 the Beneficiary appointed Allerton Waste Recovery Park Interim SPV Limited (company registered number 07580751) for the carrying out of the Project (the Project Agreement).

(C) The Project Agreement has been novated to AmeyCespa (AWRP) SPV Limited (company registered number 08717850) (the Contractor).

(D) By an agreement dated on or around the date of this Deed (the Works and Operating Contract) the Contractor has appointed the Works and Operating Contractor to carry out certain works in relation to the Project.

(E) By an agreement dated 26 August 2011 between the Sub-Contractor and AmeyCespa Limited (company registered number 07333225), but novated to the Works and Operating Contractor on or around the date of this Deed (the Contract), the Works and Operating Contractor has further appointed the Sub-Contractor to carry out certain works in relation to the Project (the Works).

(F) The Sub-Contractor is obliged under the Sub-Contract to give a warranty in this form in favour of the Beneficiary.

1 Operative Provisions

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges and the covenants contained herein, the parties to this Deed agree as follows.

2 Definitions and Interpretation

2.1 Terms used in this Deed that are defined in the Contract shall have the meanings given to them in the Contract as appropriate, unless otherwise defined herein.
Redacted Copy

Save to the extent that the context or the express provision of this Deed otherwise require:

2.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed,

2.2.2 all references to clauses are references to clauses of this Deed,

2.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time,

2.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision,

2.2.5 any reference to time of day shall be a reference to London time,

2.2.6 the words herein, hereto and hereunder refer to this Deed as a whole and not to the particular clause in which such word may be used,

2.2.7 words importing the singular include the plural and vice versa,

2.2.8 words importing a particular gender include all genders,

2.2.9 person includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association,

2.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation,

2.2.11 references to party means a party to this Deed and references to "parties" shall be construed accordingly,

2.2.12 all monetary amounts are expressed in pounds sterling,

2.2.13 references to the word includes or including are to be construed without limitation, and

2.2.14 the obligations of any party under this Deed are to be performed at that party's own cost and expense.

3 Sub-Contractor's Warranty and Liability

3.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its duties and obligations under the Contract in accordance with the Contract.
3.2 The Sub-Contractor shall have no liability under this Deed which when aggregated with any liability under the Contract is greater or of a longer duration than it would have had if the Beneficiary had been a party to the Contract as joint Works and Operating Contractor.

3.3 The Sub-Contractor shall be entitled in any action or proceeding by the Beneficiary to rely on any limitation in the Contract and to raise equivalent rights in defence of liability to those which it would have against the Works and Operating Contractor under the Contract.

4 Documents

4.1 The Sub-Contractor where legally able and subject to using reasonable endeavours to obtain any necessary third party consents hereby grants (or, if such grant cannot legally take place until a later date, agrees to use reasonable endeavours to grant) to the Beneficiary with effect from the date of this Deed, a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of the Contract or determination of the employment of the Sub-Contractor under the Contract or any dispute thereunder or hereunder) to use all the Project Data for any of the Approved Purposes and in this clause “used” shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term “right to use” shall be construed accordingly.

4.2 The Beneficiary shall not hold the Sub-Contractor liable for any use the Beneficiary or its sub-licensees may make of the Project Data for any purpose other than one of the Approved Purposes unless the Sub-Contractor authorises such use and confirms that the Project Data is suitable for it.

4.3 The Sub-Contractor agrees on reasonable request at any time and following reasonable prior written notice to give the Beneficiary or those authorised by it access to the Project Data and to provide copies (including copy negatives and CAD disks) thereof at the Sub-Contractor’s expense.

4.4 The Sub-Contractor warrants to the Beneficiary that the Project Data (save to the extent duly appointed sub-consultants and sub-contractors have been used to prepare the same) is its own original work or that the Sub-Contractor is duly licensed to use the same for the Works including all requirements of onward licenses required under this Deed and that in any event their use (whether or not sub-consultants and/or sub-contractors have been used to prepare them) in connection with the Works shall not infringe the rights of any third party.

5 Insurance

5.1 The Sub-Contractor hereby covenants with the Beneficiary to take out and maintain professional indemnity insurance cover with a limit of indemnity of not less than £10,000,000 for any one occurrence or series of occurrences arising out of any one event in relation to the Works and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until 12 years after practical completion of the Works, to the extent that such insurance is generally available in the European market to design and build contractors.

5.2 As and when reasonably required by the Beneficiary the Sub-Contractor shall produce for inspection documentary evidence to the reasonable satisfaction of the Beneficiary that the
insurance referred to in clause 5.1 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

5.3 The Sub-Contractor shall inform the Beneficiary if the insurance required by clause 5.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub-Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

6 Notices

6.1 All notices under this Deed shall be in writing and all certificates, notices or written instructions to be given under the terms of this Deed shall be served by sending the same by first class post or by hand, leaving the same at in the case of the Works and Operating Contractor at The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ FAO The Company Secretary, in the case of the Beneficiary at North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton, DL7 8AH FAO Assistant Chief Executive (Legal and Democratic Services) and in the case of the Sub-Contractor at 16 Great Queen Street, Covent Garden, London, WC2B 5AH FAO The Company Secretary.

6.2 Notices shall be effective:

6.2.1 by post, upon the earlier of actual receipt and five Business Days after mailing, or

6.2.2 by hand, upon delivery.

7 Assignment

7.1 Without prejudice to the provisions of clause 11, the Beneficiary may, without the consent of any other party, transfer all of its rights and obligations under this Deed to any person to whom the Beneficiary assigns or otherwise disposes of its rights under the Project Agreement. The Beneficiary shall notify the Sub-Contractor promptly in writing following any such transfer specifying the name and address of the transferee and the date of the transfer.

7.2 The Sub-Contractor shall not contend that any transferee referred to in clause 7.1 is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is a transferee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

8 Beneficiary's Remedies

8.1 Subject to clause 3.2, the rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

9 Inspection of Documents
9.1 The Sub-Contractor's liabilities under this Deed shall not be in any way reduced or extinguished by reason of any inspection or approval of the Documents, or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure be made for its benefit or on its behalf.

10 Standards of Products and Materials

10.1 The Sub-Contractor warrants that new materials only will be used in carrying out the Works (unless otherwise agreed or required in accordance with the Project Agreement) and all goods used or included in the Works will be of satisfactory quality and that there will be used or included in the Works no products or materials that are not in conformity with the relevant British or European Union standards or codes of practice which at the time of use are widely known to members of the Sub-Contractor's 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.

10.2 If in the performance of its duties under the Contract the Sub-Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Sub-Contractor shall notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Sub-Contractor to inspect or check the work of others which is not required by the Contract.

11 Step-in

In this clause 'Security Trustee' has the meaning given to it in the Senior Lenders Collateral Warranty.

11.1 The Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Beneficiary not less than fourteen (14) days' prior written notice (the Notice Period) specifying the Sub-Contractor's ground for terminating or treating as terminated or repudiated the Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Contract. Within the Notice Period:

11.1.1 the Beneficiary may give written notice to the Sub-Contractor that the Beneficiary will thenceforth become the client under the Works and Operating Contract and thereupon the Sub-Contractor will admit that the Beneficiary is its client under the Contract and the Contract will be and remain in full force and effect notwithstanding any of the said grounds;

11.1.2 subject to clause 11.4, if the Beneficiary has given such notice as aforesaid or under clause 11.3 below, the Beneficiary will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Sub-Contractor's specified grounds and which is capable of remedy by the Beneficiary; and

11.1.3 subject to clause 11.4, if the Beneficiary has given such notice as aforesaid or under clause 11.3 below, the Beneficiary will from the service of such notice
Redacted Copy

become responsible for all sums properly payable to the Sub-Contractor under the Contract accruing due after the service of such notice but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Contract.

11.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor, the Beneficiary will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Sub-Contractor pursuant to clause 11.1.1 or clause 11.3 of this Deed.

11.3 The Sub-Contractor further covenants with the Beneficiary that if the Project Agreement is terminated, the Sub-Contractor, if requested by the Beneficiary by notice in writing and subject to clause 11.1.2 and clause 11.1.3, will accept the instructions of the Beneficiary to the exclusion of the Works and Operating Contractor in respect of its duties under the Contract upon the terms and conditions of the Contract and will if so requested enter into agreement whereby the Beneficiary is substituted for the Works and Operating Contractor under the Contract and will if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Works and Operating Contractor under the Contract.

11.4 If two (2) or more valid notices are received during the Notice Period, the following order of priority shall apply:

11.4.1 notice service by the Contractor;
11.4.2 notice served by the Security Trustee;
11.4.3 notice served by the Beneficiary.

All notices received shall take effect in accordance with the above order of priority and no other relevant notice will bind the Sub-Contractor, subject to clause 11.6 below.

11.5 The Works and Operating Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 11.3 as conclusive evidence that the Project Agreement has been terminated.

11.6 The Beneficiary may by notice in writing to the Sub-Contractor appoint another person to exercise its rights under this clause 11 subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

12 Third Party Rights

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13 Counterparts

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

14 Waiver
Redacted Copy

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

Severability

If any condition, any clause or provision of this Deed not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.

Amendments

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the parties.

Applicable Law and Jurisdiction

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.
This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

signed as a deed by AmeyCespa (AWRP) ODC Limited
acting by its attorney
under a power of attorney dated
in the presence of: Attorney:

witness signature:
name:
address:
occupation:

executed as a deed by Stadler UK LIMITED
acting by , a director
in the presence of:

THE COMMON SEAL of North)
Yorkshire County Council was)
affixed in the presence of: )

Authorised Signatory
SCHEDULE 15 - Redacted Copy

Schedule 15

Part 1: Form of Authority/Construction Contractor Collateral Warranty (Civils Works)
Authority Collateral Warranty
Warranty

dated

Parties

(1) AmeyCaspa (AWRP) ODC Limited a company incorporated in England and Wales (registered number 9200149) whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ (the Works and Operating Contractor),

(2) North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton, DL7 8AH (the Beneficiary), and

(3) Vinci Construction UK Limited (Company no: 02295904) with registered address Astral House, Imperial Way, Watford, Hertfordshire WD24 4WW (the Sub-Contractor).

Background

(A) The Beneficiary desires to obtain waste treatment services in North Yorkshire (the Project).

(B) By an agreement dated 26 August 2011 the Beneficiary appointed Allerton Waste Recovery Park Interim SPV Limited (company registered number 07580751) for the carrying out of the Project (the Project Agreement).

(C) The Project Agreement has been novated to AmeyCaspa (AWRP) SPV Limited (company registered number 08717850) (the Contractor).

(D) By an agreement dated on or around the date of this Deed (the Works and Operating Contract) the Contractor has appointed the Works and Operating Contractor to carry out certain works in relation to the Project.

(E) By an agreement dated 26 August 2011 between the Sub-Contractor and AmeyCaspa Limited (company registered number 07333225), but novated to the Works and Operating Contractor on or around the date of this Deed (the Contract), the Works and Operating Contractor has further appointed the Sub-Contractor to carry out certain works in relation to the Project (the Works).

(F) The Sub-Contractor is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

1 Operative Provisions

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges and the covenants contained herein, the parties to this Deed agree as follows.

2 Definitions and Interpretation

2.1 Terms used in this Deed that are defined in the Contract shall have the meanings given to them in the Contract as appropriate, unless otherwise defined herein.
2.2 Save to the extent that the context or the express provision of this Deed otherwise require:

2.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Deed,

2.2.2 all references to clauses are references to clauses of this Deed,

2.2.3 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time,

2.2.4 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision,

2.2.5 any reference to time of day shall be a reference to London time,

2.2.6 the words herein, hereto and hereunder refer to this Deed as a whole and not to the particular clause in which such word may be used,

2.2.7 words importing the singular include the plural and vice versa,

2.2.8 words importing a particular gender include all genders,

2.2.9 person includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association,

2.2.10 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation,

2.2.11 references to party means a party to this Deed and references to "parties" shall be construed accordingly,

2.2.12 all monetary amounts are expressed in pounds sterling,

2.2.13 references to the word includes or including are to be construed without limitation, and

2.2.14 the obligations of any party under this Deed are to be performed at that party's own cost and expense.

3 Sub-Contractor's Warranty and Liability

3.1 The Sub-Contractor warrants to the Beneficiary that it has carried out and will continue to carry out its duties under the Contract in accordance with the Contract and that it has exercised and will continue to exercise, in carrying out the design of the Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent
professional designer providing those services in relation to a project of a similar size and scope to the Works. In particular and without limiting the generality of the foregoing the Sub-Contractor covenants with the Beneficiary that it has carried out and will carry out and complete the Works in accordance with the Contract and duly observe and perform all its duties and obligations thereunder.

3.2 The Sub-Contractor shall have no liability under this Deed which when aggregated with any liability under the Contract is greater or of a longer duration than it would have had if the Beneficiary had been a party to the Contract as joint Works and Operating Contractor.

3.3 The Sub-Contractor shall be entitled in any action or proceeding by the Beneficiary to rely on any limitation in the Contract and to raise equivalent rights in defence of liability to those which it would have against the Works and Operating Contractor under the Contract.

3.4 The Sub-Contractor shall have no liability to the Beneficiary in respect of any delay in the completion of the Works howsoever caused save to the extent that the liability arises under the Contract and the Beneficiary shall have exercised its right to step in under Clause 11. Any claim in relation to a delay in completion of the Works but not otherwise will be extinguished to the extent that the Sub-Contractor has had deducted liquidated damages under clause [Redacted] of the Contract.

4 Documents

4.1 The Sub-Contractor where legally able and subject to using reasonable endeavours to obtain any necessary third party consents hereby grants (or, if such grant cannot legally take place until a later date, agrees to use reasonable endeavours to grant) to the Beneficiary with effect from the date of this Deed, a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of the Contract or determination of the employment of the Sub-Contractor under the Contract or any dispute thereunder or hereunder) to use all the Project Data for any of the Approved Purposes and in this clause “used” shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term “right to use” shall be construed accordingly. Such licence will carry the right to grant sub licences on same terms and conditions as applicable to the licence and will only be transferable by the Beneficiary on the same terms and conditions as applicable to the licence to third parties subject to the prior written notice to the Sub-Contractor.

4.2 The Beneficiary shall not hold the Sub-Contractor liable for any use the Beneficiary or its sub-licensees may make of the Project Data for any purpose other than one of the Approved Purposes unless the Sub-Contractor authorises such use and confirms that the Project Data is suitable for it.

4.3 The Sub-Contractor agrees on reasonable request at any time and following reasonable prior written notice to give the Beneficiary or those authorised by it access to the Project Data and to provide copies (including copy negatives and CAD disks) thereof at the Sub-Contractor’s expense.

4.4 The Sub-Contractor warrants to the Beneficiary that the Project Data (save to the extent duly appointed sub-consultants and sub-contractors have been used to prepare the same) is its own original work or that the Sub-Contractor is duly licensed to use the same for the Works including all requirements of onward licenses required under this Deed and that in any event their use (whether or not sub-consultants and/or sub-contractors have been
used to prepare them) in connection with the Works shall not infringe the rights of any third party.

Insurance

5.1 The Sub-Contractor hereby covenants with the Beneficiary to take out and maintain professional indemnity insurance cover with a limit of indemnity of not less than £10,000,000 for any one occurrence or series of occurrences arising out of any one event in relation to the Works and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until 12 years after practical completion of the Works, to the extent that such insurance is generally available to members of the Sub-Contractor's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Sub-Contractor will be deemed to be within the reasonable rates.

5.2 As and when reasonably required by the Beneficiary the Sub-Contractor shall produce for inspection documentary evidence to the reasonable satisfaction of the Beneficiary that the insurance referred to in clause 5.1 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

5.3 The Sub-Contractor shall inform the Beneficiary if the insurance required by clause 5.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub-Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

Notices

6.1 All notices under this Deed shall be in writing and all certificates, notices or written instructions to be given under the terms of this Deed shall be served by sending the same by first class post or by hand, leaving the same at in the case of the Works and Operating Contractor at The Sherard Building, Edmund Halley Road, Oxford, Oxfordshire, OX4 4DQ FAO The Company Secretary, in the case of the Beneficiary at North Yorkshire County Council of County Hall, Racecourse Lane, Northallerton, DL7 8AH FAO Assistant Chief Executive (Legal and Democratic Services) and in the case of the Sub-Contractor at Astral House, Imperial Way, Watford, Hertfordshire WD24 4WW FAO The Company Secretary.

6.2 Notices shall be effective:

6.2.1 by post, upon the earlier of actual receipt and five Business Days after mailing, or

6.2.2 by hand, upon delivery.

Assignment

7.1 Without prejudice to the provisions of clause 11, the Beneficiary may, without the consent of any other party, transfer all of its rights and obligations under this Deed to:
7.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the crown act 1975;

7.1.2 any Local Authority which has sufficient financial standing or financial resources to perform the obligations of the Beneficiary under the Project Agreement;

7.1.3 any other public body whose obligations under the Project Agreement are unconditionally and irrevocably guaranteed by the Beneficiary 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 Beneficiary under the Project Agreement

7.1.4 on two further occasions to any person to whom the Beneficiary assigns or otherwise disposes of its rights under the Project Agreement.

The Beneficiary shall notify the Sub-Contractor promptly in writing following any such transfer specifying the name and address of the transferee and the date of the transfer.

7.2 The Sub-Contractor shall not contend that any transferee referred to in clause 7.1 is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is a transferee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

8 Beneficiary's Remedies

8.1 Subject to clause 3.2, the rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

9 Inspection of Documents

9.1 The Sub-Contractor's liabilities under this Deed shall not be in any way reduced or extinguished by reason of any inspection or approval of the Documents, or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure be made for its benefit or on its behalf.

10 Standards of Products and Materials

10.1 The Sub-Contractor warrants that, unless the Works and Operating Contractor agrees otherwise in writing with or recycled materials are allowable in accordance with industry standards as identified in the Works Information, new materials only will be used in carrying out the Works and all goods used or included in the Works will be of satisfactory quality and that there will be used or included in the Works no products or materials that are not in conformity with the relevant British or European Union standards or codes of practice which at the time of use are widely known to members of the Sub-Contractor's 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.
10.2 If in the performance of its duties under the Contract the Sub-Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Sub-Contractor shall notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Sub-Contractor to inspect or check the work of others which is not required by the Contract.

11 Step-in

In this clause 'Security Trustee' has the meaning given to it in the Senior Lenders Collateral Warranty.

11.1 The Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Beneficiary not less than seven (7) days notice, if the grounds are that sums which are due have not been paid by the final date for payment and no effective pay less notice has been given to the Sub-Contractor, otherwise not less than fourteen (14) days' prior written notice (the Notice Period) specifying the Sub-Contractor's ground for terminating or treating as terminated or repudiated the Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Contract. Within the Notice Period:

11.1.1 the Beneficiary may give written notice to the Sub-Contractor that the Beneficiary will thenceforth become the client under the Contract and thereupon the Sub-Contractor will admit that the Beneficiary is its client under the Contract and the Contract will be and remain in full force and effect notwithstanding any of the said grounds;

11.1.2 subject to clause 11.4, if the Beneficiary has given such notice as aforesaid or under clause 11.3 below, the Beneficiary shall accept liability for the Works and Operating Contractor's obligations under the Contract and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Sub-Contractor's specified grounds and which is capable of remedy by the Beneficiary; and

11.1.3 subject to clause 11.4, if the Beneficiary has given such notice as aforesaid or under clause 11.3 below, the Beneficiary will from the service of such notice become responsible for all sums properly payable to the Sub-Contractor under the Contract accruing due after the service of such notice but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Contract.

11.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Sub-Contractor, the Beneficiary will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Sub-Contractor pursuant to clause 11.1.1 or clause 11.3 of this Deed.
The Sub-Contractor further covenants with the Beneficiary that if the Project Agreement is terminated, the Sub-Contractor, if requested by the Beneficiary by notice in writing and subject to clause 11.1.2 and clause 11.1.3, will accept the instructions of the Beneficiary to the exclusion of the Works and Operating Contractor in respect of its duties under the Contract upon the terms and conditions of the Contract and will if so requested enter into agreement whereby the Beneficiary is substituted for the Works and Operating Contractor under the Contract and will if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Works and Operating Contractor under the Contract.

If two (2) or more valid notices are received during the Notice Period, the following order of priority shall apply:

11.4.1 notice service by the Contractor;

11.4.2 notice served by the Security Trustee;

11.4.3 notice served by the Beneficiary.

All notices received shall take effect in accordance with the above order of priority and no other relevant notice will bind the Sub-Contractor, subject to clause 11.6 below.

The Works and Operating Contractor acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under clause 11.3 as conclusive evidence that the Project Agreement has been terminated.

The Beneficiary may by notice in writing to the Sub-Contractor appoint another person to exercise its rights under this clause 11 subject to the Beneficiary remaining liable to the Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

12 Third Party Rights

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

13 Counterparts

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full and original instrument for all purposes.

14 Waiver

Failure by any party at any time to enforce any provision of this Deed or to require performance by the other parties of any provision of this Deed shall not be construed as a waiver of such provision and shall not affect the validity of this Deed or any part of it or the right of the relevant party to enforce any provision in accordance with its terms.

15 Severability

If any condition, any clause or provision of this Deed not being of a fundamental nature is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Deed shall not be affected thereby.
Amendments

No amendment to this Deed shall be binding unless in writing and signed by the duly authorised representatives of the parties.

Applicable Law and Jurisdiction

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.
COLLATERAL WARRANTY EXECUTION PAGE

This document is executed as a deed and delivered on the date stated at the beginning of this Deed.

signed as a deed by AmeyCespa (AWRP) ODC Limited
acting by its attorney
under a power of attorney dated in the presence of: Attorney:

witness signature:
name:
address:
occupation:

Executed as a deed by Vinci Construction UK Limited acting by , a director Director:
in the presence of:

witness signature:
name:
address:
occupation:

THE COMMON SEAL of North )
Yorkshire County Council was )
affixed in the presence of: )

Authorised Signatory
### Part 2
Ancillary Documents Entered into at the Commencement Date

<table>
<thead>
<tr>
<th>Document</th>
<th>Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>EFW Sub-Contract</td>
<td>AmeyCespa Limited and Vinci Environment UK Limited</td>
</tr>
<tr>
<td>MT Sub-Contract</td>
<td>AmeyCespa Limited and Stadler UK Limited</td>
</tr>
<tr>
<td>Civils Sub-Contract</td>
<td>AmeyCespa Limited and Vinci Construction UK Limited</td>
</tr>
</tbody>
</table>

### Part 3
Ancillary Documents Entered into at Financial Close

<table>
<thead>
<tr>
<th>Document</th>
<th>Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Works and Operating Contract</td>
<td>AmeyCespa (AWRP) SPV Limited and AmeyCespa (AWRP) ODC Limited</td>
</tr>
<tr>
<td>Performance Guarantee</td>
<td>Amey UK plc, Cespa, Compania Española de Servicios Públicos Auxiliares SA, and AmeyCespa (AWRP) SPV Limited</td>
</tr>
<tr>
<td>Performance Bond</td>
<td>Liberty Mutual Insurance Limited, AmeyCespa (AWRP) SPV Limited and AmeyCespa (AWRP) ODC Limited</td>
</tr>
<tr>
<td>Retention Bond</td>
<td>Royal Bank of Scotland plc, AmeyCespa (AWRP) ODC Limited and AmeyCespa (AWRP) SPV Limited</td>
</tr>
<tr>
<td>Deed of Novation and Variation (EFW Facility)</td>
<td>AmeyCespa Limited, AmeyCespa (AWRP) ODC Limited and Vinci Environment UK Limited</td>
</tr>
<tr>
<td>Deed of Novation and Variation (MT Facility)</td>
<td>AmeyCespa Limited, AmeyCespa (AWRP) ODC Limited and Stadler UK Limited</td>
</tr>
<tr>
<td>Deed of Novation and Variation (civils works)</td>
<td>AmeyCespa Limited, AmeyCespa (AWRP) ODC Limited and Vinci Construction UK Limited</td>
</tr>
</tbody>
</table>
SCHEDULE 16 - Redacted Copy

SCHEDULE 16
FINANCING AGREEMENTS

Part 1
Initial Financing Agreements

1  Common Terms Agreement
2  Commercial Facilities Agreement
3  Senior EIB Finance Contract A
4  Senior EIB Finance Contract B
5  Hedging Documents
6  Account Bank Agreement
7  Intercreditor Agreement
8  HoldCo Charge
9  ProjectCo Charge
10 Direct Agreement
11 Any direct agreement or collateral warranty (other than the Direct Agreement) provided in favour of any of the Finance Parties in connection with the Project Documents (as such term is defined in the Common Terms Agreement)
12 Shareholder Support Agreement
13 ProjectCo Loan Note Instrument
14 HoldCo Loan Note Instrument
15 Qualifying Shareholder L/C

Each of the above as defined in the Common Terms Agreement.
Part 2
Senior Financing Agreements

1 Common Terms Agreement
2 Commercial Facilities Agreement
3 Senior EIB Finance Contract A
4 Senior EIB Finance Contract B
5 Hedging Documents
6 Account Bank Agreement
7 Intercreditor Agreement
8 HoldCo Charge
9 ProjectCo Charge
10 Direct Agreement

Any direct agreement or collateral warranty (other than the Direct Agreement) provided in favour of any of the Finance Parties in connection with the Project Documents (as such term is defined in the Common Terms Agreement)

12 Shareholder Support Agreement
13 Qualifying Shareholder L/C

Each of the above as defined in the Common Terms Agreement.

Part 3
Subordinated Financing Agreements

1 ProjectCo Loan Note Instrument
2 HoldCo Loan Note Instrument

Each of the above as defined in the Common Terms Agreement.
SCHEDULE 17 - Redacted Copy

SCHEDULE 17

MARKET TESTING

1 General

1.1 Not used.

2 Market Testing

2.1 The Market Tested Services shall be capable of being subject to Market Testing throughout the Service Period.

2.2 The objective of any Market Testing of the Market Tested Services shall be to establish the most economically advantageous tender having regard to criteria agreed (from time to time) with the Authority.

2.3 The Market Testing procedure will be undertaken in good faith by the Contractor (and with the reasonable co-operation of the Authority) and shall also be undertaken in an open and transparent manner, ensuring a fully auditable trail.

2.4 Any documentation relating to the Market Testing shall be provided to the Authority prior to use. The Contractor shall have due and proper regard to any comments made by the Authority either as to the proposed process or documentation that the Contractor proposes to use.

2.5 The Contractor shall undertake each Market Testing in accordance with the Market Testing Procedure set out in this Schedule 17 (Market Testing). For the avoidance of doubt the relevant Market Testing procedures shall be undertaken in accordance with the provisions of this paragraph 2 as modified in accordance with paragraph 3.

2.6 The Contractor shall bear its own costs, fees and expenses associated with the Market Testing.

2.7 As soon as reasonably practicable and in any event before each Market Testing Review Date and submission of the relevant Market Testing Proposal, the Parties shall agree (acting reasonably):

2.7.1 any changes required to the relevant Market Tested Services;

2.7.2 the appropriate manner of advertising the Market Tested Services required;

2.7.3 the number and identity of prospective Tenderers that will be invited to prepare and submit Tenders for the Market Tested Services in question; and

2.7.4 the form and contents of the Tender documents to be delivered to prospective Tenderers (the Tender Documents) which shall include:

(a) a statement of the Tender validity period;

(b) details of the Tender evaluation criteria;

(c) the form of any compliant or variant Tender;
SCHEDULE 17 - Redacted Copy

(d) the terms and conditions under which the Market Tested Services will be contracted including any supplementary requirements of the Parties as required pursuant to paragraphs 3;

(e) information relating to employees and their conditions of employment;

(f) the information that Tenderers are required to provide;

(g) how many Tenders are required for the Market Testing Procedure to be valid; and

(h) the relevant information from Schedule 2 (Contractor's Proposals).

2.8 Notwithstanding any provision in this Schedule 17 (Market Testing), where practicable, and subject to availability, no less than three (3) Tenderers will be invited to prepare and submit Tenders provided that any prospective Tenderer shall possess an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question (and any dispute as to the selection of a prospective Tenderer shall be determined in accordance with clause 62 (Dispute Resolution);

2.9 The Authority shall either:

2.9.1 comment on the relevant Market Testing Proposals within ten (10) Business Days, in which case the Contractor shall give consideration to the Authority's comments in the Tenders it seeks; or

2.9.2 decline to or offer no comment on the relevant Market Testing Proposals within ten (10) Business Days in which case the Contractor shall proceed to invite Tenders as proposed.

2.10 The Authority shall have the right to object to the selection of a Tenderer where the Tenderer has committed a Prohibited Act by notifying the Contractor of such objection in writing and such Tenderer shall not be selected.

2.11 Having taken into account any reasonable representations of the Authority pursuant to paragraph 2.10 the Contractor shall issue the relevant Tender Documents to prospective Tenderers.

2.12 The Contractor shall provide to the Authority as soon as reasonably practicable, but in any event no longer than five (5) Business Days after being issued to prospective Tenderers under paragraph 2.11 above, a copy of the relevant Tender Documents.

2.13 The Contractor shall provide a copy of the Tender Documents to the Authority as soon as reasonably practicable and in any event no longer than five (5) Business Days after receiving a copy of the responses to the Tender Documents.

2.14 The Authority may request such additional information as it may require to assess the Tender within three (3) weeks of receipt of the Tender from the Contractor. The Contractor shall provide any such additional information within three (3) weeks of any request by the Authority under this paragraph 2.14.

2.15 On making any decision as to the award of any sub-contract, the Contractor shall supply to the Authority a copy of its Tender evaluation, together with sufficient supporting
information concerning the Tender evaluation to enable the Authority to analyse and understand the basis for the Contractor's decision.

2.16 If the Authority does not agree with the Contractor's decision, the Authority may, within fifteen (15) Business Days of being provided with the Tender evaluation, dispute such decision and, if the Parties do not resolve such dispute within fifteen (15) Business Days of the Authority disputing the Contractor's decision under this paragraph 2.16 the dispute shall be dealt with in accordance with clause 62 (Dispute Resolution).

2.17 The Contractor shall provide any prospective Tenderer which is unsuccessful in being selected, if requested to do so by that Tenderer, with an explanation of the reasons behind its failure to be selected.

2.18 Following the acceptance of any Tender by the Contractor in accordance with the provisions of this Schedule 17 (Market Testing), the rates, prices and charges in Schedule 6 (Payment Mechanism) shall be amended to reflect the revised rates as a result of the Market Testing.

2.19 For the avoidance of doubt:

2.19.1 where the Tender price of a sub-contractor appointed by the Contractor is lower than the existing price for the relevant Market Tested Service, then the cost difference between the Tenderer's Tender price and the existing price shall be deducted from the relevant rate set out in Schedule 6 (Payment Mechanism) with effect from the relevant Market Testing Review Date.

2.19.2 where the Tender price of a sub-contractor appointed by the Contractor is higher than the existing price for the relevant Market Tested Service, then the cost difference between the Tenderer's Tender price and the existing price shall be added to the relevant rate set out in Schedule 6 (Payment Mechanism) with effect from the relevant Market Testing Review Date.

3 Landfill Services Market Testing

3.1 The first Landfill Market Testing Date shall be 5 years after the Service Commencement Date.

3.2 Thereafter the Landfill Market Testing Dates shall occur upon the 5th anniversary of the first Landfill Market Testing Date, unless otherwise agreed by the Parties.

3.3 In addition to the provisions contained in paragraph 2, no less than forty (40) weeks before the Landfill Market Testing Date, the Contractor shall prepare and submit to the Authority its proposals for Market Testing of the Landfill Services (the Landfill Market Testing Proposals) describing in detail the Contractor's proposed Tenderers and the Tender Documents.

3.4 The Landfill Market Testing Proposals shall include, without limitation:

3.4.1 a list of those landfill operators from which the Contractor proposes to seek bids. Unless otherwise agreed, this shall include all landfill operators within thirty (30) miles of any Delivery Point and (where practicable) a minimum of three (3) landfill operators;
SCHEDULE 17 - Redacted Copy

3.4.2 Tender Documents comprising a proposed specification and sub-contract terms, which shall be in all material respects consistent with the provisions of this Agreement, including but not limited to Schedule 1 (Authority's Requirements), and Schedule 6 (Payment Mechanism); and

3.4.3 a schedule setting out the proposed tonnages it is proposed to landfill in the period up to the next Landfill Market Testing Date.

3.5 No less than twenty-five (25) weeks before the Landfill Market Testing Date, the Contractor shall commence conducting the Market Testing of Landfill Services in accordance with the Landfill Market Testing Proposals.

3.6 Subject to paragraph 3.7, following the expiry of the Tender period for the return of responses to the Tender Documents (which shall be no later than twenty (20) weeks before the Landfill Market Testing Date) the Contractor shall determine:

3.6.1 which Tenders (if any) are compliant with the requirements; and

3.6.2 following consultation with the Authority, which Tender (if any) provides the most economically advantageous offer, in respect of the Landfill Services.

3.7 No less than fifteen (15) weeks before the relevant Market Testing Review Date, the Contractor shall, subject to taking into account any comments made by the Authority pursuant to paragraph 3.6 above, select:

3.7.1 in respect of Tenders for the provision of an individual Market Tested Service, the most economically advantageous Tender received in respect of the provision of that Market Tested Service; and

3.7.2 in respect of Tenders for the provision of more than one (1) Market Tested Service, the most economically advantageous Tender in respect of the provision of those Market Tested Services;

provided that in respect of Landfill Services only the cost of haulage shall be taken into account.

3.8 No less than eight (8) weeks before the Landfill Market Testing Date, the Contractor shall provide the Authority with its proposals for providing Landfill Services (the Landfill Services Proposal) up to the next Landfill Market Testing Date.

3.9 No less than three (3) weeks before the Landfill Market Testing Date, the Authority shall either:

3.9.1 give written notice to the Contractor accepting the Landfill Services Proposal for undertaking Landfill Services from the Landfill Market Testing Date, in which case such revised Landfill Services shall commence from the Landfill Market Testing Date;

3.9.2 give written notice to the Contractor accepting the Contractor's Landfill Services Proposal in respect of the Landfill Services which shall commence from the Landfill Market Testing Date (or such other date as the Parties, acting reasonably, may agree), but refer the rates, prices and charges for determination in accordance with clause 62 (Dispute Resolution), in which case the Adjudicator's decision shall be binding.
SCHEDULE 18

Not Used