

APPENDIX 1 - CHECKLIST

Prosiect Gwyrdd's Procurement of The Waste Treatment Solution for Municipal Waste

Invitation to Submit Detailed Solutions

FROM [PARTICIPANT TO COMPLETE] SOLUTION [1]/[2] delete as appropriate

To ensure that all information has been included, please complete this Checklist and return a copy with each Detailed Solution. The following documentation is required **for each Detailed Solution** submitted by a Participant.

Question answered and supporting information enclosed (please detail)		
Please tick box		
1.	Part One – Completed ISDS Checklist (Appendix 1). <i>Upload via etenderwales</i>	<input type="checkbox"/>
2.	Part One – Completed and signed Anti-Collusion Certificate (Appendix 2). <i>Upload via etenderwales</i>	<input type="checkbox"/>
3.	Part One – Copy of all clarifications with an index detailing each clarification. <i>Upload via etenderwales</i>	<input type="checkbox"/>
4.	Part One – Executive Summary (please see section 4.5.4 of this ISDS) including confirmation that any statement made in the PQQ and Detailed Solutions remains true and accurate in all material respect save to the extent specifically disclosed in the Detailed Solutions and highlighted in the Executive Summary. If any changes are disclosed in the Detailed Solutions, please provide a list referring to the sections containing such disclosures. <i>Upload via etenderwales</i>	<input type="checkbox"/>
5.	Part Two – Clean and delta view copy of the marked up Payment Mechanism (Appendix 8). <i>Upload via etenderwales</i>	<input type="checkbox"/>
6.	Part Two – Completed Participant Commentary Table (Appendix 3) in relation to any proposed amendments to the Payment Mechanism.	<input type="checkbox"/>

	<i>Upload via etenderwales</i>	
7.	Part Two – Completed and signed Financial Bid Forms (Appendix 5). <i>Upload via etenderwales</i>	<input type="checkbox"/>
8.	Part Two – Completed Financial Model. <i>Upload via etenderwales</i>	<input type="checkbox"/>
9.	Part Two – Financial Model audit opinion in the form of a signed letter from a Chartered Accounting firm confirming the model operates in accordance with the stated assumptions. <i>Upload via etenderwales</i>	<input type="checkbox"/>
10.	Part Three – Clean and delta view copy of the marked up Authority's Requirements (Appendix 6) if any amendments are proposed. <i>Upload via etenderwales</i>	<input type="checkbox"/>
11.	Part Three – Completed Participant Commentary Table (Appendix 3) in relation to any proposed amendments to the Authority's Requirements. <i>Upload via etenderwales</i>	<input type="checkbox"/>
12.	Part Three – Completed Bid Back list (Appendix 4 of ISDS)	<input type="checkbox"/>
13.	Part Three – Completed Contractors Proposals (Section 5) including commentary on the Authority's Requirements and Performance Measurement Framework (Appendix 6) <i>Upload via etenderwales</i>	<input type="checkbox"/>
14.	Part Three – All completed technical proformas (Appendix 11) including a completed WRATE model following the WRATE Instructions. <i>Upload via etenderwales</i>	<input type="checkbox"/>
15.	Part Five – Written and signed confirmation from the Participant that each Detailed Solution submission represents the views of all members of the Participant's Team including letters of support from each sub contractor and each funder in accordance with section 7 of this ISDS. <i>Upload via etenderwales</i>	<input type="checkbox"/>
16.	Part Five – Clean and delta view versions of the Participant's marked up Project Agreement and Schedules in accordance with section 7. Please note that in accordance with section 8, the above are to	<input type="checkbox"/>

	be submitted to the Partnership by no later than 17:00:00 GMT 21 st January 2011. <i>Upload via etenderwales</i>	
17.	Part Five – Completed Participant Commentary Table (Appendix 3). Please note that in accordance with section 8, the above are to be submitted to the Partnership by no later than 17:00:00 GMT 21 st January 2011. <i>Upload via etenderwales</i>	<input type="checkbox"/>
18.	Part Five – Detailed heads of terms for each sub-contract in accordance with section 7. <i>Upload via etenderwales</i>	<input type="checkbox"/>
19.	Part Five – Organisational chart illustrating the relationship between the Participant and each sub-contractor in accordance with section 7 of this ISDS. <i>Upload via etenderwales</i>	<input type="checkbox"/>
20.	Part Five – Written confirmation from the proposed guarantors of each sub-contractor (as more particularly set out in section 7 of this ISDS). <i>Upload via etenderwales</i>	<input type="checkbox"/>
21.	Completed Bidder Insurance Response Matrices (Appendix 15) <i>Upload via etenderwales</i>	<input type="checkbox"/>
22.	<i>Any supplemental information, appropriately referenced.</i> <i>Upload via etenderwales</i>	<input type="checkbox"/>

APPENDIX 2 - ANTI-COLLUSION CERTIFICATE

**Prosiect Gwyrdd's
Procurement of the Waste Treatment Solution for Municipal Waste
Invitation to Submit Detailed Solutions**

TO COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF

FROM PARTICIPANT []
SOLUTION [1] / [2] delete as appropriate

The essence of the public procurement process is that the Partnership shall receive bona fide competitive tenders from all Participants. In recognition of this principle we hereby certify that all of the submissions we shall make during the Competitive Dialogue Procedure will be bona fide Solution(s), intended to be competitive, and that we have not fixed or adjusted the nature and/or cost of the Solution(s) or the rates or prices quoted by or under or in accordance with any agreement or arrangement with any other Participant (other than a member of our own consortium). We have not and insofar as we are aware neither has any Participant Party:-

- a) Entered into any agreement with any other person with the aim of preventing Solution(s) being made or as to the fixing or adjusting of the nature and/or cost of any Solution(s) or the conditions on which any Solution(s) is made; or
- b) Informed any other person, other than the person calling for this Solution(s), of the nature and/or cost or the approximate nature and/or cost of the Solution(s), except where the disclosure, in confidence, of the amount of the Solution(s) was necessary to obtain quotations necessary for the preparation of the Solution(s) for insurance, for performance bonds and/or parent company guarantee, contract guarantee bonds or for professional advice required for the preparation of the Solution(s); or
- c) Caused or induced any person to enter into such an agreement as is mentioned in paragraphs 1 and 2 above or to inform us of the nature and/or cost or the approximate nature and/or cost of any rival Solution(s) for the Project; or
- d) Committed any offence under the Prevention of Corruption Acts 1889 to 1916 nor under Section 117 of the Local Government Act 1972; or
- e) Offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Solution(s) or proposed Solution(s) for the Project any act or omission; or



- f) Canvassed any other persons referred to in paragraph 1 above in connection with the Project; or
- g) Contacted any officer of the Partnership about any aspect of the Project including (but without limitation) for the purposes of discussing the possible transfer to the employment of the Participant of such officer for the purpose of the Project or for soliciting information in connection with the Project.
- h) We also undertake that we shall not procure the doing of any of the acts mentioned in paragraphs 1 to 7 above for the duration of the Competitive Dialogue Procedure nor (in the event of the Solution(s) being accepted) shall we do so while the resulting Project continues in force between us (or our successors in title) and the Partnership.

In this Certificate, the word "**person**" includes any person, body or association, corporate or incorporate and "**agreement**" includes any arrangement whether formal or informal and whether legally binding or not.

In this Certificate, "**Participant Party**" means any employee, consultant, funder, insurer, advisor, agent, officer or sub-contractor (of any tier) of the Participant.

Signed:-

Signed:-

Position:-

Position:-

For and on behalf of:-

For and on behalf of:-

Dated:-

Dated:-

Signed:-

Signed:-

Position:-

Position:-

For and on behalf of:-

For and on behalf of:-

Dated:-

Dated:-

Please see section 3.6 of this ISDS for further information in relation to the signature requirements of the Certificate.

APPENDIX 3 - PARTICIPANT COMMENTARY TABLE

In relation to Prosiect Gwyrdd's Procurement of the Waste Treatment Solution for Municipal Waste

FROM *[PARTICIPANT TO COMPLETE]*
PART *[FIVE]* *[LEGAL]* COMMENTARY TABLE
SOLUTION *[1]/ [2]*

Authority's Requirements

			Proposed Amendment	Drafting	Reasoning	The Partnership's Response
1.						
2.						
3.						

Main Body (and Schedule 1)

	Clause No.	Clause Name.	Proposed Amendment	Drafting	Reasoning	The Partnership's Response
1.						
2.						
3.						

Schedules (Excluding Schedule 1)

	Clause No.	Clause Name.	Proposed Amendment	Drafting	Reasoning	The Partnership's Response
1.						
2.						
3.						

Payment Mechanism

			Proposed Amendment	Drafting	Reasoning	The Partnership's Response
1.						
2.						
3.						

BID FORM 1: DIVERSION PERFORMANCE

Technical Notes

Year ended March	CONTRACT WASTE: DIVERSION & RECYCLING PERFORMANCE																Contractors Forecast BMW to Landfill (% of the BMW content of the Contract Waste)
	Partnerships' Projected Total Contract Waste Tonnage	Partnerships' Maximum allowable % of Contract Waste to Landfill (15 % of the Contract Waste)	Contractors Guaranteed Maximum % of Contract Waste to Landfill	Contractors Guaranteed Maximum Tonnage of Contract Waste to Landfill	Contractors Forecast % of Contract Waste to Landfill	The Contractors Guaranteed Maximum Processed Landfill Tonnage target (% of Contract Waste)	The Contractors Guaranteed Maximum Unprocessed Landfill Tonnage target (% of Contract waste)	Partnerships' Minimum Recycling Rate for Contract Waste (16%)	Contractors' Guaranteed Recycling Rate for Contract Waste %	Contractors' Guaranteed Recycling tonnage for Contract Waste (Tonnes)	Contractors' Forecast Recycling Rate for Contract Waste %	Projected BMW Content of Contract Waste	Maximum allowable BMW to Landfill Target (10% of the BMW content of the Contract Waste)	Contractors Guaranteed Maximum BMW to Landfill (% of the BMW content of the Contract Waste)	Contractors' Guaranteed Maximum BMW to Landfill Tonnage		
Column ref	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	
2014	153 133	0%	() %	()	() %	() %	() %	0%	() %	()	() %	33 133	0%	() %	()	() %	
2015	153 133	0%	() %	()	() %	() %	() %	0%	() %	()	() %	33 133	0%	() %	()	() %	
2016	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2017	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2018	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2019	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2020	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2021	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2022	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2023	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2024	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2025	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2026	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2027	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2028	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2029	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2030	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2031	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2032	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2033	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2034	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2035	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2036	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2037	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2038	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2039	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2040	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2041	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	
2042	153 133	15%	() %	()	() %	() %	() %	16%	() %	()	() %	33 133	10%	() %	()	() %	

Notes
The bid form should be completed with reference to the ISDS Instructions to Bidders, including the Price Instructions and the Payment Mechanism

Bidder to complete C, D, E, F, G, I, J, K, N, O, P

APPENDIX 4 – BID BACK LIST

SOLUTION [1]/[2]	Contract Clause	Description	Participant Information - Detailed Solution
	Financial and Commercial Bid Back Items		
1			
2			
3			
	Technical and Operational Bid Back Items		
1			
2			
3			
	Deliverability and Planning Bid Back Items		
1			
2			
3			
	Legal Bid Back Items		
1			
2			
3			

PROSPECT GWYRDD
PRICE PRO-FORMA
INSTRUCTIONS TO BIDDERS

Please complete the attached Price Pro-forma and return to the Partnership as part of the ISDS submission.

Only enter data in the cells shaded 'yellow' and do not alter any formulas or insert any rows or columns.

If the bidder wishes to provide any additional information this should be done so through responses to specific questions included in the ISDS submission.

Tonnage of treatable waste (per reference project)

The tonnages to be used for modelling purposes are the tonnages of Contract Waste per ISDS Technical Assumptions.

Waste Tonnage to Landfill

Tonnage of active Unprocessed Contract Waste to Landfill should be entered in Row 25.

Interim Services

If Interim Services are proposed on a Value for Money basis, the total nominal Interim Services should be inputted in row 42

Commissioning Payments

The total nominal Commissioning Payments should be inputted in row 46 - these should be linked to the ISDS Financial Model submitted by the bidder

Unitary Charge

The Unitary Charge should be provided as a 'real' figure price based **as at April 2012** as per the Financial modelling instructions in Appendix 9.

The bidder should set out in row 20 the total annual nominal Unitary Charge payments projected from their ISDS Financial Model

NNDR

The ISDS financial model's projected "Pass Through" nominal NNDR payments calculated in accordance with the instructions in Appendix 9 should be input into row 63

Tonnage of Contract Waste not used for Commissioning and sent to Landfill - Commissioning period only

The tonnage of Contract Waste not required for Commissioning out of the 102,091 (cell F21) available over the 7 month period to 31st of march 2016 should be input in cell F67

Other Costs

Landfill tax and gate fee rates have been provided and must not be altered.

Author/Best Input/s	
Bidder's Input/s	
Bidder's Name	

Bidder's Name

PRICE & TONNAGE PRO-FORMA

NPV Base Date	April 2015
Expected Full Service Commencement date	April 2016
Years to Contract Start	1.0

Expedited Full Service Commitment date
New Base Date

[illegible][illegible]

WAG revenue contribution calculation sheet

WPPO Funding Requirement	£0
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First payment year	2016
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Starting Month	April
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Contract end year	2041
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Contract end month	March
--------------------	-------

Interest rate	5.5%
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Scaling Factor	100.0%
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LOOKUP TABLE	
Lookup Number 1	1 0.958 0.292
Annually period start	April 2 0.625 0.625
	August 3 0.292 0.958
	December 4 0.125 0.125
	February 5 0.208 0.042
Start month factor	January 6 0.708 0.542
	July 7 0.792 0.458
	June 8 0.042 0.208
	March 9 0.175 0.375
Lookup Number 2	May 10 0.375 0.875
	November 11 0.458 0.702
	October 12 0.542 0.708
	September 0.958
Annually period end	
	0.208
End month factor	
	0.958

WPPO Residual Contribution Calculator

Length of annuity payments	24.916
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Annual annuity	£0
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First financial year	2016
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Last financial year	2040
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Year	Financial Year	Contribution	Cumulative contribution
2016	1 2016- 2017	£0	£0
2017	2 2017- 2018	£0	£0
2018	3 2018- 2019	£0	£0
2019	4 2019- 2020	£0	£0
2020	5 2020- 2021	£0	£0
2021	6 2021- 2022	£0	£0
2022	7 2022- 2023	£0	£0
2023	8 2023- 2024	£0	£0
2024	9 2024- 2025	£0	£0
2025	10 2025- 2026	£0	£0
2026	11 2026- 2027	£0	£0
2027	12 2027- 2028	£0	£0
2028	13 2028- 2029	£0	£0
2029	14 2029- 2030	£0	£0
2030	15 2030- 2031	£0	£0
2031	16 2031- 2032	£0	£0
2032	17 2032- 2033	£0	£0
2033	18 2033- 2034	£0	£0
2034	19 2034- 2035	£0	£0
2035	20 2035- 2036	£0	£0
2036	21 2036- 2037	£0	£0
2037	22 2037- 2038	£0	£0
2038	23 2038- 2039	£0	£0
2039	24 2039- 2040	£0	£0
2040	25 2040- 2041	£0	£0
2041	26 2041- 2042	£0	£0
2042	27 2042- 2043	£0	£0
2043	28 2043- 2044	£0	£0
2044	29 2044- 2045	£0	£0
2045	30 2045- 2046	£0	£0
2046	31 2046- 2047	£0	£0
2047	32 2047- 2048	£0	£0
2048	33 2048- 2049	£0	£0
2049	34 2049- 2050	£0	£0
2050	35 2050- 2051	£0	£0
2051	36 2051- 2052	£0	£0
2052	37 2052- 2053	£0	£0
2053	38 2053- 2054	£0	£0
2054	39 2054- 2055	£0	£0
2055	40 2055- 2056	£0	£0
TOTAL		£0	£0
CHECK		£0	£0

IMPORTANT INSTRUCTIONS FOR BIDDERS

This form is to be used by a Bidder to "Price Out" transportation cost adjustment. Please insert the price of the delivery point where waste is to be transported by each activity in cells C16 to C19. Please insert the destination of the delivery point where waste is to be transported by each activity in cells D16 to D19. Please enter the corresponding tonnage processed per partner in cells A26, A28, A30, A32, A34, A36, A38, A40, A42, A44, A46, A48, A50, A52, A54, A56, A58, A60, A62, A64, A66, A68, A70, A72, A74, A76, A78, A80, A82, A84, A86, A88, A90, A92, A94, A96, A98, A100, A102, A104, A106, A108, A110, A112, A114, A116, A118, A120, A122, A124, A126, A128, A130, A132, A134, A136, A138, A140, A142, A144, A146, A148, A150, A152, A154, A156, A158, A160, A162, A164, A166, A168, A170, A172, A174, A176, A178, A180, A182, A184, A186, A188, A190, A192, A194, A196, A198, A200, A202, A204, A206, A208, A210, A212, A214, A216, A218, A220, A222, A224, A226, A228, A230, A232, A234, A236, A238, A240, A242, A244, A246, A248, A250, A252, A254, A256, A258, A260, A262, A264, A266, A268, A270, A272, A274, A276, A278, A280, A282, A284, A286, A288, A290, A292, A294, A296, A298, A300, A302, A304, A306, A308, A310, A312, A314, A316, A318, A320, A322, A324, A326, A328, A330, A332, A334, A336, A338, A340, A342, A344, A346, 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Cost Proforma - 1A
Proforma - Summary Analysis of Facility Specific Capital Costs (Nominal)

IMPORTANT - INSTRUCTIONS FOR BIDDERS

Bidders must ensure that the Proforma information provided reconciles to the financial model

Where a breakdown of cost items is provided within the proforma, the summary total must

- Rows 14 and 15 shall be completed once for the total proposed solution
- Rows 23 to 45 shall be completed for each individual waste treatment facility in the bidders proposed solution
- Rows 57 to 63 shall be completed once for all facilities included in the bidders proposed solution

Proforma - Summary Analysis of Facility Specific Capital Costs (Nominal)

Start of Construction End of Construction	Please insert relevant Date		Please insert relevant Date																												
	Period Start Date	2012-13 £000s	2013-14 £000s	2014-15 £000s	2015-16 £000s	2016-17 £000s	2017-18 £000s	2018-19 £000s	2019-20 £000s	2020-21 £000s	2021-22 £000s	2022-23 £000s	2023-24 £000s	2024-25 £000s	2025-26 £000s	2026-27 £000s	2027-28 £000s	2028-29 £000s	2029-30 £000s	2030-31 £000s	2031-32 £000s	2032-33 £000s	2033-34 £000s	2034-35 £000s	2035-36 £000s	2036-37 £000s	2037-38 £000s	2038-39 £000s	2039-40 £000s	2039-41 £000s	
Notes	Total £000s																														
PROJECT COSTS (Total for all Facilities) TO BE COMPLETED FOR EACH FACILITY (EG MRF EFW WTS AD IVC) Relinquishment (Identify what work is undertake and where) Civil engineering Land (land cost specific to this facility and use) Earthworks Ground improvement and special foundations Sub structure excluding special foundations Buildings and superstructure Services Connections and Utilities (excluding gas main relocation, including any offsite work - identify e.g. grid connection) Pipework ductwork (specific to this facility and not shared) Process plant Materials handling plant Equipment (mobile) Electrical and instrumentation Preliminaries (Identify what this item includes) Building regulation and planning fees Construction insurance (including professional fees) Non Works costs (Identify) Contingencies Professional fees (Identify profession) Professional #1 Professional #2 Professional #3 Statutory charges (Bidder to specify) Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

Typical unit costs listed above	Unit	Cost
Base site works	M2	
Concrete	M3	
Concrete Reinforced	M3	
Steel reinforcing	Tonnes	
Steel structural	Tonnes	
Labour	day	

Bidders must ensure that the Proforma information provided reconciles to the financial model. Where a breakdown of cost items is provided within the proforma the summary total must reconcile to the information within the financial model

- Rows 15 to 42 shall be completed for each site in the bidders proposed solution
- Rows 48 to 54 shall be completed once for all the sites included in the bidder's proposed solution

Start of Construction	End of Construction
1970	1975
1975	1980
1980	1985
1985	1990
1990	1995
1995	2000
2000	2005
2005	2010
2010	2015
2015	2020
2020	2025
2025	2030
2030	2035
2035	2040
2040	2045
2045	2050
2050	2055
2055	2060
2060	2065
2065	2070
2070	2075
2075	2080
2080	2085
2085	2090
2090	2095
2095	2100

[illegible]

Typical unit costs used above	Unit	Cost
Bulk earthworks	M3	
Aggregates	M3	
Concrete Reinforced	M3	
Structuring	tonne	
Steel structural	tonne	
Fuels	litre	
Labour	day	

Cost Proforma - 1C
Proforma - Summary Analysis of Lifecycle Maintenance Costs (Nominal)

IMPORTANT - INSTRUCTIONS FOR BIDDERS

Bidders must ensure that the Proforma information provided reconciles to the financial model
Where a breakdown of cost items is provided within the proforma the summary total must reconcile to the information within the financial model
Rows 14 to 27 shall be completed for each individual waste treatment facility in the bidders proposed solution

Proforma - Summary Analysis of Lifecycle Maintenance Costs (Nominal)

Period Start Date	Period End Date	Kilowatt	Please insert relevant Date																														
			Total	2013-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40	2038-41	
TO BE COMPLETED FOR EACH FACILITY: [Bidder to specify] [Bidder to specify] [Bidder to specify] [Bidder to specify] [Bidder to specify] [Bidder to specify] [Bidder to specify]	Kilowatt	Kilowatt	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	£000s	
			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Lifecycle Costs			0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		

Bidders must ensure that the Proforma information provided reconciles to the financial model.

Where a breakdown of cost items is provided within the proforma the summary total must reconcile to the information within the financial model.

Rows 14 to 29 shall be completed for each individual waste treatment facility in the bidders proposed solution.

Start of Operations	Phase	Insert relevant Date
End of Operations	Phase	Insert relevant Date

Cost Proforma 1D

Authorities' Inputs
Bidder's Inputs

Bidder's Name

PAYMENT MECHANISM PRO-FORMA

Part 1 - Unitary Charge

Band	Bandwidth	Rate / Tonne £
	From (tonnes)	Up to but not including (tonnes)
Band 1	0	Minimum Tonnage
Band 2		Base Element Rate
Band 3		
Band 4		

Participants to modify bands as required

Notes

To be completed in real terms (as at April 2010)

The bid form should be completed with reference to the Payment Mechanism Principles Paper and ISDS Instructions

Part 2

Payment Mechanism Schedule []	Bid Back	Units	Bid Back Position (Base)	Bid Back Position (Indexation)	Any Supporting Commentary from the Bidders
Definition of Active Landfill Gate Fee	Value of Active Landfill Gate Fee	£ per tonne at April 2010 prices			
Definition of Base Element Rate	Unitary Charge Base Element to apply to the Base Element Tonnage	£ per tonne at April 2010 prices			
Definition of Inactive Landfill Gate Fee	Value of Inactive Landfill Gate Fee	£ per tonne at April 2010 prices			
Definition of Fixed Proportion	Fixed Proportion of the Unitary Charge Base Element	% of UCBE not subject to indexation			
Definition of Performance Standards Deduction Cap	Performance Standard Cap	£ per annum			
Section 3 Commissioning Payments	Commissioning Gate Fee	£ per tonne at April 2010 prices			
Section 8 - Gain Share	The percentage of additional third party income above guaranteed levels to be shared with the Partnership per Third Party income type	%			
Section 11 - Recycling Deduction	Recycling Failure Deduction Rate	£ per tonne as at April 2010 prices			
	Rate per Tonne for each type of Ad-hoc waste	£ per tonne at April 2010 prices			

Authorities' Inputs
Bidder's Inputs

Bidder's Name

CONTRACT TARGETS PRO-FORMA

Year no.	Contract Year end March	Processed Landfill Performance Target	Unprocessed Landfill Performance Target	BMW Landfill Performance Target	Recycling Target	Maximum tonnage
		% of Contract Waste	% of Contract Waste	% of Contract Waste	% of Contract Waste	tonnes
1	2017					
2	2018					
3	2019					
4	2020					
5	2021					
6	2022					
7	2023					
8	2024					
9	2025					
10	2026					
11	2027					
12	2028					
13	2029					
14	2030					
15	2031					
16	2032					
17	2033					
18	2034					
19	2035					
20	2036					
21	2037					
22	2038					
23	2039					
24	2040					
25	2041					
26	2042					
27	2043					

APPENDIX 6 – PART 1 – AUTHORITY'S REQUIREMENTS

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Project Aims:

The Partnership comprises of Cardiff Council, Caerphilly County Borough Council, Monmouthshire County Council, Newport City Council and The Vale of Glamorgan Council and has the following aims for the Project:

A commitment to meet WAG's anticipated targets for waste management set out in Towards Zero Waste Consultation for Municipal Waste Management in Wales April 2009;

To minimise the environmental impacts of the Partners' residual waste management operations;

To maximise economies of scale by working in partnership;

To provide best value for the Partners' tax payers;

To establish a sustainable, cost effective regional solution for the treatment of waste for the Partnership;

To comply with the necessary terms and conditions associated with the approved WAG funding.

The scope of the Project includes (but is not limited to):

- a) Detailed design of the facility(ies);
- b) Provision of finance to build, operate and maintain the facility(ies);
- c) Application for planning permission, environmental permits and all necessary consents required for the construction and operation of the facility(ies);
- d) Construction and commissioning of the facility(ies);
- e) Acceptance of all Contract Waste at the facility(ies);
- f) Operation and maintenance of the facility(ies) for the period of the Project Agreement which shall include the reception, treatment and/or recovery of Contract Waste in accordance with the targets and standards set out in this document;
- g) The management of storage, treatment, sale, removal and transportation of all products and disposal of all process residues and rejects from the facility(ies);



- h) The production and management of strategies to maintain the service in the event of the non-availability of any key aspect of the solution;
- i) The responsibility for all employment and staffing matters relating to the delivery of the Solution;
- j) Hand-back or decommissioning of the facility(ies) at the end of the contract period; and
- k) Any other ancillary services agreed as part of the Competitive Dialogue Procedure in accordance with the Partnership's Contract Notice.

General

- 1.1 The Contractor shall design and construct the Works in accordance with the relevant Method Statement to meet the requirements of PR1.
- 1.2 The Contractor shall provide Works appropriate for it to accept all Contract Waste and to process such Contract Waste to meet PR3.
- 1.3 As a minimum, the Works shall meet the Works Quality Standards included in Appendix A.

Design and Delivery Requirements

SERVICE OUTPUTS – WORKS REQUIREMENTS

SO 1.1 The Works shall be undertaken in accordance with all applicable Legislation, Consents, Works Delivery Plan and Method Statements.

- 1.4 The Contractor shall provide a Works Delivery Plan containing the information as detailed in the Contractors Proposals.
- 1.5 The Contractor shall provide Works that shall be suitable and efficient for all vehicles bringing Contract Waste to the Site(s) and vehicle egress from the Site(s). As a minimum, the Facility(ies) shall be capable of accepting all vehicles up to and including bulk trailers. The vehicle type and design of the discharge arrangements may change during the Contract Period and therefore the Facility(ies) shall be flexible and capable of accepting or be readily adaptable to accept a wide range of vehicles. The types of vehicles currently being used are provided in Appendix C.
- 1.6 The Works shall be designed and constructed to ensure that all waste processing treatment and product storage takes place within enclosed spaces with appropriate environmental controls provided.
- 1.7 The Contractor shall be responsible for identifying and undertaking all necessary works and enabling works.
- 1.8 Such enabling works shall have regard to protecting and safeguarding continuity of site services, adjoining properties and the safety of site users and visitors.
- 1.9 The Contractor shall carry out all necessary demolition of existing structures and make safe redundant infrastructure on the site(s) in accordance with BS6187:2000.
- 1.10 The Contractor shall carry out any protection and diversion works associated with any existing infrastructure located on the site(s) required for the

construction of the Works and ensure continuity of utility supplies to any Adjoining Properties in so-far as they may be affected by the Works. This shall include but shall not be limited to gas, electricity, water, sewerage and communications services.

- 1.11 The Contractor shall ensure that adequate retaining walls and/or support to excavated faces are provided to support any Adjoining Property during the carrying out of the Works.
- 1.12 The Contractor shall ensure the site(s) (and any Works carried out outside the site(s)) is/are safe and secure throughout the period up to the Planned Readiness Date and shall ensure no unauthorised access to the site(s).
- 1.13 The Works shall be suitably housed and protected such that any Authority Representative, any Authority staff or visitors cannot gain access to areas or parts of the site(s) that could cause harm or a risk to their health and safety.
- 1.14 The Contractor shall ensure that all construction vehicles leaving the site(s) are adequately cleaned to prevent the deposit of waste material and debris on any Adjoining Property. If such material or debris is so deposited the Contractor shall employ such measures as shall be necessary to remove the material and debris and to clean and reinstate such Adjoining Property and Adopted Highway to the reasonable satisfaction of the owners or occupiers of the Adjoining Property.
- 1.15 Processes that include the recovery of energy from waste shall be designed to allow a combined heat and power (CHP) solution, CHP enabled means The solution will have minimum requirements for a turbine that is capable of supplying steam/hot water to match the expected heat off-take requirement plus space for future accommodation of ancillary works such as heat exchanger and pipe work – which would only be installed if/when the CHP off-take materialises, so as to be developed during the Contract Period or shall include a complete CHP solution.
- 1.16 Delivery vehicles shall be accepted, weighed, recorded, discharged and be able to leave the Facility(s) in a time of not exceeding [20] minutes per vehicle. Measurement shall be from the recognition of the vehicle by the ANPR monitoring site access, to the time it is able to leave the site as measured by the outward weighbridge. Waiting on the approach roads outside or inside the site shall constitute “arrival at the site” if the standing is a result of the actions or inactions of the Contractor. The Contractor shall design the weighbridges such that queues shall not form at the entry weighbridge.
- 1.17 The Works shall be designed and constructed to include suitable storage facilities for Contract Waste of a size and volume which are capable of storing a minimum of [4 (four) days average] Contract Waste delivered to the Site(s) without prejudice to the terms of the Contingency Plan.

- 1.18 The Works shall include equipment capable of monitoring, weighing and electronically recording each load and vehicle bringing Contract Waste and any Third Party Waste to the Site(s) and each load and vehicle removing Contract Waste and/or products and/or residues of treatment from the Site(s). The information to be recorded shall as a minimum be that required by the Contractor for the purpose of meeting their obligations under the Contract.
- 1.19 The Works shall be designed and constructed to include all necessary storage and material handling equipment to facilitate storage and/or removal of all Contract Waste from the Site(s) and in accordance with the relevant Method Statements.
- 1.20 The Works shall be designed and constructed to include all necessary infrastructure and utility services required to meet the requirements of this Schedule including but not limited to their connection, security of supply and capacity.
- 1.21 The Works shall be designed and constructed to include a dewatering area for street cleansing vehicles.
- 1.22 The Works shall be designed and constructed to include the following:
 - a) The Facility and all parts thereof shall incorporate all necessary fire control systems and emergency exit and access routes,
 - b) The Facilities shall be designed to have the minimum practical impact on the environment and shall include all necessary environmental controls to manage emissions to air, land, sewer and water,
 - c) Security and monitoring systems shall be provided to prevent unauthorised access to the site.

Minimum Works Requirements

- 1.23 The Contractor shall ensure that the Works necessary to deliver the Facilities and Service, including but not limited to; design, enabling works, remediation, demolition, integration of site access with existing highways, access and manoeuvring areas, on-site road network, data recording systems, waste acceptance areas, treatment plant, roads, storage and parking areas, offices and welfare facilities, visitor centre, boundary fencing and security, closed circuit television, site lighting, site signage, weighbridge and landscaping, comply with Good Industry Practice, all applicable Legislation and Consents including, but not limited to, the following:

- a) British standards, codes of practice, or equivalent European industry recognised standards and guidance;
 - b) Health and Safety Executive guidance notes;
 - c) The Welsh Assembly Government's and the relevant local authority's planning policies including TAN 12 Design and supplementary guidance;
 - d) Requirements of the utilities companies;
 - e) Building Research Establishment Digest recommendations;
 - f) The Disability Discrimination Act (DDA)
 - g) Fire safety requirements in agreement with the fire authority;
 - h) Environmental Agency guidance notes, consents and authorisations;
 - i) Site Waste Management Plan Regulations; and
 - j) Construction (Design and Management) Regulations 2007.
- 1.24 The Contractor shall provide materials, equipment, plant, machinery and other goods of sound and satisfactory quality and fit for purpose for which they will be used. All workmanship and manufacture of fabrication shall meet or surpass all relevant British or EU standards or equivalent.
- 1.25 The Contractor shall provide details of any sub-Contractors and major suppliers
- 1.26 The Contractor will provide Details of the forms of Sub-Contract that will be used together with confirmation that contractual arrangements are consistent with the main contractual agreement

Quality Management System

- 1.27 The Contractor will ensure that a Quality Management System that is compliant with ISO9001 or equivalent is in place prior to and throughout the Works Period.

1.28 The Contractor shall appoint a nominated manager who shall in respect of the Works:

- a) ensure the effective operation of and implementation of the Quality Management System;
- b) audit the Quality Management System at regular intervals (and as a minimum every [6 (six)] months) and report the findings of such audit to the Contractor and the Authority;
- c) audit any sub-contractor's Quality Management Systems, as a minimum every [6 (six)] months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractors and the Partnership;
- d) review the Quality Management System at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
- e) liaise with the Authority on all matters relating to quality assurance.

Environmental Management System

1.29 The Contractor will ensure that an Environmental Management System that is compliant with ISO14001 or equivalent is in place prior to and throughout the Works Period..

1.30 The Contractor shall nominate an environmental management manager who shall in respect of the Works:

- a) ensure the effective operation of and implementation of the Environmental Management System;
- b) audit the Environmental Management System at regular intervals (and as a minimum every [6 (six)] months) and report the findings of such audit to the Contractor and the Authority;
- c) audit any sub-contractor's Environmental Management Systems, as a minimum every [6 (six)] months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractors and the Authority;

- d) review the Environmental Management System at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
- e) liaise with the Authority on all matters relating to environmental management.

Construction Programme

- 1.31 The Contractor shall develop and maintain a detailed Construction Programme covering all elements of the Works and based on the Construction Programme included in the relevant Method Statement.
- 1.32 The Contractor shall submit to the Authority the Construction Programme and any subsequent amendment to the Construction Programme within five (5) Business Days of any proposed amendment in accordance with the Review Procedure.
- 1.33 The Contractor shall carry out the Works in accordance with the Construction Programme.
- 1.34 The Contractor shall monitor and report to the Authority on a monthly basis progress of the Work against the latest revision of the Construction Programme.

2 Key Personnel

- 1.35 The Contractor shall identify the key staff that will interface with the Authority during the Works Phase and detail how that interface will be maintained.

Civil and Building Works Specification

SERVICE OUTPUTS – CIVIL AND BUILDING WORKS REQUIREMENTS	
SO 1.2	The Contractor will develop and implement a Site Waste Management Plan that details how the Contractor will measure and report the quantity of construction waste produced, the quantity of construction waste sent to landfill, the amount of construction and demolition materials that are recovered and the total material value derived from re-used and recycled content in new build.
SO 1.3	The Contractor will design and construct the Facility(ies) to meet the aspirational sustainability objectives of achieving a BREEAM: standard of “Excellent”.

- 1.36 The Contractor shall adopt and implement a recognised industry standard civil and building works specification, for the design, construction, commissioning and testing of the Works.
- 1.37 The architectural, civil engineering and site works and finishes provided shall be in accordance with current industrial standards having regard to best practice in the waste management industry and conforming to the requirements of the relevant necessary consents.
- 1.38 Engineering layouts and design details shall be Reviewable Items subject to approval by the Partnership prior to submission by the Contractor of any permission applications.
- 1.39 The Contractor shall:
 - a) Develop (and subsequently implement) a Site Waste Management Plan, which shall be provided to the Partnership prior to commencement of the Works, detailing how the Contractor will measure and report the quantity of construction waste produced and the quantity of construction waste sent to landfill;
 - b) Recover a minimum of [75 (Seventy Five)]% of construction and demolition materials;
 - c) Ensure that a minimum of 10% of total material value derives from re-used and recycled content in new build; and
 - d) Design and construct the Facility(ies) so that it achieves a BREEAM: Industrial standard of “Excellent”.

Mechanical and Electrical Specifications

- 1.40 The Contractor shall adopt and implement a recognised industry standard mechanical and electrical works specification for the design and construction of the Works.

Employee Specifications

- 1.41 The Contractor shall ensure that all persons employed in connection with the construction of the Works are suitably skilled and experienced in their several professions, trades and callings or adequately supervised.

- 1.42 The Contractor shall ensure that all aspects of the Works are supervised by sufficient numbers of persons who have adequate knowledge for the satisfactory and safe performance of the Works in accordance with the Contract and with regard to the activities which are carried out at the relevant Site(s) and to the nature of persons occupying the relevant Site(s).

Planning and Permitting

SERVICE OUTPUTS – PLANNING AND PERMITTING

SO 1.4 The Contractor will obtain the necessary Consents and Environmental Permits to develop and operate the Facility(ies).

- 1.43 The Contractor shall be responsible for securing full planning permission for its Solution on either the Contractor's site and/or the Optional Site. The Contractor shall be responsible (but is not limited to) for the cost and time of preparing an EIA and any other assessments or studies that may be required, complying with any planning conditions/environmental permits and meeting the cost of any planning obligations that are identified.
- 1.44 The Contractor shall provide the Authority with a Planning/Permitting/Permissions Schedule within 8 weeks of award of Contract, as listed in Appendix E and detailed in the Contractors Proposals.
- 1.45 The Contractor must build in sufficient time for the development of an EIA in their Solution and any requirement for an EIA will then be completed by the Contractor to reflect its Solution.
- 1.46 The Contractor shall be responsible for the appropriate design of the Facility(ies) for their Solutions. The Contractor shall be required to provide completed design proposals for any proposed facility(ies) and to meet design evaluation criteria. Flexibility and suitability of design will be essential to ensure planning permission is secured within a reasonable timeframe. Key to this will be to ensure a positive attitude towards public perception taking into account street-scene views, rural or urban settings, architectural expression, orientation, boundary treatment, landscape and sustainability. Relevant local policy and guidance including (but not limited to) the Regional Waste Plan and Local Development Plans, which provides a great deal of background work, shall be followed by Contractors when preparing their design.

- 1.47 Planning Applications shall be Reviewable Items subject to approval by the Partnership prior to submission.

Design Standards

- 1.48 The Contractor shall provide a schedule of design standards for key elements, list of Key Design Drawings, List of Key Design Parameters, List of Design Documents and Content. To include but not limited to details and approach to: Street-scene views, Impact on rural and urban settings, Architectural expression, Orientation, Boundary treatment and Sustainability.
- 1.49 The Contractor shall provide details of Landscape design features including the purpose of the feature e.g. buffering, mitigation, screening etc..
- 1.50 The Contractor shall provide Details of Architectural Design concept and proposals including; materials for external faces, volumes and building massing, heights, orientation and spatial distribution and boundary treatments. Include elevations and photomontage in the setting of the site and general surroundings.

Visitor Facilities

- 1.51 The Contractor shall incorporate facilities for visitors within the Facility(ies). The facilities for visitors may be combined with the Contractor's office and meeting facilities or a stand-alone facility as described within the Contractor's Proposals.
- 1.52 The facilities for visitors shall:
- a) be accessible without the need for visitors to be issued with personal protective equipment;
 - b) designed to be Disabled Discrimination Act compliant;
 - c) be suitable to accommodate groups (including seating) of up to 30 people, including school children;
 - d) have or have access to appropriate toilet and washing facilities;
 - e) have or have safe access to a view of part of the Facility(ies), for example the control room or a viewing gallery over the tipping hall, without requiring visitors to be issued with personal protective equipment;

- f) be supplied with a computer, projector, and screen, furniture and fittings as necessary.

1.53 The Contractor shall ensure that there is sufficient visitor parking space to enable up to seven (7) cars or one (1) bus to park within the boundaries of the Facility(ies).

Existing Structures and Infrastructures

1.54 The Contractor shall be responsible for identifying and undertaking all enabling works necessary to ensure the Site(s) is suitable for the development of the Works.

1.55 The Contractor shall carry out all demolition of existing structures and make safe redundant infrastructure on the Site(s) in accordance with BS6187:2000.

1.56 The Contractor shall be responsible for undertaking remediation or removal of any contaminated waste, material or land.

1.57 The Contractor shall carry out any protection and diversion works associated with any existing infrastructures located on the Site(s) required for the construction of the Works and ensure continuity of utility supplies to any Adjoining Properties in so-far as they may be affected by the Works. This shall include but is not limited to gas, electricity, water, sewerage and communications services.

1.58 The Contractor shall ensure that adequate retaining walls and/or support to excavated faces are provided to support any Adjoining Property during the carrying out of the Works.

1.59 The Contractor shall ensure the Site(s) (and any Works carried out outside the Site(s)) is safe and secure throughout the period up to the Services Commencement Date and shall ensure no unauthorised access to the Site(s).

1.60 The Works shall be suitably housed and protected such that waste delivery vehicle operators, Authority Representative, Authority staff or visitors cannot gain access to areas or parts of the Site(s) that could cause harm or a risk to their health and safety.

Site Access and Circulation

SERVICE OUTPUTS – SITE ACCESS AND CIRCULATION

SO 1.5 The Site design and the management of the Works will be undertaken to ensure safe movement of vehicles and pedestrians within the Site(s).

- 1.61 The Contractor shall design and construct the internal road and pedestrian area layout within the Site(s) to allow safe movement and segregation of vehicles and pedestrians and with regard to health and safety Legislation and Good Industry Practice. This shall include making provision for the safe and efficient movement of visitors around the site during all phases of the Contract.
- 1.62 The Contractor shall provide access to the Site(s) from the external road network.
- 1.63 The Contractor shall ensure the security of the Site(s) and allow the Authority safe and efficient access during the Opening Hours. This shall include but is not limited to:
- a) Suitable levels of artificial illumination for the purpose of ingress and egress from the Site(s), way finding and discharging Contract Waste;
 - b) Lighting to meet the requirements of:
 - i The Chartered Institution of Building Services Engineers (CIBSE) Lighting Guide;
 - ii The Institution of Lighting and Crime; and
 - c) Bilingual (English and Welsh) signage indicating access and egress.
 - d) Access into the site(s) designed to avoid queuing on highways and access roads.
 - e) The Facility and all parts thereof shall incorporate emergency exit and access routes.

Welfare

- 1.64 The Contractor shall design and construct within the Facility(ies) welfare (toilet) facilities for the drivers and operatives of Authorised Vehicles. The location of the welfare facilities should be such that their usage is not included in vehicle turnaround times. The Contractor shall, if necessary, provide parking for Authority Vehicles for safe use of the welfare facilities.

Environmental Consideration and Nuisance Control

- 1.65 The Contractor shall minimise nuisance and environmental impact during construction and shall design and construct the Works so as to minimise nuisance and environmental impact including but not limited to the impact of:
- a) light;
 - b) noise;
 - c) vermin and other pests;
 - d) litter;
 - e) flies;
 - f) dust;
 - g) emissions;
 - h) odour; and
 - i) traffic;
 - j) protect areas of nature conservation;
 - k) protect quality and quantity of surface and ground water resources;
 - l) protect sites of archaeological importance.
- 1.66 The Contractor shall ensure that all construction vehicles leaving the Site(s) are adequately cleaned to prevent the deposit of waste material and debris on any Adjoining Property. If such material or debris is so deposited the Contractor shall employ such measures as shall be necessary to remove the material and debris and to clean and reinstate such Adjoining Property to the reasonable satisfaction of the owners or occupiers of the Adjoining Property in accordance with Clause 10.7 (Adjacent Land and Third Party Consents) of Appendix 7 Project Agreement.
- 1.67 The Contractor shall ensure that all waterways and reens/drainage ditches on the Site(s) are protected.

Health and Safety

SERVICE OUTPUTS – HEALTH AND SAFETY

SO 1.6 The Works will comply with all health and safety Legislation.

- 1.68 The Contractor will ensure that a Health and Safety Management System that is compliant with OHSAS 18001 or equivalent is in place prior to and throughout the Works Period
- 1.69 The Contractor shall provide the Authority with a Health and Safety Plan 3 months prior to commencement of Construction Works, as listed in Appendix E and detailed in the Contractors Proposals. The Health and Safety Plan is to also include, but not limited to; Risk Assessments, (including Control of Substances Hazardous to Health Register, Method Statements and Safe Systems of Work).
- 1.70 The Contractor shall nominate a health and safety manager who shall in respect of the Works
- a) Liaise with the Health and Safety Executive on all relevant matters;
 - b) Co-ordinate the Contractor's health and safety plans with the Authority's health and safety policies; and
 - c) Take all necessary steps, and provide the Authority with such information as the Authority reasonably requires to satisfy itself that all necessary steps are being taken, to identify and control risks to the health and safety of persons involved in the Works.

Fire Safety

- 1.71 The Contractor shall carry out a detailed fire assessment of the Facility(ies) and operations on the Site(s) taking into account all health and safety issues, protection of the environment and the requirement for business continuity. This review shall include, but is not limited to reviewing best practice and recommendations from fire investigations on similar facilities and other related best practice industry guidance.
- 1.72 The Contractor shall identify and incorporate in the Works a Fire Strategy (which incorporates the output from the detailed fire assessment in paragraph 1.71) to minimise both the cause of fire occurring and the subsequent impact of any fire.
- 1.73 The Fire Strategy and related fire design shall be submitted by the Contractor to the Partnership as a Reviewable Item.

- 1.74 The Contractor shall provide the Authority with a Fire and Emergency Plan 3 months prior to commencement of Construction Works, as listed in Appendix E and detailed in the Contractors Proposals.

Construction Phase Reporting

SERVICE OUTPUTS – REPORTING

SO 1.7 The Contractor will keep the Authority fully informed of progress throughout the construction of the Facility(ies) in accordance with the agreed reporting requirements.

- 1.75 The Contractor shall submit to the Authority within five (5) Business Days following the end of each month, a Monthly Construction Progress Report covering the construction activities carried out in the preceding month. The Monthly Construction Progress Report shall include as a minimum a description of the following:
- a) Assessment of actual progress by comparison to the submitted Construction Programme;
 - b) Progress with obtaining Consents and Environmental Permits;
 - c) Progress with discharging any requirements of the Consents;
 - d) Report on any material risk to achieving the Planned Service Commencement Date;
 - e) Where the Monthly Construction Progress Report covers the period in which the Readiness Test Certificate is issued, the Monthly Construction Progress Report shall include a copy of the Readiness Test Certificate; and
 - f) Summary of construction tasks to be carried out in the next month

As-Built Drawings

- 1.76 The Contractor shall provide the Authority, a set of As-Built Drawings, as Listed within the List of Plans Appendix E (and detailed in the Contractors Proposals), on the earlier of the date falling [10 (ten)] Business Days after the date they become available to the Contractor or within [6 (six)] months after the date of issue of the Readiness Test Certificate in respect of the Facility(ies).

- 1.77 The Contractor shall promptly update the As-Built Drawings supplied to the Authority to reflect any changes from time to time and promptly provide a set of such amended As-Built Drawings to the Authority.
- 1.78 The Contractor shall provide the Authority, a set of Operating Manuals on the earlier of the date falling [10 (ten)] Business Days after the date they become available to the Contractor or within [6 (six)] months after the date of issue of the Readiness Test Certificate in respect of the Facility(ies). Additionally provide the Authority with a full and detailed description of activities needed to operate the facility on a day to day basis and how the activities interact.
- 1.79 The Contractor will on an annual basis review and update the Authority's Operating Manuals to ensure the Authority hold a current version.
- 1.80 The Contractor shall provide the Authority with a List of Fixed and Mobile Plant required for operation of the Facility(ies).

Communication, Liaison and Public Relations

SERVICE OUTPUTS – COMMUNICATION, LIAISON AND PUBLIC RELATIONS
SO 1.8 Communication with stakeholders and management of public relations will be an integral part of the management of the Works.

- 1.81 The Contractor shall put in place and operate throughout the period up to the Services Commencement Date, a Stakeholder Communication Plan, details of which are included in the Contractors Proposals and listed in Appendix E, the Plan shall detail the Contractor's planned approach to stakeholder management, communication and community liaison, which:
- a) Identifies those likely to be affected by the Works;
 - b) Identifies likely concerns and takes all appropriate steps to mitigate these concerns; and
 - c) Records all complaints and comments (verbal or otherwise), letters or notices from any members of the public or statutory authority.
- 1.82 The Stakeholder Communication Plan shall be submitted by the Contractor to the Authority as a Reviewable Item.
- 1.83 The Contractor shall develop and implement an Enquiries and Complaints Plan that sets out the procedures to follow for managing questions, complaints

and disputes relating to Works. As a minimum the Enquiries and Complaints Plan shall include the following actions and response times:

- a) The Contractor shall, within [1 (one)] Business Day of a request from the Authority, provide information to support the Authority's internal and external public relations activities in connection with the performance of the Contract.
- b) The Contractor shall respond to correspondence from the Authority's officers and members and members of the public by ensuring that an acknowledgement of the correspondence is issued within [5 (five)] Business Days and a full reply within ten [10 (ten)] Business days of receipt.
- c) The Contractor shall complete all investigations of all complaints and issue a formal written report to the Authority within [10 (ten)] Business Days of the complaint being registered.

1.84 All publicity in relation to the Solution will be jointly agreed prior to publication.

1.85 The Enquiries and Complaints Plan shall be submitted by the Contractor to the Authority as a Reviewable Item.

1.86 Following receipt of a complaint the Contractor shall take any necessary or appropriate corrective action in accordance with Good Industry Practice and/or the Contractor's Enquiries and Complaints Plan.

1.87 The Contractor shall fully co-operate with and provide assistance and relevant information to the Authority and to the Commission for Local Administration ("the Ombudsman") in enquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matters arising in connection with the provision of Services under this Contract.

1.88 The Contractor shall participate in a formal liaison committee and a Stakeholder Liaison Group to the extent required by Schedule 18.

PR2 COMMISSIONING REQUIREMENTS

Commissioning

SERVICE OUTPUTS – COMMISSIONING STANDARDS

- | | |
|---------------|--|
| SO 2.1 | The Facility(ies) will be commissioned in accordance with applicable regulations, legislation, testing, and Good Industry Practice. |
| SO 2.2 | The Facility(ies) will be available to accept and treat the Contract Waste by the Planned Service Commencement Date. |

- 2.1 The Contractor shall develop an outline Testing and Commissioning Plan based on the Testing and Commissioning Plan included in the relevant Method Statement. The detailed Testing and Commissioning Plan shall be no less onerous than that included with the relevant Method Statement. The Testing and Commissioning Plan shall include but not be limited to:
- a) Security systems and procedures function correctly and effectively;
 - b) data measuring and recording equipment and processes function correctly;
 - c) the systems for reporting data to the Authority function correctly and provide in a timely manner the correct and required data in the required form and format;
 - d) Waste reception, capacity and handling procedures operate correctly;
 - e) vehicle turn around times are achieved;
 - f) health and safety and welfare requirements are met;
 - g) the process outputs meet the design quality standards; and
 - h) all guarantees provided to the Authority in relation to the process are met.
- 2.2 The Contractor shall submit to the Authority as a Reviewable Item the detailed Testing and Commissioning Plan, as listed in Appendix E and detailed in the Contractors Proposals, as a minimum [12 (Twelve)] Contract Months prior to the Planned Readiness Date. The Testing and Commissioning Plan shall include but not be limited to the Contractor's proposals for:
- a) cold commissioning of individual Equipment and Facilities;
 - b) the process to achieve the Readiness Test;

- c) hot commissioning of the Works including the incremental acceptance, processing and treatment of Contract Waste; and
 - d) the Acceptance Tests.
- 2.3 The Contractor shall carry out the commissioning in accordance with the Testing and Commissioning Plan.
- 2.4 Prior to the issuance of the Readiness Test Certificate, the Contractor shall carry out commissioning of the Works to demonstrate that the design construction installation and plant performance:
 - a) comply with health and safety Legislation and Guidance;
 - b) comply with manufacturers requirements;
 - c) are suitable for testing their integration within the Works;
 - d) are fit for their intended purpose; and
 - e) are capable of meeting the requirement of PR2.
- 2.5 After the issuance of the Readiness Test Certificate, the Contractor shall carry out commissioning of the Works to demonstrate that their design, construction, installation and plant performance:
 - a) comply with health and safety Legislation and Guidance;
 - b) comply with manufacturers requirements;
 - c) are suitable for integration within the Works;
 - d) are fit for their intended purpose; and
 - e) the requirements of PR3.
- 2.6 The Readiness Tests and Acceptance Tests will be witnessed by the Independent Certifier.

Service Mobilisation and Transition Plan

- 2.7 The Contractor shall provide [12 (twelve)] months prior to undertaking Commissioning and Testing a Service Mobilisation and Transition Plan as described in the Contractors Proposals and listed in Appendix E to the Authority's Requirements.

Commissioning Period Reporting

SERVICE OUTPUTS – REPORTING

SO 2.3 The Contractor will keep the Authority fully informed of progress throughout the commissioning of the Facility(ies) in accordance with the agreed reporting requirements.

2.8 The Contractor shall submit to the Authority within [5 (five)] Business Days following the end of each Contract Month during the Commissioning Period, a Monthly Commissioning Progress Report, in accordance with the List of Plans detailed in the Contractors Proposals and listed in Appendix E, covering all the commissioning and testing activities carried out in the preceding Contract Month. The Monthly Commissioning Progress Report shall include as a minimum a description of the following:

- a) Assessment of actual progress by comparison to the submitted Commissioning Programme; and
- b) Summary of the commissioning tasks to be carried out in the following month.

Mechanical and Electrical Specifications

2.9 The Contractor shall adopt and implement a recognised industry standard mechanical and electrical works specification for the commissioning and testing of the Works.

Security

2.10 The Contractor shall ensure the Site(s) are secure to prevent unauthorised access to the Site(s) following the Readiness Date.

Quality Management System

2.11 The Contractor shall implement a Quality Management System that is compliant with ISO9001 or equivalent throughout the commissioning and testing periods.

Environmental Management System

2.12 The Contractor shall implement an Environmental Management System in compliance with ISO14001 or equivalent at all times throughout the commissioning period.

Health and Safety

SERVICE OUTPUTS – HEALTH AND SAFETY

SO 2.4 The Site(s) will comply with health and safety Legislation during commissioning.

- 2.13 The Contractor shall implement a Health and Safety Management System in compliance with OHSAS 18001 or equivalent at all times throughout the commissioning period.

PR3 SERVICE REQUIREMENTS

PR 3.1 - Diversion Targets

Contract Waste Treatment and Diversion from Landfill

SERVICE OUTPUTS – WASTE TREATMENT SOLUTION

SO 3.1 The Contractor will provide a Solution for the receipt, treatment and disposal of Contract Waste in accordance with targets and service standards set out within the Authority's Requirements and the Contractor's Proposals.

- 3.1 The Services must be capable of treating up to 35 per cent of the total Municipal Waste arisings in the administrative areas of the Partnership.
- 3.2 In each Contract Year the Services must divert at least:
 - a) 85 per cent of Contract Waste from landfill; and
 - b) 90 per cent of Biodegradable Municipal Waste content of Contract Waste from landfill.
- 3.3 In each Contract Year the Contractor shall not exceed the Target Processed Landfill Tonnage as specified in the Contractor's Proposals.
- 3.4 In each Contract Year the Contractor shall not exceed the Target Unprocessed Landfill Tonnage as specified in the Contractor's Proposals.
- 3.5 In each Contract Year the Contractor must achieve as a minimum the Recycling Target specified in the Contractor's Proposals, which shall be no less than 16 per cent of Contract Waste.
- 3.6 Where energy recovery is part of the solution, the Authority requires that any proposed waste thermal treatment facility shall achieve, as a minimum, the R1 designation for recovery (per the revised Waste Framework Directive).
- 3.7 Where energy recovery is part of the Solution, the overall plant efficiency shall be as high as possible as can be demonstrated to be value for money and, where possible, the Facility(ies) should operate or be capable of operating in combined heat and power mode, as specified in the Contractor's Proposals.

Sustainability and Carbon Management Plan

- 3.8 The Contractor will provide, within [3 (Three)] months of award of Contract, a Sustainability Management and Carbon Management Plan (as set out in the Contractors Proposals and listed in Appendix E).
- 3.9 The baseline against which sustainability and carbon impact will be measured and how they have been derived. This shall be related to the WRATE model for the contractors solution. Please follow the WRATE Proforma contained in Appendix 13 Part 3 and WRATE Modelling Instructions Appendix 14.
- 3.10 The Sustainability Management and Carbon Management Plan shall be published [Annually], setting out the current year's targets and progress against the previous year's targets.

Contract Waste

- 3.11 The Authority gives no guarantee as to the composition of Contract Waste. The Contractor shall make allowances for future changes in Contract Waste arisings and composition and shall ensure that the technical and operational processes employed are sufficiently flexible to meet Contract requirements throughout the Contract Period.
- 3.11 All data in the possession of the Authority regarding existing Municipal and Contract Waste flows and composition shall be made available to the Contractor, along with any planned service changes that may impact on the quantity and composition of Contract Waste.
- 3.12 If requested by the Authority Representative, the Contractor shall arrange for an independent body to be employed to carry out an analysis of the Contract Waste, identifying the waste by such categories as the Authority shall require.
- 3.13 By way of guidance only but without warranty as to future projections, the quantity of Contract Waste to be accepted and processed by the Contractor each Contract Year is estimated as follows:

Contract Waste by Year	
Year Commencing 1st April	Quantity (t)
2015*	175,013
2016*	175,657
2017	176,206

2018	176,750
2019	177,547
2020	177,887
2021	178,224
2022	178,633
2023	179,250
2024	180,112
2025	180,445
2026	180,635
2027	180,826
2028	181,019
2029	181,212
2030	181,408
2031	181,605
2032	181,803
2033	182,003
2034	182,204
2035	182,407
2036	182,611
2037	182,817
2038	183,024
2039	183,233
2040*	183,444

*Note: Full Year tonnages provided for information only. The actual Contract Waste tonnages will be dependent upon a number of factors including but not limited to the agreed Service Commencement Date which shall be discussed during the Competitive Dialogue Procedure.

PR3.2 - Environmental Management

Impact on the Local Environment

SERVICE OUTPUTS – ENVIRONMENTAL MANAGEMENT

SO 3.2 The Services will fully meet the requirements of Consents and Environmental Permits and applicable Legislation throughout the Contract Period.

- 3.14 The Contractor shall develop, maintain and update the Environmental Impact Control Plan on an annual basis as detailed in the Contractors Proposals and listed in Appendix E
- 3.15 The Environmental Impact Control Plan shall include all procedures, actions and monitoring required by the Contractor to:
- a) minimise the environmental impacts of transporting, receiving, treating and disposing of Contract Waste and Third Party Waste including but not limited to the impacts from:
 - i light;
 - ii noise;
 - iii vermin and other pests;
 - iv litter;
 - v flies;
 - vi dust;
 - vii emissions;
 - viii odour; and
 - ix traffic.
 - b) to meet the environmental conditions contained or referred to within the Consents;
 - c) to meet all Legislation;
 - d) where, practical, minimise amenity impacts on the local population; and
 - e) protect all waterways and reens/drainage ditches;
 - f) protect areas of nature conservation;

- g) protect quality and quantity of surface and ground water resources;
- h) protect sites of archaeological importance;

with respect to the Site(s) and all Contractor's operations and activities external to the Site(s).

- 3.16 The Contractor shall comply with the latest version of the Environmental Impact Control Plan.
- 3.17 The Contractor shall implement at its own cost the amendments to the Environmental Impact Control Plan including for the avoidance of doubt all changes required to the Facility(ies) and the Services.
- 3.18 The Contractor shall ensure that the ground within 400 metres of the boundary of the Site(s) and areas identified on the site plan layout ref no. [1a], including but not limited to access roads and adjoining land to which the Contractor can lawfully obtain access without payment of monies, are kept free from litter and fly tipped waste.
- 3.19 Where litter and fly tipped waste referred to in paragraph 3.18 above is brought to the attention of the Contractor by the Authority then:
- a) within [30 (thirty)] minutes of being notified the Contractor shall, contain and control such waste with consideration to its health and safety obligations; and
 - b) the Contractor shall immediately organise the removal and disposal of any litter and clean up any affected surrounding area.
 - c) within [24 (twenty-four)] hours the Contractor shall remove and dispose of fly-tipped waste and clean up any affected surrounding area.

Contingency Plan

SERVICE OUTPUTS – CONTINGENCY PLAN

SO 3.3 The Services will be continuously available to accept Contract Waste, within the agreed Opening Hours, throughout the Contract Period.

- 3.20 In the event that the contractor is unable to accept contract waste at the facility the contractor is responsible for providing alternative contract waste delivery points. The Contractor will develop and agree with the Authority a Contingency Plan (as per the Contractors Proposals and listed in Appendix E) that identifies how the Services will be provided in the event that the Authority is required to deliver Contract Waste to a Contingency Delivery Point on a permanent or temporary basis or during emergency situations. The Contingency Plan shall include:
- a) Location(s) of Contingency Delivery Point(s);
 - b) Arrangements for the redirection of Contract Waste to Contingency Delivery Point(s); and
 - c) Details of any impact on the Services as a result of using the Contingency Delivery Point(s).
- 3.21 The first Contingency Plan shall be delivered to the Authority [6 (six)] months prior to service commencement.
- 3.22 The Contractor shall submit any proposed changes to the Contingency Plan to the Authority in accordance with the Review Procedure.
- 3.23 The Contractor shall notify the Authority prior to implementing the Contingency Plan.
- 3.24 The Contractor shall provide an updated Contingency Plan to the Authority within [10 (ten)] days of a change agreed pursuant to paragraph 3.20.
- 3.25 The Contractor shall confirm within [20 (twenty)] Business days within the end of each Contract Year that the Contingency Plan is up to date.
- 3.26 The Contractor shall only store Contract Waste in designated on-Site(s) storage Facilities.
- 3.27 The Contractor will provide the Authority a Disaster Recovery Plan (as detailed in the Contractors Proposals and listed in Appendix E) 3 Months prior to Service Commencement Date that identifies how the Services will be reinstated following the facility being unavailable due to a disaster, such as but not limited to instance of flood, fire, explosion.



- 3.28 The Contractor shall confirm within [20 (twenty)] Business days of the end of each Contract Year that the Disaster Recovery Plan is up to date.

PR3.3 - Operational Interface

Receipt of Contract Waste

SERVICE OUTPUTS – RECEIPT OF CONTRACT WASTE

SO 3.4 The Services must be capable of receiving Contract Waste from the Authority throughout the Contract Period.

- 3.29 The Contractor will provide detail of Waste Acceptance Procedure for Contract Waste within appropriate Method Statement, as detailed in the Contractors Proposals and listed in Appendix E. To include but not limited to arrangements for:
- a) Inspection of waste;
 - b) Quarantine of non conforming waste;
 - c) Vehicle Acceptance Procedure.
- 3.30 The Contractor shall provide the Authority with a Waste Acceptance Plan [6 (six)] months prior to service commencement date, detailing how the contractor will accept Contract waste during commissioning, full operation and handback/over periods. The plan will be an annual reviewable item. The Contractor will ensure Contract Waste is received in accordance with the Waste Acceptance Plan.
- 3.31 The Contractor shall accept Contract Waste delivered by an Authorised Vehicle or vehicle contracted to the authority during the Opening Hours agreed for specified Delivery Points, which are [Monday to Sunday, 0600h to 2200h, excluding Christmas Day and New Year's Day].
- 3.32 The Contractor shall accept Contract Waste outside the Opening Hours where requested by the Authority provided always that such requests are consistent with all Consents. The Authority shall provide [3 (three)] hours notice of the requirement for the delivery of Contract Waste outside the Opening Hours.
- 3.33 The Contractor shall implement the Non Authorised Vehicle Acceptance Procedure for each occurrence where Contract Waste is delivered to the Site(s) in a vehicle not previously notified in advance to the Contractor as an Authorised Vehicle or without the correct written or electronic authorisation.

- 3.34 Delivery vehicles shall be accepted, weighed, recorded, discharged and be able to leave the Facility(s) in a time of not exceeding [20] minutes per vehicle. Measurement shall be from the recognition of the vehicle by the ANPR monitoring site access, to the time it is able to leave the site as measured by the outward weighbridge. Waiting on the approach roads outside or inside the site shall constitute “arrival at the site” if the standing is a result of the actions or inactions of the Contractor.
- 3.35 The Contractor shall provide traffic control and such assistance as is reasonably required to assist in the unloading of Contract Waste commensurate with the design and operation of the Facility(ies) and as specified within the relevant Method Statements.

Third Party Waste

SERVICE OUTPUTS – THIRD PARTY WASTE AND BENEFIT SHARING
SO 3.5 The Contractor will share the benefits of Third Party Waste and any Energy Recovery with the Authority.

- 3.36 The Contractor shall be entitled to process Third Party Waste at the Facility(ies) with prior agreement of the Authority in order to take up spare capacity at the Facility(ies) over and above that required by the Authority, provided that:
- a) Contract Waste shall be accepted and treated in priority to Third Party Waste; and
 - b) Third Party Waste will not displace Contract Waste from the Facility(ies).
- 3.37 The Contractor shall prepare and shall agree an annual Third Party Waste Plan as part of the Services Method Statement. The Third Party Waste Plan shall:
- a) specify the forecast spare capacity at the Facility(ies) and identify the potential tonnage of Third Party Waste that will be accepted;
 - b) detail the financial benefit to the Authority arising from the acceptance and processing of Third Party Waste;
 - c) include the procedures for the notification of the Authority of the quantity, source, nature, composition and calorific value of Third Party Waste accepted at the Facility(ies); and

- d) incorporate the Contractor's Substitute Waste Plan as required under the Contract.
- 3.38 The Contractor shall implement and comply with the Third Party Waste Plan.
- 3.39 The Contractor shall be responsible for delivery of the standards and shared benefits arising from agreements contained in Schedule 5 Part 1, Ancillary Documents, of the Contract.

Communication, Liaison and Public Relations

SERVICE OUTPUTS – COMMUNICATION, LIAISON AND PUBLIC RELATIONS	
SO 3.6	In respect of the Services, the Contractor will support the Authority to promote public waste awareness activities, responsibility and education.
SO 3.7	In respect of the Services, the Contractor will manage, respond to, and report on complaints and enquiries from the Authority or third parties.

- 3.40 The Contractor shall develop and implement a Stakeholder Communication and Enquires and Complaints Plan that details its planned approach to stakeholder management, communication and community liaison including as a minimum the following activities:
- a) the Contractor shall provide as part of the Stakeholder Communication and Enquires and Complaints Plan a Waste Awareness and Education Plan, detailing how the Contractor will support the Authority's work to raise public awareness of waste, issues and in accordance with the Contractors Proposals and listed in Appendix E
 - b) Ensuring information is readily available to support the Authority's internal and external public relations activities in connection with the Services;
 - c) Undertaking at least two public open days per year at the Site(s); and
 - d) Include a Visitors Facility Plan to include
 - i Approach to managing visitors
 - ii Staffing during visits
 - iii Health and Safety requirements for visitors

- 3.41 The Contractor will ensure the facilities for visitors are:

- a) available as a minimum five days a week, to include Saturdays, Sundays and bank holidays, but excluding Christmas Day, Boxing Day and New Years Day.
 - b) free of charge to any Authority Related Party,
 - c) maintained in good and workable condition at all times.
- 3.42 The Contractor shall develop and implement an Enquiries and Complaints Plan that sets out the procedures to follow for managing questions, complaints and disputes relating to the operation of the Facilities and the performance of the Services. As a minimum the Enquiries and Complaints Plan shall include the following actions and response times:
- a) The contractor shall notify the Authorities Representative of a complaint within [4 (four)] hours received from a statutory body and [4 (four)] hours from a member of the public.
 - b) The Contractor shall, within [1 (one)] Business Day of a request from the Authority, provide information to support the Authority's internal and external public relations activities in connection with the performance of the Contract.
 - c) The Contractor shall respond to correspondence from the Authority's officers and members and members of the public by ensuring that an acknowledgement of the correspondence is issued within five (5) Business Days and a full reply within [10 (ten)] Business days of receipt.
 - d) The Contractor shall complete all investigations of all complaints and issue a formal written report to the Authority within [10 (ten)] Business Days of the complaint being registered.
 - e) The Contractor shall investigate any enquiry from a statutory body and respond within [5 (five)] business days or within the Statutory Body's requirement which ever is the shortest.
- 3.43 All publicity to include Complaint Responses, Press Releases and Public Relations in relation to the Solution will be jointly agreed prior to publication.
- 3.44 The Stakeholder Communication and Enquiries and Complaints Plan shall be submitted by the Contractor to the Authority as a Reviewable Item.

- 3.45 Following receipt of a complaint the Contractor shall take any necessary or appropriate corrective action in accordance with Good Industry Practice and/or the Contractor's Enquiries and Complaints Plan.
- 3.46 The Contractor shall fully co-operate with and provide assistance and relevant information to the Authority and to the Commission for Local Administration ("the Ombudsman") in enquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matters arising in connection with the provision of Services under this Contract.
- 3.47 The Contractor shall ensure a senior member of Personnel is available to provide a direct contact point for the Authority 24 hours a day throughout the Contract Period.
- 3.48 The Contractor shall participate in a formal liaison committee and a Stakeholder Liaison Group to the extent required by Schedule 18 of the Contract.
- 3.49 The Contractor shall attend quarterly meetings with the Authority and the Partners' technical officers.
- 3.50 The Contractor shall keep the Authority apprised of all material issues relating to the provision of the Services at all times.

Corporate Social Responsibility

SERVICE OUTPUTS – CORPORATE SOCIAL RESPONSIBILITY

SO 3.8 The Contractor will develop and implement a Corporate Social Responsibility Plan for the Solution that exceeds statutory and regulatory requirements.

- 3.51 The Contractor shall develop and implement a Corporate Social Responsibility Plan, to include but not limited to; good neighbour policies, which sets annual targets for environmental, economic and social improvements that the Contractor will undertake in relation to the operation of the Facility(ies), the performance of the Services, and its interaction with the local community.
- 3.52 The Corporate Social Responsibility Plan shall be published [Annually], setting out the current year's targets and progress against the previous year's targets.

3.53 The Corporate Social Responsibility Plan shall be submitted by the Contractor to the Authority as a Reviewable Item.

3.54 The Contractor's approach to Corporate Social Responsibility shall:

- a) Exceed all statutory and regulatory obligations;
- b) Have regard to the Welsh Assembly Government's and the relevant authority's Corporate Social Responsibility objectives; and
- c) As a minimum, address:
 - i. The waste hierarchy;
 - ii. The proximity principle, particularly with regard to the Contractor's supply chain; and
 - iii. Local employment and sustainable employment practices.

Value for Money and Continuous Improvement

SERVICE OUTPUTS – VALUE FOR MONEY AND CONTINUOUS IMPROVEMENT	
SO 3.9	The Services will be operated to deliver Value for Money throughout the Contract Period.
SO 3.10	The Contractor will strive to Continuously Improve the Services throughout the Contract Period.

3.55 The Contractor shall prepare and provide the Authority with a Continuous Improvement Plan, in accordance with the Contractors Proposals and listed in Appendix E, [3 (three)] months prior to Service Commencement Date. The Contractor shall undertake or refrain from undertaking such actions as the Authority shall reasonably request under Schedule 15, Best Value and Continuous Improvement, of the Contract.

3.56 The Contractor shall comply with requests for information, data or other assistance to enable the Authority to undertake and produce the annual Best Value Performance Plan, value for money reviews for the Authority's waste operations, the Authority's waste strategy and the Comprehensive Area Assessment or equivalent legislation. The work involved in assisting the Authority to produce these reports shall use information that is readily available to the Contractor and shall be provided within [10 (ten)] Business Days of receiving the request.

- 3.57 The Contractor shall review its operational practices and processes to identify ways to improve the efficiency of the Service and, where reasonably practical and economically advantageous to do so, shall implement updated practices and procedures. The Contractor shall report such identified and prepared improvements within the Monthly Service Report.

Information and Reporting

SERVICE OUTPUTS – INFORMATION AND REPORTING

SO 3.11 The Contractor will keep the Authority fully informed of progress throughout the provision of the Services in accordance with the agreed reporting requirements.

- 3.58 The Contractor shall provide an Information and Communication system that provides each Authority a method accessing all relevant contractor systems in real time providing input and output data in a structured format which enables the Partners to be able to manipulate and further interrogate the information

- 3.59 The Contractor shall

- a) ensure that all systems comprising the information management system shall be maintained in accordance with good industry practice, shall be capable of interfacing electronically with those of the Authority, shall be auditable and follow the principles of transparency; and
- b) permit the Authority and Authority's Representative unfettered access to the information management system, on a real time industry standard machine readable format.

- 3.60 The Information Management System shall as a minimum, record the information required to produce all the reports required in paragraph 3.5, including:

- a) Waste delivery and disposal records;
- b) Plant performance;
- c) Performance monitoring data;
- d) Details of all Performance Standard Failures; and

- e) Details of any RIDDOR accidents.
- 3.61 The Contractor shall utilise a computerised data handling system which shall be electronically linked to the weighbridge and shall generate the weights of the Contract Waste and any Third Party Waste delivered without the need for manual input.
- 3.62 The Contractor shall inspect, monitor, weigh and electronically record, in relation to each Contract Waste and Third Party Waste load and vehicle entering or exiting the Site(s), information required for the purpose of meeting their obligation under the Contract and in support of the Authority's statutory reporting requirements including but not limited to:
- a) Date;
 - b) Description of waste;
 - c) Gross, tare (actual), and net weights;
 - d) Disposal contractor number;
 - e) Registered Contract Waste/Third Party Waste carrier number;
 - f) Source/destination of waste/product/residue;
 - g) Time of arrival/departure at weighbridge;
 - h) Vehicle registration number;
 - i) Driver name and reference number; and
 - j) Site/Facility where the Contract Waste/Third Party Waste is deposited (where the Contractor is providing more than one Site/Facility).
- 3.63 In the event of breakdown at the weighbridge installation, a manual auditable recording system shall immediately be implemented and maintained in operation. Weighbridges (including any temporary replacement weighbridge facility) shall be calibrated and Certificated in accordance with the requirements of Trading Standards.
- 3.64 The Contractor shall issue a copy of the weighbridge ticket to each vehicle which transports Contract Waste and residues to or from the Facility(ies)

and/or Site(s) and shall keep copies of such tickets for a period of seven years.

- 3.65 The Contractor shall prepare a Monthly Service Report and submit it to the Authority within [10 (ten)] Business Days following the end of each month during the Services Period. The Monthly Service Report shall set out all information required by the Authority to verify the performance of the Contractor and the Monthly Payment in respect of the Contract Month just ended. The Monthly Service Report should include but is not limited to the information contained in Appendix C.
- 3.66 The Contractor shall submit to the Authority, within 15 Business Days of the end of each Contract Year, a Draft Annual Services Report and within 3 Months of Year End a Final Annual Service Report on the performance and delivery of the Services for the previous Contract Year, in accordance with the Contractors Proposals and listed in Appendix E.
- 3.67 The Contractor shall ensure that the Annual Services Report includes all relevant information required to support the Authority's Best Value obligations and processes as detailed in the Best Value and Continuous Improvement Schedule.
- 3.68 The Contractor shall, upon a written request from the Authority, within [5 (five)] Business Days provide such written evidence or other supporting information as the Authority may reasonably require for verifying and auditing the information and other material contained in either the Monthly Service Report or the Annual Services Report. The Authority may make comments on and/or make objections to the written evidence, supporting information, Monthly Service Report or Annual Services Report and in such cases shall provide the Contractor with written comments and/or objections within [10 (ten)] Business Days of receipt of the evidence, information or Monthly Service Report or Annual Services Report as the case may be.

PR3.4 – Facilities and Contract Management

Planned Maintenance

SERVICE OUTPUTS – MAINTENANCE

SO 3.12 The Facility(ies) will be maintained in accordance with Good Industry Practice and to satisfy all applicable Legislation and Guidance to ensure continuous availability of the Services.

- 3.69 The Contractor shall provide a Maintenance Plan and undertake Planned Maintenance which includes all maintenance of the Facility(ies) to comply with the manufacturer's requirements, Operating Manuals, Method Statements, agreed lifecycle replacement and to achieve the Works Quality Standards set out in Appendix A.
- 3.70 The Planned Maintenance shall be carried out in a safe manner to comply with Good Industry Practice, relevant Legislation and the relevant Method Statements at all times.
- 3.71 As part of the Planned Maintenance, the Contractor shall produce and issue to the Authority a detailed Annual Schedule of Planned Maintenance which shall be submitted to the Authority [4 (four)] months in advance of the Planned Service Commencement Date and subsequent anniversary. This shall include but not be limited to information relating to all implications arising from carrying out the proposed maintenance and all implications on the Authority's operations while the maintenance is in progress.
- 3.72 The Contractor shall supply a Monthly Schedule of Planned Maintenance for the following month which shall be submitted to the Authority [15 (fifteen)] Business Days before the end of each Contract Month. The Monthly Schedule of Planned Maintenance shall be consistent with the Annual Schedule of Planned Maintenance. The Monthly Schedule of Planned Maintenance shall include but not be limited to information relating to the upcoming maintenance for the following Contract Month and any implications arising from the previous Contract Month's Planned Maintenance.
- 3.73 The Contractor shall comply with the Monthly Schedule of Planned Maintenance and shall ensure that all maintenance identified within this Schedule is completed by the end of each Contract Month.

- 3.74 The Contractor's Planned Maintenance shall be consistent with the design philosophy and component life expectancy and shall be commensurate to maintaining the Facility(ies) to deliver the expected plant availability. This Service shall lead to a Facility(ies) with a Minimum Residual Life as specified in the Contractor's Proposals. It is encouraged that if the Contractor can prolong life of parts through good operational practice then this should be undertaken provided that plant is handed back with a full replacement of key parts to maintain operation.
- 3.75 The Contractor shall make provisions within the Annual and Monthly Schedules of Planned Maintenance to minimise any nuisance and environmental impact during the maintenance activities in order to ensure they do not constitute a nuisance during maintenance.
- 3.76 The contractor shall keep a full record of any unplanned maintenance and shall immediately notify the Authority and confirm in writing within [2 (two)] Business Days of any such maintenance which shall be carried out in accordance with the contingency plan.

Quality Management System

SERVICE OUTPUTS – QUALITY MANAGEMENT

SO 3.13 The Services will be performed in compliance with all applicable Legislation and Guidance, the Quality Management System, and Good Industry Practice.

- 3.77 The Contractor shall implement a Quality Management System that is compliant with ISO9001 or equal at all times following the Services Commencement Date.
- 3.78 The Contractor shall appoint a quality manager who shall in respect of the Services:
- a) ensure the effective operation of and implementation of the Quality Management System;
 - b) audit the Quality Management System at regular intervals (and as a minimum every [6 (six)] Contract Months) and report the findings of such audit to the Contractor and the Authority;

- c) audit any sub-contractor's Quality Management Systems, as a minimum every [6 (six)] Contract Months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractors and the Authority;
- d) review the Quality Management System at intervals agreed with the Authority to ensure their continued suitability and effectiveness;
- e) liaise with the Authority on all matters relating to quality assurance and;
- f) ensure service changes are implemented to take account of Good Industry Practice.

Environmental Management System

3.79 The Contractor shall implement an Environmental Management System that is compliant with ISO14001 or equal at all times following the Services Commencement Date.

3.80 The Contractor shall appoint an environmental management manager who shall in respect of the Services:

- a) ensure the effective operation of and implementation of the aforementioned Environmental Management System;
- b) audit the Environmental Management System at regular intervals (and as a minimum every [6 (six)] Contract Months) and report the findings of such audit to the Contractor and the Authority;
- c) audit any sub-contractor's Environmental Management Systems, as a minimum every [6 (six)] Contract Months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractor and the Authority;
- d) review the Environmental Management System at intervals agreed with the Authority to ensure its continued suitability and effectiveness; and
- e) liaise with the Authority on all matters relating to environmental management.

Resourcing

3.81 The Contractor shall employ sufficient Personnel to ensure that Services are provided at all times and in all respects. The Contractor shall ensure that a

sufficient reserve of Personnel is available to meet all obligations during holidays and absences. The Contractor shall provide a Management Plan detailing the operational management structure to be provided and shall include identifying key personnel and Establishment list as set out in the Contractors Proposals and listed in Appendix E.

Health and Safety

SERVICE OUTPUTS – HEALTH AND SAFETY

SO 3.14 The Services will be performed in accordance with health and safety Legislation and guidance throughout the Contract Period.

- 3.82 The Contractor shall implement a Health and Safety Management System that is compliant with OHSAS 18001 or equal at all times following the Services Commencement Date.
- 3.83 The Contractor shall appoint a health and safety manager who shall in respect of the Services:
- a) ensure the effective operation of and implementation of the aforementioned Health and Safety Management System;
 - b) audit the Health and Safety Management System at regular intervals (and as a minimum every [6 (six)] Contract Months) and report the findings of such audit to the Contractor and the Authority;
 - c) audit any sub-contractor's Health and Safety Management Systems, as a minimum every [6 (six)] Contract Months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractor and the Authority;
 - d) review the Health and Safety Management System at intervals agreed with the Authority to ensure its continued suitability and effectiveness; and
 - e) liaise with the Authority on all matters relating to health and safety management.
- 3.84 In carrying out the Services, the Contractor shall comply with applicable health and safety Legislation and requirements including but not limited to:
- a) report any incidents under RIDDOR to the Health and Safety Executive;

- b) manage their compliance with health and safety Legislation and obligations in relation to their provision of Services;
 - c) provide all Personnel with the appropriate personal protective equipment;
 - d) ensure that suitable first aid equipment is provided to all Personnel; and
 - e) maintain accurate and up to date health and safety records and documentation and make these available for inspection by the Authority's Representative or the Authority's safety adviser when requested including COSHH manuals, Method Statements and risk assessments.
- 3.85 In the case of any accidents involving members of the public or any events that are reportable under RIDDOR, the Contractor shall provide details of the same to the Authority within [1 (one)] Business Days of each such occurrence.
- 3.86 The Contractor shall develop and maintain an appropriate and up-to-date health and safety induction programme for all Personnel, Authority Staff, Authority related parties and other third parties, to include but not limited to Site Rules and Emergency procedures. The Contractor shall ensure that all Personnel, Authority Staff, Authority related parties and other third parties have completed induction training.

Fire Safety

- 3.87 The Contractor shall carry out the Services in a manner which is consistent with the Fire Strategy for the Site(s) and facility(ies).
- 3.88 The Contractor shall continually review the risks of fire associated with the Facility(ies) including taking account of prevailing Good Industry Practice.
- 3.89 The Contractor shall make any necessary changes to the Fire Strategy and propose Contractor changes to the relevant Method Statement to take account of prevailing Good Industry Practice.
- 3.90 The Contractor shall, on the occurrence of any fire, act in accordance with the Fire Strategy.
- 3.91 The Contractor shall provide the Authority with any information the Authority reasonably requests in relation to Personnel including but not limited to:

- a) the terms and conditions of employment;
 - b) the staff training programmes, policies and plans;
 - c) the training records;
 - d) the records of any unspent convictions;
 - e) the skills and competencies of Personnel; and
 - f) the number of Personnel employed.
- 3.92 The Contractor shall provide appropriate training, including Health and Safety, and local community sensitivity training, throughout all relevant tiers of the organisation and provide the Authority with a Annual Training Plan 12 months prior to Service Commencement Date and within 15 Business Days of Year End, in accordance with details set out in the List of Plans detailed in the Contractors Proposals and listed in Appendix E.
- 3.93 The Contractor shall develop and annually maintain, personnel procedures and policies covering all relevant matters including discipline, grievance, equal opportunities and health and safety. These procedures and policies shall comply with all relevant legislation and Good Industry Practice and shall be issued to the Authority once completed.
- 3.94 The Contactor shall notify all Personnel and potential Personnel of the requirement that they must disclose any convictions and shall notify the Authority of any convictions immediately. The Contractor shall provide copies of any unspent convictions to the Authority upon request.
- 3.95 The Contractor shall develop and maintain an appropriate and up-to-date induction programme for all Personnel and the Contractor shall ensure all new Personnel involved in the delivery of the Services undertake the induction programme prior to their commencement of work on the Site(s).
- 3.96 The Contractor shall ensure that all Personnel engaged in the delivery of the Services, in addition to the induction programme, are at all times properly and adequately notified, trained and instructed and the information recorded within their personal training records (including if practicable by way of continuing professional development) with regard to:

- a) the task that the individual has to perform;
- b) the provisions of this Contract relevant to the duties to be performed;
- c) the standing instructions and procedures, where relevant, to the Services;
- d) relevant health and safety hazards, rules, policies and procedures concerning health and safety at work and all other mandatory and statutory requirements;
- e) fire precautions and fire procedures;
- f) the need for Personnel to show courtesy and consideration at all times; and
- g) improving energy and resource efficiency on the Facility(ies) in line with mandatory standards and performance improvement targets.

3.97 The Contractor shall ensure Personnel are properly dressed in appropriate uniforms and work wear (including protective clothing and footwear where required) and wear identification badges at all times while working in the Facility(ies).

Signage

3.98 The Facility(ies) and designated areas at the Site(s) shall have sufficient bi-lingual (English/Welsh), clear, visible and legible signage to safely direct Authorised Vehicles and visitors around the Site(s) (including signage for containers, storage areas, visitor facilities, and welfare facilities) and such signage shall be kept up to date and be reasonably free from damage.

Transfer and Haulage

SERVICE OUTPUTS – TRANSPORT AND HAULAGE

SO 3.15 Transport and haulage of Contract Waste, Products and Process Residues to or from the Facility(ies) will be performed in accordance with Legislation, environmental and sustainable good practice, and Good Industry Practice.

3.99 The Contractor shall provide efficient and sustainable transport of Contract Waste, Products and Process Residues in accordance with applicable Legislation, applicable consents (including any planning consents), Waste

Transport Plan, environmental and sustainable practice, and Good Industry Practice.

3.100 The Contractor shall maintain a Waste Transport Plan to address all activities involving the Contractor's modes of transport, vehicle fleet and associated traffic management arrangements (including signage) to and from the Site(s), and including proposed transport routes and the minimising of impacts on sensitive receptors.

3.101 Contract Waste, Products and Residues shall only be transported in enclosed containers or on netted/sheeted vehicles.

Management of Products and Process Residues

SERVICE OUTPUTS – MANAGEMENT OF PRODUCTS AND PROCESS RESIDUES

SO 3.16 The Contractor will manage recycled and recovered Products in accordance with the requirements of this Authority's Requirements and the Contractor's Proposals.

SO 3.17 The Contractor will manage Process Residues in accordance with the requirements of this Authority's Requirements and the Contractor's Proposals.

3.102 The Contractor shall prepare, maintain and implement a Marketing Plan which sets out the Contractor's policies and strategies with regard to the marketing and sale of Products. Demonstrating how the Contractor will provide contingency markets for products, proposal for sourcing new and replacement markets and procedures for ensuring value for money within the markets is maintained and approach to Market Testing and Benchmarking.

3.103 The Contractor shall provide the Authority with a Market Plan 12 months prior to the Service Commencement Date, as detailed in the Contractors Proposals and listed in Appendix E

3.104 The Products shall not be deemed to have been sold or delivered to an end user until such time as they are accepted by a third party processor or an end market.

3.105 Final disposal shall be provided for all Process Residues that cannot otherwise be Recycled, Composted or Recovered.

3.106 The Contractor shall ensure that adequate landfill capacity exists for all Process Residues for the term of the Contract.



- 3.107 The Contractor shall supply the Authority with full details of the landfill site(s) to be used and copies of Consents.
- 3.108 The Contractor shall agree with the Authority any proposed changes or substitution of landfill site(s) in accordance with the Contract, and update the Service Delivery Plan accordingly.

PR4 HAND-BACK AND AFTERCARE REQUIREMENTS

Hand-Back and Aftercare Requirements

SERVICE OUTPUTS – HAND-BACK AND AFTERCARE REQUIREMENTS

SO 4.1 The Contractor will implement its Hand-Back or Aftercare Plan to provide a smooth transition of the Services to the Authority's new arrangements following expiry or early termination of the Contract.

- 4.1 Where the Facility(ies) is to be handed back or Handed Over, the Contractor shall develop a Hand-Back or Hand Over Plan in accordance with the relevant Method Statement and submit it in accordance with the Review Procedure to the Authority within the first Contract Year following the Services Commencement Date. The Hand-Back/Hand Over Plan shall outline the agreed timetable and activities required for all significant events leading up to the Hand-Back of the Facility(ies) to the Authority for use at either the Expiry Date or on termination of the Contract.
- 4.2 The Hand-Back/Hand Over Plan shall cover as a minimum:
- a) land interests associated with the Site(s);
 - b) the updated and complete Contracts and arrangements necessary to operate the Service;
 - c) all Assets associated with the Site(s);
 - d) any ongoing liabilities;
 - e) a Hand-Back/Hand Over programme which shall be updated as required during the lifetime of the Contract and shall be agreed with the Authority, prior to the Hand-Back/Hand Over Plan being updated;
 - f) all Personnel associated with the Facility(ies) and which are proposed to form part of the Hand-Back/Hand Over Plan;
 - g) the transfer of any Consents and Environmental Permits relevant and necessary to operate the Facility(ies)/Service to the Authority or to its nominated Contractor(s); and
 - h) all test procedures, and required standards of tests and procedures for assessment by the Authority for the following tests:

- i. to determine that the structure of the Facility(ies) and permanent plant, equipment, fixtures and fittings are sound and to identify any remedial measures to be carried out before the Expiry Date in addition to planned maintenance as set out in the Service Delivery Plan;
 - ii. to demonstrate satisfactory functional operation of the Facility(ies) and to identify any remedial measures to be carried out before the Expiry Date in addition to planned maintenance as set out in the Service Delivery Plan; and
 - iii. to determine satisfactory performance for handling and treating Contract Waste in accordance with Consents and this Specification, including, without limitation, the output standards set out in the Contract.
- 4.3 The Contractor shall comply with the Hand-Back/Hand Over Plan at all times during the Hand-Back process.
- 4.4 The Contractor shall hand back/Hand Over the Facility(ies) in a physical and operational condition which will ensure the Minimum Residual Life as specified in the Contractor's Proposals. The condition shall be subject to agreement with the Authority, and subject to surveys, in accordance with the relevant part of the Contract.
- 4.5 The Contractor shall ensure that any remedial work required by the Authority is carried out and completed to the Authority's satisfaction at the Contractor's cost before the Expiry Date.
- 4.6 The Contractor shall arrange for treatment and disposal of any contamination produced or found on the site prior to return of facility(ies) to the Partnership.
- 4.7 The Contractor shall, at the Contractor's cost, provide necessary training to personnel which forms part of the Hand-Back/Hand Over Plan and which the Authority nominates for the running of the Facility(ies) as a minimum 6 (six)] Contract Month before the planned Expiry Date ensure the continued operation of the Site(s).
- 4.8 Should the Contractor's Proposals identify that the Facility(ies) will be closed rather than handed back, the Contractor shall prepare an Aftercare Plan that provides for the Facility's/Facilities' dismantling or aftercare.



- 4.9 The Aftercare Plan shall address the care and maintenance of the Site(s), and include monitoring, maintenance of restoration materials and vegetation together with the management of environmental management systems already in place, and until such time as the Environment Agency is satisfied that the Permit may be handed in, and/or where there is agreement that on-going liabilities may revert back to the responsibility of the Authority.

APPENDIX A – WORKS QUALITY STANDARDS

Structures and Buildings:	i Structurally sound , secure and weatherproof; ii Free from damage and deterioration; and iii Free from dirt, discolouration, extraneous growth, pests and vermin.
Plant and Equipment:	i Function as intended and operates in accordance with the manufacturers requirements; ii Structurally sound, secure and weatherproof; iii Free from damage and deterioration; and iv Free from dirt, discolouration, extraneous growth, pests and vermin.
Road/Hard Landscape:	i All roads and car parking marks clearly visible; ii Have reasonably even and intact surfaces; iii Free from any damage; iv Free of deterioration which represents tripping hazards; v Be maintained so as not to cause damage to any vehicles using the Facility(ies); vi Be kept reasonably free of snow, mud, waste and ice such that the Facility(ies) are safe to use; and vii Be approved as necessary by the relevant authorities.
Fencing:	i Structurally sound, intact, secure and weatherproof; and ii Free from damage and deterioration.

APPENDIX B – CONTENTS OF WORKS DELIVERY PLAN

The works Delivery Plan shall include:

- a) details of any sub-contractors and major suppliers including the extent of the sub-contract package;
- b) the tendering process and evaluation criteria when selecting sub-contractors for any aspect of works;
- c) methods for incentivising sub-contractor(s), to meet set dates for completion;
- d) construction works, including plant and equipment to be installed;
- e) proposals and policies for the use of local materials, labour and suppliers;
- f) availability of assignable warranties;
- g) specify planning and construction fall back and contingency arrangements;
- h) detailed Design Proposals – architecture, landscape and design features;
- i) design Development Procedure – architectural and engineering drawings for each Facility;
- j) design Contract Schedules and Specifications;
- k) supervision and quality management arrangements including certification;
- l) commissioning Tests and Ready for Use Criteria, including details of Independent Certifier(s);
- m) any phasing of construction to meet with a phased delivery of the Service; and
- n) Hand-back criteria for all facilities.

APPENDIX C – MONTHLY SERVICE REPORT

The Monthly Service Report should include but is not limited to:

- a) the status of any actions from the previous Monthly Service Report;
- b) details of all Contract Waste and Third Party Waste accepted by the Contractor including but not limited to:
 - i total tonnage of Contract Waste and Third Party Waste;
 - ii number of separate deliveries;
 - iii quantity of Contract Waste and Third Party Waste stored on Site(s) and the beginning and end of the relevant Contract Month;
 - iv quantity of Contract Waste and Third Party Waste treated;
 - v sources and types of Contract Waste and Third Party Waste; and
 - vii number of vehicles and tonnage or estimated tonnage of Contract Waste rejected prior to discharge.
- c) details of all Contract Waste, Third Party Waste and process residues/recyclates removed from the Site(s) including but not limited to:
 - i total tonnage (broken down by type e.g. Contract Waste, Third Party Waste, ash, compost, processed, unprocessed, etc) of waste to landfill;
 - ii number of outgoing loads; and
 - iii destination;
- d) data and information required for the purpose of determining the Unitary Charge in accordance with the Payment Mechanism and including the relevant Monthly Service Report and invoicing requirements;
- e) details of any breaches of Legislation or Consents by the Contractor in relation to the provision of the Services;
- f) a statement of the status of all Consents and Environmental Permits and any applications for new or amended Consents and Environmental Permits;
- g) a statement of the reasons for any delay in the provision of the Service together with details of the actions and timetable to be taken to mitigate delays;
- h) a summary statement of any changes requested by the Authority or by the Contractor;

- i) details of any outstanding information required by the Authority and/or Contractor in connection with the Contract;
- j) details of each instance of the events or circumstances resulting in Non-Acceptance Deductions or Mileage Deductions or Performance Deductions;
- k) details of any complaints or enquiries received from the public and/or the Authority, along with a summary of the Contractor's actions or responses, and including response times;
- l) details of any health, safety or welfare related issues including any RIDDOR reportable incidents;
- m) details of any fires and the reasons for the fires' occurrence along with the Contractor's proposals to prevent reoccurrence;
- n) any relevant training initiatives undertaken or planned;
- o) details of any maintenance carried out; and
- p) any other matter reasonably required by the Authority in relation to the Project.



APPENDIX D – REQUIRED RECEPTION TIMES FOR CONTRACT WASTE DELIVERED IN AUTHORISED VEHICLES TO THE DELIVERY POINT(S)

The Contractor's proposed Delivery Point for Contract Waste will be designed to provide access and tipping for all types/size of municipal collection vehicles including those detailed below:

- a) 3.5t – 7.5t Light goods vehicles
- b) 3.5t – 17t Mechanical sweepers
- c) 11t – 32t Refuse collection vehicles
- d) 44t GVW Trailer units (Excluding Articulated Tipping Vehicles)

The proportion of Contract Waste arriving and contained in refuse collection vehicles (RCVs) or bulk trailers will depend on the location of the Contractor's proposed Delivery Point(s).

Prior to the Service Commencement Date, the Authority will provide to the Contractor a list of Authorised Vehicles with such information as is required for their proper identification. The Authority will notify the Contractor in a timely manner of any changes to the Authorised Vehicles during the services period.

As far as is practicable, the Authority shall consult with the Contractor in respect of any proposed changes in Authorised Vehicles where such changes mean the new vehicle is outside of the types listed above. Any such change will be managed by the Parties in accordance with [Schedule 21, Change Protocol].

The Contractor should note that the Partners are continually reviewing collection arrangements and some changes may be made to collection types and patterns during the Contract Period.

Authority: Caerphilly County Borough Council			
Source	Mode	Delivery Days	Delivery Times
Household Collections	RCVs and cage vehicles If no local Delivery Point, Bulk trailers and some RCVs	Mon - Fri	07:00-22:00
		Saturdays	07:00-20:00
HWRCs	Bulk trailers and/or hook loaders	Mon - Sun	Apr-Oct: 07:00-18:00 Oct-March 07:00-16:30
EXCEPTIONS	No requirement on Christmas Day and New Year's Day		
Bank Holidays	For collections normally falling on Christmas Day, Boxing Day and New Year's Day, collections may occur on adjacent weekends. HWRCs continue to operate except on Christmas Day and New Year's Day.		

Authority: Cardiff Council			
Source	Mode	Delivery Days	Delivery Times
Household Collections	RCVs and cage vehicles if no local Delivery Point, Bulk trailers	Mon - Fri	14:00-22:00
HWRCs	Bulk trailers and/or hook loaders	Mon - Sun	BST 07:00-17:00 GMT 07:00-16:00
Commercial Waste	If no local Delivery Point, bulk trailers	Mon - Sun	07:00-22:00
EXCEPTIONS	No requirement on Christmas Day, Boxing Day and New Year's Day		
Bank Holidays	<p>Household collections are not made on BH Mondays: crews work Tues-Sat 14:00 hrs to 22:00 hrs during the week following.</p> <p>Commercial collections are not made on BH Mondays: crews work Tues-Sun 06:00 hrs to 22:00 hrs during the week following.</p> <p>HWRCs continue to operate except on Christmas Day and New Year's Day.</p> <p>For collections normally falling on Christmas Day, Boxing Day and New Year's Day, collections may occur on adjacent weekends.</p>		

Authority: Monmouthshire County Borough Council			
Source	Mode	Delivery Days	Delivery Times
Household Collections	RCV's and bulk loaders by artic trailers, possible some sweepers or gully tankers, depending on location	Mon - Sat	07.00-20.00
HWRCs	Bulk artic trailers	Mon - Sun	08.00-18.00 all year round.
EXCEPTIONS	Christmas Day and New Year's Day		
Bank Holidays	<p>For collections normally falling on Bank Holidays, collections will be on subsequent normal days. Under single status this may change to working on Bank Holidays and Sundays (except Christmas Day and New Year's Day).</p> <p>For HWRC's all days are worked except Christmas Day and New Year's Day.</p>		

Authority: Newport County Borough Council			
Source	Mode	Delivery Days	Delivery Times
Household Collections	RCVs, cage vehicles, vans and mechanical sweepers. If no local Delivery Point, bulk trailers	Mon - Sat	07:00-16:30
HWRCs	Bulk trailers	Mon - Sun	BST 07:30-19:00. GMT 07:30-18:00
Commercial Waste	RCVs If no local Delivery Point, bulk trailers	Mon - Sat	07:00-16:30
EXCEPTIONS	Christmas Day, Boxing Day and New Year's Day		
Bank Holidays	Neither household nor commercial collections are made		

	<p>on Bank Holiday Mondays, Christmas Day or New Year's Day: crews work the adjacent Saturday / Sunday to catch up.</p> <p>HWRCs continue to operate except on Christmas Day, Boxing Day and New Year's Day.</p>
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Authority: Vale of Glamorgan County Borough Council			
Source	Mode	Delivery Days	Delivery Times
Household Collections	RCVs and cage vehicles. If no local Delivery Point, bulk trailers	Mon - Friday	07:00-17:00 (07:00-18:00 for bulky)
HWRCs	Bulk trailers	Mon - Sun	BST 06:00-19:00 GMT 07:00-16:00
Commercial Waste	If no local Delivery Point, bulk trailers	Mon - Sun	07:00-22:00
EXCEPTIONS	No requirement on Christmas Day, Boxing Day and New Year's Day		
Bank Holidays	<p>Household and Commercial collections are made on Bank Holidays with the exception of Christmas Day, Boxing Day and New Year's Day. For collections normally falling on Christmas Day and New Year's Day, collections may occur on adjacent weekends.</p> <p>HWRCs continue to operate except on Christmas day and New Year's Day.</p>		

APPENDIX E – LIST OF PLANS

Appendix E to the Authority's requirements is a list of documents to be provided, reviewed and updated by the Contractor to the Partnership.

Notes to Appendix E:

1. Document Reference: Location of relevant clauses in the Authority's Requirements.
2. Location of the Contractors proposals (the Contractors method statements) which relate to each plan
3. Required by: the time by which the final version is required. Draft versions are required with the Final Tender Offer.
4. Frequency: frequency for issue and review.
5. Comment: Brief description of Plan - refer to specification for requirements and Contractor Proposals for full requirements.
6. The Participant should provide any other not detailed but included in the contract documentation or any other plan reasonably required by the Authority.
7. All Plans shall be incorporated into the Contractors Health, Safety and Environmental Management System and shall be subject to annual (unless where specified) external audits to ensure they remain up to date and current.

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Monthly Commissioning Progress Report	SO2.3	CP 2.4	Within 5 Business Days after the end of each	Issue: Monthly during commissioning Review: monthly during	This is a simple report identifying progress against commissioning programme setting out successful completions and identifying any issues. The report will measure progress against programme and forthcoming commissioning tasks.

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Monthly Service Report	SO3.11	CP4.10	month Within 10 Business Days of the end of each month	commissioning Issue: Monthly	<p>This report is identified in the Performance Measurement Framework, and will detail monthly facility performance and throughput data for valuation and client reporting</p> <p>The Monthly Service Report should include but is not limited to:</p> <ul style="list-style-type: none"> a) the status of any actions from the previous Monthly Service Report; b) details of all Contract Waste and Third Party Waste accepted by the Contractor including but not limited to: <ul style="list-style-type: none"> i total tonnage of Contract Waste and Third Party Waste; ii number of separate deliveries; iii quantity of Contract Waste and Third Party Waste stored on Site(s) and the beginning and end of the relevant Contract Month; iv quantity of Contract Waste and Third Party Waste treated;

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
					<p>v sources and types of Contract Waste and Third Party Waste; and</p> <p>vii number of vehicles and tonnage or estimated tonnage of Contract Waste rejected prior to discharge.</p> <p>c) details of all Contract Waste, Third Party Waste and process residues/recyclate removed from the Site(s) including but not limited to:</p> <p>i total tonnage (broken down by type e.g. Contract Waste, Third Party Waste, ash, compost, processed, unprocessed, etc) of waste to landfill;</p> <p>ii number of outgoing loads; and</p> <p>iii destination;</p> <p>d) data and information required for the purpose of determining the Unitary Charge in accordance with the Payment Mechanism and including the relevant Monthly Service Report and invoicing requirements;</p> <p>e) details of any breaches of Legislation or Consents by the Contractor in relation to the provision of the Services;</p>

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
					<p>f) a statement of the status of all Consents and Environmental Permits and any applications for new or amended Consents and Environmental Permits;</p> <p>g) a statement of the reasons for any delay in the provision of the Service together with details of the actions and timetable to be taken to mitigate delays;</p> <p>h) a summary statement of any changes requested by the Authority or by the Contractor;</p> <p>i) details of any outstanding information required by the Authority and/or Contractor in connection with the Contract;</p> <p>j) details of each instance of the events or circumstances resulting in Non-Acceptance Deductions or Mileage Deductions or Performance Deductions;</p> <p>k) details of any complaints or enquiries received from the public and/or the Authority, along with a summary of the Contractor's actions or responses, and including response times;</p> <p>l) details of any health, safety or welfare</p>

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Annual Service Report	SO3.11	CP 4.10	Draft within 15 Business Days of the end of the Contract Year. Final within 3 months of end of Contract Year	Issue :Annual Review: not applicable	<p>related issues including any RIDDOR reportable incidents;</p> <p>m) details of any fires and the reasons for the fires' occurrence along with the Contractor's proposals to prevent reoccurrence;</p> <p>n) any relevant training initiatives undertaken or planned;</p> <p>o) details of any maintenance carried out; and</p> <p>p) any other matter reasonably required by the Authority in relation to the Project.</p> <p>This report is a requirement in the Performance Framework and shall include the areas covered by the Monthly Service Report, provide a summary of statistics for the contract year passed, all relevant information required to support the Authority's Best Value obligations and processes as detailed in the Best Value and Continuous Improvement Schedule, plus any other relevant information, including that which has been requested in writing by the Councils.</p> <p>The Councils may comment on the draft report, and provide a written response within 20 business days of its receipt. A final agreed version of the Annual Service Report will be received within 3 months of</p>

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Annual Training Plan	SO3.14	CP 5.8	12 months before Service Commencement Date	Issue: Annual Review: Annual	the end of the contract year. Refer to CP 5.8 Annual Training Plan
As Built Drawings	SO1.7	CP 1.12	Within 1 Month following issue of the Acceptance Certificate	Single submission Annual review and update if any changes	Refer to CP 1.12 As Built Drawings
Commissioning Plan	SO2.1 SO2.2	CP 2.1	12 months before commencement of Testing and	Single submission Review: weekly testing and commissioning	.Refer to CP 2.1 Commissioning requirements

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Stakeholder Communications Plan	SO1.8 SO3.6 SO3.7	CP 4.7	Commissioning 3 months before commencement of Construction Works	Annual review and update if any changes Issue: Quarterly until end of first year operations, then Annual Review: Annual	Refer to CP 4.7 Communications, Liaison and Public Relations
Enquiries and Complaints Plan	SO1.8, SO3.6, SO3.7	CP 4.7	3 months before commencement of Construction Works	Issue: Quarterly until end of first year operations, then Annual Review: Annual	Refer to CP 4.7 Communications, Liaison and Public Relations
Contingency Plan	SO3.3	CP 3.7	12 months before Service Comment Date	Issue: Annual Review: Annual or at any change	Refer to CP 3.8 Contingency

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Continuous Improvement Plan	SO3.9, SO3.10	CP 4.9	3 months before Service Comment Date	Issue: Annual Review: Annual	Refer to CP 4.9 Continuous Improvement
Corporate Social Responsibility Plan	SO3.8	CP 7.3	3 months before Service Comment Date	Issue: Annual Review: Annual	Refer to CP 7.3 Corporate Social Responsibility
Environmental Impact Control Plan.	SO1.5, SO3.2	CP 3.6	No later than 3 months before commencement of detailed design	Issue: Annually and 28 days following a breach of the Plan Review: Annually and 5 days following a breach of the Plan	Refer to CP 3.7 Environmental Management
Fire and	SO1.6, SO3.14	CP 5.7	3 months	Issue: Annual	Refer to CP 5.7 Fire Safety

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Emergency Plan.			before commencement of Construction Works	Review: Annual	
Disaster Recovery Plan	1.28	CP 4.1	3 Months before Service Commencement	Issue: Annual Review: Annual or at any change	Refer to CP 4.1 Disaster Recovery
Handback/Handover Plan	SO4.1	CP 6.1	Key Principals submitted with Service offer. Final Handback plan no later than one year following Service	Single submission as draft then final	Refer to CP 6.1 Handback/Handover and aftercare requirements

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Health and Safety Plan	SO1.6, SO2.4, SO3.14	CP1.9 CP 2.5 CP 5.6	Comment No later than 3 months before commencement of Construction Works	Issue: Annual Review: Annual	Refer to CP 1.9 Works Health and Safety for the Works component of the Health and Safety plan Refer to CP 2.4 Commissioning Health and Safety Refer to CP 5.6 Health and Safety
Maintenance Plan	SO3.12	CP 5.4	3 months before Service Commencement	Issue: Annual Review: Annual or at any change	Refer to CP 5.4 Maintenance
Schedule of Planned Maintenance	SO3.12	CP 5.4	Within 15 business days after the end of the month	Issue; Monthly Review; not applicable	Refer to CP 5.4 Maintenance
Management	SO3.13	CP 5.8	3 months	Issue; Annual	Refer to CP 5.8 Resourcing

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Plan			after Award of Contract	Review; Annual or at any change	
Establishment List	SO3.13	CP 5.8	Within 3 months of service commencement	Issue: Annual Review: Annual	Refer to CP 5.8 Resourcing
Market Plan	SO3.17	CP 5.10	12 months before Service Commencement	Issue: Annual Review: Quarterly	Refer to CP 5.10 Management of Products and Residue
Operation Manual	SO1.7	CP 1.12	3 months before Service Commencement	Issue; Annual Review; Annual	Refer to CP 1.12 As Built Drawings and Manuals
Planning/Permitting/Permissions Schedule	SO1.4	CP 1.7	Within 8 weeks of Award of Contract	Single submission or when changed Review: Monthly	Refer to CP 1.7 Planning and Permitting

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
				against schedule until permissions achieved	
Risk Assessments, (including Control of Substances Hazardous to Health Register, Method Statements and Safe Systems of Work)	SO1.6	CP 1.9 CP1.12 CP 2.5 CP 5.1 CP 5.6 CP5.7	No later than 3 months before commencement of Construction Works	Issue: Annual Review: Quarterly	Risk Assessments form part of the Quality and Environmental Management Systems and H&S system. The Contractor shall continually review its Risk Assessments, Control of Substances Hazardous to Health Register, Method Statements and Safe Systems of Work, taking account of latest practices and guidance. Risk Assessments are required as part of the following CPs: CP 1.9 CP1.12 CP 2.5 CP 5.1 CP 5.6 CP5.7
Sustainability and Carbon Management Plan	SO3.1	CP 3.5	Within 3 months of Award of	Issue: Annual Review: Annual	Refer to CP 3.5 Sustainability and Carbon Management

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Service Mobilisation and Transition Plan	SO2.1	CP 2.2	Contract Within 3 months of Award of Contract	Single submission Review: Monthly during mobilisation and transition period	Refer to CP 2.2 Service Mobilisation and Transition
Third Party Waste Plan	SO3.5	CP 4.6	Within 3 months of Award of Contract	Issue: Annual Review: Annual	Refer to CP 4.6 Third Party Waste and Benefit Sharing
Substitute Waste Plan	SO3.5	CP 4.6	Within 3 months of Award of Contract	Issue: Annual Review: Annual	Refer to CP 4.6 Third Party Waste and Benefit Sharing
Transport Plan	SO3.15	CP 5.9	Within 3 months of Award of Contract	Issue: Annual Review: Annual	Refer to CP 5.9 Transport and Haulage
Waste	SO3.4	CP 4.2	6 months	Issue: Annual	Refer to CP 4.2 Receipt of Contract Waste

Document Title	(1) Plan reference to Authority's Requirements	(2) Contractors Proposals reference	(3) Required by	(4) Issue and Review Frequency	(5) Comment
Acceptance Plan			before Service Commencement	Review: Annual	
Waste Awareness and Education Plan	SO3.6	CP 4.7	3 months before Service Commencement	Issue: Annual Review: Annual	Refer to CP 4.7 Communications, Liaison and Public Relations
Works Delivery Plans	SO1.1	CP 1.2	Within 3 months of Award of Contract	Single submission Review: monthly works development	Refer to CP 1.2 Works Delivery Plans

APPENDIX F - DEFINITIONS

The following definitions are used in the Contract and also referred to in this Schedule. Please note that some of the following definitions may be subject to change as the WIDP Residual Waste Treatment Contract is developed and alignment with the terms of the Contract.

Acceptance Test Certificate	means a certificate issued by the Independent Certifier that the Acceptance Tests have been satisfied;
Acceptance Tests	means the Tests so described in {Schedule 11 (Tests)} of this Contract;
Adjoining Property	means any land and/or property adjoining or in the neighbourhood of the Site(s) and each and every part thereof including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;
Aftercare Plan	means the plan to be developed by the Contractor in accordance with PR4 Hand-Back and Aftercare Requirements;
Annual Schedule of Planned Maintenance	means the schedule to be submitted by the Contractor on an annual basis containing the information prescribed in PR3.4 Planned Maintenance;
Annual Services Report	has the meaning given to it in Schedule 15 (Continuous Improvement) of this Contract;
As Built Drawings	means drawings, technical information, models, operation and maintenance manuals to encompass the method of construction, manufacture, operation and maintenance of each element of a Facility in sufficient detail to allow a competent person to understand all material elements of the construction of the Facility and to maintain, dismantle, reassemble, adjust and operate all plant and equipment forming the same;
Assets	means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Contract including: <ul style="list-style-type: none"> (a) any land or buildings (including the Facility); (b) any plant, machinery or equipment;

	<p>(c) any books and records (including operating and maintenance manuals, the Operating Manual, health and safety manuals, documents maintained in accordance with the Site Waste Management Plans Regulations 2008, as built drawings and other know how);</p> <p>(d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);</p> <p>(e) any revenues and any other contractual rights (including the novation of Off Take and Third Party Waste Contracts);</p> <p>(f) any intellectual property rights;</p> <p>(g) subject to clause 80.7 any Consents; and</p> <p>(h) where termination occurs pursuant to paragraph 3.5 of Schedule 26 (Planning) [or paragraph 11.1.5 of Schedule 27 (Approach to Permit Risk)], all documents, letters and instructions and enclosures to and opinions of Leading Counsel or the Contractor's consultants relating to any Planning Application, Environmental Permit, Planning Permission, Proceedings or Permit Proceedings;</p>
Authorised Vehicle	means the vehicles delivering Contract Waste to the Site(s) [or the Contingency Delivery Point] which the Authority has provided notification of to the Contractor for the delivery of Contract Waste in accordance with this Contract;
Authority	{The Lead Contracting Authority} [confirmed during dialogue]
Authority Related Party	<p>means any of the following:</p> <p>a) an officer, servant, employee or agent of the Authority acting in that capacity;</p> <p>b) any contractor or sub-contractor of the Authority of any tier (for the avoidance of doubt any Partner) and their directors,</p>

	<p>officers, servants, employees or agents acting in that capacity;</p> <p>but excluding in any case the Contractor and any Contractor Related Parties;</p>
Authority's Representative	means the representative appointed by the Authority pursuant to Clause 9.1 (Representatives of the Authority);
BH	means Bank Holiday;
Biodegradable Municipal Waste	has the meaning given to it in the Landfill Allowance Scheme (LAS) Regulations (Wales) 2004 and also referred to as " BMW ";
BMW Diversion Target	means the Contractors Guaranteed Tonnage of BMW to Landfill that does not exceed the Partnerships' Maximum allowable Tonnage of BMW to Landfill (10 % of the Contract Waste).
BREEAM	means Building Research Establishment Environmental Assessment Method;
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
CA Site	means HWRC;
Commencement Date	means the date of this Contract;
Commercial Waste	has the meaning given in Section 75(7) of the EPA;
Commissioning Period	means the period between the Readiness Date and the Services Commencement Date;
Commissioning Programme	means the programme for the carrying out of the Commissioning as contained in {Schedule 3 (Contractor's Proposals)} of this Contract;
Composted	has the meaning given to it by the Welsh Assembly Government and 'Compost' and 'Composting' shall be construed accordingly. The Project will endeavour to update Participants as on any amendments as soon as it is in a position to do so;
Consents	<p>means all permissions, consents, approvals, certificates, permits, licenses and authorisations of a Relevant Authority required for the performance of any of the Contractor's obligations under this Contract including for the avoidance of doubt:</p> <p>a) all Environmental Permits;</p> <p>b) all Planning Permissions; and</p>

	c) all Planning Obligations;
Construction Programme	means the programme for the carrying out of the Works as contained in Part 3 (Construction Programme) of Schedule 3 (Contractor's Proposals) of this Contract;
Contingency Delivery Point	means the point of discharge of Contract Waste in accordance with the Contingency Plan;
Contingency Plans	means the contingency arrangements forming part of the Contractor's Proposals (Schedule 3);
Contract Month	means each successive calendar Month in a Contract Year;
Contract Period	means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;
Contract Waste	means all Municipal Waste arising from time to time in the Partnership's Administrative Area and delivered to the Contractor by or on behalf of the Authority. For the avoidance of doubt, Contract Waste does not include Third Party Waste and Substitute Waste;
Contract Year	means a period of twelve (12) months commencing on 1 April, provided that: <ul style="list-style-type: none"> a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the day immediately following 31 March; and b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of this Contract Period and ending on that day;
Contractor	<i>{insert name of project company};</i>
Contractor Materials	means all or any programmes, software, code, databases, data materials, works (whether literary, artistic or otherwise), know how and/or information which are used from time to time by the Contractor and/or any Contractor Related Party or are otherwise relevant to the maintenance, management, provision, replacement, carrying out and operation of the relevant Facility and/or the Service;
Contractor's Guaranteed Tonnage of BMW to Landfill	means the Contractor's Guaranteed Maximum Tonnage of BMW sent to Landfill expressed as a % content of the BMW content of the total Contract Waste (as provided in Appendix 4, column reference "N").

Contractor's Guaranteed Tonnage of Contract Waste to Landfill	means the Contractor's Guaranteed Tonnage of Contract Waste sent to Landfill expressed as a % of the total Contract Waste (as provided in Appendix 4, column reference "C").
Contractor's Proposals	means the proposals of the Contractor to deliver the Project to satisfy the Authority's Requirements, as set out in {Schedule 3 (Contractor's Proposals)} of this Contract;
Corporate Social Responsibility Plan	means the plan forming part of the Contractor's Proposals developed in compliance with the requirements prescribed in [PR3.3] Corporate Social Responsibility;
COSHH	means Control Of Substances Hazardous to Health Regulations 2002;
Delivery Point	means the delivery point to which the [Partners] (or its or their sub-contractors) will deliver Contract Waste as set out in the Waste Acceptance Plan
Enquiries and Complaints Plan	means the plan forming part of the Contractor's Proposals developed in compliance with the requirements prescribed in [PR1] Communication, Liaison and Public Relations and in [PR3.3] Communication, Liaison and Public Relations;
Environmental Impact Control Plan	means the plan forming part of the Contractor's Proposals to be developed by the Contractor in accordance with PR3.2 Impact on the Local Environment;
Environmental Management System	means the system prescribed in PR1 Environmental Management System and PR3.4 Environmental Management System;
Environmental Permit	means the permit required and issued by the Permitting Authority pursuant to the Environmental Permitting Regulations in respect of the Facility;
EPA	means the Environmental Protection Act 1990;
Equipment	means all moveable plant and equipment [to be provided and maintained by the Contractor in order to comply with its obligations under this Contract;
EU	means the European Union;
Expiry Date	means the 25th (twenty-fifth) anniversary of the Planned Services Commencement Date or as extended in accordance with Clause 3.3 (Option to Extend this Contract Period of this Contract);
Facility	means [specify the treatment facilities] and all supporting infrastructure including associated plant and amenities to be designed, constructed,

	tested and commissioned pursuant to this Contract and "Facilities" shall be interpreted accordingly;
Fire Strategy	means the plan developed in compliance with the requirements prescribed in PR3.4 Fire Strategy;
Good Industry Practice	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or Construction Sub-Contractor or Operating Sub-Contractor or any sub-contractor under the same or similar circumstances;
GVW	means Gross Vehicle Weight;
Handback Plan	means the plan forming part of the Contractor's Proposals to be developed by the Contractor in accordance with PR4 Hand-Back and Aftercare Requirements;
Health and Safety Management System	means the system prescribed in PR1 Health and Safety Management System and PR3.4 Health and Safety Management System;
Household Waste	has the meaning attributed to it in Section 75(5) and Section 89 of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations 1992;
HWRCs	means Household Waste and Recycling Centres;
Independent Certifier	means the person appointed jointly by the Authority and the Contractor to act as independent certifier to the Project in accordance with the Independent Certifier's Deed of Appointment;
Information Management System	means the system developed and forming part of the Contractor's Proposals in compliance with the requirements prescribed in PR3.3 Information and Reporting;
Legislation	means: <ul style="list-style-type: none"> a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978; b) any exercise of the Royal Prerogative; and c) any enforceable community right within the meaning of Section 2 of the European

	Communities Act 1972, in each case in the United Kingdom
Liaison Committee	has the meaning given to it in paragraph 1 of Schedule 18 (Liaison Committee);
Marketing Plan	means the plan forming part of the Contractor's Proposals developed in compliance with the requirements prescribed in PR3.4 Management of Products and Residues;
Method Statements	means the Works Method Statement and the Services Method Statements;
Mileage Deductions	means the amount calculated in accordance with paragraph 7 of Schedule 4 (Payment Mechanism);
Minimum Residual Life	means the minimum operational life expectancy of the Facility without major replacement from the Expiry Date as specified in the Contractor's Proposals;
Month	means any month in a Contract Year provided that: a) the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and b) the last Contract Month shall begin on the first day of the month in which the last day of this Contract Periods occurs and end on that day, and the term Months shall be construed accordingly;
Monthly Commissioning Progress Report	means the report to be submitted by or on a monthly basis containing the information prescribed in PR2 Commissioning Period Reporting;
Monthly Construction Progress Report	means the report to be submitted by the Contractor to the Authority on a monthly basis containing the information prescribed in PR1 Construction Phase Reporting;
Monthly Payment	has the meaning given to it in Schedule 4 (Payment Mechanism);
Monthly Schedule of Planned Maintenance	means the schedule to be submitted by the Contractor to the Authority on a monthly basis containing the information prescribed in PR3.4 Planned Maintenance;
Monthly Service Report	means the report to be submitted by the

	Contractor to the Authority on a monthly basis containing the information prescribed in PR3.3 Information and Reporting;
MSW Diversion Target	means The Contractors Guaranteed Tonnage of Contract Waste to Landfill that does not exceed the Partnerships' Maximum allowable Tonnage of Contract Waste to Landfill (15 % of the Contract Waste).
Municipal Waste	means all Waste which by virtue of Legislation a local authority has a statutory duty or power to collect, including (without limitation) Household Waste, Commercial Waste, fly tipped waste and street cleansing arisings (and, in relation to Commercial Waste, which it does in fact collect);
Non Authorised Vehicle Acceptance Procedure	means the agreed procedure developed by the Contractor for the processing of Authority vehicles which are not Authorised Vehicles;
Non-Acceptance Deduction	means the deduction calculated in accordance with paragraph 8 of Schedule 4 (Payment Mechanism);
Opening Hours	means the specified hours of operation of each relevant Facility set out in {Part 2 (Method Statements) of Schedule 3 (Contractor's Proposals)} of this Contract;
Operating Manual	has the meaning given to it in {Clause 28.1 (Maintenance of Manual)} of this Contract;
Partnership	Caerphilly County Borough Council ("Caerphilly CBC"), the County Council of the City and County of Cardiff ("Cardiff Council"), Monmouthshire County Council ("Monmouthshire CC"), Newport City Council ("Newport CC") and the Vale of Glamorgan Council (the "Vale of Glamorgan") (and each individually a "Partner") and for the avoidance of any doubt, the Partnership is neither a legal partnership nor a legal entity in its own right.
Partnership's Maximum Tonnage of BMW to Landfill	Means the maximum total tonnage BMW content of Contract Waste sent to landfill
Party	means a party to this Contract and 'Parties' shall be construed accordingly;
Payment Mechanism	means the payment mechanism set out in Schedule 4 (Payment Mechanism);
Performance Deductions	has the meaning given to it in Schedule 4 (Payment Mechanism) of this Contract;
Performance Measurement Framework	means the framework prescribed in part [] of this Schedule 2 (Authority's Requirements);
Performance Requirements (PR)	means each performance requirement as set out in this Schedule 2 (Authority's Requirements);
Performance Failures	has the meaning given to it in part [] of this

	Schedule 2 (Authority's Requirements);
Performance Standards	means the standards set out at [] of Part B (Performance Measurement Framework) of Schedule 2 (Authority's Requirements);
Personnel	means the employees, servants, agents, sub-contractors or other representatives, of the Contractor, or of any Sub-Contractor, involved directly, or indirectly, in the provision of the Service;
Planned Maintenance	means the maintenance of the Facility(ies) prescribed in PR3.4 Planned Maintenance <i>from time to time</i> ;
Planned Readiness Date	means [fixed date] or as adjusted in accordance with the terms of this Contract;
Planned Service Commencement Date	means 1 April 2016 or as adjusted in accordance with the terms of this Contract;
Process Residues	means the outputs from the treatment process that can not be recovered, recycled or composted;
Products	means the outputs from the Facility(ies) including Recycled, Composted and Recovered Products but excluding the Process Residues;
Project	means the provision of waste management services to the Authority by the Contractor as contemplated by this Contract including the carrying out of the Works and the provision of the Services;
Quality Management System	means the system prescribed in PR1 Quality Management System and PR3.4 Quality Management System;
RCVs	means refuse collection vehicles
Readiness Date	means in respect of a Facility the date on which the Readiness Test Certificate is issued in respect of that Facility or in the event of referral for determination under the Dispute Resolution Procedure pursuant to {Clause 21.4.1 of this Contract} the date upon which it is determined that the Facility passed the Readiness Tests;
Readiness Tests	means the Tests so described in {Schedule 11 (Tests)} of this Contract;
Readiness Test Certificate	means a certificate issued by the Independent Certifier that the Readiness Tests have been satisfied;
Recovered	has the meaning given to it by the Welsh Assembly Government and 'Recover' and 'Recovering' shall be construed accordingly. The Project will endeavour to update Participants as on any amendments as soon as it is in a

	position to do so;
Recovery Target	has the meaning given to it in {Schedule 4 (Payment Mechanism)} of this Contract
Recycled	has the meaning given to it by the Welsh Assembly Government and 'Recycle' and 'Recycling' shall be construed accordingly. The Project will endeavour to update Participants as on any amendments as soon as it is in a position to do so;
Recycling Target	has the meaning given to it in {Schedule 4 (Payment Mechanism)} of this Contract
Review Procedure	means the procedure set out in Schedule 9 (Review Procedure);
Reviewable Design Data	means the items of Design Data listed in the Appendix to the Review Procedure (Schedule 9) of this Contract;
RIDDOR	means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
Service Commencement	means the commencement of the Services;
Service Delivery Plan	means the plans set out in Part 2 of Schedule 3 (Contractor's Proposals)
Service Outputs (SO)	means Performance Standards;
Services	means the whole of the services or any of them to be provided by the Contractor pursuant to this Contract which are necessary for the Contractor to undertake in order to comply with the Service Requirements, the Services Method Statements and the other provisions of this Contract;
Services Commencement Date	means the date on which Service Commencement occurs in accordance with Clause 21.1.3 (Completion of the Works) of this Contract;
Services Method Statement	means the proposals for the method of providing the Services to satisfy the Service Requirements forming part of the Contractor's Proposals and set out in {Part 2 of Schedule 3 (Contractor 's Proposals)} of this Contract;
Services Period	means the period specified in {Clause 3.2 (Commencement and Duration)} of this Contract;
Site Waste Management Plan	means the documents maintained in accordance with the Waste (Wales) Measure 2010;
Site(s)	means the area edged [red] on the relevant Site Plan together with the Facility [and the service ducts and media for all utilities and services serving the Facility];

Solution	means the solution submitted by the Contractor through the Competitive Dialogue Procedure in response to the procurement documentation;
Stakeholder Communication Plan	means the plan forming part of the Contractor's Proposals developed in compliance with the requirements prescribed in PR1 Communication, Liaison and Public Relations and in PR3.3 Communication, Liaison and Public Relations;
Substitute Waste Plan	means the plan for the disposal of Substitute Waste developed from the Outline Substitute Waste Plan and updated in accordance with {Clause 25.2} of this Contract;
TAN 12 Design	means the Welsh Assembly Government's Technical Advice Note 12: Design;
Target Processed Landfill Tonnage	means the Contractors Guaranteed Maximum Processed Landfill Tonnage target (% of Contract Waste) (as provided in Appendix 4, column reference "F");
Target Unprocessed Landfill Tonnage	means the Contractors Guaranteed Maximum Unprocessed Landfill Tonnage target (% of Contract Waste) (as provided in Appendix 4, column reference "G");
Termination Date	means any date of early termination of this Contract in accordance with {Part XII (Termination and Compensation on Termination)} of this Contract;
Testing and Commissioning Plan	means the plan developed from the Outline Commissioning Plan and forming part of the Contractor's Proposals developed in compliance with the requirements prescribed in PR2 Commissioning;
Third Party Waste	means all waste received at the Facility other than Contract Waste;
Third Party Waste Plan	means the plan forming part of the Contractor's Proposals developed in compliance with the requirements prescribed in PR3.3 Third Party Waste;
Unitary Charge	means the payment calculated in accordance with Schedule 4 (Payment Mechanism);
Waste	has the meaning ascribed to it in Section 75 of the EPA;
Waste Transport Plan	means the plan forming part of the Contractor's Proposals developed in compliance with the requirements prescribed in PR3.4 Transfer and Haulage;
Works	means all of the works (including design and works necessary for obtaining access to the Site(s), commissioning and conduct of the

	Tests) to be undertaken in accordance with this Contract in accordance with the Works Requirements, Commissioning Requirements and the Works Method Statements;
Works Method Statements	means the proposals for the method of carrying out the Works to satisfy the Works Requirements forming part of the Contractor's Proposals and set out in {Part I of Schedule 3 (Contractor's Proposals)} of this Contract.
Works Period	means the period from the Commencement Date to the Services Commencement Date;
Works Quality Standards	means the standards prescribed in Appendix A of Schedule 2 (Authority's Requirements).



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Section 1.01 Principles of the Performance Framework

Introduction

- 1.1 This document sets out the Performance Framework, against which the delivery of the Services by the Contractor will be measured. The Services will be monitored against the Key Targets and Performance Standards set out in Table 8 and Table 9 which reflect the requirements of the Services to be provided as detailed within the Authority's Requirements and Contractor Proposals.
- 1.2 If the Contractor fails to meet any of the Key Targets and Performance Standards (a 'Performance Failure') as detailed in Table 8 and Table 9 then the Partnership will be entitled to a remedy. The Framework uses a combination of Notices, Performance Deductions and Performance Failure Points. The issue of Notices may ultimately lead to Termination of the Contract.
- 1.3 The Performance Framework will apply in full from the Services Commencement Date to the earlier of the Termination Date or the Expiry Date. Paragraphs 1.24 and 1.25 set out how the Performance Framework also applies during the Commissioning Period.
- 1.4 The Performance Framework is structured to apply to Key Targets and Performance Standards. Key Targets are managed using a system of Notices and monetary deductions for non performance. The Performance Standards are managed by a point system giving rise to a system of Notices, and by Performance Deductions, as calculated by paragraph 6 of the Payment Mechanism. All monetary deductions or non payments arising from the Performance Framework are applied through the Payment Mechanism.
- 1.5 A general principle of the Performance Framework is that where one or more Performance Standards may apply to a particular Performance Failure, then only a single application of Performance Deduction and/or Performance Failure Points relating to the highest category of Performance Failure applicable will be made to that Performance Failure each time it occurs.

Notices

- 1.6 The Performance Framework uses six notices
 - a) Improvement Notice A and B
 - b) Warning Notice A and B
 - c) Contractor Breach Notice A and B
- 1.7 Improvement Notices "B" are Issued for failure to meet the Quarterly Sub-targets within the agreed tolerances (in relation to the Key Target Achievement) and requires the contractor to submit an Improvement Plan. Improvement Notices "A" are Issued for failure to meet



Performance Standards during a Contract Month and requires the contractor to submit an Improvement Plan.

- 1.8 Warning Notices “A” and “B” are intended to make the Contractor aware that they are failing to deliver the Service to the required standard and that the next step in the process will be the issue of a Contractor Breach Notice.
- 1.8.1 Warning Notices “A” are used with Performance Failures and Warning Notices “B” and used with Key Target Failures..
- 1.9 Contractor Breach Notices “A” and “B” inform the Contractor that he has failed to deliver the Service to the required standard and that continued failure may lead to the issue of a Termination Notice.
- 1.9.1 In the event that a Contractor Breach Notice “A” or “B” is issued, the Partnership may issue a Termination Notice for reason of a Contractor Default under limb [(q)] of that definition.
- 1.10 Table 1 outlines how the issue of Improvement Notices “A”, Warning Notices “A” and Contractor Breach Notices “A” may lead to termination of the Contract on the basis of Contractor Default in relation to the Performance Standards identified in Table 9.
- 1.11 Table 2 outlines how the issue of Improvement Notices “B”, Warning Notices “B” and Contractor Breach Notices “B” may lead to termination of the Contract on the basis of Contractor Default in relation to the failure to meet the Key Targets.

Notice Regime – Performance Standards

- 1.12 The system of notices will operate as set out in Table 1.

**Table 1 Notice Regime Performance Standards**

Notice Type	Basis of Issue
Improvement Notice "A"	Issued for failure to meet Performance Standards during a Contract Month and requires the contractor to submit an Improvement Plan.
Warning Notice "A"	Issued if the Contractor exceeds the three month points threshold.
Contractor Breach Notice "A"	Issued if the contractor: <ul style="list-style-type: none"> • accrues 5 Warning Notices "A" in 12 month rolling period; or <ul style="list-style-type: none"> • accrues 4 Warning Notices "A" in a Contract year.

Notice Regime – Key Targets

1.13 The system of notices for Key Targets will operate as set out in Table 2.

Table 2 Notice Regime Key Targets

Notice Type	Basis of Issue
Improvement Notice “B”	Issued for failure of the Quarterly Sub-targets within the agreed tolerances (in relation to the Key Target Achievement) and requires the contractor to submit an Improvement Plan.
Warning Notice “B”	Issued if the Contractor receives 3 Improvement Notices “B” during the Contract Year.
Contractor Breach Notice “B”	Issued if the contractor: <ul style="list-style-type: none"> • accrues 3 Warning Notices “B” in 5 year rolling period; or <ul style="list-style-type: none"> • accrues 2 Warning Notices “B” in two consecutive Contract years.

Performance Standards

1.14 Performance Standards are individual areas of performance focussing on day to day Service delivery and are set out in Table 9. Performance against the Performance Standards is monitored on an individual basis and frequency depending on the category of the Standard. Compliance with Performance Standards overall is reported on a monthly basis. The Partnership reserves the right to add or remove Performance Standards during the competitive dialogue period.

Key Targets

1.15 Figure 2 sets out the process via which the Contractor is assessed against the Key Targets identified in Table 8. This process utilises Warning Notices and Contractor Breach Notices only. It should be noted that financial penalties in relation to the Key Targets will be levied within the Payment Mechanism, and are outside the scope of this Performance Mechanism.

1.16 The Key Targets set out in Table 8 are indicative only and will be finalised during competitive dialogue, prior to financial close. The Partnership reserves the right to add or remove Key Targets during the competitive dialogue period.

Monitoring and Reporting

1.17 The Contractor will be responsible for the monitoring, accurate recording and reporting of its own performance of the Service and of compliance with, or failure under, the requirements of the Performance Framework. However, the Partnership may undertake monitoring and shall be entitled



to include its own findings in the calculation of Performance Failure Points and/or Performance Deductions as appropriate. Where both parties are in disagreement the Dispute Resolution procedure in Schedule 22 shall be followed.

- 1.18 The Contractor will notify the Partnership, in reasonable detail¹, of any Performance Failure under any of the Performance Standards or Key Targets as set out in Table 8 and Table 9. At the end of each Contract Month the Contractor will be required to report to the Partnership the value of Performance Deductions to be applied and these will be subtracted from the Monthly Payment due to the Contractor under paragraph 4 "Unitary Charge" of the Payment Mechanism. The number of Performance Failure Points incurred in any month, together with the details of each Performance Failure, will also be itemised in the Monthly Report to the Partnership.

Review of the Performance Framework

- 1.19 The Partnership shall have the right to review the Performance Framework on an annual basis.
- 1.20 Where the Partnership are of the opinion that changes are required to the Performance Framework it shall have the right to implement those changes in accordance with the Change Protocol..

Indexation of Performance Deductions

- 1.21 The Performance Deduction values shown in Table 5 shall be subject to annual indexation in line with section 12 of the Payment Mechanism.

Start Up and Commissioning Period²

- 1.22 For the avoidance of doubt, all Performance Standards in Table 9 will apply in full during the Commissioning Period. At the Full Service Commencement Date all Performance Points will be reset to zero. All Performance Standards in Table 9 will then apply in full for the duration of the Contract.
- 1.23 During the **Commissioning Period**, compliance with the [] Key Targets in Table 8 will be relaxed for the duration of the period. This phase will be split into three equal periods and the [] Key Targets will apply as follows:

1st third Contractor must meet [] of the [] Key Target
 2nd third Contractor must meet [] of the [] Key Target
 Final third Contractor must meet [] of the [] Key Target

¹ Reporting detail required to be confirmed during dialogue.

² The Start Up Period and Commissioning Period will be defined as appropriate in accordance with each bidder's proposal.



The relaxation will only apply where key targets are related to a proposed facility in start up or commissioning. Where the target is met by other means e.g. existing facilities there will be no relaxation.

- 1.24 From the end of the Commissioning Period and from the Service Commencement Date the requirements of the Key Targets in Table 8 shall apply in full.

Applications of the Performance Framework

The following tables (set out in Appendix 1 shall be used when calculating Performance Failure Points and Performance Deductions:

- Table 3 Performance Failure Categories:** Details the categories of Performance Failures based on the severity of the failure.
- Table 4 Monitoring Frequency:** defines the frequency at which deductions can be made.
- Table 5 Performance Deductions:** Defines the deductions applied to each Performance Failure Category.
- Table 6 Performance Failure Points:** Details the level at which Performance Failure Points are set for each Performance Failure Category.
- Table 7 Warning Notice and Contractor Breach Notice Thresholds:** Details the threshold for issuing a Warning Notice or Contractor Breach Notice.
- Table 8 Key Targets:** Describes the Key Contractual Targets that the contractor is required to meet
- Table 9 Performance Standards:** Describes the Performance Standards to be measured and the monitoring criteria to be used, the Monitoring Frequency to be applied, the relevant Performance Failure Category for each Performance Standard, and the period in which the Performance Standard failure has to be rectified.

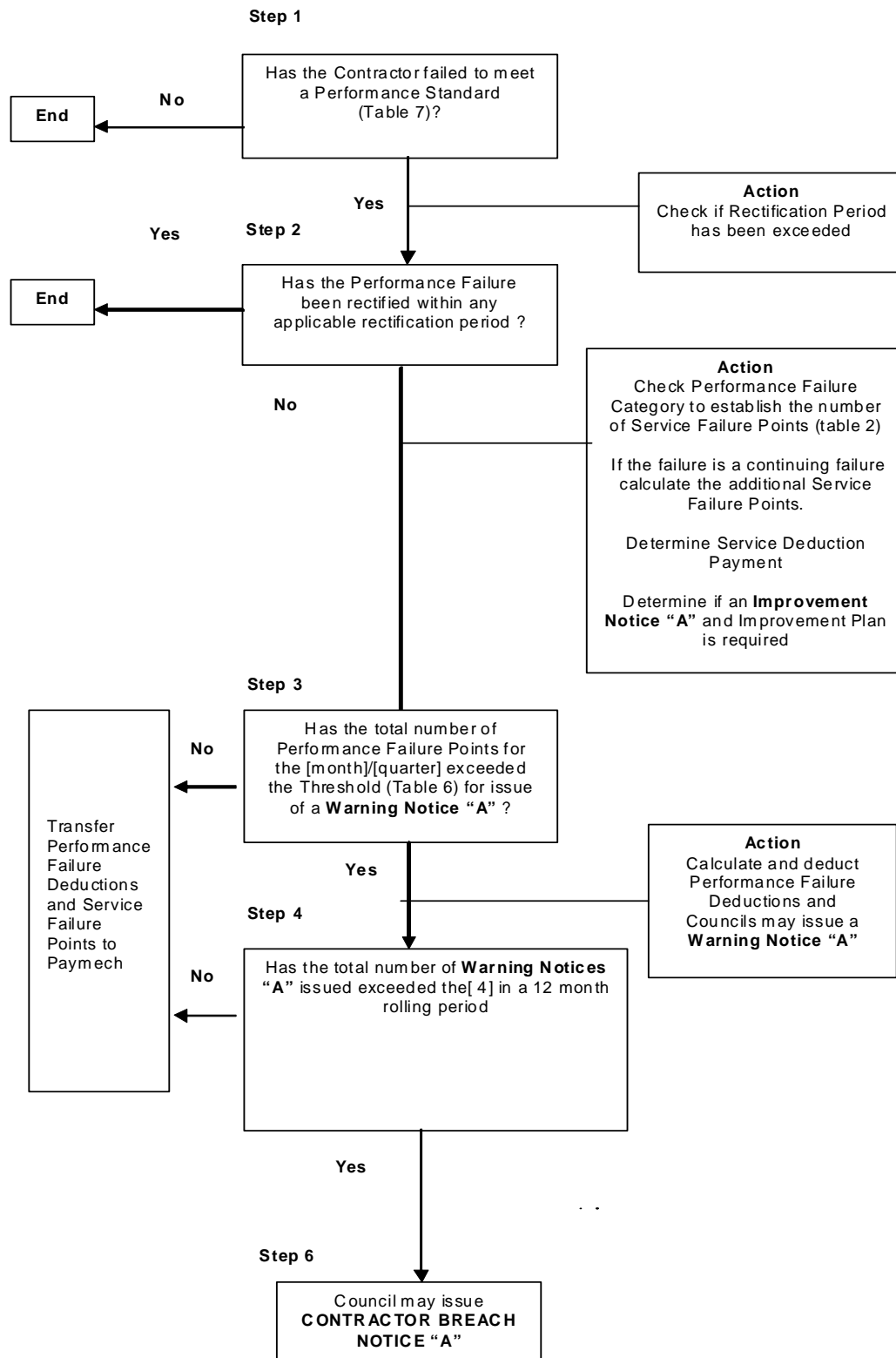
Performance Standards

- 1.25 The Contractor shall monitor each Performance Standard set out in Table 9 at the frequency set out in that table, and shall record whether or not the Performance Standard is being met.
- 1.26 Where a Performance Failure is identified, the Contractor shall rectify the Performance Failure within the Rectification Period stated in Table 9 for that Performance Standard.



- 1.27 If the Performance Failure is not rectified within the Rectification Period, the Contractor shall record the Performance Failure and shall determine the Performance Deduction from Table 5 using the Performance Failure Category specified for the Performance Standard in Table 9. The Contractor shall also determine the Performance Failure Points from Table 6.
- 1.28 The Rectification Period shall run from the earlier of:
- 1.29 the time at which the Contractor detects a Performance Failure at the Normal Monitoring Point (as defined in 1.31) and at which the Contractor ought reasonably to have been aware of the Performance Failure; or
- 1.30 the time at which the Partnership notifies the Contractor of a Performance Failure.
- 1.31 The Normal Monitoring Point shall be the latest time at which the Contractor should have monitored the Performance Standard in accordance with the required monitoring frequencies set out in Table 4 and calculated against the Performance Standard Failure category identified in Table 9.
- 1.32 Performance against all Performance Standards shall be recorded at each Contract Month.
- 1.33 In the event that a Performance Failure is not rectified and remains a failure at the next Normal Monitoring Point, further Performance Deductions and Performance Failure Points will be levied at the next Normal Monitoring Point until rectified.
- 1.34 Figure 1. Application of the Performance Framework to Performance Standards sets out the general process for determining the quantum of Performance Deductions and Performance Failure Points.

Figure 1 - Application of Performance Standards

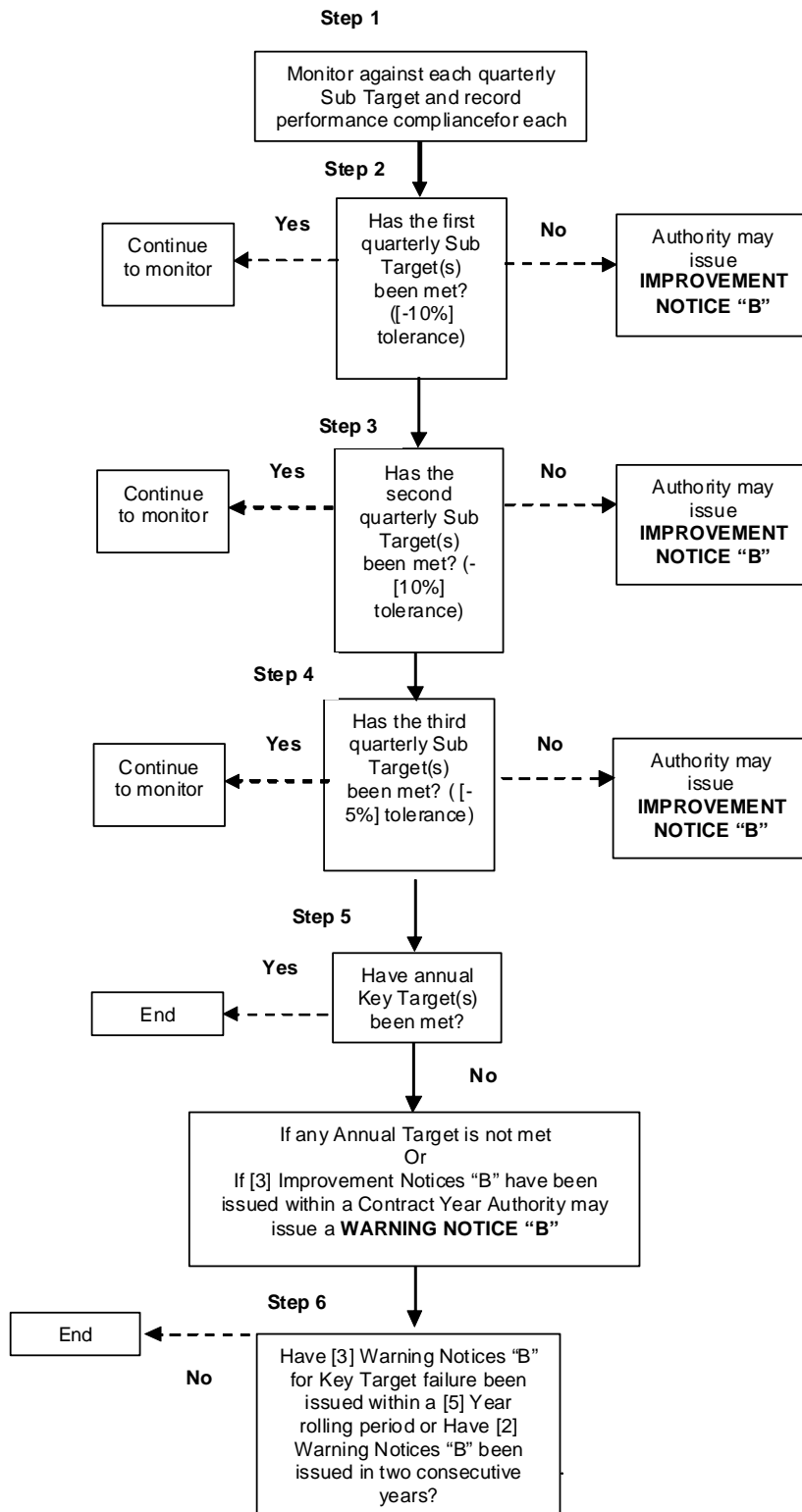




Key Targets

- 2.1 For Key Targets subject to Figure 2 the Contractor shall agree with the Partnership (prior to Contract signature) the quarterly Sub Targets to be monitored. Where the Sub Target has not been met within a tolerance level of [10%] over the first 3 month period of each Contract Year the Partnership may issue the Contractor with an Improvement Notice.
- 2.2 This will be repeated for the 6 monthly Sub Target which will also have a tolerance level of [10%], and the 9 monthly Sub Target, which will have a tolerance of [5%]. It must be noted that there will be no tolerance in respect of the annual Key Target.
- 2.3 Irrespective of the number of Contract Waste Streams failing to meet their targets the Partnership can only issue 1 Improvement Notice in any three month period. If [3] Improvement Notices are issued to the Contractor during a Contract Year then the Partnership may issue a Warning Notice. A maximum of 1 warning notice can be issued per contract year and each warning notice remains valid for [5] contract years from issue.
- 2.4 Where [3] Warning Notices have been issued in respect of any rolling period of [5] Contract Years or where [2] Warning Notices have been issued in two consecutive years due to a failure by the Contractor to meet the Key Targets the Partnership may issue the Contractor with a Contractor Breach Notice.

Figure 2 - Application of Key Targets





Issue of Improvement Notices “A” and “B”

- 2.5 The Partnership are entitled to issue an Improvement Notice “A” and “B” in relation to Performance Standard and Key Target Failure in accordance with this Performance Framework. The Notice served will specify that it is an Improvement Notice; and provide details of the reasons for issuing the Improvement Notice. Improvement Notices “A” relate to the rectification following the failure of a Performance Standard and Improvement Notices “B” relate to the improving the performance in relation to Key Targets.
- 2.6 On receipt of an Improvement Notice the Contractor will investigate the reason for the failure and issue the Partnership with a plan [Improvement Plan] detailing the steps the Contractor will take to remedy the failure. If the Contractors investigation identifies that the failure has been due to action or inaction by the Partnership then it will inform the Partnership, through the [Improvement Plan] and a decision as to whether or not the failure will still count will be taken by the Partnership. The [Improvement Plan] shall be issued by the Contractor within [5] business days of receipt of the Improvement Notice. The content of the Improvement Plan shall be subject to the approval of the Partnership and where the Partnership are of the opinion that the Improvement Plan will not rectify the failure the Contractor shall revise and resubmit the Improvement Plan to the Partnership for approval within [3] business days.

Issue of Warning Notices “A” and “B”

- 2.7 The Partnership are entitled to issue a Warning Notice in accordance with this Performance Framework. The notice served will specify that it is a Warning Notice; and provide details of the reasons for issuing the Warning Notice.
- 2.8 On the issue of a Warning Notice the Contractor will;
- a) where the Warning Notice has been issued due to failure of the Performance Standards, submit a [Improvement Plan “A”] detailing the steps that will be taken to prevent the recurrence of the relevant Performance Failures in the following Contract Month.
 - b) where the Warning Notice has been issued due to non compliance with the Key Targets, submit a [Improvement Plan “B”] detailing the steps that will be taken to achieve the Key Targets in the following Contract Year.

Issue of Contractor Breach Notice



- 2.9** A Contractor Breach Notice may be issued by the Partnership under any of the circumstances set out in this Performance Framework. The Partnership may issue a Termination Notice for reason of a Contractor Default under limb [(q)] of that definition.

Appendix 1 – Performance Framework Tables³

Table 3 - Performance Failure Categories

Performance Failure Category	Description
Category 1	Fundamental
Category 2	Critical
Category 3	Essential
Category 4	Important

Table 4 - Monitoring Frequency

Period	Label
Per Vehicle	PV
Hourly	H
Daily	D
Weekly	W
Monthly	M
Quarterly	Q
Annual	A
Per Occurrence	PO

Table 5 - Performance Deductions

Category	Performance Deduction
1	[£25,000]
2	[£10,000]
3	[£3,000]
4	[£300]

³ The information to be included in appendix 1 will be developed during the dialogue period, and will require calibration of both the payment mechanism and performance mechanism.

Table 6 - Performance Failure Points

Performance Failure Category	Performance Failure Points
1	[100] Points
2	[60] Points
3	[20] Points
4	[4] Points

Table 7 - Warning Notice and Contractor Breach Notice Thresholds

Warning Notice “A”	Contractor Breach Notice “A” (12 month period)
<p>[800] Performance Failure Points exceeded in any month</p> <p>Or</p> <p>[2300] Total Performance Failure Points exceeded in a rolling three month period.</p>	[4] Warning Notices “A”

Table 8 - Key Targets

Target No.	Key Target	Monitoring Frequency (ref: Table 4)	Key Target Monitoring Methodology
0	The Contractor has met the MSW Landfill Performance Target.	Q	Review of Contractors and other records as required.
B.2	The Contractor has met the BMW Landfill Performance Target.	Q	Review of Contractors and other records as required.



B.3	The Contractor has met the Recycling/Composting Performance Target of [16%] of Contract Waste.	Q	Review of Contractors and other records as required.
B.4	The Contractor has met the Processed Landfill Tonnage Target.	Q	Review of Contractors and other records as required.
B.5	The Contractor has met the Unprocessed Landfill Tonnage Target.	Q	Review of Contractors and other records as required.

Table 9 - Performance Standards**PR3.2 - Environmental Management**

Performance Mechanism Ref	Authoritys requirement Ref	Performance Standard	Performance Failure Category (ref: Table 3)	Rectification Period	Monitoring Frequency (ref: Table 4)	Performance Standard Monitoring Methodology
	1.43	The Contractor has complied with all Permits, Permissions, Consents and Conditions	[Fundamental]	[N/A]	M	Regulatory Audits
	Appendix 5	Failure to provide each plan in accordance with the timescale requirements identified in Column 3 “Required by” for each plan identified in “Appendix 5 List of Plans” of the Authorities Requirements	[Fundamental]	[5 Business Days]	In accordance with the timescale identified in Column 3 “Required by” for each plan listed in Appendix 5 of the Authorities Requirements	Receipt of each Plan
	Appendix 5	Failure to update and issue each plan in accordance with the Issue and review frequency timescale requirements identified in Column 4 “Issue and review frequency” for each plan identified in Appendix 5 “List of Plans” of the Authorities Requirements	[Fundamental]	[5 Business Days]	The issue and review frequency timescale requirements identified in Column 4 “Issue and review frequency” for each plan listed in Appendix 5 “List of Plans” of the Authorities Requirements	Receipt of each updated Plan
	Appendix 5	Failure to implement, comply with the requirements and methods contained within each plan listed in Appendix 5 “List of Plans”	[Important]	[5 Business Days]	M	Services carried out in accordance with the requirements and

Performance Mechanism Ref	Authoritys requirement Ref	Performance Standard	Performance Failure Category (ref: Table 3)	Rectification Period	Monitoring Frequency (ref: Table 4)	Performance Standard Monitoring Methodology
		of the Authority's Requirements and detailed in the Contractors Proposals				methods described in each Plan
	3.23	The Contractor has notified the Partnership prior to implementing the Contingency Plan.	[Fundamental]	[N/A]	PO	Record of notification prior to implementation.
	3.18	The Contractor has kept the site boundary [400 metres] and areas identified on the site plan layout ref no. [1a] free from litter and fly tipped waste.	[Essential]	[12 Hours]	D	Record in Site Diary.
	3.19(a)	The Contractor has contained and controlled any litter or fly-tipped waste within [30] minutes of the waste being observed or notified by the Partnership.	[Essential]	[30 Minutes]	D	Partnership has notified Contractor of litter or fly-tipped Waste and Contractor has responded within timescale.
	3.19(b)	The Contractor has removed or cleaned up any litter or fly-tipped waste within [24] hours of the waste being observed or notified by the Partnership.	[Essential]	[12 Hours]	D	Partnership has notified Contractor of litter or fly-tipped Waste and Contractor has responded within timescale.
	3.99	The Contractor has transported Contract Waste in accordance with the Waste Transport Plan.	[Fundamental]	[N/A]	PO	Record in Site Diary.
	3.26	The Contractor has stored Contract Waste in Permitted on-Site storage facilities.	[Fundamental]	[24 Hours]	D	Record in Site Diary.

PR3.3 - Operational Interface

Performance Mechanism Ref	Authority's Requirements Ref:	Performance Standard	Performance Failure Category (ref: Table 3)	Rectification Period	Monitoring Frequency (ref: Table 4)	Performance Standard Monitoring Methodology
	3.33	The Contractor has implemented the Non-Authorised Vehicle Acceptance Procedure.	[Important]	[1 Business Day]	PO	In accordance with the [refer to relevant Method Statement].
	3.34	Authorised Vehicles have achieved the required turnaround time of no greater than [20] minutes.	[Important]	[N/A]	PO	Electronic records of Authorised Vehicles entering and exiting the Site consolidated to show the number on Site. ⁴
	3.35	The Contractor has provided any necessary assistance in receipt and unloading of Contract Waste as reasonably required.	[Important]	[N/A]	PO	In accordance with the [refer to relevant Method Statement].
	3.42	The Contractor has implemented the approved Enquiries and Complaints Plan within [4] hours of receiving a complaint.	[Important]	[N/A]	PO	In accordance with the Enquiries and Complaints Plan.
	3.30	The Contractor has accepted waste in accordance with the Waste Acceptance Plan	[Important]	[N/A]	PO	In accordance with the Waste Acceptance Plan.
	3.62	Each load of Contract Waste brought to the Site(s) and Contract Waste removed from the Site(s) has been weighed and as a minimum the relevant information has been recorded or recorded in compliance with manual recording process.	[Critical]	[N/A]	PO	Complete electronic records for information specified in PR3.3; and in the format detailed in the [refer to relevant Method Statement].

⁴ Vehicles failing to leave the Site within the specified turnaround time as a result of mechanical breakdown or the actions or the inactions of the driver should be excluded from the total. [AQ: check insertion]

Performance Mechanism Ref	Authority's Requirements Ref:	Performance Standard	Performance Failure Category (ref: Table 3)	Rectification Period	Monitoring Frequency (ref: Table 4)	Performance Standard Monitoring Methodology
	3.63	The Contractor has implemented the manual recording system during any breakdown of a weighbridge installation	[Fundamental]	[N/A]	PO	Monthly review of the Services Plan.
	3.64	The Contractor has issued a copy of the weighbridge ticket to each vehicle which transports Contract Waste and residues to and from any of the Facilities and/or Sites.	[Critical]	[N/A]	PO	Contractor's computerised records.
	3.47	A nominated contact has been available 24 hours a day.	[Critical]	[N/A]	PO	Partnership records of date and time when contact was attempted but failed.

PR3.4 - Facilities and Contract Management

Performance Mechanism Ref	Authority's Requirements Ref:	Performance Standard	Performance Failure Category (ref: Table 3)	Rectification Period	Monitoring Frequency (ref: Table 4)	Performance Standard Monitoring Methodology
	3.65	The Contractor shall prepare and submit a Monthly Service Report	[Important]	[1 Business Day]	Monthly	Receipt of Monthly Service Report
	3.66	The Contractor shall prepare and submit an Annual Service Report	[Important]	[5 Business Days]	Annually	Receipt of Annual Service Report
	3.69	The Contractor has complied with the Monthly Schedule of Planned Maintenance and completed all planned maintenance identified in the plan by the end of the Contract Month.	[Critical]	[5 Business Days]	M	Written record of Monthly Schedule of Planned Maintenance and written record of maintenance carried out in the Contract Month within the Monthly Service Report.
	3.77	The Contractor has implemented a QMS that is compliant with ISO9001.	[Essential]	[5 Business Days]	M	In accordance with the relevant Method Statements.
	3.78	The Contractor has appointed a Quality Manager.	[Essential]	[5 Business Days]	M	In accordance with the relevant Method Statements.
	3.79	The Contractor has implemented an EMS that is compliant with ISO14001.	[Essential]	[5 Business Days]	M	In accordance with the relevant Method Statements.
	3.80	The Contractor has appointed an Environmental Management Manager.	[Essential]	[5 Business Days]	M	In accordance with the relevant Method Statements.

Performance Mechanism Ref	Authority's Requirements Ref:	Performance Standard	Performance Failure Category (ref: Table 3)	Rectification Period	Monitoring Frequency (ref: Table 4)	Performance Standard Monitoring Methodology
	3.84(a)	The Contractor has reported all reportable incidents.	[Essential]	[5 Business Days]	M	Written record of all incidents in Monthly Service Report contains all details of reportable incidents and date and time reported to relevant body.
	3.84(b)	The Contractor has a record of all health and safety records and documentation maintained and up to date.	[Essential]	[5 Business Days]	M	Documents are available to the Partnership when requested.
	3.78(f)	The Contractor has implemented changes to take account of Good Industry Practice.	[Important]	[2 Months]	A	Changes implemented within 12 months following review and identification of best practice.
	3.90	The Contractor has on the occurrence of any fire, acted in accordance with the agreed fire strategy.	[Fundamental]	[N/A]	PO	Partnership review of fire incident report.
	3.98	The Facilities and designated areas at each Site have sufficient clear, visible and legible signage to safely divert Authorised Users around the Site and such signage has been kept up to date and has been reasonably free from damage.	[Critical]	[5 Business Days]	D	In accordance with the relevant Method Statements.
	3.41(a)	The facilities for visitors have been available as a minimum five days a week to include Saturdays, Sundays and bank holidays, but excluding Christmas Day, Boxing Day and	[Important]	[5 Business Days]	M	In accordance with the relevant Method Statements.

Performance Mechanism Ref	Authority's Requirements Ref:	Performance Standard	Performance Failure Category (ref: Table 3)	Rectification Period	Monitoring Frequency (ref: Table 4)	Performance Standard Monitoring Methodology
		New Years Day.				
	3.101	The Contractor has only transported waste, products and residues in enclosed containers or on netted / sheeted vehicles.	[Essential]	[N/A]	PO	In accordance with the relevant Method Statement.
	3.107	The Contractor has supplied the Partnership with full details of the landfill site(s) to be used and copies of Consents.	[Fundamental]	[1 Business Days]	M	Receipt of information within the agreed timescale.
	3.108	The Contractor has agreed with the Partnership any proposed changes or substitution of landfill sites in accordance with the Contract, and has updated the Service Delivery Plan accordingly.	[Fundamental]	[5 Business Days]	M	Regular review of the Service Delivery Plan.

PR4: - Hand-Back Requirements.

Performance Mechanism Ref:	Authority's Requirements Ref:	Performance Standard	Performance Failure Category (ref: Table 3)	Rectification Period	Monitoring Frequency (ref: Table 4)	Performance Standard Monitoring Methodology
	4.3	The Contractor has included a Hand-over programme within the Hand- Over Plan	Essential	[5 Business Days]	PO	Receipt of the Hand-Back Plan as part of the Hand-Back Plan within the stated timescale.



APPENDIX 7 – DRAFT PROJECT AGREEMENT

PROSIECT GWYRDD RESIDUAL WASTE TREATMENT CONTRACT ISDS STAGE MAIN BODY AND SCHEDULE 1



DATED _____ **20[]**

(1) [NAME OF AUTHORITY]

and

(2) [NAME OF CONTRACTOR]

**PROSIECT GWYRDD
RESIDUAL WASTE TREATMENT CONTRACT**

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SCHEDULE 32 – PROHIBITED MATERIALS

STATUS AT ISDS

	Schedule	Status at ISDS stage
1.	Definitions	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
2.	Authority's Requirements	Included in the ISDS. Bidders to refer to instructions in ISDS.
3.	Contractor's Proposals	Bidders to submit with ISDS response. See Technical Requirements in the ISDS for instructions as to form and content.
4.	Payment Mechanism	Included in the ISDS. Bidders to refer to instructions in ISDS.
5.	Ancillary Documents and Initial Financing Agreements	List to be agreed between the Parties during Detailed Dialogue. To include Construction Sub-Contract and Operating Sub-Contract and any Off-Take Contracts and Third Party Waste Contracts
6.	Contractor Warranted Data	Bidders to propose. For discussion during Detailed Dialogue.
7.	Sites Information	For discussion during Detailed Dialogue.
8.	Key Dates	Bidders to propose. For discussion during Detailed Dialogue.
9.	Review Procedure	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
10.	Required Insurances	Included within the draft Project Agreement.

	Schedule	Status at ISDS stage
		Bidders to refer to instructions in ISDS.
11.	Tests	Bidders to propose. For discussion during Detailed Dialogue.
12.	Independent Certifier's Deed of Appointment	Bidders to propose. For discussion during Detailed Dialogue.
13.	Authority's Policies	Bidders are referred to the policies contained within the Data Room. For discussion during Detailed Dialogue.
14.	Waste Law List	For discussion during Detailed Dialogue.
15.	NOT USED	-
16.	Refinancing	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
17.	Compensation on Termination	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
18.	Liaison Procedure	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
19.	Revision of Base Case and Custody	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
20.	Employment and Pensions	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.

	Schedule	Status at ISDS stage
21.	Change Protocol	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
22.	Disputes Resolution Procedure	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
23.	Commercially Sensitive Information	Bidder to propose. For discussion during Detailed Dialogue.
24.	Direct Agreement	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
25.	Form of Collateral Warranty	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
26.	Planning	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
27.	Approach to Permit Risk	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
28.	Relevant Discharge Terms	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.
29.	Design Proposals	Bidder to propose. For discussion during Detailed Dialogue.
30.	Outline Substitute Waste Plan	Bidder to propose. For discussion during Detailed Dialogue.

	Schedule	Status at ISDS stage
31.	NOT USED	-
32.	Prohibited Materials	Included within the draft Project Agreement. Bidders to refer to instructions in ISDS.



THIS CONTRACT is made on [] 20[]

BETWEEN:

- (1) **THE AUTHORITY** of [] (the "Authority"); and
- (2) **[THE CONTRACTOR]** of [] (Company No. []) whose registered office is at [] (the "Contractor").

WHEREAS:

- (A) The Welsh Assembly Government's waste strategy set out in "Towards Zero Waste" (the consultation document for a new waste aims) requires local authorities in Wales to achieve a minimum of 70% recycling/composting by 2024/25. The 1999 Landfill Directive (99/31/EC) requires all local authorities to divert prescribed amounts of biodegradable municipal waste from Landfill. The achievement of the objectives set out in "Towards Zero Waste" will enable compliance with the EU landfill diversion targets by reducing the amount of Biodegradable Municipal Waste ("BMW") sent to landfill to at least 50% of 1995 levels by 2012/13 and to 35% of 1995 levels by 2019/20. The obligation to divert waste from landfill is enforced by the Waste and Emissions and Trading Act 2003 which came into force in Wales pursuant to the Waste and Emissions and Trading Act 2003 (Commencement Order) (Wales) Order 2004 (together the recycling/composition and landfill diversion requirements shall be known as the Statutory Targets).
- (B) A Joint Working Agreement has been signed by The County Council of the City and County of Cardiff, Caerphilly County Borough Council, Monmouthshire County Council, Newport City Council and The Vale of Glamorgan Council on [•] (together known as the "**Partnership**" and individually as a "**Partner**") to jointly procure solutions for the treatment and disposal of the Partnership's municipal waste in furtherance of the project known as Prosiect Gwyrdd. The Partnership is neither a legal partnership nor a legal entity in its own right. Pursuant to the terms of the Joint Working Agreement, [•], in its capacity as lead authority, enters into this Contract for and on behalf of itself and the Partnership.
- (C) The Authority is designated as a Waste Disposal Authority under Section 30(2)(a) of the EPA.
- (D) Pursuant to a notice published in the Official Journal of the European Union on 23 November 2009 (2009/S 227-326432) expressions of interest were invited from appropriately qualified organisations for services relating to the design, installation, operation and maintenance of residual waste treatment facilities, with a view to assisting the Partnership to discharge their respective statutory obligations and to



contribute towards meeting their respective Statutory Targets, on the basis set out in this Contract.

- (E) The Contractor has submitted proposals to the Authority setting out how it will meet the Authority's Requirements relating to the design, installation, commissioning, financing, operation and maintenance of the Facility and the provision of the Services.
- (F) The Authority has selected the Contractor as the most economically advantageous tenderer to provide the Services pursuant to this Contract.

PART I – PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The provisions of Schedule 1 (Definitions) shall apply and have effect in relation to the words and expressions used in this Contract and the interpretation and construction of this Contract.

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice-versa;
- 1.2.3 a reference to any Clause, sub-Clause, paragraph, Schedule, recital 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 Contract;
- 1.2.4 save where otherwise provided in this Contract, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to this Contract and/or such other document;
- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.6 references to any documents being 'in the agreed form' means such documents have been initialled by or on behalf of each of the parties for the purposes of identification;

- 1.2.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.8 headings are for convenience of reference only;
- 1.2.9 words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words;
- 1.2.10 any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.2.11 subject to any express provisions to the contrary, the obligations of either Party are to be performed at that Party’s own cost and expense.

1.3 Schedules

The Schedules to this Contract form part of this Contract.

1.4 Exclusion of Legislation

The Parties intend that this Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 on the basis that this Contract is entered into on principles similar to the UK Government’s private finance initiative as set out in Section 4(2) of the Construction Contracts (England and Wales) Exclusion Order 1998. The Contractor acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Ancillary Document shall not affect the Parties’ rights or obligations under this Contract.

1.5 Indexation

In this Contract, save where otherwise provided, references to amounts expressed to be “indexed” are references to such amounts, multiplied by:

$\frac{\text{Index}_1}{\text{Index}_2}$

where Index_1 is the value of [*index/indices selected*] most recently published prior to the relevant calculation date and Index_2 is the value of [*index/indices selected*] on the Price Reference Date.

1.6 Responsibility for Related Parties

Subject to the provisions of this Contract, the Contractor shall be responsible to the Authority for the acts and omissions of the Contractor

Related Parties as if they were the acts and omissions of the Contractor and the Authority shall be responsible to the Contractor for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Contractor shall, as between itself and the Authority, be responsible for the selection of and pricing by all Contractor Related Parties.

1.7 **Approval**

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

1.8 **Statutory Capacity**

Save as otherwise expressly provided, the obligations of the Authority under this Contract are obligations of the Authority in its capacity as a contracting counter-party and Waste Disposal Authority and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Authority to the Contractor.

1.9 **Succession**

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

2. **PRECEDENCE OF DOCUMENTATION**

2.1 **Precedence of Documentation**

In the event of any inconsistency between the provisions of the body of this Contract and the Schedules, the main body of this Contract shall take precedence. In the event of any inconsistency between Schedule 2 (Authority's Requirements) and Schedule 3 (Contractor's Proposals), Schedule 2 (Authority's Requirements) shall take precedence.

3. **COMMENCEMENT AND DURATION**

3.1 This Contract and the rights and obligations of the Parties shall take effect on the Commencement Date.

3.2 The Services Period will commence on the Services Commencement Date and terminate on the earlier of:

3.2.1 the Expiry Date; and

3.2.2 the Termination Date.

3.3 **Option to Extend the Contract Period**

On or before a date falling no later than twenty four (24) Months prior to the Expiry Date the Authority shall, at its sole discretion, have the option to give written notice to the Contractor of its desire to extend the Expiry Date by a period of up to five (5) years (the 'Extension of Contract Period') and on the Authority giving such written notice this Contract shall remain in full force and effect until the earlier of the expiry of the Extension of Contract Period or the Termination Date subject to the agreement by the Parties (within the public procurement rules) of the terms of such extension, including any consequential variations to the Contract, the Annual Unitary Payment and any Ancillary Documents including, without limitation, the adjustment of the Base Case to remove the capital expenditure that has been amortised and to reflect the full payment of the Senior Debt and [Equity].

4. **LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

4.1 **Certification Requirements**

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

4.2 **Contractor's Consent**

The Contractor hereby consents to the issue by the Authority of certificates under Section 3 of the Local Government (Contracts) Act 1997 in respect of this Contract and the Direct Agreement.

4.3 **Failure to Issue a Certificate**

If a certificate is not issued by the Authority pursuant to Clause 4.2 (Contractor's Consent) within six (6) weeks of the date of this Contract then the Contractor shall be entitled by giving notice in writing to the

Authority within five (5) Business Days of such date to terminate this Contract, whereupon the Relevant Discharge Terms shall apply.

4.4 **Unenforceability of Contract**

In the event of the making of a determination or order by a court of final jurisdiction on application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997) the result of which is that this Contract does not have effect or is otherwise unenforceable, then the Relevant Discharge Terms shall apply.

4.5 **Relevant Discharge Terms**

The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in Schedule 28 (Relevant Discharge Terms).

5. **GENERAL WARRANTIES AND UNDERTAKINGS**

5.1 **Contractor Undertakings**

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

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

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

- 5.1.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- 5.1.4 it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor;
- 5.1.5 it shall not without the written consent of the Authority incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in the provision of the Services or the Works;
- 5.1.6 it shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Ancillary Documents and/or Financing Agreements; and
- 5.1.7 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.

5.2 **Prohibited Act**

The Contractor warrants and represents that in entering into this Contract it has not committed any Prohibited Act.

5.3 **Status of Warranties**

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

5.4 **Contractor Warranty**

The Contractor warrants and represents to the Authority that as at the date of this Contract:

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

- 5.4.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract, the Ancillary Documents and the other contractual documents envisaged by this Contract to be entered into by the Contractor (“Other Contract Document(s)”);
- 5.4.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract and the Ancillary Documents has been taken or, in the case of any Ancillary Document and any Other Contract Document executed after the date of this Contract, will be taken before such execution;
- 5.4.4 the obligations expressed to be assumed by the Contractor under this Contract and the Ancillary Documents are, or in the case of any Ancillary Document and any Other Contract Documents executed after the date of this Contract will be, legal, valid, binding and enforceable to the extent permitted by law and this Contract and each Ancillary Document and any Other Contract Document is or will be in the proper form for enforcement in England;
- 5.4.5 the execution, delivery and performance by it of this Contract, the Ancillary Documents and any Other Contract Documents does not contravene any provision of:
 - (a) any existing Legislation either in force, or enacted but not yet in force and binding on the Contractor;
 - (b) the memorandum and articles of association of the Contractor;
 - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.4.6 the Contractor Warranted Data is true and accurate in all respects;
- 5.4.7 the Contractor has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act;
- 5.4.8 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or

might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract, any Ancillary Document or any Other Contract Document;

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

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

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

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

and the Authority relies upon such warranties and representations.

5.5 **No Warranty by Authority**

Subject to Clause 5.7 (Fraudulent Statements) the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

5.6 **No Liability to Contractor**

Subject to Clause 5.7 (Fraudulent Statements) neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- 5.6.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or
- 5.6.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

5.7 **Fraudulent Statements**

Nothing in this Clause 5 (General Warranties and Undertakings) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of this Contract.

- 5.8 The provisions of this Clause 5 (General Warranties and Undertakings) are without prejudice to the Contractor's express rights and remedies under or pursuant to this Contract.

6. **CONTRACTOR'S DUE DILIGENCE**

- 6.1 Subject to Clause 5.7 (Fraudulent Statements) and the provisions of Clause 14 (Fossils and Antiquities), the Contractor shall be deemed to have:

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

- 6.1.2 gathered all information necessary to perform its obligations under this Contract and other obligations assumed including:

- (a) information as to the nature, location and condition of the Site(s) (including hydrological, geological, geotechnical and sub-surface conditions);
- (b) current and projected tonnages, trends and composition of Contract Waste; and
- (c) information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures.

- 6.2 Subject to Clause 5.7 (Fraudulent Statements), and except for any express provisions of this Contract having the contrary effect, the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is

incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

7. AMENDMENT OF DOCUMENTS

7.1 Delivery of Initial and Changed Ancillary Documents

The Contractor has provided to the Authority copies of the Ancillary Documents as listed in Part 1 of Schedule 5 (Ancillary Documents and Financing Agreements) and of the Initial Financing Agreements as listed in Part 2 of Schedule 5 (Ancillary Documents and Financing Agreements).

7.2 Without prejudice to the provisions of Clauses 7.1, 7.3 or 7.4, or to the definition of Senior Financing Agreements in Schedule 1 (Definitions), if at any time an amendment is made to any Ancillary Document or Financing Agreement, or the Contractor enters into a new Ancillary Document or Financing Agreement (or any agreement which affects the interpretation or the application of any Ancillary Document or Financing Agreement), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

7.3 Ancillary Documents

Except as relates to Off-Take Contracts and Third Party Waste Contracts (in respect of which Clause 51.1 shall apply) the Contractor shall perform its obligations under, and observe all of the provisions of, the Ancillary Documents and shall not:

- 7.3.1 terminate or agree to the termination of all or part of any of the Ancillary Documents;
- 7.3.2 make or agree to make any material variation of any Ancillary Document;
- 7.3.3 in any material respect depart from its obligations, (or waive or allow to lapse any rights it may have in a material respect), or procure that any counterparty to an Ancillary Document in any material respect departs from its obligations (or waives or allows to lapse any rights it may have in any material respect), under any Ancillary Document; or
- 7.3.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority's Representative for review under the Review Procedure and there has been no objection in accordance with paragraph 3 of the Review Procedure within twenty (20) Business Days of receipt by the Authority's Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the Parties and the Contractor has complied with Clauses 81 (Assignment and Sub-Contracting).

7.3.5 Any variation to or departure from the terms of an Ancillary Document that relates to a matter or restriction in Clauses 81.2 (Restriction on the Contractor) shall be deemed to be material for the purpose of Clause 7.3.2 and/or 7.3.3;

7.3.6 Where the proposed course of action is referred to the Review Procedure pursuant to Clause 7.3.4 above, the Authority shall be entitled to object to the entering into of any such agreement where the same would be contrary to the provisions of Clause 81.6 (Refusal of Consent).

7.4 **Changes to Financing Agreements and Ancillary Documents**

7.4.1 Without prejudice to the provisions of this Clause 7 (Amendment of Documents) and Clause 52 (Refinancing), the Contractor shall not, without the prior written consent of the Authority, enter into new Financing Agreements or terminate, amend, waive its rights or otherwise deal with its Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of the Contractor to perform its obligations under the Ancillary Documents or the Contract.

7.4.2 No amendment, waiver or exercise of a right under this Contract, any Financing Agreement or Ancillary Document shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless:

- (a) the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this Clause 7.4.2 (Changes to Financing Agreements and Ancillary Documents), or
- (b) it is a Permitted Borrowing.

In the event of any conflict between the provisions of this Clause 7.4.2 and any other provision of this Contract, the provisions of Clause 7.4.2 shall prevail.

8. **LIAISON PROCEDURE**

The Parties shall comply with the provisions of Schedule 18 (Liaison Procedure).

9. **REPRESENTATIVES**

9.1 **Representatives of the Authority**

- 9.1.1 The Authority's Representative shall be [] or such other person appointed pursuant to this Clause. The Authority's Representative shall exercise the functions and powers of the Authority in relation to the Project which are identified in this Contract as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Contract as may be notified to the Contractor from time to time.
- 9.1.2 The Authority's Representative shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Authority's Representative and all references to the "Authority's Representative" in this Contract (apart from this Clause) shall be taken as reference to such person so far as they concern matters within the scope of such person's authority.
- 9.1.3 The Authority may by notice to the Contractor change the Authority's Representative. The Authority shall (as far as practicable) consult with the Contractor prior to the appointment of any replacement for the Authority's Representative, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of an Emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Contract).
- 9.1.4 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Contract) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.

- 9.1.5 Save where notified in writing by the Authority before such act or instruction, the Contractor and the Contractor's Representative shall be entitled to treat any act or instruction by the Authority's Representative which is authorised by this Contract as being expressly authorised by the Authority and the Contractor and the Contractor's Representative shall not be required to determine whether authority has in fact been given.
- 9.1.6 Save where notified in writing by the Authority before such act or instruction, the Contractor and the Contractor's Representative shall not be entitled to treat any act or instruction by the Authority's Representative or any other officer, employee or other person engaged by the Authority which is not authorised by this Contract as being authorised by the Authority and shall be required to determine by notice to the Authority whether an express authority has in fact been given.

9.2 Representatives of the Contractor

- 9.2.1 The Contractor's Representative shall be [] or such other person appointed pursuant to this Clause. The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.
- 9.2.2 The Contractor may by notice to the Authority change the Contractor's Representative. Where the Contractor wishes to do so, it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

9.3 Appointment of Representatives

At any time the Authority may appoint more than one Authority's Representative and the Contractor may appoint more than one Contractor's Representative provided in each case the appointer provides written confirmation to the Contractor or Authority as appropriate of the extent of its Representative's authority.

PART II – LAND AND PERMITTING

10. LAND ISSUES

10.1 Access during construction

10.1.1 From the Commencement Date until the date when the Licences are completed in accordance with this Clause 10 (Land Issues) (or, if earlier, the Termination Date), the Authority will afford the Ancillary Rights to the Contractor and the Contractor Related Parties for the purpose of implementing the Works.

10.1.2 If at any time the Contractor requires access to or any interest in any land which does not form part of the Site or any additional rights beyond those which the Contractor has in relation to any part of the Site, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Contractor.

10.1.3 From the start of the Works Period until the grant of the Lease for the Site or (if earlier) the Termination Date, the Authority grants a licence (the "Licence") to the Contractor and all Contractor Related Parties to:

- (a) exercise the Ancillary Rights in respect of the Site; and
- (b) enter upon so much of the Site as is reasonably necessary,

in each case solely for the purposes of implementing the Works provided that the timing of the Works and the access to the Site shall at all times be in accordance with the Works Delivery Plan. The Licence and the Contractor's right of access to the Site shall automatically cease and determine upon the earlier of the date when the Lease is completed the Expiry Date or the Termination Date.

10.1.4 The Licence granted by Clause 10.1.3:

- (a) shall not operate or be deemed to operate as a demise of the Site or any part thereof and neither the Contractor nor any Contractor Related Party shall have or be entitled to exclusive possession or any estate right title or interest in the Site or any part thereof but shall occupy the Site or any part thereof as a licensee only; and
- (b) is personal to the Contractor and the Contractor Related Parties and is granted only in so far as such

rights are capable of being granted by the Authority whether as a result of any restriction in the Title Deeds or otherwise.

10.2 Grant of Lease

10.2.1 The Authority will grant and the Contractor will accept a Lease of the Freehold Site on the Lease Completion Date.

10.2.2 Not less than twenty (20) Business Days prior to the Lease Completion Date the Authority's Representative shall deliver an engrossment of the counterpart Lease for the relevant Site to the Contractor.

10.2.3 The Contractor shall execute and deliver to the Authority's Representative the counterpart Lease for the relevant Site within five (5) Business Days of receipt together with the duly sworn Tenant's Declaration.

10.2.4 Registration

(a) The Contractor shall apply for and procure registration of each Lease [Underlease] at HM Land Registry and meet all fees in connection therewith as soon as reasonably practicable after the Lease Completion Date and shall within ten (10) Business Days of completion of such application supply copies of the leasehold register entries and title plan to the Authority's Representative.

(b) The Authority shall use reasonable endeavours (but without being required to incur any costs) to assist the Contractor in responding to any requisitions raised by HM Land Registry.

10.2.5 Neither the Contractor nor any Contractor Related Party shall be entitled to any compensation on the expiry or earlier determination of any Lease save as set out in this Contract.

10.2.6 Each Lease shall be granted subject to but where applicable with, the benefit (to the extent the Authority is capable of transferring the same) of:

(a) all existing rights privileges easements liabilities (and in particular but without prejudice to the generality of the foregoing) drainage or other service rights or easements and quasi or reputed easements affecting the Site(s);

(b) all local land charges (whether registered or not before the date hereof) and all matters capable of registration

as local land charges (whether or not actually registered as such) affecting or relating to the Site(s) or any part thereof or any building or other structure thereon whether general or specific;

- (c) all notices orders proposals or requirements whatsoever (whether registered or not before the date hereof) affecting or relating to the Site(s) or any part thereof given or made by any government department or by any statutory undertaker or by any public local authority or other competent authority;
- (d) all actual or proposed charges orders proposals restrictions agreements notices or other matters whatsoever (whether registered or not before the date hereof) affecting or relating to the Site(s) or any part thereof or any building or other structure thereon or any part thereof under the Planning Act; and
- (e) the matters mentioned or referred to in the registers to the freehold or leasehold titles to the Site(s) as at the date of this Contract;

and the Contractor shall be deemed to take the Lease [Underlease] with full knowledge thereof and shall raise no requisition thereon or objection thereto.

10.3 Consents

10.3.1 Insofar as any consents are required for the carrying out of Works at and operation and/or use of the Site(s) the Contractor will at its own expense in all respects procure that such consents are obtained prior to the Lease Completion Date for the relevant Site and will supply copies of any consents to the Authority.

10.4 Title

Title to the Site(s) having been deduced to the Contractor or the Contractor's Representative prior to the date of this Contract the Contractor shall take the Lease(s) with full knowledge thereof and shall raise no requisition thereon or objection thereto save in relation to any matters that have not been previously disclosed to the Contractor arising after the date of this Contract revealed by usual pre-completion searches at HM Land Registry or HM Land Charges Registry.

10.5 Early Termination

If this Contract is terminated for any reason prior to the Expiry Date:

- 10.5.1 the Lease(s) granted to the Contractor or any Contractor Related Party shall automatically cease and determine with effect from the date of termination of this Contract (or, if not granted at the time, the obligation to grant the Lease(s));
- 10.5.2 the Contractor shall forthwith deliver to the Authority the Lease(s) together with relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to the Lease(s); and
- 10.5.3 the Contractor shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at HM Land Registry and the Land Charges Registry in relation to the Lease.

10.6 **Expiry of Contract**

Not later than twenty (20) Business Days before the last day of the Contract Period, the Authority may, by written notice to the Contractor, require the Contractor to assign, with effect from the last day of the Contract Period, its unencumbered interest in each Lease or Underlease (as applicable) to such assignee as shall be notified by the Authority to the Contractor in the notice by delivering to the Authority within ten (10) Business Days a duly executed deed of assignment in such form as the Authority and the Contractor shall agree (each acting reasonably) together with all relevant title deeds and releases from any charge.

10.7 **Adjacent Land and Third Party Consents**

10.7.1 The Contractor shall use all reasonable endeavours not to do or permit or suffer to be done anything which might:

- (a) be or become a danger or nuisance or give rise to liability in tort to any Adjoining Owners or to members of the public generally; or
- (b) cause damage or Contamination to any Adjoining Property; or
- (c) (unless permitted by a Third Party Consent and then only in accordance with the terms of the Third Party Consent) interfere with any Adverse Rights,

and the Contractor shall at its own expense in the carrying out of the Works and/or Services take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused.

10.7.2 If the Works and/or Services cannot be carried out without interfering with any Adverse Right the Contractor shall promptly and at its own expense obtain all necessary Third Party Consents and/or the approval of any statutory undertakers and shall pay such sums as may be required for the giving of such Third Party Consent and/or approval of any statutory undertakers and shall supply to the Authority a copy of every Third Party Consent and/or approval of any statutory undertakers obtained.

10.7.3 The Contractor shall make good any damage to any roads, footpaths, Conduits, services, landscaping and other works on any Adjoining Property which is caused by the Contractor or any Contractor Related Party.

11. SITE CONDITIONS

11.1 Site Conditions

The Site Conditions shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract and the generality of the foregoing) the Contractor shall be deemed to have:

11.1.1 carried out ground physical and geophysical investigation and to have inspected and examined the Site(s) and its surroundings and (where applicable) any existing structures or works on, over or under the Site(s);

11.1.2 satisfied itself as to the nature of the Site Conditions, the ground, ecosystem, water table, drainage and the subsoil, the form and nature of the Site(s), the load bearing and other relevant properties of the Site(s), the risk of injury or damage to property affecting the Site(s), the nature of the materials (whether nature or otherwise) to be excavated, the existence of any overhead or underground cables, pipes, drains and other utilities and the nature of the design, works and materials necessary for the execution of the Works;

11.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Site(s) and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Site(s));

11.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority its employees and agents) with access to or use of, or rights in

respect of, the Site(s) with particular regard to Adjoining Owners;

11.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties;

11.1.6 satisfied itself as to the presence or absence of any Contamination; and

11.1.7 satisfied itself as to its obligations under the Wildlife and Countryside Act 1981 in relation to any Site.

11.2 The Contractor shall not be entitled to make any claim in relation to Site Conditions against the Authority of any nature whatsoever, on any grounds including the fact that incorrect or insufficient information on any matter relating to the Site(s) was given to it by any person, whether or not the Authority, its contractors or agents.

11.3 The Contractor accepts full responsibility for all matters referred to in Clause 11.1 (Site Conditions) and the Contractor shall be responsible for, and hold the Authority harmless from, cleaning up and otherwise dealing with any Contamination at or from the Site(s) so that it shall at all times comply with its obligations under this Contract including (without limitation) complying with, at its own cost, any applicable Legislation and any Consents, orders, notices or directions of any Relevant Authority (whether made against the Authority or the Contractor).

11.4 **Storage**

The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the carrying out of the Works or the provision of the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Authority of all such materials being used or stored at the Site(s) and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.

11.5 **COSHH Register**

The Contractor shall maintain a COSHH register in relation to the Facility and shall ensure that a copy of the register is held at the Facility, at the Contractor's registered office and that a copy is given to the Authority. The Authority shall notify the Contractor of any items which it or any Authority Related Party is using or storing at any of the Site(s) and which are required to be included in such register.

12. CONSENTS

- 12.1 The Contractor and the Authority shall comply with their respective obligations as set out in Schedule 26 (Planning) and Schedule 27 (Approach to Permit Risk).
- 12.2 Except as provided for in Schedule 26 (Planning) and Schedule 27 (Approach to Permit Risk) the Contractor shall:
- 12.2.1 at its own expense obtain, implement and maintain and renew as necessary all Consents which may from time to time be required for the carrying out of the Works and the performance of the Services;
 - 12.2.2 comply with the conditions attached to any Consents and procure that no such Consent is breached by any Contractor Related Party and use reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works and/or the Services;
 - 12.2.3 notify the Authority promptly of any notices received (whether from any Relevant Authority or any other person) relating in any way to any Consent and shall provide to the Authority a copy of any such notice within five (5) Business Days of receipt by the Contractor.
- 12.3 The Contractor shall not without the prior written consent of the Authority (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before or after the date of the Contract) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this Clause 12, references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.
- 12.4 When requested to do so by the Authority's Representative, the Contractor shall report to the Authority's Representative as to the progress of the Planning Application and any Environmental Permit and any Proceedings and Permit Proceedings (as defined in Schedule 27 (Approach to Permit Risk)) and all discussions and negotiations with the Planning Authority, the Permitting Authority, the Environment Agency and any other Relevant Authority and any statutory consultees and supply the Authority's Representative with copies of all documents, letters and instructions and enclosures to and opinions of Leading Counsel or the Contractor's consultants relating to any Planning Application, Environmental Permit, Planning Permission or Proceedings;

12.5 The Contractor shall:

12.5.1 Within thirty (30) Business Days of the Commencement Date and thereafter on each anniversary of the Commencement Date provide to the Authority's Representative a comprehensive list of all Consents which are required in respect of the Facility which have been or will be applied for and/or all the Consents obtained ("Consents List"). The Consents List shall identify in respect of the each Facility the:

- (a) date on which each such Consent application was made;
- (b) date on which each such Consent is expected or was obtained;
- (c) date for any renewal for each such Consent; and
- (d) any accompanying documents.

12.5.2 As soon as reasonably practicable following a request to do so, supply free of charge to the Authority's Representative a copy of any document or documents referred to in the Consents List.

PART III - WORKS

13. PRINCIPAL OBLIGATIONS

13.1 Obligation to Carry Out

The Contractor shall or shall procure that the Construction Sub-Contractor (and its sub-contractors and/or consultants) shall carry out the design (including the preparation of Design Data) and the construction, completion, commissioning and testing of the Works so that:

- 13.1.1 the Facility shall achieve Readiness Date on or before the Planned Readiness Date;
- 13.1.2 the Facility shall achieve Service Commencement on or before the Planned Services Commencement Date;
- 13.1.3 the Works fully comply with and meet all the requirements of this Contract, the Works Requirements, the Commissioning Requirements, the Works Method Statements, Construction Programme, Good Industry Practice, Guidance, all Consents and all applicable Legislation;
- 13.1.4 new materials only will be used in carrying out the Works (unless the Authority agrees otherwise in writing or the contrary is set out in the Works Requirements and Works Method Statements) and all goods used or included in the Works will be of satisfactory quality, and there will be used or included in the Works none of those products and materials listed and/or referred to in Schedule 32 (Prohibited Materials) nor any products or materials not in conformity with relevant British or European Union standards or codes of practice which at the time of use are widely known to building contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;
- 13.1.5 all persons employed in connection with the performance of the Works will be skilled and experienced in their several professions, trades and callings or adequately supervised;
- 13.1.6 all aspects of the Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Contract;

- 13.1.7 subject to Clause 42 (Protester Action), the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Sites are secure against trespassers and clean and tidy so far as is practicable having regard to the nature of the Works; and
- 13.1.8 adequate retaining and supporting walls are provided to support any Adjoining Property during the carrying out of the Works.

13.2 Overall Responsibility

The obligations in Clause 13.1 (Obligation to Carry Out) are independent obligations. In particular:

- 13.2.1 the fact that the Contractor has complied with the Authority's Requirements but not the Contractor's Proposals shall not be a defence to an allegation that the Contractor has not satisfied the Contractor's Proposals provided that the Authority's Requirements shall take priority over the Contractor's Proposals in the event of any discrepancy or inconsistency between them; and
- 13.2.2 the fact that the Contractor has complied with the Contractor's Proposals but not the Authority's Requirements shall not be a defence to an allegation that the Contractor has not satisfied the Authority's Requirements.

13.3 Works Stipulations

During the carrying out of the Works the Contractor shall or shall procure that the Construction Sub-Contractor and its sub-contractors and/or consultants shall:

- 13.3.1 not use or occupy or permit the Site or any land upon which the Works are being undertaken to be used or occupied for any purpose other than the carrying out of the Works;
- 13.3.2 not deposit or manufacture or permit to be deposited or manufactured on the Site or any land upon which the Works are being undertaken any materials which are not required for the carrying out of the Works;
- 13.3.3 at the Contractor's sole cost transport all surplus materials arising from the Works and arrange for the disposal of the same at such places as may lawfully be used for disposal and the Contractor shall comply with its legal obligations in relation to ensuring that such materials will not cause or give rise to pollution of the environment as defined by Section 29(3) Environmental Protection Act 1990;

- 13.3.4 ensure that all vehicles leaving the Site are adequately cleaned to prevent the deposit of waste materials and debris on the Adjoining Property or any highway, road and/or footpath and if any such material or debris is so deposited the Contractor shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate the Adjoining Property and/or any highway, road and/or footpath to the reasonable satisfaction of the owners or occupiers of the Adjoining Property or any highway, road and/or footpath as the case may be;
- 13.3.5 not without the written consent of the Authority erect or permit or suffer to be erected on the Site any temporary structure except site accommodation usual in connection with works of a like nature to the Works or as contemplated by the Works Method Statements; and
- 13.3.6 not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Site any signs or trade boards save those previously approved in writing by the Authority (such approval not to be unreasonably withheld or delayed).

13.4 Utilities

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

- 13.4.1 be responsible for determining the location of such services and utilities as may be at the Site and for the maintenance of access to such services and utilities at the Site;
- 13.4.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Site;
- 13.4.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities not within the Site;
- 13.4.4 pay to all Relevant Authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Site;
- 13.4.5 make connection into services and utilities outside the Site; and
- 13.4.6 otherwise do all that is required in relation to the utilities required for the purposes of carrying out the Works and as will be necessary to provide the Services.

13.5 Sole Remedy for delay

13.5.1 A breach of Clause 13.1.1 or 13.1.2 or Clause 16.5 (Construction Programme) shall not of itself be capable of giving rise to a Contractor Default under limb (a) of that definition and the Authority's remedy for the Contractor not achieving the Readiness Date by the Planned Readiness Date, the Services Commencement Date by the Planned Services Commencement Date (or any other failure to use reasonable endeavours to comply with the Construction Programme) is limited to:

- (a) the operation of Schedule 4 (Payment Mechanism) (or, as applicable, any delay in its operation becoming effective because Services Commencement has not been achieved); and/or
- (b) termination under Clause 67 (Termination for Contractor Default) pursuant to limb (l) or (m) of the definition of Contractor Default); and/or
- (c) where applicable, Clause 69 (Termination on Force Majeure); and/or
- (d) [the Liquidated Damages provisions under Clause 21A (Late Service Commencement Due to Delay in the Works)].

14. FOSSILS AND ANTIQUITIES

14.1 Property

As between the Parties, all fossils, antiquities, and other objects having artistic, historic or monetary value and human remains which may be found on or at the Site(s) are or shall become, upon discovery, the absolute property of the Authority.

14.2 Discovery

Upon the discovery of any such item during the course of the Works, the Contractor shall:

- 14.2.1 immediately inform the Authority's Representative of such discovery;
- 14.2.2 take all steps not to disturb the object and, if necessary, cease any Works in so far as the carrying out of such Works would endanger the object or prevent or impede its excavation; and

14.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

14.3 **Action**

The Authority shall procure that the Authority's Representative promptly, and in any event within five (5) Business Days, issues a written instruction to the Contractor specifying what action the Authority's Representative requires the Contractor to take in relation to such discovery.

14.4 The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in Clause 14.3 above at its own cost (except and to the extent that such instruction constitutes an Authority Change pursuant to Clause 14.6 below in respect of which case the provisions of Schedule 21 (Change Protocol) shall apply).

14.5 If directed by the Authority's Representative, the Contractor shall allow representatives of the Authority to enter the Site for purposes of inspection, removal or disposal of such discovery provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of the Facility, the Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time.

14.6 If any instruction referred to in Clause 14.3 above includes a requirement for the Contractor to carry out works (being any work or alteration, addition, demolition or extension or variation in the Facility) which are not works which would be necessary for the purpose of compliance with Legislation or any Consents, such works shall be deemed to be an Authority Change and the provisions of Schedule 21 (Change Protocol) shall apply as if such instruction were an Authority Change Notice issued by the Authority in accordance with the provisions of Schedule 21 (Change Protocol).

14.7 The Authority shall act promptly and diligently in dealing with its obligations in this Clause 14 in relation to any find so as to mitigate any effect on the Contractor, the Works and/or the Services.

15. **DESIGN DEVELOPMENT**

15.1 **Design Warranty**

Without prejudice to Clauses 13.1 (Obligation to Carry Out) the Contractor warrants that it has used and will continue to use the degree of skill and care in the design of the Works that would reasonably be

expected of a competent professional designer experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Works.

15.2 **Review of Design Data**

The Contractor shall allow the Authority's Representative at any time a reasonable opportunity to view any items of Design Data, which shall be made available to the Authority's Representative as soon as reasonably practicable following receipt of any written request from the Authority's Representative.

15.3 **Design Database**

The Contractor shall establish and maintain or procure that the Construction Sub-Contractor establishes and maintains a computerised design database which the Contractor's Representative and the Authority's Representative may access remotely by computer to view drawings comprised within the Design Data (including Reviewable Design Data) and electronically store and/or print copies of such Design Data. If the Authority's Representative is unable to access that design database and notifies the Contractor of the same, the Contractor shall procure that the database is made available as soon as reasonably practicable for inspection by the Authority's Representative or any person authorised by the Authority's Representative.

15.4 **Rectification of Construction Proposals**

If it should be found that the implementation of the Works in accordance with the Works Method Statement does not fulfil the Authority's Requirements, the Contractor shall at its own expense amend the Works Method Statement and rectify the Works or any part of the Works affected. Such amendment and rectification shall have the effect that:

15.4.1 the Works Method Statement shall satisfy the Authority's Requirements; and

15.4.2 following the amendment or rectification the structural, mechanical and electrical performance of each Facility will be of an equivalent standard of performance to that set out in the Works Method Statement prior to their amendment or rectification (for the purpose of comparison disregarding the fault which required the amendment or rectification to be made).

15.5 **Liability in relation to Design not diminished by Review**

The liability of the Contractor to carry out the design of the Facility according to this Contract shall not be modified, diminished or otherwise affected by any Reviewable Design Data or other document or

information regarding design having been reviewed or commented upon by the Authority or the Authority's Representative.

15.6 **Design and Works undertaken prior to the date of this Contract**

Any design, design development work or Works carried out in respect of any Facility prior to the date of this Contract will not obviate, diminish or alter the Contractor's obligations hereunder and will be deemed to have been carried out pursuant to this Contract.

15.7 **No Change to the Design Proposals**

The Contractor shall not amend or change the Design Proposals except either as a Contractor Change through Schedule 21 (Change Protocol) or pursuant to paragraph 3.3 of Schedule 26 (Planning). Where the Contractor Change is necessary for the Contractor to comply with Clause 15.4, the Authority shall not be entitled to unreasonably withhold its Consent to such a Contractor Change provided the implementation, rectification and consequential impact, is at the Contractor's expense.

16. **MANAGEMENT OF CONSTRUCTION SUB-CONTRACT**

16.1 The Contractor shall ensure that regular programmed meetings and other progress critical meetings are fully and properly minuted in accordance with the Contractor's quality management system.

16.2 The Contractor shall on the last Business Day of each Month from the commencement of the Works send to the Authority's Representative copies of all certificates, instructions, variations or equivalent contract documentation issued under the terms of the Construction Sub-Contract sorted into chronological order.

16.3 The Contractor shall:

16.3.1 take reasonable steps to ensure that the Construction Sub-Contractor and all other persons employed by the Contractor in connection with the Works comply with all relevant Legislation relating to employment including (without limitation) the Race Relations Act 1976 and Sex Discrimination Act 1975;

16.3.2 notify the Authority promptly of any notices received by the Contractor (whether from any local or other Relevant Authority or from any Adjoining Owner) relating in any way to the Site(s) and shall supply a copy of every such notice to the Authority within five (5) Business Days after the receipt of it; and

16.3.3 pay all fees charges and other payments whatever which may at any time be payable to any local or other Relevant Authority in respect of the Works.

16.4 Site Meetings

16.4.1 The Contractor shall procure that

- (a) the Authority's Representative is afforded a reasonable opportunity to attend programmed monthly site meetings and any other progress critical or other key meetings whether programmed or not relating to the Works; and
- (b) (whether or not the Authority's Representative has attended) a copy of the minutes of such meetings is promptly supplied to the Authority.

16.5 Construction Programme

16.5.1 Subject to the provisions of Clause 13.5 (Sole Remedy for delay) and this Clause 16.5, the Contractor shall procure that (subject to the terms of this Contract) the Works are carried out in compliance to the extent reasonably practicable with the Construction Programme.

16.5.2 Subject to Clause 16.5.4, the Contractor shall be entitled to make revisions, amendments or variations to the Construction Programme by submitting the relevant revision, amendment or variation to the Authority for review in accordance with Schedule 9 (Review Procedure).

16.5.3 The Contractor shall not implement any revision, amendment or variation to the Construction Programme to which Clause 16.5.2 applies until the Authority consents or is deemed to have consented to the revision, amendment or variation in accordance with Schedule 9 (Review Procedure). Once consented to, a proposed revision, amendment or variation will form part of the Construction Programme.

16.5.4 The Contractor shall be entitled to propose revisions, amendments or variations to the Construction Programme which do not prejudice the Contractor's ability to achieve the Readiness Date by the Planned Readiness Date and/or the Services Commencement Date by the Planned Services Commencement Date without submitting the same for review under Schedule 9 (Review Procedure).

16.6 Notification of Delays in Progress of the Works

Without prejudice to the provisions of Clause 16.5 above and the requirement of the Contractor to notify pursuant to Clause 20 (Delays), if either:

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

16.6.2 it appears to the Authority's Representative at any time that the actual progress has been significantly delayed or has fallen behind the Construction Programme (and the Authority's Representative requests the Contractor's Representative to do so),

the Contractor's Representative shall submit to the Authority's Representative a report identifying the reasons for the delay and (where the Authority's Representative requires the Contractor's Representative to do so) the Contractor's Representative shall produce and submit to the Authority's Representative in accordance with Schedule 9 (Review Procedure) a revised Construction Programme showing the manner and the periods in which the Works will be carried out to achieve the Planned Services Commencement Date and/or showing the steps which are to be taken to eliminate or reduce the delay.

16.7 Changes to the Works Delivery Plan

16.7.1 Notwithstanding the provisions of Clause 16.5 above and Schedule 9 (Review Procedure) in relation to the Construction Programme, any change to the Works Delivery Plan shall require the express prior written consent of Authority, such consent to be:

- (a) in the absolute discretion of the Authority in respect of matters set out in [sections]¹ of the Works Delivery Plan; or
- (b) in respect of matters not set out in (a) above, through the Review Procedure.

17. CDM REGULATIONS

17.1 Responsibility for Design

Without prejudice to the generality of Clause 29 (Health and Safety) as between the Contractor and the Authority, the Contractor shall be entirely responsible for the safety of any design which forms part of the Works and/or the Services and for the adequacy, stability and safety of all site operations and methods of construction.

¹ Relevant sections of the Works Delivery Plan to be agreed and set out here on a project specific basis to the extent the Partnership consider applicable.

17.2 The Contractor as "client"

In accordance with the CDM Regulations the Authority and the Contractor hereby elect that the Contractor shall be and shall be treated as the only "client" in respect of the Works and/or the Services pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Works or (if earlier) the termination of this Contract, seek in any way to withdraw, terminate or derogate from such election.

17.3 Duties under the CDM Regulations

The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of all the obligations, requirements and duties arising under the CDM Regulations in connection with the Works and/or the Services (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Planned Services Commencement Date for each Facility, provide a certified copy of the final draft Health and Safety File (as defined in the CDM Regulations) to the Authority and, within thirty (30) Business Days of the Acceptance Test Certificate for each Facility in accordance with Clause 21 (Completion of the Works), a certified copy of the full Health and Safety File relating to that Facility. The Contractor shall ensure that the Health and Safety File is revised as often as may be appropriate to incorporate any relevant new information in relation either to the Works and/or the Services during the Contract Period.

17.4 Authority to co-operate and provide information

Notwithstanding the election made under Clause 17.2 (The Contractor as "client"), the Authority shall observe and continue to observe its duties which pursuant to Regulation 8 of the CDM Regulations are to remain with the Authority, and notably those duties under Regulations 5(1)(b), 10(1), 15 and 17(1).

18. INDEPENDENT CERTIFIER

18.1 Appointment

The Parties have on or prior to the date of this Contract in compliance with all Legislation relating to procurement which is applicable to either Party, appointed a suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Contract upon the terms of the Independent Certifier's Deed of Appointment.

18.2 **Changes to terms of Appointment**

Neither the Authority nor the Contractor shall without the other's prior written approval (not to be unreasonably withheld or delayed):

18.2.1 terminate, repudiate or discharge the Independent Certifier's Deed of Appointment or treat the same as having been terminated, repudiated or otherwise discharged; or

18.2.2 waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or

18.2.3 vary the terms of the Independent Certifier's Deed of Appointment or the service performed or to be performed by the Independent Certifier.

18.3 The Parties shall comply with and fulfil their respective duties and obligations arising under or in connection with the Independent Certifier's Deed of Appointment.

18.4 The Parties agree to co-operate with each other generally in relation to all matters within the scope or in connection with the Independent Certifier's Deed of Appointment. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to be notified of and to attend all inspections undertaken by or meetings involving the Independent Certifier.

18.5 **Replacement**

In the event of the Independent Certifier's appointment being terminated otherwise than for full performance, the Contractor shall, at its own expense and subject to obtaining the prior written consent of the Authority (not to be unreasonably withheld or delayed), appoint, in accordance with this Clause, a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his appointment shall, unless otherwise agreed, be as set out in the Independent Certifier's Deed of Appointment.

18.6 In the event the Parties fail to agree the identity and/or terms of a replacement Independent Certifier in accordance with Clause 18.5, within ten (10) Business Days of the original Independent Certifier's appointment being terminated, then such disagreement shall be referred for resolution in accordance with the Dispute Resolution Procedure.

18.7 Provision of Documents

The Contractor shall provide the Independent Certifier with true and accurate copies of this Contract, the Ancillary Documents and the Financing Agreements (including any variations).

19. MONITORING AND INSPECTION

19.1 Right of Inspection

19.1.1 The Contractor shall procure that the Authority or any duly authorised representative or adviser of the Authority shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Works) to enter the Site(s) in order to inspect the state and progress of the Works (and to ascertain whether they are being properly executed) the operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations under this Contract.

19.1.2 In exercising its rights under Clause 19.1.1 the Authority shall (and shall procure that any of its representatives or advisers shall) at all times comply with all relevant site rules in relation to the Site(s).

19.2 Right to Open Up

19.2.1 Subject to Clause 19.2.2 (and provided that in so doing the Authority uses reasonable endeavours to minimise disruption to the carrying out of the Works), the Authority's Representative shall have the right at any reasonable time prior to the date upon which the Readiness Test Certificate is issued to request the Contractor to open up and inspect any part or parts of the Works where the Authority's Representative reasonably believes that such part or parts of the Works is or are defective and the Contractor shall comply with such request.

19.2.2 Prior to exercising his right pursuant to Clause 19.2.1 above, the Authority's Representative shall notify the Contractor of his intention to exercise such right, setting out detailed reasons and providing reasonable prior notice.

19.2.3 If, following the exercise by the Authority's Representative of his right pursuant to Clause 19.2.1, the inspection shows that the relevant part or parts of the Works are not defective, any delay or increased costs caused to the Works by the exercise of such rights shall, subject to (and in accordance with) the provisions of Clause 39 (Compensation Events), be treated as a Compensation Event.

- 19.2.4 If, following the exercise by the Authority's Representative of his right pursuant to Clause 19.2.1, the inspection shows that the relevant part or parts of the Works is or are defective, the Contractor shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Contractor at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Works.
- 19.2.5 If, following the exercise by the Authority's Representative of his right pursuant to Clause 19.2.1, the Authority's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and the Contractor does not agree with such opinion, the matter shall be determined in accordance with Schedule 22 (Dispute Resolution Procedure).
- 19.2.6 Without prejudice to the rights of the Authority's Representative pursuant to this Clause 19.2 the Parties acknowledge that the exercise of such rights pursuant to this Clause 19.2 shall not in any way affect the obligations of the Contractor under this Contract save as expressly set out in this Clause 19.

19.3 Health and Safety Requirements

The Authority and its representative or adviser shall at all times comply with any reasonable health and safety requirements notified to it by the Contractor when exercising its rights under this Clause 19 (Monitoring and Inspection).

19.4 Supply of Information

The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting [any of] the Site(s) pursuant to this Clause 19 (Monitoring and Inspection) such information in respect of the Works as may reasonably be required.

19.5 Increased Monitoring

- 19.5.1 If, following any viewing, visit or inspection made by the Authority or the Independent Certifier, it is discovered that there are material defects in the Works or that the Contractor has materially failed to comply with the Works Requirements or the Works Method Statement, the Authority may (without prejudice to any other right or remedy available to it) by notice to the Contractor increase the level of its monitoring of the Contractor until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it is capable of

performing and will perform all its obligations under this Contract.

19.5.2 If the Authority issues a notice under Clause 19.5.1 (Increased Monitoring) the Contractor shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to the costs of the increased level of monitoring.

19.6 Inspection of Facility

The Authority or a representative or adviser of the Authority may at all reasonable times and on reasonable notice and subject to obtaining the consent of the relevant manufacturer or supplier (which the Contractor shall use reasonable endeavours to obtain) enter upon any property used by the Contractor as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works.

19.7 Contractor's Reasonable Assistance

The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of Clauses 19.1, 19.2 and 19.6, subject to the Contractor's and Construction Sub-Contractor's construction obligations not being adversely affected and to the Authority reimbursing the Contractor for any reasonable costs or expenses incurred by the Contractor as a result of the action taken by the Authority under Clauses 19.1, 19.2 and 19.6.

20. DELAYS

20.1 Notice

If at any time the Contractor becomes aware that a Facility will not or is unlikely to receive an a Readiness Test Certificate by the Planned Readiness Date or Acceptance Test Certificate by its Planned Services Commencement Date the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Business Days of becoming aware of the likely delay give notice to the Authority to that effect specifying:

20.1.1 the reason for the delay or likely delay; and

20.1.2 an estimate of the likely effect of the delay on the receipt of the Readiness Test Certificate or the Acceptance Test Certificate of the Facility (taking into account any measures that the

Contractor proposes to adopt to mitigate the consequences of the delay in accordance with Clause 20.3 (Duty to Mitigate)).

20.2 **Supply of Information**

Following service of a notice by the Contractor pursuant to Clause 20.1 (Notice) the Contractor shall promptly supply to the Authority any further information relating to the delay which:

20.2.1 is received by the Contractor; or

20.2.2 is reasonably requested by the Authority.

20.3 **Duty to Mitigate**

The Contractor shall take all reasonable steps to mitigate the consequences of any delay which is the subject of a notice pursuant to Clause 20.1 (Notice).

20.4 **Time for Completion of the Works**

If the carrying out of the Works or any part thereof is delayed and the delay is notified to the Authority in accordance with Clause 20.1 and such delay is attributable to:

20.4.1 a Compensation Event, then the provisions of Clause 39 (Compensation Events) shall apply; or

20.4.2 a Relief Event, then the provisions of Clause 40 (Relief Events) shall apply; or

20.4.3 a Force Majeure Event, then the provisions of Clause 69 (Termination on Force Majeure) shall apply.

21. **COMPLETION OF THE WORKS**

21.1 **Services Commencement Date**

21.1.1 Schedule 11 (Tests) and Schedule 12 (Independent Certifier's Deed of Appointment) set out the two stage certification process to be undertaken by the Independent Certifier as follows:

- (a) certification that all the Readiness Tests have been satisfactorily passed; and
- (b) certification that the Acceptance Tests have been satisfactorily passed.

21.1.2 A Facility shall only be accepted and an Acceptance Test Certificate issued if the Facility has satisfactorily passed both the Readiness Tests and the Acceptance Tests.

21.1.3 The Services Commencement Date for a Facility shall be the date on which an Acceptance Test Certificate is issued in respect of that Facility or in the event of referral for determination under the Dispute Resolution Procedure pursuant to Clause 21.4.1 the date upon which it is determined that the Facility passed the relevant Acceptance Tests.

21.2 Testing and Commissioning

21.2.1 The Contractor shall develop the Outline Commissioning Plan into the Commissioning Plan as set out in the Commissioning Requirements and shall carry out all commissioning of the Facility in accordance with the Commissioning Plan as approved or not commented on by the Authority.

21.2.2 The Contractor shall provide to the Authority and the Independent Certifier not less than ten (10) Business Days notice of the anticipated date upon which the Contractor considers that a Facility will be in a condition to proceed with the Tests and the Contractor shall keep the Authority informed of any alterations to the proposed date and each Party will act reasonably in relation to any delays to the timetable notified.

21.2.3 The Contractor shall, not less than [twenty (20)] Business Days prior to the anticipated date upon which the Contractor considers that the relevant Facility will be in a condition to proceed with the Tests, confirm to the Authority the levels, timings and periods of deliveries of Contract Waste necessary for commissioning and testing of the relevant Facility in accordance with the terms of the Commissioning Plan.

21.2.4 Provided that the Contractor has complied with its obligations under Clause 21.2.3, the Authority shall procure the levels, timings and periods of deliveries of Contract Waste required under Clause 21.2.3 (up to the Minimum Tonnage pro-rated for the relevant periods). Such arrangements shall be made in accordance with the Contract Waste delivery requirements for such Contract Waste confirmed in the notice issued under Clause 21.2.3. The Authority shall be kept informed as to the likely need for a further finite period of delivery of Contract Waste to the relevant Facility to allow for further Testing. For the avoidance of doubt, Non-Acceptance Deductions and Mileage Deductions may apply in respect of confirmed Contract Waste deliveries pursuant to this Clause 21.2 (Testing and Commissioning).

- 21.2.5 The Contractor shall be responsible for the handling and disposal of any Contract Waste delivered for the purposes of commissioning in accordance with the Commissioning Protocol.
- 21.2.6 The Contractor shall under the supervision of the Independent Certifier undertake the Tests in accordance with the provisions of Schedule 11 (Tests).
- 21.2.7 When the Contractor is of the opinion that the relevant Tests have been satisfactorily passed it shall forthwith promptly notify the Independent Certifier and the Authority of the same.
- 21.2.8 The Parties shall procure in accordance with the Independent Certifier's Deed of Appointment that the Independent Certifier shall, within the period of two (2) Business Days of its receipt of the Contractor's notice given under Clause 21.2.7 either:
- (a) issue a Readiness Test Certificate and/or Acceptance Test Certificate (as appropriate) stating the date upon which the relevant Tests were satisfactorily passed; or
 - (b) notify the Authority and the Contractor that the relevant Test or Tests have not been satisfactorily passed (a "Notice of Non Completion") providing a report setting out the respects in which it considers that such Tests have not been passed.
- 21.2.9 Representatives from the Authority, the Senior Lenders and the Independent Certifier shall be entitled to witness the performance of Tests.

21.3 Issue of Certificate

If a Notice of Non-Completion is served pursuant to Clause 21.2.8(b) the Contractor shall repeat the steps set out in Clauses 21.2.1 to 21.2.8 until all outstanding matters have been attended to and the relevant Test Certificate can be issued pursuant to Clause 21.2.8.

21.4 Effect of issue of Test Certificate

- 21.4.1 If the Independent Certifier fails to issue the relevant Test Certificate in accordance with Clause 21.3 or either Party wishes to challenge the relevant Test Certificate or if there are certain aspects of the Independent Certifier's report provided pursuant to Clause 21.2.8 (as the case may be) which the relevant Party wishes to challenge, the relevant Party shall be entitled to refer the matter for determination by an Adjudicator under the Dispute Resolution Procedure as if it constituted a dispute.

- 21.4.2 The Parties agree that the relevant Test Certificate shall be final binding and enforceable upon the Parties except in the case of fraud, collusion, bias or manifest error unless the matter is referred for determination by an Adjudicator under the Dispute Resolution Procedure within fifteen (15) Business Days of receipt of the relevant Test Certificate.
- 21.4.3 Without prejudice to any rights or remedies that the Parties may have against the Independent Certifier, the Parties agree that, notwithstanding any other provision contained in the Dispute Resolution Procedure an Adjudicator's decision referred to in Clause 21.4.2 shall be final, binding and enforceable upon the Parties and may not subsequently be referred by any Party to arbitration and/or any court of competent jurisdiction.
- 21.4.4 For the avoidance of doubt, a Test Certificate (whether issued by the Independent Certifier or subsequently determined by the Adjudicator) shall determine the commencement of the Commissioning Period or Services Period (as the case may be) but shall not be final and conclusive evidence that the Facility has been constructed in accordance with the Contract (and in particular Clause 13.1.3) but shall be without prejudice to:
- (a) the Authority's rights to levy Deductions pursuant to Schedule 4 (Payment Mechanism) whether or not the reason for such Deductions arose or could have been detected prior to the issue of the Acceptance Certificate;
 - (b) the Authority's rights and remedies under the Collateral Warranty; and
 - (c) either Parties' rights and remedies under the Independent Certifier's Deed of Appointment.

21.5 Snagging Items

In the event that a Test Certificate for a Facility is expressed to be subject to Snagging Items:

- 21.5.1 the Independent Certifier shall, at the same time as it issues the relevant Test Certificate, issue to the Contractor and the Authority a list of the relevant Snagging Items for the Facility (the "Snagging List"). Within five (5) Business Days of receipt from the Independent Certifier of the Snagging List the Contractor shall provide to the Authority and the Independent Certifier a reasonable programme for making good each Snagging Item set out in the Snagging List provided that such programme shall require that each Snagging Item shall be

made good within twenty (20) Business Days of the date of provision of that programme or within such time as is reasonably practicable. The Parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under Clause 60 (Dispute Resolution). The programme agreed or determined in accordance with this Clause 21.5 (Snagging Items) shall be known as the Snagging Programme; and

21.5.2 the Contractor shall procure that each Snagging Item is rectified in accordance with the Snagging Programme and to the satisfaction of the Independent Certifier. If any Snagging Item has not been rectified by the date set out in the Snagging Programme then the Authority shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Contractor as a debt.

[21A LATE SERVICE COMMENCEMENT DUE TO DELAY IN THE WORKS²

21A.1 If the Services Commencement Date has not occurred by the Planned Services Commencement Date, the Contractor shall, subject to Clause 21A.8, immediately become liable to pay or allow to the Authority (whether by payment, set-off or Deductions) on demand Liquidated Damages for the period between the Planned Services Commencement Date and the Services Commencement Date, and the Contractor shall make payment to the Authority of any Liquidated Damages for which it becomes liable under this Clause 21A.1 to the Authority within five (5) Business Days of the Authority's demand thereof.

21A.2 The Parties agree that the rate of Liquidated Damages represents a genuine pre-estimate of the Losses that the Authority may suffer as a result of any delay in the completion of the Facility.

21A.3 The right of the Authority to recover Liquidated Damages may only be waived by written notice from the Authority to the Contractor making reference to this Clause 21A.3 and signed by the Authority's Representative. The Authority's decision as to whether Liquidated Damages are payable shall be final and conclusive pending resolution under Clause 60 (Dispute Resolution).

21A.4 If under Clause 39 (Compensation Events), 40 (Relief), 43 (Authority and Contractor Changes) or 69 (Termination on Force Majeure), the Planned Services Commencement Date is replaced by a later Planned Services Commencement Date, the Authority shall pay or repay to the

² For discussion during dialogue having regard to the Partnership's existing disposal arrangements and the financial implications of delay caused by the Contractor.

Contractor any amounts recovered, allowed or paid under Clause 21A.1 for the period up to such later Planned Services Commencement Date.

- 21A.5 The Authority may deduct and/or set off any sum due pursuant to Clause 21A.1 or Clause 21A.6 from any monies due to the Contractor under this Contract or the Authority may recover the same from the Contractor as a debt.
- 21A.6 In the event that, for any reason, the right of the Authority to recover Liquidated Damages pursuant to this Clause 21A is held to be unenforceable in whole or in part and the Authority is therefore not entitled to the relevant Liquidated Damages, the Parties acknowledge and agree that the Authority shall be entitled to bring a claim for breach of contract against the Contractor to recover (without double recovery) the Losses suffered and/or incurred by the Authority as a result of the failure by the Contractor to achieve the Services Commencement Date by the Planned Services Commencement Date (provided that the Contractor's liability under this Clause 21A.6 shall in no circumstances exceed the total amount of the Liquidated Damages (or part thereof) held to be unenforceable).]

PART IV - SERVICES

22. PRINCIPAL OBLIGATIONS

22.1 The Contractor shall provide the Services throughout the Services Period:

22.1.1 in accordance with:

- (a) the Contract;
- (b) the Service Requirements;
- (c) the Services Method Statements;
- (d) Good Industry Practice;
- (e) Legislation;
- (f) the terms and requirements of any Consents;

22.1.2 in a manner that is consistent with all current relevant health and safety precautions required to comply with Good Industry Practice and Legislation for the protection of the Contractor, its staff and Sub-Contractors and their staff, the Authority's employees and any other persons invited onto or visiting the Site(s);

22.1.3 so as to minimise inconvenience and disruption to the extent reasonably practicable to:

- (a) the Authority and the Authority's employees;
- (b) the WCAs and their employees and collection contractors; and
- (c) any lawful visitor to any of the Site(s) and Facility;

22.1.4 in accordance with the terms of the Lease.

22.2 Each of the obligations in Clauses 22.1.1 to 22.1.4 (inclusive) is an independent obligation. In particular:

22.2.1 the fact that the Contractor has provided the Services in accordance with the Services Method Statements shall not be a defence to an allegation that the Contractor has failed to comply with the Service Requirements; and

22.2.2 the fact that the Contractor has provided the Services in accordance with the Service Requirements shall not be a defence to an allegation that the Contractor has failed to

provide the Service in accordance with the Services Method Statements.

22.3 Changes to the Service Delivery Plan

22.3.1 The Contractor shall be permitted to propose changes or amendments to the Service Delivery Plan provided:

- (a) any change or amendment to [sections] of the Service Delivery Plan shall be treated and assessed as a Contractor Change and accordingly be subject to Authority approval in accordance with Schedule 21 (Change Protocol); or
- (b) in respect of matters not set out in (a) above, such change or amendment to be submitted to the Authority for review pursuant to Schedule 9 (Review Procedure).

23. ACCEPTANCE OF CONTRACT WASTE

23.1 Obligation to Accept

The Contractor shall Accept in accordance with the Authority's Requirements and the [Waste Acceptance Protocol] all Contract Waste that is delivered to it by or under the direction of the Authority, subject at all times to the applicable Maximum Tonnage.

23.2 Minimum Tonnage

23.2.1 Without prejudice to Clause 23.1, where the tonnage of Contract Waste delivered falls below the Minimum Tonnage the Minimum Tonnage shall apply in calculating the "B" Base component of the Unitary Payment as provided in paragraph [] of Schedule 4 (Payment Mechanism).

23.2.2 Without prejudice to any other right or remedy of either Party, the Minimum Tonnage shall be reduced tonne per tonne for any Contract Waste Not Accepted save where such Non Acceptance arises as a direct result of an Excusing Cause.

24. OWNERSHIP OF WASTE

As between the Contractor and the Authority all Contract Waste received by or in the possession of or Accepted by the Contractor or any of its sub-contractors (including without limitation the Operating Sub-Contractor and its sub-contractors) shall thereupon become and be deemed to be acquired by and in the ownership of and at the risk of the Contractor who shall take full responsibility for it and shall handle and dispose of such Contract Waste in accordance with the terms of this Contract.

25. PRIORITY OF WASTE AND SUBSTITUTE WASTE

25.1 Priority of Waste

25.1.1 In all circumstances throughout the Commissioning Period and the Services Period the Contractor shall Accept, handle and process Contract Waste in priority to Third Party Waste up to the Maximum Tonnage.

25.2 Substitute Waste

25.2.1 By no later than the date which shall be 20 (twenty) Business Days before the Planned Readiness Date the Contractor shall submit to the Authority the Substitute Waste Plan for review under the Review Procedure.

25.2.2 The Contractor shall submit to the Authority for review under the Review Procedure within 10 Business Days of the beginning of each Contract Year following the Planned Readiness Date an update of the Substitute Waste Plan to reflect the Contractor's proposals for sources of Substitute Waste.

25.2.3 In the event that paragraph 4.3 of Schedule 4 (Payment Mechanism)³ applies or in the reasonable opinion of the Authority is likely to apply then the Authority shall at any time thereafter be entitled to notify the Contractor ("**Substitute Waste Notice**");

- (a) that it considers Contract Waste in the relevant Contract Year will fall below the Minimum Tonnage for such Contract Year;
- (b) the amount by which it considers there will be shortfall between the amount of Contract Waste being provided and the Minimum Tonnage ("**Contract Waste Shortfall**"); and
- (c) the period during which the Contract Waste Shortfall shall subsist ("**Shortfall Period**").

25.2.4 Where the Contractor receives a Substitute Waste Notice the Contractor shall implement the Substitute Waste Plan and use (and shall procure that its Operating Sub-Contractor shall use) reasonable endeavours to secure Substitute Waste for the Contract Waste Shortfall for the Shortfall Period at a price which

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Note: The Payment Mechanism should also ensure that excess Third Party Income is applied to refund the Authority before sharing is calculated if there is no Substitute Waste or the Substitute Waste Amount is less than the Base Price per Tonne multiplied by the Contract Waste Shortfall.

is demonstrated to the Authority's satisfaction as being reasonably obtainable on market and arm's length terms for contracts of the nature and tenor proposed provided that the Contractor shall only be obliged to source Substitute Waste from creditworthy entities and that is of a composition the same or similar to Contract Waste.

25.2.5 In the event that the Contractor secures Substitute Waste then:

- (a) to the extent that the Substitute Waste Price is equal to or less than the Base Price per Tonne for [Base Price Band 1] then the Authority shall be entitled to and the Contractor shall pay an amount equal to the Substitute Waste Amount within [] Business Days after the end of each Contract Month in respect of the Shortfall Period;
- (b) to the extent that the Substitute Waste Price is in excess of the Base Price per Tonne for [Band Price Band 1] then:
 - (i) the Authority shall be entitled to and the Contractor shall pay an amount equal to the number of tonnes of Substitute Waste provided to the Contractor in each Contract Month multiplied by Base Price per Tonne for [Band Price Band 1] within [] Business Days after the end of each Contract Month in respect of the Shortfall Period; and
 - (ii) the Authority shall be entitled and the Contractor shall pay an amount equal to the number of tonnes of Substitute Waste provided to the Contractor in each Contract Month multiplied by the Substitute Waste Price less the Base Price per Tonne for [Band Price Band 1] multiplied by [%] within [] Business Days after the end of each Contract Month in respect of the Shortfall Period .

25.2.6 In the event that the Contractor has not complied with its obligations pursuant to Clause 25.2.4 to use reasonable endeavours to secure Substitute Waste then the Minimum Tonnage shall be reduced by an amount equal to the amount of Third Party Waste the Contractor would have secured if it had complied with its obligation and the provisions of paragraph 4.2 of Schedule 4 (Payment Mechanism) shall apply accordingly.

26. MAINTENANCE

26.1 Maintenance

26.1.1 The Contractor shall ensure on a continuing basis that at all times its maintenance and operating procedures are compliant with the Maintenance Requirements and in any event are sufficient to ensure that:

- (a) the Facility is available as required by this Contract and the Authority's Requirements;
- (b) it can maintain the design intention of each Facility and those Assets as described in limbs (a) and (b) in the definition of Assets to achieve their full working life; and
- (c) the Assets (or such part of the Assets as may be required by the Authority) are handed back to the Authority on the Expiry Date in a condition complying with the requirements of this Clause and the Handback Requirements.

26.1.2 Nothing in this Clause 26.1 (Maintenance) shall obviate or diminish the Contractor's obligation to ensure that at all times the Services are continuously available.

26.2 Surveys

26.2.1 If the Authority reasonably believes that the Contractor is in breach of its obligations under Clause 26.1 (Maintenance) then it may carry out or procure the carrying out of a survey of the Assets by a suitably qualified independent surveyor (not being an employee of the Authority) to assess whether the Assets have been and are being maintained by the Contractor in accordance with its obligations under Clause 26.1 (Maintenance). This right may not be exercised more often than once every two (2) years.

26.2.2 The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days in advance of the date it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

26.2.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The cost of the survey, except where Clause 26.2.4 (Surveys) applies, shall be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.

26.2.4 If a survey shows that the Contractor has not complied or is not complying with its obligations under Clause 26.1 (Maintenance), the Authority shall:

- (a) notify the Contractor of the standard that the condition of the Site(s) should be in to comply with its obligations under Clause 26.1 (Maintenance);
- (b) specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
- (c) be entitled to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Authority in relation to the survey other than where the costs of the rectification and/or maintenance work are less than the costs of the survey in which case the cost of the survey shall be shared equally between the Authority and the Contractor.

26.2.5 The Contractor shall carry out such rectification and/or maintenance work within the period specified by the Authority and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

26.2.6 In the event of any failure by the Contractor to comply with Clause 26.2.4(a) or if the Authority is or becomes aware of a breach by the Contractor of its obligations under Clause 26.2.4(a) then the Authority shall be entitled to exercise its right of access and remedy such breach in accordance with Good Industry Practice and shall be entitled to recover any costs or expenses incurred in doing so from the Contractor as a debt.

26.3 Programmed Maintenance

The Contractor shall undertake routine repairs and maintenance of the Assets in accordance with a Schedule of Programmed Maintenance which shall be developed as provided in the Service Requirements and

which has been approved or not commented on by the Authority under the Review Procedure.

27. DUTY OF CARE

27.1 The Contractor shall at all times comply with its duty of care under Section 34 of the EPA.

27.2 The Contractor shall have a duty to inform the Authority if any person for whom the Authority is responsible, any WCA or any third party associated with the Project may in the reasonable opinion of or to the knowledge of the Contractor be in breach of the duty of care under Section 34 of the EPA.

28. OPERATING MANUALS

28.1 Maintenance of Manual

The Contractor shall throughout the Services Period maintain and update an operating and maintenance manual setting out the procedures for providing the Services (the “Operating Manual”).

28.2 Access to Manual

The Contractor shall at the request of the Authority provide the Authority with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under Clause 28.1 (Maintenance of Manual).

29. HEALTH AND SAFETY

29.1 The Contractor shall at all times retain a person to be responsible for the health and safety matters as required by the Health and Safety at Work Act 1974 and notify full details of such person to the Authority. The Contractor shall provide and maintain, at the Site(s), an accident book which shall be open to inspection by the Authority’s Representative or the Authority’s safety adviser.

29.2 The Contractor shall have regard to the Authority’s health and safety policy contained in the Authority Policies when preparing its own statement.

29.3 The Contractor shall supply a copy of its general statement of safety policy to the Authority, for approval no later than thirty (30) Business Days following the Commencement Date and shall review its policy and safe working procedures whenever necessary in the light of changing Legislation, working practices, accidents or similar events and shall inform the Authority’s Representative of any consequent revisions.

29.4 The Contractor shall procure that it and any Contractor Related Parties at all times take such precautions as are appropriate in accordance with Good Industry Practice to protect the health and safety of all persons employed in the provision of the Services or otherwise entitled to be at or in the vicinity of the Site(s).

30. **EQUIPMENT**

30.1 The Contractor shall from the Services Commencement Date:

30.1.1 provide, repair, maintain and replace all Equipment necessary for the provision of the Services;

30.1.2 maintain all Equipment in accordance with Clause 26.1 (Maintenance);

30.1.3 use reasonable endeavours to ensure that all Equipment and related contracts, agreements, guarantees, warranties, bonds and insurances are assignable/novatable to the Authority or any third party who may provide the Services on expiry or termination;

30.1.4 at the end of each Contract Year prepare and provide to the Authority an updated Equipment List; and

30.1.5 six (6) Months prior to the Expiry Date, or, in the case of early termination of this Contract, twenty (20) Business Days following service of the relevant termination notice, prepare and provide to the Authority a final Equipment List ("**Final Equipment List**").

31. **EMERGENCIES**

31.1 If an Emergency arises during the Services Period which cannot be dealt with by performance of the Services the Authority may instruct the Contractor to use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Authority to ensure that the Emergency is dealt with and normal operation of the relevant Facility resumes as soon as is reasonably practicable provided that the Contractor shall not be obliged to provide any service which it is neither qualified nor competent to provide.

31.2 The properly incurred costs of the Contractor of any additional or alternative services provided to the Authority under Clause 31.1 shall be borne by the Authority and paid against the Contractor's invoice in accordance with Clause 45 (Invoicing and Payment). If such costs are not agreed, the matter shall be referred to the Dispute Resolution Procedure.

32. PERFORMANCE MONITORING

32.1 Contractor Monitoring

The Contractor shall monitor its performance in the delivery of the Services in accordance with the procedure set out in the Authority's Requirements.

32.2 Authority Monitoring

The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage after the issue of the Readiness Certificate for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract. The Contractor will use its reasonable endeavours to assist the Authority in such an exercise. The Authority shall be entitled to notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have due regard to the Authority's comments in relation to the future provision of the Services.

32.3 Without prejudice to the Authority's rights under Clause 32.2 and to any other express rights under this Contract, where the Contractor has been found to:

32.3.1 be fraudulent in the submission of monitoring reports or claims for payment under Clause 45 (Invoicing and Payment) ("monitoring reports"); or

32.3.2 have submitted two (2) or more erroneous monitoring reports, within a nine (9) Month period,

the Authority may by notice to the Contractor increase the level of its monitoring of the Contractor and/or of the Operating Sub-Contractor under this Contract in respect of the relevant Service or Services the subject of such fraudulent or erroneous reporting until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it will perform (and is capable of performing) its obligations under this Contract.

32.4 For the purposes of Clause 32.3 (Authority Monitoring), the Authority acknowledges that where the Contractor has failed to demonstrate to the reasonable satisfaction of the Authority as required by Clause 32.3 (Authority Monitoring) but:

32.4.1 the Contractor has removed the person or persons responsible for the fraudulent reporting; or

32.4.2 in the following three (3) Months following the Authority notice (if it has not already been established) the increased level of

monitoring of the Contractor and/or of the Operating Sub-Contractor under this Contract in respect of the relevant Service or Services indicates that there have been no further erroneous reports of any kind;

this shall be regarded as sufficient demonstration that the Contractor will perform and is capable of performing its obligations.

- 32.5 If the Authority issues a notice under Clauses 32.2 and/or 32.3 (Authority Monitoring), the Contractor shall bear its own costs and indemnify and keep the Authority indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of monitoring arising due to circumstances under Clauses 32.2 and/or 32.3 (Authority Monitoring).

33. **AUTHORITY STEP-IN**

33.1 **Right to Step-In**

If the Authority reasonably believes that it needs to take action in connection with the Services:

33.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

33.1.2 to discharge a statutory duty,

then the Authority shall be entitled to take action in accordance with Clauses 33.2 (Notice to the Contractor) to 33.5 (Step-In on Contractor Breach).

33.2 **Notice to the Contractor**

If Clause 33.1 (Right to Step-In) applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:

33.2.1 the action it wishes to take;

33.2.2 the reason for such action;

33.2.3 the date it wishes to commence such action;

33.2.4 the time period which it believes will be necessary for such action; and

33.2.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.

33.3 **Action by Authority**

33.3.1 Following service of such notice, the Authority shall take such action as notified under Clause 33.2 (Notice to the Contractor) and any consequential additional action as it reasonably believes is necessary (together, the “Required Action”) and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

33.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Contractor against all Direct Losses (subject to the provisions of Clause 33.7.2 (Compensation for loss of Third Party Income) in relation to lost Third Party Income) where it fails to do so.

33.4 **Step-In without Contractor Breach**

If the Contractor is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

33.4.1 the Contractor shall be relieved from its obligations to provide such part of the Services; and

33.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Monthly Payment due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and/or providing the Services affected by the Required Action in full over that period.

33.5 **Step-In on Contractor Breach**

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the

extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

33.5.1 the Contractor shall be relieved of its obligations to provide such part of the Services; and

33.5.2 in respect of the period in which the Authority is taking the Required Action, the Monthly Payment due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

33.6 Calculation of the Monthly Payment to be paid during the Required Action

33.6.1 The Monthly Payment due to the Contractor pursuant to Clauses 33.4.2 and 33.5.2 during the period the Authority is taking the Required Action shall be the lower of:

(a) the average Monthly Payment received by the Contractor over the twenty-four (24) Month period immediately prior to the Required Action being taken (except where there have been more than twelve (12) Months but not thirty (30) Months since the Services Commencement Date, in which case the average Monthly Payment received by the Contractor on a Monthly basis will be calculated on the basis of the period from the start of the seventh Month from the Services Commencement Date until the date upon which the Required Action is being taken); and

(b) the Monthly Payment forecast in the Base Case,

in each case net of any Authority Share of Third Party Income as provided for in Schedule 4 (Payment Mechanism).

33.7 Compensation for loss of Third Party Income

The Contractor shall be compensated for Third Party Income lost as a direct consequence of the Authority taking the Required Action on the following basis (less, in each case, the Authority's share of any Third Party Income)

33.7.1 in circumstances where the Contractor is not in breach, the Contractor's compensation for lost Third Party Income will be as set out in Schedule 19 (Revision of Base Case and Custody paragraph 6.5)

33.7.2 in circumstances where the Contractor is in breach the Contractor compensation shall be limited to the difference (if any) between the amount of Third Party Income that the Authority receives during the period of the Authority taking Required Action less the Authority's costs of generating that income.

34. MARKET TESTING

34.1 Market Testing Procedure

The Authority shall, other than where Clause 34.2 applies, consider which of the Market Tested Services shall be subject to Market Testing pursuant to the remainder of this Clause 34 and shall inform the Contractor at least seven (7) months prior to each Market Testing Review Date of its decision. Any Market Tested Service not subject to Market Testing shall be subject to a benchmarking exercise in accordance with Clause 34.4 (Benchmarking following Market Testing). The following procedure shall apply in relation to Market Tested Services that are to be Market Tested:

34.1.1 At least one hundred and twenty (120) Business Days before each Market Testing Review Date the Parties shall endeavour to agree:

- (a) the number and identity of prospective tenderers that will be invited to prepare and submit tenders for the Market Tested Services in question 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 the Dispute Resolution Procedure);
- (b) whether any changes are required to the relevant Market Tested Services;
- (c) whether or not an independent tender manager needs to be appointed by the Contractor to manage the tender process; and
- (d) the form and contents of the tender documents (which shall include the Service Requirements to the extent that it relates to the Market Tested Services) to be delivered to prospective tenderers (the "Tender Documents"). The Tender Documents shall specify that (i) tenderers may submit tenders for all or any of the Market Tested Services and (ii) if a tenderer submits a

tender for a group or groups of market tested services, then it may be required to provide all or any of the services in such group or groups.

- 34.1.2 No later than one hundred (100) Business Days before each Market Testing Review Date, the Contractor shall prepare and deliver to the Authority a draft market testing proposal (the “Market Testing Proposal”) which shall incorporate all of the matters agreed by the Parties and shall reflect the payment structure contained in this Contract.
- 34.1.3 If the Parties are unable to agree any of the matters set out in the Market Testing Proposal or if the Authority reasonably considers that the Contractor has made a material error or omission in the Market Testing Proposal, the Authority may (subject to Clause 34.1.1(d) (Market Testing Procedure)) amend the provisions of the Market Testing Proposal to accord with statutory and government requirements at its sole discretion.
- 34.1.4 The Contractor may upon receiving any amendments made by the Authority in accordance with Clause 34.1.3 (Market Testing Procedure) refer the matter to the Dispute Resolution Procedure.
- 34.1.5 The Contractor shall manage (or procure the management by the Operating Sub-Contractor of) the Market Testing tendering process in accordance with the Market Testing Proposal agreed or determined in accordance with this Clause 34 (Market Testing).
- 34.1.6 The Contractor shall provide to the Authority as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents.
- 34.1.7 Subject to Clause 34.1.8, following the expiry of the tender period for the return of responses to the Tender Documents the Contractor shall determine, following consultation with the Authority, which tender to select, if any, in respect of each relevant Market Tested Services.
- 34.1.8 The Contractor shall by no later than seventy (70) Business Days before the Market Testing Review Date select:
 - (a) 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

- (b) in respect of tenders for the provision of more than one
(1) Market Tested Services, the most economically advantageous tender in respect of the provision of those Market Tested Services,

provided that nothing in this Clause 34.1.8 shall oblige the Contractor to accept the lowest tender. The Contractor shall procure that the selected tenderer becomes a Sub-Contractor to it or a sub-contractor to the Operating Sub-Contractor. Any dispute under this Clause 34.1.8 shall be determined in accordance with the Dispute Resolution Procedure.

34.1.9 The Authority shall have the right to object to the selection of a tenderer where the tenderer has committed a Prohibited Act and such tenderer shall not be selected.

34.1.10 Where in relation to any Market Tested Service there are no valid tenders, or where the only valid tender is that submitted by the current provider of the relevant Market Tested Services, the Contractor shall conduct a benchmarking exercise in accordance with Clause 34.4.

34.2 **Combination with other value testing exercise**

The only circumstances in which the Authority may require any Market Testing exercise to be conducted at another time will be where there is to be another value testing exercise conducted under the Construction Sub-Contract and/or the Operating Sub-Contract within six (6) Months of a Market Testing Review Date hereunder and the Authority reasonably believes there will be merit in seeking to have such exercises conducted jointly at or about the same time provided that the period of time between successive Market Testing Review Dates shall never be greater than five (5) years and six (6) Months.

34.3 **Adjustments to Unitary Payment**

34.3.1 Where the tender price of a sub-contractor appointed by the Contractor pursuant to Clause 34 (Market Testing) (the "Successful Tenderer") is lower than the Latest Services Element, then the cost difference between the Successful Tenderer's tender price and the Latest Services Element shall be deducted from the Latest Services Element with effect from the relevant Market Testing Review Date and the Unitary Payment shall be adjusted to reflect that deduction in accordance with Clause 53 (Revision of Base Case and Custody).

34.3.2 Where the tender price of the Successful Tenderer is higher than the Latest Services Element, then the cost difference

between the Successful Tenderer's tender price and the Latest Services Element shall be added to the Latest Services Element with effect from the relevant Market Testing Review Date and the Unitary Payment shall be adjusted to reflect that addition in accordance with Clause 53 (Revision of Base Case and Custody).

34.4 **Benchmarking following Market Testing**

34.4.1 Where Clause 34.1.10 applies, the Contractor shall conduct a benchmarking exercise as follows.

34.4.2 Each benchmarking exercise will be undertaken to ascertain the relative quality and competitiveness of the Market Tested Services in question. The benchmarking exercise will be undertaken in good faith by the Contractor (and with the reasonable co-operation of the Authority) and on the basis of an objective and like for like comparison by comparing the standards and prices of the Market Tested Services in question and the costs of providing them with the standards and prices of equivalent services and the costs of providing them in similar circumstances provided by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question.

34.4.3 The Contractor will make the results of any benchmarking exercise available to the Authority by the date occurring one (1) month before the relevant Market Testing Review Date with a view to the Authority and the Contractor making the appropriate adjustments to the Unitary Payment on the basis set out in Clause 34.4.4. The results shall indicate the extent to which (if at all) the Market Costs differ (in percentage terms) from the Latest Services Element.

34.4.4 Where the Market Costs are between ninety five percent (95%) and one hundred and five percent (105%) of the Latest Services Element, no change shall be made to the Monthly Payment or the Latest Services Element. Where the Market Costs are less than ninety five percent (95%) or more than one hundred and five percent (105%) of the Latest Services Element or a benchmarking exercise cannot be carried out, the Parties shall adjust the Monthly Payment on the basis that if a benchmarking exercise is carried out:

- (a) the Authority will assume the risk of any agreed increase in the Monthly Payment arising as a result of the Market Costs exceeding one hundred and five percent (105%) of the Latest Services Element;



- (b) the Contractor will assume the risk of any agreed decrease in the Monthly Payment arising as a result of the Market Costs being less than ninety five percent (95%) of the Latest Services Element; and
- (c) the Latest Services Element shall be increased or decreased (as the case may be) to reflect the Market Costs,

and the Monthly Payment shall be adjusted in accordance with Clause 53 (Revision of Base Case and Custody). Any dispute under this Clause 34.4.4 shall be determined in accordance with the Dispute Resolution Procedure.

35. **NOT USED**

PART V – EMPLOYMENT AND PENSIONS

36. EMPLOYMENT MATTERS

The provisions of Schedule 20 (Employment and Pensions) shall apply in respect of employment and pension matters in connection with the Project.

37. CONTRACTOR EMPLOYEES

37.1 Skills and Competencies

The Contractor shall procure that sufficient numbers of Personnel are, at all times, engaged in providing the Services and that such Personnel:

37.1.1 are appropriately skilled and competent;

37.1.2 receive such training and supervision as is necessary to ensure the proper performance of the Service; and

37.1.3 are appropriately qualified.

37.2 Training Records

From the Services Commencement Date the Contractor shall keep evidence of all relevant training and instruction of all Personnel together with relevant certificates and qualifications, (and update the same) and copies shall be provided to the Authority on request.

37.3 Provision of Information

Without prejudice to any other obligations of the Contractor in this Contract, and to the extent permitted by Legislation, the Contractor shall, within a reasonable period of any request by the Authority, provide to the Authority all information (including any documents) reasonably requested by the Authority relating to Personnel including, without limitation, information (and any documents) regarding the training, skills and competency of each Personnel, the numbers of Personnel employed or engaged in provision of the Service and the terms and conditions of employment or engagement of such Personnel. The Authority shall, upon making a request pursuant to this Clause 37.3, explain to the Contractor the reason for such request.

37.4 Personnel Policies and Procedures

The Contractor shall procure that there are set up and maintained by it and by all Sub-Contractors personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation

and Good Industry Practice, are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Authority.

37.5 **Convictions**

Notwithstanding any other provision of this Clause 37, the Contractor shall:

- 37.5.1 procure that all Personnel and potential Personnel are required to disclose any Convictions;
- 37.5.2 procure that, where any Personnel discloses any Convictions, or is found to have any Convictions, the same shall be immediately notified to the Authority;
- 37.5.3 immediately notify the Authority in writing upon the Contractor becoming aware of any Personnel who, subsequent to his/her commencement of employment by the Contractor or any sub-contractor of any tier in the provision of the Service, receives a Conviction or whose previous Convictions become known to the Contractor (or any Contractor Related Party involved in the provision of the Service); and
- 37.5.4 if reasonably requested by the Authority, provide copies of the records of any unspent Convictions of any Personnel.

37.5A **Visitors Centre**

37.5A.1 Before any Named Employee begins to attend the Site to perform Services at the Visitors Centre, the Contractor shall procure that:

- (a) such employee disclose any Convictions;
- (b) the results are obtained of a check of the most extensive available kind with the Criminal Records Bureau has been completed (and the result obtained) in respect of such employee;
- (c) the results are obtained of a check of the most extensive available kind with the Independent Safeguarding Authority in respect of such employee; and
- (d) to the extent permitted by Legislation or Guidance a copy of the results of such checks as are referred to in Clauses 37.5A.1(b) and 37.5A.1(c) have been notified to the Authority.

37.5A.2 The Contractor shall procure that:

- (e) all persons performing any of the Services at the Visitors Centre shall be registered with the Independent Safeguarding Authority and that where registration is required, no persons who are not registered with the Independent Safeguarding Authority or engaged in the performance of the Services at the Visitors Centre.
- (f) no person who appears on a Barred List following the results of an Independent Safeguarding Authority check shall be employed or engaged in the performance of the Services at the Visitors Centre;
- (g) it shall and shall procure that all sub-contractors shall comply with all statutory reporting requirements to the Independent Safeguarding Authority.

37.5A.3 The Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Criminal Records Bureau check, is employed or engaged in the provision of the Services at the Visitors Centre without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

37.5A.4 In so far as permitted by law, the Contractor shall procure that the Authority is kept advised at all times of any Named Employee who, subsequent to his/her commencement of employment:-

- (a) receives a Conviction which becomes known to the Contractor or sub-contractor or whose previous Convictions become known to the Contractor (or any sub-contractor); or
- (b) in respect of whom information is referred by the Contractor or any sub-contractor to the Independent Safeguarding Authority pursuant to the Vetting and Barring Scheme; or
- (c) who is placed on a Barred List pursuant to the Vetting and Barring Scheme which becomes known to the Contractor or sub-contractor.

37.5A.5 In the event that any Named Employee is added to a Barred List, the Contractor shall procure that such Named Employee is immediately removed from the Site and ceases to be engaged in the performance of the Services at the Visitors Centre.

37.6 Unsuitable Persons not to be engaged in the Service

The Authority may, if it has reasonable grounds for believing that any Personnel or potential Personnel is or would be an Unsuitable Person, serve written notice on the Contractor requiring the Contractor to procure (at the Contractor's own cost and expense) that such Unsuitable Person is not engaged or employed directly or indirectly in, or in connection with, the provision of the Service or any part of the Service. The rights contained within this Clause 37.6 shall be exercised reasonably by the Authority and not arbitrarily, vexatiously or capriciously. For the avoidance of doubt the Contractor shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been served pursuant to this Clause 37.6.

37.7 Contractor 's Responsibility

Save as expressly provided in this Contract, the Contractor shall be entirely responsible for the employment and conditions of service of all Personnel and shall procure that each Sub-Contractor is likewise responsible for its Personnel or the Personnel of its sub-contractors. The Contractor shall carry out such checks as may be required in order to comply with Section 15 of the Immigration, Asylum and Nationality Act 2006.

38. NON-DISCRIMINATION

38.1.1 The Contractor shall not, and shall procure that all Sub-Contractors shall not unlawfully discriminate against any employee on the grounds of, without limitation:

- (a) age;
- (b) colour;
- (c) disability;
- (d) ethnic or national origin;
- (e) marital status;
- (f) religion;
- (g) sex;
- (h) sexuality (including sexual orientation);
- (i) trade union membership or activity; and



- (j) responsibility for dependents, where a relevant employee has sole or substantial responsibility for familial or non-familial dependents,

and in particular, but without limitation, the Contractor and each Sub-Contractor shall not discriminate on the grounds of nationality in the selection of sub-contractors. If any court or tribunal, or the Commission for Racial Equality, should make any finding of unlawful discrimination against the Contractor or any Sub-Contractor then the Contractor shall take all necessary steps to prevent recurrence of such unlawful discrimination and shall deliver to the Authority full details of the steps taken to prevent such recurrence.

38.2 **Statutory Equality and Race Relations**

The Contractor shall, and shall ensure that each Sub-Contractor shall, comply with any requirements and instructions which the Authority reasonably imposes in connection with the statutory equality and race relations obligations imposed on any public sector body including, without limitation, any duties introduced by the Equality Act 2006, the Statutory Code of Practice on the Duty to Promote Disability Equality and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000).

PART VI – SUPERVENING EVENTS

39. COMPENSATION EVENTS

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

39.1.1 the Contractor is unable to commence the Works on or before the Planned Works Commencement Date and as a result is unable to achieve the Planned Readiness Date on or before the Planned Readiness Date and/or

39.1.2 the Contractor is unable to achieve the Readiness Date on or before the Planned Readiness Date or following the Planned Readiness Date, before the Readiness Longstop Date; and/or

39.1.3 the Contractor is unable to achieve Service Commencement on or before the Planned Service Commencement or, following the Planned Services Commencement Date, before the Acceptance Longstop Date; and/or

39.1.4 the Contractor is unable to comply with its obligations under this Contract; and/or

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

then the Contractor is entitled to apply for relief from its obligations and/or claim compensation under this Contract.

39.2 Subject to Clause 39.4 below, to obtain relief and/or claim compensation the Contractor must:

39.2.1 as soon as practicable, and in any event within fifteen (15) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs or lose revenue (including Third Party Income), give to the Authority a notice of its claim for an extension of time for the relevant Planned Readiness Date or (following the relevant Planned Readiness Date) the Readiness Long Stop Date and/or the relevant Planned Services Commencement Date or (following the relevant Planned Services Commencement Date) to the Acceptance Longstop Date, payment of compensation and/or relief from its obligations under this Contract;

39.2.2 within ten (10) Business Days of receipt by the Authority of the notice referred to in Clause 39.2.1 above, give full details of the Compensation Event and the extension of time and/or relief from its obligations under the Contract and/or any Estimated Change in Project Costs claimed; and

39.2.3 demonstrate to the reasonable satisfaction of the Authority that:

- (a) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or any delay in the achievement of the Planned Works Commencements Date, Planned Readiness Date or Planned Services Commencement Date and/or breach of the Contractor's obligations under this Contract; or following the Planned Readiness Date delay in achieving the Readiness Date before the Readiness Longstop Date or following the Planned Services Commencement Date, delay in achieving Service Commencement before the Acceptance Longstop Date; and
- (b) the Estimated Change in Project Costs, and/or time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

39.3 In the event that the Contractor has complied with its obligations under Clause 39.2, then:

39.3.1 in the case of a delay, the relevant Planned Readiness Date or following the Planned Readiness Date the Readiness Longstop Date shall be postponed by such time as shall be reasonable for the Compensation Event taking into account the likely effect of the delay.

39.3.2 in the case of a delay, the relevant Planned Services Commencement Date or following the Planned Services Commencement Date, the Acceptance Longstop Date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay.

39.3.3 in the case of an additional cost being incurred or revenue (including Third Party Income) being lost by the Contractor:

- (a) on or before the Services Commencement Date at the relevant Facility; or
- (b) as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, in the case of Change in

Revenue, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated) within twenty (20) Business Days of its receipt of a written demand by the Contractor supported by all relevant information;

39.3.4 in the case of a payment of compensation for the Estimated Change in Project Costs and, in the case of Change in Revenue, without double counting, for revenue actually lost that does not result in Capital Expenditure being incurred by the Contractor referred to in Clause 39.3.3(b) above but which reflects a change in the costs and/or without double counting, loss of revenue being incurred by the Contractor after the relevant Services Commencement Date for a Facility, the Authority shall compensate the Contractor in accordance with Clause 39.6 below by an adjustment to the Unitary Payment in accordance with Clause 53 (Revision of Base Case and Custody); and/or

39.3.5 the Authority shall give the Contractor such relief from its obligations under this Contract as is reasonable for such a Compensation Event.

39.4 In the event that information is provided after the dates referred to in Clause 39.2 above, then the Contractor shall not be entitled to any extension of time, compensation or relief from its obligations under this Contract in respect of the period for which the information is delayed.

39.5 If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Contract or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to any relief under this Clause, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

39.6 Any payment of compensation referred to in Clause 39.3.3(a) above shall be calculated in accordance with Clause 53 (Revision of Base Case and Custody).

40. **RELIEF EVENTS**

40.1 **Occurrence**

If and to the extent that a Relief Event:

40.1.1 is the direct cause of a delay in achieving the Planned Works Commencement Date or Readiness Date or Service Commencement; and/or

40.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Contract,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under Clause 67 (Termination for Contractor Default).

40.2 Relief

To obtain relief, the Contractor must:

40.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Authority a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

40.2.2 within five (5) Business Days of receipt by the Authority of the notice referred to in Clause 40.2.1 (Relief), give full details of the relief claimed; and

40.2.3 demonstrate to the reasonable satisfaction of the Authority that:

- (a) the Contractor and the Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
- (b) the Relief Event directly caused the delay to the relevant Planned Works Commencement Date and/or Readiness Date and/or Services Commencement Date or following the Planned Readiness Date, delay in achieving the Readiness Date by the Readiness Longstop Date or following the Planned Services Commencement Date, delay in achieving Service Commencement by the Acceptance Longstop Date[or the need for relief from other obligations under the Contract but only to the extent that such other obligations give rise to a right to terminate;]
- (c) the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

- (d) the Contractor is using reasonable endeavours to perform its obligations under this Contract.

40.3 **Consequences**

In the event that the Contractor has complied with its obligations under Clause 40.2 (Relief) above, then:

40.3.1 the Planned Works Commencement Date and/or the Planned Readiness Date and/or the relevant Planned Services Commencement Date or following the Planned Readiness Date, the Readiness Longstop Date following the Planned Services Commencement Date, the Acceptance Longstop Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

40.3.2 the Authority shall not be entitled to exercise its right to terminate this Contract under Clause 67 (Termination for Contractor Default) and, subject to Clause 40.4 (Deductions), shall give such other relief as has been requested by the Contractor.

40.4 **Deductions**

Nothing in Clause 40.3 (Consequences) shall affect any entitlement to make adjustments and/or deductions under Clause 45 (Invoicing and Payment) and Schedule 4 (Payment Mechanism) during the period in which the Relief Event is subsisting.

40.5 **Information**

In the event that information required by Clause 40.2 (Relief) is provided after the dates referred to in that Clause, then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.

40.6 **Notice**

The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

40.7 **Disputes**

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Planned Works Commencement Date, and/or the Planned Readiness Date and/or any

Planned Services Commencement Date and/or the Readiness Longstop Date and/or the Acceptance Longstop Date and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

41. **EXCUSING CAUSES**

41.1 **Relief from Deductions**

If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Services and provided that the effect of such Excusing Cause is claimed within thirty (30) Business Days of the date on which the Contractor become aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, then to the extent such failure or interference arises as a result of such Excusing Cause:

41.1.1 such failure by the Contractor to perform, and any poor performance of, any affected Service shall not constitute a breach of the provisions of this Contract by the Contractor;

41.1.2 such interference shall not be taken account of in measuring the performance of the Services in accordance with Clause 32 (Performance Monitoring) which shall be operated as though the relevant Services had been performed free from such adverse interference; and

41.1.3 any such failure to perform the Services shall be deemed not to have occurred,

so that the Contractor shall subject to Clause 23 (Acceptance of Contract Waste) be entitled to the payment under this Contract up to the Minimum Tonnage as if there had been no such interference with the performance of the Services.

41.2 For the purposes of Clause 41.1 "Excusing Cause" means any of the following:

41.2.1 where a Facility or part thereof that has been closed by written agreement between the Contractor and the Authority as part of that agreement no adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) will be levied;

41.2.2 the implementation of an Authority Change or, a Qualifying Change in Law to the extent the same are implemented in accordance with agreed procedures until final agreement or determination of the capital expenditure payable by the Authority or adjustment to the Unitary Payment pursuant to

Schedule 19 (Revision of Base Case and Custody) (provided that the extent to which the Contract is or has been excused is taken into account in the assessment of the Authority Change or Qualifying Change of Law);

41.2.3 the implementation of any instruction of the Authority pursuant to Clause 31.1 on the occurrence of an Emergency where the implementation of such instruction interferes adversely with, or causes a failure of, the performance of the Services the Contractor's ability to perform the Services in accordance with the Contract.

41.3 **Insured exposure**

Without prejudice to Clause 55 (Required Insurances), the Contractor shall not be entitled to any payment which would not have been due under this Contract but for Clause 41.1 (Relief from Deductions) to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained by the Contractor or any Contractor Related Party in accordance with this Contract (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of an act or omission of the Contractor (or any Contractor Related Party), including but not limited to non disclosure or under insurance) or any other policy of insurance which the Contractor has taken out and maintained.

41.4 **Mitigation of Excusing Cause**

41.4.1 The Contractor shall take all reasonable steps to mitigate the consequences of an Excusing Cause on the Contractor's ability to perform its obligations under this Contract. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to and shall not receive, the relief specified in this Clause 41 (Excusing Causes).

42. **PROTESTER ACTION**

42.1 The Contractor shall use reasonable endeavours to prevent Protester Action affecting the Site(s) and/or the Facility including providing appropriate security and security fencing, an appropriately manned weighbridge and providing reasonable additional security measures in the event that and for so long as there are reasonable grounds for believing that a higher risk of Protester Action persists.

42.2 Notwithstanding the provisions of Clause 42.1 above, in the event Protester Action arises at or around the Site(s) and/or the Facility or on the access road to the Site(s) and/or the Facility the Contractor shall take such actions as are reasonable, proportionate and lawful to deal



with Protester Action and where necessary shall co-operate with the emergency services.

- 42.3 Save to the extent provided in limb (g) of the definition of Relief Events and Clause 40 (Relief Events), the Contractor shall be responsible for the consequences of any delays or disruption consequent upon any Protester Action.

PART VII – CHANGE AND CHANGE IN LAW

43. AUTHORITY AND CONTRACTOR CHANGES

The provisions of Schedule 21 (Change Protocol) shall apply in respect of Authority and Contractor Changes.

44. CHANGE IN LAW

44.1 Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- 44.1.1 any necessary change in the [Works and/or the] Service;
- 44.1.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;
- 44.1.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve the Planned Readiness Date and/or Planned Services Commencement Date and/or meet the Authority's Requirements and/or the Contractor's Proposals during the implementation of any relevant Qualifying Change in Law;
- 44.1.4 any loss of revenue (including Third Party Income subject to paragraph 6 (Principles relating to Third Party Income) of Schedule 19 (Revision of Base Case and Custody) that will result from the relevant Qualifying Change in Law;
- 44.1.5 any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and
- 44.1.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Services Period,

in each case giving in full detail the procedure for implementing the change in [the Works and/or] the Service. Responsibility for the costs of implementation (and any resulting variation to the Unitary Payment) shall be dealt with in accordance with Clauses 44.2 (Parties to Discuss) to 44.6 (Adjustment to Unitary Payment).

44.2 Parties to Discuss

As soon as practicable after receipt of any notice from either Party under Clause 44.1 (Qualifying Change in Law), the Parties shall apply

Schedule 21 (Change Protocol) in order to discuss and agree the issues referred to in Clause 44.1 (Qualifying Change in Law) and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law. In applying the Change Protocol the parties shall take into account (inter alia):

- 44.2.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige the Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- 44.2.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
- 44.2.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the shareholders or their Affiliates carry on business;
- 44.2.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clauses 44.1.5 (Qualifying Change in Law) and/or 44.1.6 (Qualifying Change in Law).
- 44.2.5 providing evidence that the Contractor has used reasonable endeavours to pass any increase in costs to existing Third Party Waste customers of the Contractor or Operating Sub-Contractor as the case may be demonstrated in relation to Third Party Waste Contracts referred to in Clause 51.4 by evidencing compliance with such Clause.

44.3 **Change Agreed**

If the Parties agree or it is determined under the Dispute Resolution Procedure that the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Contractor's Share of any Capital Expenditure agreed or determined to be required as a result of a General Change in Law under this Clause), then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and to the Senior Lenders.

44.4 **Contractor's Share**

The Contractor's Share of any Cumulative Capital Expenditure agreed or determined to be required as a result of a Qualifying Change in Law arising under paragraph (c) of such definition shall be solely for the account of the Contractor.

44.5 **Financing**

If the Contractor has used reasonable endeavours to obtain funding for the Capital Expenditure referred to in Clause 44.3, but has been unable to do so within forty (40) Business Days of the date that the agreement or determination referred to in Clause 44.3 occurred, then the Authority shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling twenty (20) Business Days after the Capital Expenditure has been incurred.

44.6 **Adjustment to Unitary Payment**

Any compensation payable under this Clause 44 (Change in Law) by means of an adjustment to or reduction in the Unitary Payment shall be determined and made in accordance with Schedule 19 (Revision of Base Case and Custody).

44.7 **Payment of Irrecoverable VAT**

The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty (20) Business Days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this Clause 44.7 (Payment of Irrecoverable VAT), "Irrecoverable VAT" means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Works or the Services or any of the obligations or provisions under this Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

PART VIII– PAYMENT PROVISIONS

45. INVOICING AND PAYMENT

45.1 Payment of the Unitary Payment

The Authority shall pay the Contractor:

45.1.1 during the period from the Readiness Date to the Services Commencement Date, the Commissioning Payment; and

45.1.2 from the Services Commencement Date, the Unitary Payment,

in each case in respect of each Payment Period, calculated in accordance with Schedule 4 (Payment Mechanism).

45.2 Report and Invoice

On the first (1st) Business Day following the end of each Payment Period the Contractor shall submit to the Authority:

45.2.1 a report showing for that Payment Period:

- (a) prior to the issue of the Acceptance Test Certificate for the Facility the Commissioning Payment, and
- (b) following the issue of an Acceptance Test Certificate for the Facility the Monthly Unitary Payment, and
- (c) individually, each item taken into account in calculating the Monthly Unitary Payment pursuant to section 4 of Schedule 4 (Payment Mechanism); and

45.2.2 an invoice for the amount (if any) shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

45.3 Final Payment Period

45.3.1 During the final two (2) Payment Periods of the Contract Period, in addition to the amounts referred to in Clause 45.2.1 (Report and Invoice) the Authority may withhold an amount equal to the average per Payment Period of the sum of the adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) for the previous six (6) Payment Periods until such time as the Contractor shall have provided a report to the Authority in respect of those final two (2) Payment Periods containing the information set out in Clause 45.2 (Report and Invoice).

45.3.2 On receipt of the reports from the Contractor in respect of the final two (2) Payment Periods the Authority may retain from the amounts withheld pursuant to Clause 45.3.1 (Final Payment Period) a sum equivalent to the sum of the adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) identified in the report or any other amount agreed by the Parties or determined pursuant to Schedule 22 (Dispute Resolution Procedure) as owing to the Authority. The Authority shall pay the balance of any monies withheld to the Contractor or if it is agreed or determined the Contractor owes monies to the Authority in excess of those sums withheld, the Contractor shall pay such additional amounts to the Authority, in each case with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the payment was withheld by the Authority pursuant to Clause 45.3 (Final Payment Period) or from the date on which over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

45.4 **Payment**

45.4.1 Subject to Clause 45.5 (Disputed Amounts), the Authority shall pay the amount stated in any invoice submitted under Clause 45.2 (Report and Invoice) on the final Business Day of the following Payment Period in question.

45.4.2 Where a report shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority on the final Business Day of the Payment Period to which the report refers or, at the option of the Authority, carry forward that amount to the next report in reduction of amounts which would otherwise have been owed by the Authority to the Contractor.

45.5 **Disputed Amounts**

45.5.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to Clause 45.2 (Report and Invoice) in respect of any Payment Period the provisions of this Clause 45.5 (Disputed Amounts) shall apply.

45.5.2 The Authority shall notify the Contractor in writing within [ten (10)] Business Days of receipt by the Authority of the relevant invoice and supporting report of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (a

“Disputed Amount”) and submit to the Contractor such supporting evidence as the Authority may have.

45.5.3 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor’s entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.

45.6 **Response to Authority Notice**

Within five (5) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 45.5 (Disputed Amounts), the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

45.6.1 to retain on a permanent basis any amounts withheld pursuant to Clause 45.5 (Disputed Amounts); and

45.6.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

45.7 **Dispute**

If the Contractor responds (pursuant to Clause 45.6 (Response to Authority Notice)) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 45.5 (Disputed Amounts), the matter or matters in question shall be determined under the Dispute Resolution Procedure.

45.8 **Determination of Dispute**

If the determination of any dispute conducted pursuant to Clause 45.7 (Dispute) shows that:

45.8.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or

45.8.2 the Contractor has claimed under Clause 45.2 (Report and Invoice) any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the

date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

45.9 **Indexation**

On each Indexation Date the [Annual Unitary Payment] shall be adjusted for the Contract Year commencing on that Indexation Date in accordance with paragraph 14 of Schedule 4 (Payment Mechanism).

46. **SET-OFF**

46.1 The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but, subject to paragraph 2, part 7 of Schedule 17 (Compensation on Termination), the Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.

46.2 If the payment or deduction of any amount referred to in Clause 46.1 above is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

47. **LATE PAYMENTS**

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Contract relating to the payment of compensation on termination of this Contract following the occurrence of an Authority Default provide the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

48. **UTILITIES AND NNDR**

The Contractor shall be responsible for paying utility costs and charges and NNDR incurred in providing the Services subject to paragraph 11 of Schedule 4 (Payment Mechanism).

49. VAT

49.1 VAT on Payments

49.1.1 All amounts due under this Contract are exclusive of VAT.

49.1.2 If any supply made or referred to in this Contract is or becomes chargeable to VAT then the person receiving the supply (the “Recipient”) shall in addition pay the person making the supply (the “Supplier”) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

49.1.3 Where under this Contract any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.

49.1.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Contract and payable by the Authority to the Contractor.

49.2 Landfill Tax

49.2.1 The Contractor shall be responsible for and shall pay when due all Landfill Tax at the prevailing rate on Contract Waste disposed to Landfill under this Contract.

49.2.2 The Authority shall reimburse the Contractor for the payment of Landfill Tax under Clause 49.2.1 in accordance with and to the extent provided in paragraph 11 of Schedule 4 (Payment Mechanism) provided that the Authority shall in no circumstances be required to reimburse the Contractor for the payment of Landfill Tax payable on Third Party Waste.

49.2.3 Without prejudice to its obligations under this Contract, the Contractor shall use reasonable endeavours to minimise the incidence of Landfill Tax recoverable from the Authority under Clause 49.2.2 where this will reduce the overall financial burden of this Contract on the Authority.

50. THIRD PARTY INCOME

50.1 The provisions of paragraph 9 of Schedule 4 (Payment Mechanism) shall apply in respect of Third Party Income.

50.2 In the event that pursuant to the terms of this Contract the Authority is required to compensate the Contractor for lost Third Party Income the level of compensation payable shall be assessed on the basis set out in Clause 33.7 (Compensation for loss of Third Party Income) or paragraph 6 (Principles relating to Third Party Income) of Schedule 19 (Revision of Base Case and Custody) as the case may be.

51. THIRD PARTY WASTE AND OFF-TAKE CONTRACTS

51.1 Amendments to and conditions relating to Third Party Waste and Off-Take Contracts

51.1.1 The Contractor shall not (and shall procure that *[insert reference to entity that acts as a counterparty to TPW and Off-Take Contracts if not the Contractor shall not]*:

- (a) make or agree to make any material variation to an Off-Take Contract or Third Party Waste Contract; or
- (b) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) an Off-Take Contract or Third Party Waste Contract; or
- (c) enter into a new Off-Take or Third Party Waste Contract

unless the Contractor has complied with the provisions of and conditions of this Clause 51 (Third Party Waste and Off-Take Contracts).

51.1.2 No entry into, amendment, waiver or exercise of any right relating to a Third Party Waste Contract or an Off-Take Contract shall have the effect of increasing the Authority's liabilities on termination or on the occurrence of a Relevant Event unless the Contractor has obtained confirmation from the Authority that the Third Party Waste Contract or Off-Take Contract complies or continues to comply with Clause 51.1.3 or Clause 51.1.4 as the case may be.

51.1.3 The Contractor shall be entitled to enter Third Party Waste Contracts to accept, handle and process Third Party Waste at the Facility subject to the following provisions:

- (a) that the Contractor accepts, handles and processes such Third Party Waste in accordance with Good Industry Practice and using all reasonable skill and care;
- (b) that the acceptance, handling and processing of such Third Party Waste will not prevent the Contractor from

Accepting, handling and/or processing Contract Waste (up to the applicable Maximum Tonnage) pursuant to and in accordance with the requirements of this Contract;

- (c) that any such Third Party Waste shall be of a [nature which is compatible with the Facility] and is such that it will not detrimentally affect the Contractor's ability to achieve Contract Targets and Performance Standards;
- (d) that any Third Party Income received in connection with the acceptance, handling and processing of Third Party Waste at the Facility (other than Substitute Waste) shall be subject to the [Third Party Income gain share provisions set out in paragraph [] (Third Party Income) of Schedule 4 (Payment Mechanism)];
- (e) where the Third Party Waste Contract is for a period greater than [2] years or for more than [20,000 tonnes per annum] it contains provisions facilitating, at the request of the Authority, the assignment of the rights, title and interest in and to the Third Party Waste Contract to the Authority (or Authority nominated person) on termination or expiry of this Contract;
- (f) the Third Party Waste Contractor shall be liable for its share of costs pursuant to any Qualifying Change in Law or Exceptional Cost pursuant to paragraph 3 of Schedule 10 (Required Insurances) in accordance with Clause 51.1.2 (Conditions for Third Party Waste and Off-Take Contracts); and
- (g) that the Third Party Waste Contract contains provisions whereby the breakage costs in circumstances where they could be passed to the Authority are limited to those that a commercially prudent facility operator would accept in an arm's length contract for the relevant Third Party Waste Contract and further are limited to Direct Losses provided that the Authority's liability under the relevant Third Party Waste Contract shall in no circumstances exceed £[•].

51.1.4 At any time after the date of this Contract, if and whenever the Contractor shall enter into or any related entity enters into any Off-Take Contracts the Contractor shall ensure or procure as the case may be that any such contract is in writing and:

- (a) is on reasonable arm's length terms including, for the avoidance of doubt, as regards the payment of income to the Contractor or Affiliate of the Contractor;
- (b) that the Off-Take Contract contains provisions whereby the breakage costs in circumstances where they could be passed to the Authority are limited to those that a commercially prudent facility operator would accept in an arm's length contract for the relevant off-take and further are limited to Direct Losses; and
- (c) (where (the Contractor having used reasonable endeavours to achieve such agreement) agreed by the counter party) includes a right on the part of the Contractor or the Operating Sub-Contractor as the case may be to assign, at the request of the Authority, free of charge the Contractor's the rights, title and interest in and to the Off-Take Contract to the Authority (or Authority nominated person) on termination or expiry of this Contact.

51.2 Affiliates

The Contractor shall not enter into or amend a Third Party Waste Contract or an Off-Take Contract with an Affiliate unless the Authority has confirmed in writing (not to be unreasonably withheld or delayed) that it is satisfied that the provisions of Clause 51.1 have been complied with.

51.3 Due diligence over Third Party Waste and Off-Take Contracts

51.3.1 The Contractor shall:

- (a) afford the Authority a reasonable opportunity to conduct due diligence on any Third Party Waste Contract and/or any Off-Take Contract before the Contractor enters into the same to enable the Authority to assess its terms for compliance with the provisions of Clause 51.1 above and to raise comments thereon;
- (b) take into account any reasonable comments made by the Authority and shall use its reasonable endeavours to amend the Third Party Waste Contract and/or any Off-Take Contract accordingly before such contract is concluded; and
- (c) on request and free of charge, provide copies of any Third Party Waste Contract and Off-Take Contract and



any related documents to the Authority's Representative.

51.4 Third Party Waste Contracts

- 51.4.1 Where a Third Party Waste Contract is to be entered into with a local authority for a term greater than [3 (three)] years or for a guaranteed tonnage in excess of [] per annum (such contracts together with this Contract being "Qualifying Contracts"), except where the Authority otherwise agrees (acting reasonably) the Contractor shall ensure that the provisions of Clause 44 (Change in Law) and paragraph 3 of Schedule 10 (Required Insurances) are included in the relevant contract so that the compensation payable by the Authority under such aforementioned provisions is equal to the Authority Share (the Authority Share for such purpose being, as a percentage, the maximum of the Authority's tonnage to be supplied under the Contract over the maximum capacity of the Facility which is contracted under Qualifying Contracts).
- 51.4.2 Where a Third Party Waste Contract is proposed to be entered into other than with a local authority then the Contractor's obligations under Clause 51.4.1 shall be to use reasonable endeavours.

PART IX – FINANCE AND AUDIT

52. REFINANCING

The provisions of Schedule 16 (Refinancing) shall apply in respect of Refinancing.

53. REVISION OF BASE CASE AND CUSTODY

The provisions of Schedule 19 (Revision of Base Case and Custody) shall apply in respect of adjustments to the Base Case and custody arrangements for the Base Case.

54. CONTRACTOR RECORDS AND PROVISION OF INFORMATION

54.1 Records and Open Book Accounting

The Contractor shall (and shall procure that each sub-contractor shall) at all times:

54.1.1 maintain a full record of particulars of the costs of performing the Works and the Services;

54.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in Clause 54.1.1 (Records and Open Book Accounting), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract; and

54.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause;

54.2 Books of Account

Compliance with Clause 54.1 (Records and Open Book Accounting) shall require the Contractor to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to this Contract, showing in detail:

54.2.1 administrative overheads;

54.2.2 payments to Sub-Contractors and by Sub-Contractors to sub-contractors;

54.2.3 capital and revenue expenditure; and

54.2.4 such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract,

and the Contractor shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items listed in Clauses 54.2.1 to 54.2.4 (Books of Account) inclusive, available for inspection by the Authority (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Authority as and when requested from time to time.

54.3 **Maintenance of Records**

54.3.1 The Contractor shall maintain or procure that detailed records relating to the performance of the Works and the delivery of the Services are maintained, in each case in accordance with Good Industry Practice, the requirements of Clause 88 (Quality Management Systems) and any applicable Legislation.

54.3.2 Without prejudice to Clause 54.3.1, the Contractor shall procure that the following are maintained:

- (a) a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
- (b) full records of all maintenance procedures carried out during the term of this Contract,

and the Contractor shall have the items referred to in Clauses 54.3.2(a) and 54.3.2(b) (Maintenance of Records) available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a report of them to the Authority as and when requested from time to time.

54.4 **Auditor**

The Contractor shall permit all records referred to in this Clause 54 (Contractor Records and Provision of Information) to be examined and copied from time to time by the Authority's Representative and other representatives of the Authority and by the Wales Audit Office and the Auditor General for Wales, ombudsman or their representatives who reasonably require access to the same.

54.5 **Retention**

The records referred to in this Clause 54 (Contractor Records and Provision of Information) shall be retained for a period of at least five (5)

years after the Contractor's obligations under this Contract have come to an end.

54.6 **Termination or Expiry**

Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of a project the same as or similar to the Project, the Contractor shall (and shall ensure that the sub-contractors will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Project.

54.7 **Confidentiality**

All information referred to in this Clause 54 (Contractor Records and Provision of Information) is subject to the obligations set out in Clause 84 (Confidentiality).

54.8 **Accounts**

The Contractor shall:

54.8.1 provide to the Authority on the 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three Month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the term of the Contract and any other information relating to the Project that the Authority may reasonably require;

54.8.2 provide to the Authority copies of its annual report and accounts within twenty (20) Business Days of publication;

54.8.3 provide to the Authority a copy of the Financial Model at Financial Close and (as the same may be amended) within twenty (20) Business Days of any amendment thereto;

54.8.4 promptly upon the occurrence of a Financing Default notify the Authority of such Financing Default; and

54.8.5 use reasonable endeavours to assist the Authority in its preparation of any report required by the Defra or HM Treasury from time to time.

54.9 The Authority may in the circumstances referred to in Clause 54.8.4 above (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Contractor to provide an Interim Project Report and to attend, and use reasonable endeavours to ensure that the Senior



Lenders attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.

PART X – INSURANCE

55. REQUIRED INSURANCES

- 55.1 The Contractor shall, prior to the carrying out of any building or demolition work on a Site, take out and maintain or procure the maintenance of the insurances described in Part 1 [and Part 3] of Schedule 10 (Required Insurances) and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 55.2 The Contractor shall during the Services Period take out and maintain or procure the maintenance of the insurances described in Part 2 [and Part 3] of Schedule 10 (Required Insurances) and any other insurances as may be required by law.
- 55.3 No party to this Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.
- 55.4 With the exception of the insurances required by law, the insurances referred to in Clauses 55.1 and 55.2 shall:
- 55.4.1 subject to Clause 55.5 below, name the Contractor as co-insured with any other party maintaining the insurance;
 - 55.4.2 provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 2 in Part 3 of Schedule 10 (Required Insurances);
 - 55.4.3 contain a clause waiving the insurers' subrogation rights against the Authority, its employees and agents in accordance with Endorsement 2 in Part 4 of Schedule 10 (Required Insurances);
 - 55.4.4 provide for thirty (30) days prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 1 in Part 4 of Schedule 10 (Required Insurances); and
 - 55.4.5 in respect of the Physical Damage Policies, provide for payment of any proceeds received by the Contractor to be applied in accordance with Clause 56 (Reinstatement).
- 55.5 Wherever possible, where the Authority is to be a co-insured party in accordance with Schedule 10 (Required Insurances), the insurances referred to in Clauses 55.1 and 55.2 shall name the Authority as a co-insured for its separate interest.

55.6 The Contractor shall provide to the Authority:

- 55.6.1 copies on request of all insurance policies referred to in Clauses 55.1 and 55.2 (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
 - 55.6.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 55 (Required Insurances) and Schedule 10 (Required Insurances).
- 55.7 Renewal certificates or such other evidence of renewal as may be acceptable to the Authority in relation to the insurances referred to in Clauses 55.1 and 55.2 shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date.
- 55.8 If the Contractor is in breach of Clauses 55.1 and 55.2 above, the Authority may pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 55.9 The Contractor shall give the Authority notification within twenty (20) Business Days after any claim in excess of fifty thousand pounds (£50,000) (Indexed) on any of the insurance policies referred to in this Clause accompanied by full details of the incident giving rise to the claim.
- 55.10 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.
- 55.11 Subject to the provisions of Part 6 of Schedule 10 (Required Insurances), the insurance premiums in respect of the insurances referred to in Clauses 55.1 and 55.2 shall be the responsibility of the Contractor.
- 55.12 The insurances referred to in this Clause shall be effected with insurers approved by the Authority such approval not to be unreasonably withheld or delayed.
- 55.13 The limit of indemnity and the maximum deductibles for each of the Required Insurances shall be Indexed, provided such limits of indemnity and maximum deductibles shall only be increased on each renewal

date such that the limit that is Indexed becomes equal to or exceeds the whole insurable amount or deductible (as the case may be) available in the insurance market.

- 55.14 The Contractor shall procure that any insurance broker of the Contractor from time to time charged with the responsibility of placing or maintaining the Required Insurances shall provide the Authority with a letter of undertaking substantially in the form set out in Part 5 of Schedule 10 Required Insurances.

56. REINSTATEMENT

- 56.1 All insurance proceeds received under any policy referred to in paragraph 1 [and paragraph 4] of Part 1 and paragraph 1 of Part 2 of Schedule 10 (Required Insurances) (the "Physical Damage Policies") shall be applied to repair, reinstate and replace each part or parts of the Assets in respect of which such proceeds were received.

- 56.2 All insurance proceeds paid under a Physical Damages Policy in respect of a single event (or a series of related events) in an amount in excess of two hundred and fifty thousand pounds (£250,000) (Indexed) shall be paid into the Joint Insurance Account.

- 56.3 Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "Relevant Incident") in an amount in excess of two hundred and fifty thousand pounds (£250,000) ([Indexed]):

56.3.1 the Contractor shall deliver to the Authority as soon as practicable and in any event within twenty (20) Business Days after the making of the claim a plan (the "Reinstatement Outline") prepared by the Contractor for the carrying out of the works necessary (the "Reinstatement Works") to repair, reinstate or replace the assets which are the subject of the relevant claim or claims in accordance with Clause 56.3.2 below. The Reinstatement Outline shall set out:

- (a) if not the Construction Sub-Contractor the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority not to be unreasonably withheld or delayed; and
- (b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written

approval of the Authority, which approval shall not be unreasonably withheld or delayed;

56.3.2 the Authority shall within ten (10) Business Days of receipt of the Reinstatement Outline notify the Contractor in writing that:

- (a) it is satisfied that the Reinstatement Outline will enable the Contractor to comply with its obligations to carry out the Reinstatement Works within a reasonable timetable, and that the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works is approved;
- (b) the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works is not approved together with its reasons for such non-approval in sufficient detail so as to enable the Contractor to understand the nature and extent of such non-approval and to assess whether the Authority's approval under Clause 56.3.1(a) has been unreasonably withheld;
- (c) the Authority does not approve the Reinstatement Outline together with its reasons for such non-approval, in sufficient details so as to enable the Contractor to understand the nature and extent of such non-approval and to assess whether the Authority's approval under Clause 56.3.1(b) has been unreasonably withheld; or
- (d) if the Authority does not make one (1) of the said responses within the period specified in this Clause 56.3.2 it shall be deemed to have approved the Reinstatement Outline, save where the Authority has reasonably requested any further information from the Contractor, in which case the time limit outlined in Clause 56.3.2 will be deemed to commence upon receipt of such information by the Authority.

56.3.3 If the Authority gives notice of non-approval in accordance with Clauses 56.3.2(b) or 56.3.2(c) the Contractor may amend and re-submit the Reinstatement Outline (the Amended Reinstatement Outline) to the Authority for its reconsideration and the Authority shall give its approval or non-approval within five (5) Business Days of the submission of the Amended Reinstatement Outline to the Authority. If the Authority does not approve the Amended Reinstatement Outline, it shall provide reasons for such non-approval in sufficient detail so as to enable the Contractor to understand the nature and extent of

such non-approval and to assess whether the Authority's approval has been unreasonably withheld.

56.3.4 In the event that the Amended Reinstatement Outline or a person proposed to carry out the Reinstatement Works is not approved by the Authority in accordance with Clause 56.3.3 the Contractor may submit the Amended Reinstatement Outline to the Dispute Resolution Procedure in order for it to be determined whether the Authority's approval under Clause 56.3.3 was unreasonably withheld.

56.3.5 The Reinstatement Outline or the Amended Reinstatement Outline (as the case may be) as approved by the Authority pursuant to this Clause 56 (Reinstatement) or as determined pursuant to the Dispute Resolution Procedure shall become the reinstatement plan (the "Reinstatement Plan").

56.3.6 The Contractor shall effect the Reinstatement Works in accordance with the Reinstatement Plan, and:

- (a) shall enter into contractual arrangements to effect the Reinstatement Works with the person(s) identified in the Reinstatement Plan;
- (b) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the Relevant Proceeds) (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements entered into to effect the Reinstatement Works and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the Parties shall operate the signatory requirements of the Joint Insurance Account to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;
- (c) the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this Clause 56 (Reinstatement), and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with this Clause 56.3 it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of

the event which gave rise to the claim for the Relevant Proceeds;

- (d) the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;
- (e) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with this Clause 56.3 the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under this Clause 56.3 in respect of the Relevant Incident, together with any interest accrued; and
- (f) subject to Clause 61 (Indemnities), the Contractor shall be solely responsible for the payment of any deficiency.

56.4 Works Carried Out

Where insurance proceeds are to be used in accordance with this Contract to repair, reinstate or replace any part of any Facility, the Contractor shall carry out the work in accordance with the Authority's Requirements and the Contractor's Proposals so that on completion of the work the provisions of this Contract are complied with.

57. UNINSURABILITY

57.1 Uninsurable Risks

Nothing in this Part X (Insurance) shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Contractor or a Contractor Related Party.

57.2 Risks Become Uninsurable

If a risk usually covered by contractors' all risks insurance, property damage insurance, [marine cargo insurance], third party liability insurance, [contractors pollution liability insurance], delay in start up and business interruption insurance (but not loss of profits) [marine cargo delay in start up insurance but not loss of profits] or statutory insurances in each case required under this Contract becomes Uninsurable then:

- 57.2.1 the Contractor shall notify the Authority of any risk becoming Uninsurable within five (5) Business Days of becoming aware of the same and in any event at least five (5) Business Days before expiry or cancellation of any existing insurance in respect of that risk,

57.2.2 if both Parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that:

- (a) the risk being Uninsurable is not caused by the actions of the Contractor or a sub-contractor (of any tier); and
- (b) the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar public private partnership businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this Clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

the Parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

57.3 Consequences

57.3.1 If the requirements of Clause 57.2 above are satisfied, but the Parties cannot agree as to how to manage the risk, then:

- (a) in respect of such third party liability insurance [and contractors pollution liability insurance] only, the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the amount calculated in accordance with Part 5 (Compensation on Termination for Force Majeure and Uninsurability) of Schedule 17 (Compensation on Termination) and the Contract will terminate or elect to allow the Contract to continue and Clause 57.3.1(b)) below shall thereafter apply in respect of such risk; and
- (b) in respect of contractors' all risks insurance, property damage insurance, [marine cargo insurance], third party liability insurance, [contractors pollution liability insurance], (if the Authority elects to allow the Contract to continue in accordance with Clause 57.3.1(a)) delay

in start up [marine delay in start up] and business interruption insurance (but not loss of profits) or statutory insurances the Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and this Contract will continue, or an amount equal to the amount calculated in accordance with Part 5 (Compensation on Termination for Force Majeure and Uninsurability) of Schedule 17 (Compensation on Termination) plus (in relation to third party liability insurance [and contractors pollution liability insurance] only) the amount of insurance proceeds that would have been payable to the Contractor whereupon the Contract will terminate; and

- (c) where pursuant to Clauses 57.3.1(a) and 57.3.1(b) this Contract continues, then the Unitary Payment shall be reduced in each Contract Year for which the relevant insurance is not maintained, by an amount equal to the premium paid by the Contractor in respect of the relevant risk in the Contract Year prior to it becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a Contract Year only the reduction in the Unitary Payment shall be pro rated to the number of Months for which the risk was Uninsurable; and
- (d) where pursuant to Clause 57.3.1(a) and/or 57.3.1(b) this Contract continues the Contractor shall approach the insurance market at least every four (4) Months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Contract.
- (e) In respect of any period between the Authority receiving notification in accordance with Clause 57.2.1 that a TPL Risk (defined as a risk which is required to be insured under the third party liability insurance [and contractors pollution liability insurance]) has become Uninsurable and the Authority's notification to the Contractor in accordance with Clause 57.3.1(a) in respect of such risk then, provided it is ultimately agreed or determined

that the requirements of Clause 57.2.2 are satisfied in respect of the Uninsurable TPL Risk and subject to Clause 57.3.1(f) below, Clause 57.3.1(b) shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the parties otherwise agree how to manage the risk during this period; and

- (f) Clause 57.3.1(e) shall only apply provided the Contractor does not unreasonably materially delay (a) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of Clause 57.2.2 are satisfied in respect of the Uninsurable TPL Risk and/or (b) meeting with the Authority to discuss the means by which the risk should be managed.

57.4 Relevant Payment

If, pursuant to Clause 57.3.1(b), the Authority elects to make payment to the Contractor (such that the Contract will terminate) ("Relevant Payment"), the Contractor shall have the option (exercisable in writing within twenty (20) Business Days of the date of such election by the Authority (the "Option Period")) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case the Contract will continue (and the Relevant Payment will not be made by the Authority), and the Contractor's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

58. UNAVAILABLE TERMS AND CONDITIONS

58.1 Unavailability of Terms or Conditions

58.1.1 If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Contract:

- (a) any Insurance Term is not available to the Contractor in the worldwide insurance markets with reputable insurers of good standing; and/or
- (b) the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom.

(other than, in each case, by reason of one or more actions of the Contractor and/or any sub-contractors of the Contractor (of any tier)) then Clause 58.1.2 shall apply.

- 58.1.2 If it is agreed or determined that Clause 58.1.1 applies then the Authority shall waive the Contractor's obligations in Clause 55 (Required Insurances) and/or Schedule 10 (Required Insurances) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Contract as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Clause 58.1.1 continue to apply to such Insurance Term.
- 58.1.3 To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Contract, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances).
- 58.1.4 The Contractor shall notify the Authority as soon as reasonably practicable and in any event within five (5) Business Days of becoming aware that Clause 58.1.1(a) and/or Clause 58.1.1(b) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
- 58.1.5 In the event that Clause 58.1.1(a) and/or Clause 58.1.1(b) apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four Months to establish whether Clause 58.1.1(a) and/or Clause 58.1.1(b) remain applicable to the Insurance Term. As soon as the Contractor is aware that Clause 58.1.1(a)



and/or Clause 58.1.1(b) has ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.

59. INSURANCE REVIEW PROCEDURE

The provisions of Part 6 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances) shall apply in respect of insurance premia.

PART XI – DISPUTES AND REMEDIES

60. DISPUTE RESOLUTION

The provisions in Schedule 22 (Dispute Resolution Procedure) shall apply in respect of dispute resolution.

61. INDEMNITIES

61.1 The Contractor shall, subject to Clause 61.3, be responsible for, and shall release and indemnify the Authority or any Authority Related Party, on demand from and against all liability for:

61.1.1 death or personal injury;

61.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible (“Authority Property”) but excluding the land and buildings forming part of any Facility); and

61.1.3 third party actions, claims and/or demands brought against the Authority or any Authority Related Party,

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the assets or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Site(s) or property which is in the ownership or control of the Authority and adjacent to [any of] the Site(s) of the Contractor, a subcontractor of the Contractor (of any tier), their employees or agents.

61.2 Breach of statutory duty

The Contractor shall, subject to Clause 61.3.4, be responsible for, and shall release and indemnify the Authority and any Authority Related Party on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in Clause 61.1.3) above brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Contractor of its obligations under this Contract to the extent there are no other remedies available to the Authority under this Contract.

61.3 Contractor Not Responsible

The Contractor shall not be responsible or be obliged to indemnify the Authority for:

- 61.3.1 any of the matters referred to in Clauses 61.1.1 to 61.1.3 (inclusive) that arises as a direct result of the Contractor acting on the instruction of the Authority;
- 61.3.2 any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party or by the breach of the Authority of its obligations under this Contract;
- 61.3.3 any claims for mileage payments in relation to which the Contractor's liability is provided for in paragraph [*mileage deductions*] of Schedule 4 (Payment Mechanism); or
- 61.3.4 [any claim made pursuant to Clause 61.2 (Breach of Statutory Duty) to the extent that, when taken together with any other claims made under that Clause for the previous [•] years, the amount of the Contractor's Uninsured Losses exceeds £[•] (indexed).]⁴

61.4 **Notification of Claims**

Where either Party (the "Indemnified Party") wishes to make a claim (other than in relation to a claim by a third party in which case Clause 63 (Conduct of Claims) shall apply) under this Contract against the other (the "Indemnifying Party"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

61.5 **Mitigation**

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Contract.

- 61.6 An indemnity by either party under any provision of this Contract shall be without limitation to any indemnity by that party under any other provisions of this Contract⁵.

62. **SOLE REMEDY**

62.1 **Common Law Rights of the Contractor**

- 62.1.1 Without prejudice to any entitlement of the Contractor:

⁴ A cap on breach of statutory duty claim shall only be accepted if a compelling value for money case can be presented with tangible benefits for the Partnership. Please also refer to associated Clause 67.3 and Contractor Default limb(s).

- (a) to specific performance of any obligation under this Contract; or
- (b) to injunctive relief;

the Contractor's sole remedy in relation to matters for which an express right or remedy is stated in this Contract shall be that right or remedy and the Contractor shall have no additional right or remedy arising by common law, in equity, by statute or otherwise.

62.1.2 The Contractor's sole remedy in relation to any Compensation Event in respect of any Facility shall be the operation of Clause 39.3 (Compensation Events).

62.2 Common Law Rights of the Authority

Subject to:

62.2.1 any other express right of the Authority pursuant to this Contract; and

62.2.2 the Authority's right to claim, on or after termination of this Contract, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Contract by the Contractor, save to the extent that the same has already been recovered by the Authority pursuant to this Contract or has been taken into account to calculate any compensation payable by the Authority pursuant to Clauses 66 (Compensation on Termination for Authority Default), 68 (Compensation on Termination for Contractor Default), 70 (Compensation on Termination for Force Majeure), 72 (Compensation on Corrupt Gifts and Fraud) 74 (Compensation on Voluntary Termination by the Authority) or 76 (Compensation on Termination for Breach of the Refinancing Provisions),

the sole remedy of the Authority in respect of a failure to provide the Services in accordance with this Contract shall be the operation of Schedule 4 (Payment Mechanism).

62.3 Nothing in Clause 62.2 (Common Law Rights of the Authority) shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

62.4 No Breach

The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is as a result of the Authority's breach of its obligations hereunder.

62.5 Indirect Losses

Save where stated to the contrary, the indemnities under this Contract shall not apply and (without prejudice to the Authority's rights under Schedule 4 (Payment Mechanism)) there shall be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is for Indirect Losses. The Authority agrees that, notwithstanding the foregoing, any Losses of the Contractor arising under the Sub-Contracts as originally executed (or as amended in accordance with the terms of this Contract) which are not of themselves Indirect Losses, shall not be excluded from such a claim by virtue of this Clause.

62.6 No Double Recovery

Notwithstanding any other provision of this Contract, neither Party shall be entitled to recover compensation under this Contract or any Ancillary Document or any other agreement in relation to the Project in respect of any loss that it has incurred (or any failure of the other Party) to the extent that it has already been compensated in full in respect of that loss or failure pursuant to this Contract, any Ancillary Document or otherwise.

62.7 Sole Remedy for LATs

62.7.1 Notwithstanding any other provision of this Contract (save Clause 62.7.2 below), the sole remedy of the Authority against the Contractor for any cost, losses, damages and expenses suffered or incurred by them, or any one of them, in respect of Landfill Tax or the Landfill Allowance Trading Scheme during the term of this Contract, or on or after termination, shall be under Part [] of Schedule 4 (Payment Mechanism).

62.7.2 Nothing in this Clause 62.7 shall prevent the New Contractor or Expert from adjusting the Tender Price or Estimated Fair Value as a consequence of the operation of Schedule 4 (Payment Mechanism) during the currency of the New Contract or deemed New Contract.

62.8 Insured Claims

62.8.1 Without prejudice to Clause 55 (Required Insurances), the Contractor shall not be entitled to any payment which would

have been due under this Contract to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained in accordance with this Contract (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Contractor (or any Contractor Related Party), including but not limited to non-disclosure or under-insurance) or any other policy of insurance which the Contractor has taken out and maintained.

62.9 Sub-Contractor Claims

Where:-

- 62.9.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and
- 62.9.2 the Contractor subsequently makes a claim against the Authority under this Agreement in relation to such compensation and/or relief

the Authority waives any right to defend the Contractor's claim if such defence is solely on the ground that the Contractor is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that the same is recoverable from the Authority

62.10 Authority Losses

62.10.1 Subject always to Clause 62.10.3, the Contractor agrees that any Losses of a Partner Authority arising under or in connection with the Joint Working Agreement (as originally executed or as amended with the prior consent of the Contractor (such consent not to be unreasonably withheld or delayed) to the extent such Losses are suffered or incurred by the relevant Partner Authority as a result of an act or omission of the Contractor or any Contractor Related Party in relation to this Contract shall (without any double counting) be included and recoverable as Direct Losses of the Authority under this Contract and shall not be excluded from any claim by the Authority under this Contract as Indirect Losses. The express statement of the Contractor's agreement to this provision is included in this Contract for the avoidance of doubt and is without the intention of creating any limitation on the scope of what may otherwise be included and recoverable by the Authority as Direct Losses under this Contract.

62.10.2 Subject always to Clause 62.10.3, where a Partner Authority is entitled to claim an indemnity against the Authority under the Joint Working Agreement Authority (as originally executed or as

amended with the prior consent of the Contractor (such consent not to be unreasonably withheld or delayed) in respect of an act or omission of the Contractor or any Contractor Related Party and the Authority subsequently claims against the Contractor under the indemnities in Clause 61.1 (Contractor's Indemnity) of this Contract in respect of the same act or omission of the Contractor or any Contractor Related Party, the Contractor waives any right to defend the Authority's claim on the ground that the Authority is only required to make payments to the relevant Partner Authority under the relevant indemnity to the extent that the same is recoverable by the Authority from the Contractor under this Contract.

62.10.3 Any liability of the Contractor arising through operation of Clauses 62.10.1 and 62.10.2 shall not exceed the liability that the Contractor would have incurred in relation to the same facts and circumstances if the Partner Authority had entered into this Contract on a joint and several basis with the Authority instead of the arrangements described in Clauses 62.10.1 and 62.10.2.

62.11 Termination of Contract

This Contract shall only terminate in accordance with the express provisions of this Contract.

63. CONDUCT OF CLAIMS

63.1 Conduct of Claims

This Clause 63 shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract, of claims made by a third person against a Party having (or claiming to have) the benefit of the indemnity. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "Beneficiary" and the Party giving the indemnity is referred to as the "Indemnifier". Accordingly:

63.1.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Contract and any of the Ancillary Documents, or in relation to involvement in any investigation or proceedings by any auditor, inspector or ombudsman, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable together with such further information and documentation he or she may require and in any event within twenty (20) Business Days of receipt of the same;

63.1.2 subject to Clauses 63.1.3, on the giving of a notice by the Beneficiary pursuant to Clause 63.1.1 above, where it appears

that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a sufficient indemnity to its reasonable satisfaction against all costs, charges and expenses, actions, demands, proceedings, claims whatsoever that it may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim;

63.1.3 with respect to any claim conducted by the Indemnifier pursuant to Clause 63.1.2 above:

- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
- (c) the Indemnifier shall not pay or settle such claims without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

63.1.4 the Beneficiary shall (without prejudice to its duty to mitigate) be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:

- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with Clause 63.1.2 above; or
- (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Business Days of the notice from the Beneficiary under Clause 63.1.1 above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Clause 63.1.3 above within twenty (20) Business Days of notice from the Beneficiary.

63.1.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may

be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Clause 63.1.2 above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Clause 63.1.3(b), then the Indemnifier shall be released from any liability under its indemnity under Clause 61.1 [Add any other relevant indemnity references] and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to Clause 63.1.2 in respect of such claim;

63.1.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Contract from being recovered from the Indemnifier); and

63.1.7 any person taking any of the steps contemplated by this Clause 63.1 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.

PART XII – TERMINATION AND COMPENSATION ON TERMINATION

64. DIRECT AGREEMENT

The provisions set out in Clauses 65 to 79 (inclusive) of this Contract are subject to the Direct Agreement.

65. TERMINATION FOR AUTHORITY DEFAULT

65.1 Termination on Authority Default

65.1.1 If an Authority Default has occurred and the Contractor wishes to terminate this Contract, the Contractor must serve a termination notice on the Authority within thirty (30) Business Days of becoming aware of the Authority Default.

65.1.2 The termination notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.

65.1.3 The Contract will terminate on the day falling thirty (30) Business Days after the date the Authority receives the termination notice, unless the Authority rectifies the Authority Default within thirty (30) Business Days of receipt of the termination notice.

66. COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT

The provisions of Part 2 (Compensation following Authority Default or Authority Voluntary Termination) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Authority Default.

67. TERMINATION FOR CONTRACTOR DEFAULT

Subject to Clause 67.1 (Rectification) if a Contractor Default has occurred and the Authority wishes to terminate the Contract it must serve a termination notice on the Contractor.

67.1 Rectification

67.1.1 The termination notice must specify:

- (a) the type and nature of Contractor Default that has occurred, giving reasonable details; and
- (b) that in the case of any Contractor Default referred to in limbs (a), (g), (h) and (r) his Contract will terminate on the day falling forty (40) Business Days after the date the Contractor receives the termination notice, unless:

- (i) in the case of any Contractor Default falling under limb (a) of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within twenty (20) Business Days after the date the Contractor receives the termination notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or
- (ii) in the case of any Contractor Default falling within limbs (a), (g), (h) and (r) rectifies the Contractor Default within forty (40) Business Days after the date the Contractor receives the termination notice; or
- (iii) in the case of any other Contractor Default (not being limbs (a), (g), (h) and (r)), this Contract will terminate on the date falling twenty (20) Business Days after the date the Contractor receives the termination notice.

67.1.2 If the Contractor either rectifies the Contractor Default within the time period specified in the termination notice, or implements the accepted rectification programme, if applicable, in accordance with its terms, the termination notice will be deemed to be revoked and the Contract will continue.

67.1.3 If:

- (a) in the case of a Contractor Default within limb (a) of the definition of that term no acceptable rectification programme has been put forward pursuant to Clause 67.1.1(b)(i) and the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice; or
- (b) in the case of a Contractor Default within limbs (g), (h) and (r) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice,

the Authority may give notice stating that the Contract will, subject to the terms of the Direct Agreement, terminate on the date falling ten (10) Business Days after the date of receipt of such notice.

67.2 If the Contractor fails to implement any rectification programme in accordance with its terms, this Contract will, subject to the terms of the

Direct Agreement, terminate on the date falling ten (10) Business Days after the date of notification to the Contractor.

67.3 [In the case of a Contractor Default within limb (s) of the definition of that term, the Contractor Default can only be rectified by the Contractor agreeing in writing to accept full responsibility for the losses that have resulted under the limit on liability being reached or exceeded and then resetting the limits on liability.]

67.4 **Persistent Breach**

67.4.1 If a particular breach during the Services Period (other than any breach for which adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) could have been made) has continued for more than fourteen (14) days or occurred more than six (6) times in any six (6) Month period then the Authority may serve a notice on the Contractor:

- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of the breach; and
- (c) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

67.4.2 If, following service of a warning notice the breach specified has continued beyond thirty (30) Business Days or recurred [three (3)] or more times in the [six (6)] Month period after the date of service, then the Authority may serve another notice (a Final Warning Notice) on the Contractor:

- (a) specifying that it is a Final Warning Notice;
- (b) stating that the breach specified has been the subject of a warning notice served within the twelve (12) Month period prior to the date of service of the Final Warning Notice; and
- (c) stating that if the breach continues or recurs for more than thirty 30 days or recurs three (3) or more times within the six (6) Month period after the date of service of the Final Warning Notice, this Contract may be terminated.

67.4.3 A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.

68. **COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT**

The provisions of Part 3 (Compensation on Termination for Contractor Default) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Contractor Default.

69. **TERMINATION ON FORCE MAJEURE**

69.1 **Obligations**

No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Contract for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to Clauses 69.5 (Unable to Agree) or 69.7 (Notice to Continue).

69.2 **Ability to Make Deductions**

Nothing in Clause 69.1 (Obligations) shall affect any entitlement to make any adjustments and/or deductions under Clause 45 (Invoicing and Payment) and in accordance with Schedule 4 (Payment Mechanism) in the period in respect of which the Force Majeure Event is subsisting.

69.3 **Notification for Force Majeure**

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

69.4 **Consultation**

As soon as practicable following such notification, the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.

69.5 **Unable to Agree**

If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one

hundred and twenty (120) Business Days, then, subject to Clause 69.6 (Consequences of Termination), either Party may terminate this Contract by giving twenty (20) Business Days written notice to the other Party.

69.6 Consequences of Termination

If this Contract is terminated under Clause 69.5 (Unable to Agree) or Clause 69.7 (Notice to Continue):

69.6.1 compensation shall be payable by the Authority in accordance with Clause 70 (Compensation on Termination for Force Majeure); and

69.6.2 the Authority may, subject to Clauses 80.4.2 and 80.4.3 (Transfer of Assets) require the Contractor to transfer its title, interest and rights in and to any Assets [(or such part of the Assets as may be required by the Authority)] to the Authority.

69.7 Notice to Continue

If the Contractor gives notice to the Authority under Clause 69.5 (Unable to Agree) that it wishes to terminate this Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority gives the Contractor such notice, then:

69.7.1 the Authority shall pay to the Contractor, the Unitary Payment and Third Party Income in accordance with paragraph 6 (Principles relating to Third Party Income) of Schedule 19 (Revision of Base Case and Custody) from the day after the date on which this Contract would have terminated under Clause 69.5 (Unable to Agree) as if the Services were being fully provided; and

69.7.2 this Contract will not terminate until expiry of written notice of at least twenty (20) Business Days from the Authority to the Contractor that it wishes this Contract to terminate.

69.8 Mitigation

The Parties shall at all times following the occurrence of a Force Majeure Event use reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

69.9 Cessation of Force Majeure Event

The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

70. COMPENSATION ON TERMINATION FOR FORCE MAJEURE

The provisions of Part 5 (Compensation on Termination for Force Majeure or Uninsurability) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Force Majeure.

71. TERMINATION ON CORRUPT GIFTS AND FRAUD

71.1 Corrupts Gifts and Fraud

The Contractor warrants that in entering into this Contract it has not committed any Prohibited Act.

71.2 Termination for Corrupt Gifts and Fraud

71.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with the provisions of this Clause 71.2 (Termination for Corrupt Gifts and Fraud).

71.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Contract by giving notice to the Contractor.

71.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

71.2.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such

notice the Contractor terminates the relevant Ancillary Document and procures the performance of such part of the Works and/or Services by another person.

71.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

71.2.6 If the Prohibited Act is committed by any other persons not specified in Clauses 71.2.2 to 71.2.5 (Termination for Corrupt Gifts and Fraud), then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Works and/or Services by another person.

71.2.7 Any notice of termination under this Clause 71 (Termination for Corrupt Gifts and Fraud) shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act;
- (c) the date on which this Contract will terminate, in accordance with the applicable provision of this Clause;
- (d) the Authority's chosen option under Clause 72 (Compensation on Termination for Corrupt Gifts and Fraud).

72. **COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD**

The provisions of Part 4 (Compensation following Corrupt Gifts and Fraud) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Corrupt Gifts and Fraud.

73. VOLUNTARY TERMINATION BY THE AUTHORITY

- 73.1 The Authority may terminate this Contract at any time on or before the Expiry Date by complying with its obligations under Clause 73.2 (Voluntary Termination by the Authority) below.
- 73.2 If the Authority wishes to terminate this Contract under this Clause 73 (Voluntary Termination by the Authority), it must give a notice to the Contractor stating:
- 73.2.1 that the Authority is terminating this Contract under this Clause 73 (Voluntary Termination by the Authority);
- 73.2.2 that this Contract will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice; and
- 73.2.3 whether the Authority has chosen to exercise its option under Clause 73.3 (Voluntary Termination by the Authority) below.
- 73.3 On termination, the Authority shall have the option to require the Contractor to transfer its rights, title and interest in and to the Assets to the Authority or as directed by the Authority.
- 73.4 This Contract will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice referred to in Clause 73.2 (Voluntary Termination by the Authority) above.

74. COMPENSATION ON VOLUNTARY TERMINATION BY THE AUTHORITY

The provisions of Part 2 (Compensation following Authority Default or Authority Voluntary Termination) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Voluntary Termination by the Authority.

75. TERMINATION FOR BREACH OF REFINANCING PROVISIONS

- 75.1 If the Contractor wilfully breaches paragraph 2 of Schedule 16 (Refinancing) then the Authority may terminate this Contract at any time on or before the Expiry Date by complying with its obligations under Clauses 75.2 to 75.4 (Termination for Breach of Refinancing Provisions) below.
- 75.2 If the Authority wishes to terminate the Contract under Clause 75.1 (Termination for Breach of Refinancing Provisions), it must give notice to the Contractor stating:
- 75.2.1 that the Authority is terminating the Contract under Clause 75.1 (Termination for Breach of Refinancing Provisions);

75.2.2 that this Contract will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice; and

75.2.3 whether the Authority has chosen to exercise its option under Clause 75.3 (Termination for Breach of Refinancing Provisions) below.

75.3 On termination, the Authority shall have the option to require the Contractor to transfer to the Authority all of its rights, title and interest in and to the Assets (or such part of the Assets as may be required by the Authority).

75.4 This Contract shall terminate on the date falling twenty (20) Business Days after the date of receipt of the notice referred to in Clause 75.1 (Termination for Breach of Refinancing Provisions) above.

76. **COMPENSATION ON TERMINATION FOR BREACH OF THE REFINANCING PROVISIONS**

The provisions of Part 6 (Compensation following Breach of the Refinancing Provisions) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Breach of the Refinancing Provisions.

77. **CALCULATION AND PAYMENT OF EARLY TERMINATION PAYMENTS**

The provisions of Part 7 (General) of Schedule 17 (Compensation on Termination) shall apply in respect of the calculation and payment of early termination payments.

78. **CONTINUING OBLIGATIONS**

78.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract:

78.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date; and

78.1.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under Clauses [10 (Land Issues), 36 (Employment Matters), 45 (Invoicing and Payment), 47 (Late Payments), Part XII (Termination and Compensation on Termination), 54 (Contractor's Records and Provision of Information), 55 (Required Insurances), 56 (Reinstatement), 57 (Uninsurability), 60 (Dispute Resolution), 61 (Indemnities), 80.9 (Transfer of Responsibility), 85 (Freedom of Information),



87 (Intellectual Property), 98 (Notices), and 100 (Governing Law and Jurisdiction)] or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequence of such termination.

PART XIII – EXPIRY OR EARLY TERMINATION

79. SURVEYS ON EXPIRY

79.1 Final Survey

79.1.1 Eighteen (18) Months prior to the Expiry Date, the Authority shall be entitled to procure the carrying out by a suitably qualified independent surveyor (not being an employee of the Authority) of a final survey of the Assets to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under Clause 26.1 (Maintenance).

79.1.2 The Authority shall notify the Contractor in writing a minimum of five (5) Business Days in advance of the date it wishes to carry out or procure the carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

79.2 Minimisation of Disruption

Where the Authority carries out the final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey. The cost of the final survey shall be borne by the Authority.

79.3 Results of Survey

If the final survey shows that the Contractor has not complied with or is not complying with its obligations under Clause 26.1 (Maintenance) the Authority shall:

79.3.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the relevant Assets to the standard it would have been in if the Contractor had complied or was complying with its obligations under Clause 26.1 (Maintenance) (the "Required Standard");

79.3.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and

79.3.3 recover the cost of the survey from the Contractor by means of a withdrawal from the Retention Fund Account or deduction from the next payment of the Unitary Payment.

79.4 **Maintenance Work**

The Contractor shall carry out such rectification and/or maintenance work notified pursuant to Clause 79.3.1 (Results of Survey) (the "Outstanding Work") in order to reach the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Works shall be at its own expense.

79.5 **Retention Fund**

If the Contractor has been notified under Clause 79.3 (Results of Survey) that rectification and/or maintenance work is required, twelve (12) Months prior to the Expiry Date the Authority shall (to the extent that the Outstanding Work has not been carried out in the interim) deduct the costs of that work as quantified by that survey referred to in Clause 79.1 (Final Survey) from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Unitary Payment and pay such amount into an interest bearing account (the "Retention Fund Account") until this Contract has expired or terminated (subject to Clause 79.6 (Costs)).

79.6 **Costs**

If and to the extent that the Contractor carries out the Outstanding Work to the Required Standard within the specified period, the Authority, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Contractor. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Contractor's costs the Contractor shall bear the balance of such costs itself.

79.7 **Failure to Carry Out Work**

If and to the extent that the Contractor fails to carry out Outstanding Work to the Authority's reasonable satisfaction within the period specified in Clause 79.3.2, the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account or, where there is insufficient funds in the Retention Fund Account, make deductions from the Unitary Payment to pay for such rectification and/or maintenance work or recover such amounts from the Contractor as a debt payable on demand.

79.8 **Balance of Fund**

If:

79.8.1 all the rectification and/or maintenance work identified by the Authority has been carried out to the Authority's reasonable satisfaction;

79.8.2 all such work has been paid for by the Contractor; and

79.8.3 no termination notice given in accordance with this Contract is outstanding,

then the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

80. **CONSEQUENCES OF TERMINATION OR EXPIRY**

80.1 **Transfer of documents etc to the Authority**

The Contractor shall within twenty (20) Business Days of the Expiry Date (or, if earlier the Termination Date) hand over to the Authority all documents (or complete and accurate copies thereof), records, books, data and/or information in the possession, custody or power of the Contractor relating to and/or touching upon the Assets, the design, installation, maintenance and/or replacement of the Assets and the carrying out of the Service other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Service after the Termination Date or the Expiry Date (as the case may be). Documents, records, books, data and/or information kept or stored on computer shall be surrendered, released and/or handed-over to the Authority by whatever means and in whatever format the Authority may reasonably require.

80.2 **Provision of Information**

The Contractor shall (subject to any condition imposed on the Contractor or any Sub-Contractor by Legislation):

80.2.1 following the service of a Termination Notice;

80.2.2 following termination of this Contract when a Termination Notice is not served;

80.2.3 at any time during the Contract Period upon request from the Authority; and

80.2.4 no later than six (6) Months and no earlier than twelve (12) Months before the Expiry Date,

supply to the Authority within twenty (20) Business Days of the relevant date or request all information reasonably required by the Authority to carry out the Service (including information on the identity, terms and conditions of employment of all employees of the Contractor or any sub-contractor (including the Sub-Contractors) employed in the provision of the Service and information relating to the Assets including the Equipment and the Facility) and the Contractor warrants that, to the best of its knowledge and belief, such information is accurate in all material respects.

80.3 Assignment of Rights, etc.

On the Expiry Date (or if earlier, on the Termination Date) the Contractor shall:

80.3.1 assign to the Authority or any person nominated by the Authority the benefit of all and any contracts or arrangements (as may be reasonably required by the Authority) it may have with any third parties (including Off-take Contracts) and shall, if for any reason it cannot assign the same, declare a trust of all its beneficial interest in the same for the benefit of the Authority; and

80.3.2 take such action in relation to Intellectual Property Rights as is required pursuant in Clause 87 (Intellectual Property),

and the Contractor hereby irrevocably and unconditionally appoints the Authority as the Contractor's lawful attorney (and to the complete exclusion of any rights that the Contractor may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this Clause 80.3 (Assignment of Rights, etc) as the attorney may think fit.

80.4 Transfer of Assets

80.4.1 Subject to Clauses 80.4.2 and 80.4.3 below and unless the Authority elects in writing to the contrary, the Contractor shall transfer its rights, title and interest in and to the Assets (or such part of the Assets as may be required by the Authority) to the Authority (or any person nominated by the Authority), on and with effect from the Expiry Date or, if earlier, the Termination Date (as the case may be) for no additional payment and in accordance with the Handback Requirements.

80.4.2 If despite using all reasonable endeavours to secure a contractual right to require a transfer, assignment or novation of:

- (a) Equipment and related contracts, agreements, guarantees, warranties, bonds and insurances as provided in Clause 30.1.3; and/or
- (b) Off-Take Contracts as provided in Clause 51.1.2 (e); and/or
- (c) Third Party Waste Contracts as provided in Clause 51.1.4 (c)

the obligation to transfer the relevant Equipment (or associated instruments), Third Party Waste Contract or Off-Take Contract in Clause 80.4.2 shall be an obligation to use reasonable endeavours to do so at the time of the termination or Expiry notwithstanding the absence of a contractual right. The Authority shall not be required to assume or discharge obligations or liabilities of the Contractor, Operating Contractor or *[insert reference to entity that acts as a counterparty to Third Party Waste and Off-Take Contracts if not the Contractor]* in respect of any Off-Take Contract or Third Party Waste Contract or matter referred to in Clause 80.4.2 (a) above that have accrued prior to the date of the transfer.

80.4.3 Where the Authority has not made an election as referred to in Clause 80.4.4 below, the Contractor's ability to transfer the Environmental Permit to a New Contractor or to the Authority is subject to the Environment Agency approving the New Contractor or the Authority as a competent operator of the Facility and accordingly the Authority shall cooperate (and shall provide for contractual obligations on the New Contractor to so cooperate) with the Contractor in liaising with the Environment Agency insofar as this is required in order to facilitate the transfer of the Environmental Permit.

80.4.4 The Authority may elect that the Contractor's obligations under Clause 80.4.1 in connection with the transfer of the Environmental Permit be effected by surrendering the same in accordance with all applicable Guidance and upon such surrender the Contractor will be deemed to have complied with its aforementioned obligations.

80.5 Duty to Co-operate

During the final six (6) Months of the Contract Period (where this expires by effluxion of time) or during the period from Service of any

Termination Notice until the Termination Date of this Contract, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Service (or any part of the Service) to the Authority or any New Contractor of such services the same or similar to the Service, and for the purposes of this Clause 80.5 the meaning of the term "co-operate" shall include:

- 80.5.1 liaising with the Authority and/or any New Contractor, and providing reasonable assistance and advice concerning the Service and their transfer to the Authority or to such New Contractor;
- 80.5.2 allowing any New Contractor access (at reasonable times and on reasonable notice) to the Facility but not so as to interfere with or impede the provision of the Service;
- 80.5.3 (without prejudice to the obligations of the Contractor pursuant to Clause 28 (Operating Manuals)) providing to the Authority and/or to any New Contractor all and any information concerning the Site(s), the Works and the Services which is reasonably required for the efficient transfer of responsibility for performance of the Project but, for the avoidance of doubt, information which is commercially sensitive to the Contractor or a Sub-Contractor shall not be provided (and for the purposes of this Clause 80.5 (Duty to Co-operate), commercially sensitive shall mean information which would if disclosed to a competitor of the Contractor or a Sub-Contractor give that competitor a competitive advantage over the Contractor or a Sub-Contractor and thereby prejudice the business of the Contractor or a Sub-Contractor but shall, to avoid doubt, not include any information referred to in paragraphs 1 and 2 of Schedule 20 (Employment and Pensions); and
- 80.5.4 transferring its rights, title and interest in and to the Assets (or such part of the Assets as may be required by the Authority) to the New Contractor with effect on and from the Termination Date or the Expiry Date.

80.6 Retendering the Service on Expiry

On or before a date falling no later than eighteen (18) Months prior to the Expiry Date, the Authority shall notify the Contractor in writing whether it wishes to retender the provision of the Service.

80.7 If the Authority wishes to retender the provision of the Service then:

- 80.7.1 the Contractor shall do all necessary acts (including entering into any contracts) to ensure that the successor contractor obtains all of its rights, title and interest in and to the Assets (or

such part of the Assets as may be required by the Authority) with effect on and from the Expiry Date or Termination Date, and

80.7.2 the Authority will bear all costs of any retendering of the Contract on expiry.

80.8 If the Authority does not wish to retender the Service then subject to Clause 80.4 (Transfer of Assets) the Assets (or such part of the Assets as may be required by the Authority) shall transfer to the Authority on the Expiry Date or Termination Date and the Contractor shall do any necessary acts (including entering into any contracts) to ensure that the Authority obtains all of its rights, title and interest in the Assets (or such part of the Assets as may be required by the Authority) with effect on and from the Expiry Date.

80.9 **Transfer of Responsibility**

The Contractor shall use all reasonable endeavours:

80.9.1 so as to facilitate the smooth transfer of responsibility for the Service to a New Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer; and

80.9.2 to transfer to the New Contractor, and shall provide all reasonable assistance to the New Contractor in relation to the transfer of, all Consents, in each case to the extent that the same are transferable by Legislation.

PART XIV – GENERAL

81. ASSIGNMENT AND SUBCONTRACTING

81.1 Restrictions on Transfer of this Contract by the Authority

The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract being:

81.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;

81.1.2 any local authority [(which shall include any Joint Waste Authority established pursuant to Section 205 of the Local Government and Public Involvement in Health Act 2007)] which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Contract and the Direct Agreement;

81.1.3 any other public body whose obligations under this Contract and the Direct Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract and the Direct Agreement.

81.2 Restriction on the Contractor

Subject to Clause 81.3 (Exception) and subject always to the provisions of the Direct Agreement, the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority.

81.3 Exception

81.3.1 The provisions of Clause 81.2 (Restriction on the Contractor) do not apply to the grant of any security for any loan made to the Contractor under the Financing Agreements.

81.3.2 Subject to Clause 81.6 (Refusal of Consent) nothing in this Contract shall prohibit the Contractor from providing or procuring the provision of the Works or the Services from a Sub-Contractor having the legal capacity, power and authority

to become a party to and perform the obligations of the relevant Sub-Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Sub-Contract under the relevant Sub-Contract and whose identity has been notified to the Authority (and who the Authority has approved in writing, such approval not to be unreasonably withheld, and to be given (or withheld) within twenty (20) Business Days of notice) prior to the appointment of such Sub-Contractor, provided that the Contractor shall remain primarily and directly liable for the Contractor's obligations under this Contract. By entering into this Contract, the Authority approves the Sub-Contractors appointed by the Contractor as at the Commencement Date.

81.4 **Contractor's Obligations**

The Contractor shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.

81.5 **Replacement of Sub-Contractors**

81.5.1 Without prejudice to the Contractor's right to terminate and/or replace any Sub-Contractor in accordance with Clause 81.3.2 on the substitution or replacement of a Sub-Contractor due to a breach or default under the relevant Sub-Contract, on not more than one occasion during the Works Period and one occasion during the Services Period (provided that during the Contract Period the Contractor may not exercise its rights under this Clause on more than two occasions), on the substitution or replacement of a defaulting Sub-Contractor, the Contractor may elect that for the purposes of Clause 67 (Termination for Contractor Default) only any:

- (a) warning notices or Final Warning Notices in respect of Clause 67.4 (Persistent Breach); and/or
- (b) [failure to accept Contract Waste at the Facility to which Non-Acceptance Deductions apply];⁶ and/or
- (c) any failure to [process Contract Waste at the Facility]; and/or
- (d) any failure to [meet the Target Landfill Tonnage]

in each case relating to the relevant Services in respect of which the Sub-Contractor is being replaced, shall be disregarded. The Contractor shall notify the Authority on or

⁶ To be consistent with Payment Mechanism triggers to termination.

before the appointment of any such substitute or replacement Sub-Contractor whether it elects for this Clause 81.5 to apply on that occasion.

81.5.2 Where an election is made pursuant to Clause 81.5.1 above then, for the purposes of Clause 67 (Termination for Contractor Default) only, no accrued Deductions [or performance points] or any warning notices or final warning notices in respect of Clause 67.4 (Persistent Breach) shall apply for the purposes of limbs [(b); (n); (o) and (p)] of the definition of Contractor Default in respect of the relevant Services during a period of [two (2)] months from the date on which those Services are first provided by the replacement or substitute Sub-Contractor. For the avoidance of doubt, Deductions may still be made from the Unitary Payment during that period pursuant to Schedule 4 (Payment Mechanism) but such Deductions shall not be included in the calculation of the [termination trigger].

81.5.3 Any election pursuant to Clause 81.5.1 shall be of no effect where the proposed relevant substituted or replaced Sub-Contract is with an Affiliate of either the Contractor or the substituted or replaced Sub-Contractor as the case may be or a Shareholder as the case may be and the Contractor has not been granted the prior written consent of the Authority to make such election (not to be unreasonably withheld or delayed).

81.6 Refusal of Consent

The Authority shall be entitled to refuse to give consent pursuant to Clause 81.3.2 where, in the Authority's reasonable opinion:

81.6.1 the proposed new or replacement Sub-Contract does not include provisions acceptable to the Authority (acting reasonably) in respect of the assignment of the sub-contract provided that reasonable provisions allowing an assignment for the purposes of a bona fide internal restructuring within the proposed sub-contractor's group of companies shall be deemed to be acceptable to the Authority where the assignee remains within the proposed replacement sub-contractor's group of companies and that if it ceases to be such a group company there are appropriate obligations requiring the assignee to assign the sub-contract to a company within the proposed sub-contractor's group of companies;

81.6.2 the proposed new or replacement Sub-Contract contains terms materially less advantageous to the Authority than the Sub-Contract or heads of terms entered into on the date of this Contract (including the quantum of breakage costs payable by the Authority on termination);

- 81.6.3 the proposed new or replacement Sub-Contractor does not have the competence, technical ability or sufficient financial standing to satisfactorily carry out the Works or Services proposing to be sub-let or sub-contracted to it;
- 81.6.4 the proposed new or replacement Sub-Contractor will not fully and properly perform all the duties, obligations or responsibilities of the Contractor to be sub-contracted to it;
- 81.6.5 the proposed new or replacement Sub-Contractor is not (so far as applicable to the proposed replacement sub-contractor's obligations under the replacement sub-contract) subject to provisions equivalent to those set out in the Payment Mechanism;
- 81.6.6 the proposed new or replacement Sub-Contractor is not being engaged in accordance with terms and conditions which are consistent with Good Industry Practice;
- 81.6.7 the proposed new or replacement Sub-Contractor does not have the legal capacity, power or authority to become a party to the replacement sub-contract;
- 81.6.8 the new or replacement Sub-Contractor will not enter into an Authority Collateral Warranty or Direct Agreement in the form set out in Schedule 25 (Form of Collateral Warranty);

save that, without prejudice to the provisions of Clause 81.5 (Replacement of Sub-Contractors) the Authority shall not be entitled to refuse to give such consent on the basis of Clause 81.6.5 if:

- a) the replacement of the Sub- Contractor has been necessitated on account of default on the part of a Sub-Contractor in circumstances where the Contractor is entitled to terminate the relevant Sub-Contract and it is reasonable to do so having regard to such circumstances; and
- b) the Contractor can demonstrate that it has used reasonable endeavours to ensure that the proposed replacement Sub-Contractor is (so far as it is applicable to the subcontracted services) subject to provisions equivalent to those set out in the Payment Mechanism.

81.7 Liability

The sub-contracting by the Contractor of any of the Works or Services shall not relieve the Contractor of any liability under this Contract for any breach of the obligations arising under this Contract, or for the actions of negligence and/or defaults by any Contractor Related Party.

The Contractor shall not be released from any of its obligations under this Contract as a result of the termination of the appointment of a Sub-Contractor for any reason.

81.8 Prohibition

The Contractor shall procure that no Sub-Contractor will sub-contract to any person any of its duties, obligations or responsibilities where one or more of the grounds set out in Clause 81.6.3, 81.6.4, 81.6.6 and 81.6.7 (Refusal of Consent) apply to the person to whom the work is proposing to be sub-contracted.

81.9 Sub-Contractors

Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.

81.10 Collateral Warranties

The Contractor shall:

81.10.1 deliver the Collateral Warranties from the [Construction Sub-Contractor, the Professional Team, Operating Sub-Contractor or any [specified] Sub-Contractor] to the Authority on the date of this Contract;

81.10.2 not engage any new or any replacement [Construction Sub-Contractor, the Professional Team, Operating Sub-Contractor or any [specified] Sub-Contractor] in connection with the Project unless such person has delivered to the Authority a duly executed agreement substantially in the form of the Collateral Warranty set out in Schedule 25 (Form of Collateral Warranty) duly executed as a deed and in each case such Collateral Warranties must be delivered to the Authority before such entity carries out or commences any of its obligations under the relevant contract or appointment.

81.11 Successors and Assigns

This Contract and the Ancillary Documents shall be binding on and shall enure to the benefit of the Contractor and the Authority and their respective successors and permitted assigns.

82. CHANGE OF OWNERSHIP

82.1 The Contractor represents and warrants to the Authority that at the date of the Contract the legal and beneficial ownership of the Contractor [and Holdco] is as set out in Schedule 6 (Contractor Warranted Data) and that [, other than any Shareholder pre-emption rights,] no arrangements

are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor [or Holdco].

82.2 The Contractor shall inform the Authority as soon as reasonably practicable (and in any event, within twenty (20) Business Days) of any Change of Ownership occurring.

82.3 The Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, request that the Contractor inform it as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the Authority's request for details of any Change of Ownership.

82.4 The Contractor's obligations under Clauses 82.1, 82.2 and 82.3 above shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiries.

82.5 The Contractor shall obtain the Authority's prior written consent (which may be given subject to conditions) to any Restricted Share Transfer of the Contractor [or Holdco] provided always that where any Restricted Share Transfer arises as a consequence of the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Contractor [or Holdco] such consent is not required unless any such Restricted Share Transfer falls within limbs (b), (c) or (d) of that definition).

82.6 No Change of Ownership may occur during the Lock In Period.

82.7 Any Change of Ownership arising as a consequence of:

82.7.1 subject to Clause 82.5, the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Contractor [or Holdco], provided that any document conferring security over any shares has been approved by the Authority (such approval not to be unreasonably withheld or delayed);

82.7.2 any change in beneficial or legal ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or

82.7.3 any transfer of shares in the Contractor [or Holdco] by [here insert name of parent company ("Parentco") of group of which Contractor or Holdco or relevant shareholder of Contractor or Holdco is a member] and/or an Affiliate of [Parentco] to [Parentco] and/or an Affiliate of [Parentco],]

shall be disregarded for the purpose of Clause 82.6 above.

- 82.8 Where, during the Lock-in Period, the holder of any shares in the Contractor [or Holdco] is an Affiliate of [Parentco] and that holder ceases to be an Affiliate of [Parentco] it shall be a breach of Clauses 82.6 if the shares held by that holder are not within 20 Business Days of that holder ceasing to be an Affiliate of [Parentco] transferred to [Parentco] or an Affiliate of [Parentco].

83. **COMPLIANCE WITH LEGISLATION**

83.1 **Legislation**

The Contractor shall perform its obligations under this Contract and any Ancillary Document in accordance with all applicable Legislation and Guidance from time to time in force subject to any consequential effect or otherwise referred to in Clause 44 (Change in Law).

83.2 **Duty to Comply with Legislation**

Without prejudice to the generality of Clause 44 (Change in Law) and Clause 83.1 (Legislation), the Contractor shall:

83.2.1 give all notices;

83.2.2 obtain and maintain in full force and effect; and

83.2.3 pay all fees required to be paid or given,

by any Legislation and/or Guidance and/or in relation to all Consents relevant to the provision of the Works and Service and as required for the proper performance of the Contractor's duties and obligations under this Contract and under any Ancillary Document.

84. **CONFIDENTIALITY**

- 84.1 The Parties agree that the provisions of this Contract and each Ancillary Document shall, subject to Clause 84.2 below, not be treated as Confidential Information and may be disclosed without restriction.

- 84.2 Clause 84.1 above shall not apply to provisions of this Contract or a Ancillary Document designated as Commercially Sensitive Information and listed in Part 1 and Part 2 of Schedule 23 (Commercially Sensitive Information) to this Contract which shall, subject to Clause 84.4 below, be kept confidential for the periods specified in Part 1 and Part 2 of Schedule 23 (Commercially Sensitive Information). The Parties agree that the provisions of the Waste Law List shall not be regarded as Commercially Sensitive Information.

- 84.3 The Parties shall keep confidential all Confidential Information received by one party from the other party relating to this Contract and Ancillary Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- 84.4 Clauses 84.2 and 84.3 shall not apply to:
- 84.4.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;
 - 84.4.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause;
 - 84.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its subcontractors;
 - 84.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
 - 84.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 84.4.6 any provision of information to the Parties' own professional advisers or insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Contractor [and/or Holdco] in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - 84.4.7 any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:

- (a) any proposed new contractor, its advisers and lenders, should the Authority decide to retender the Contract; or
- (b) any person in connection with Clause 34;

84.4.8 any registration or recording of the Consents and property registration required;

84.4.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract; or

84.4.10 any disclosure for the purpose of:

- (a) the examination and certification of the Authority's or the Contractor's accounts;
- (b) any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
- (d) (without prejudice to the generality of Clause 84.4.4 above) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither Clause 84.4.2 nor Clause 84.4.10(d) above shall permit disclosure of Confidential Information otherwise prohibited by Clause 84.3 above where that information is exempt from disclosure under section 41 of the FOIA;

84.4.11 where disclosure is permitted under Clause 84.4, other than Clauses 84.4.2, 84.4.4, 84.4.5, 84.4.8 and 84.4.10, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract;

84.4.12 any disclosure by the Authority to any WCAs.

84.5 **Audit**

For the purposes of:

84.5.1 the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts);

84.5.2 the examination and certification of the Authority's accounts;

84.5.3 an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has performed its function,

the Wales Audit Office and the Auditor General for Wales may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Contractor and/or any Sub-Contractor and may require the Contractor and/or any Sub-Contractor to produce such oral or written explanations as he considers necessary.

84.6 **Authority Consent**

The Contractor shall not make use of this Contract or any information issued or provided by, or on behalf of, the Authority in connection with this Contract otherwise than for the purpose of this Contract, except with the written consent of the Authority.

84.7 **Prior Consent**

Where the Contractor, in carrying out its obligations under this Contract, is provided with information relating to a member of the public, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has obtained the prior written consent of such person and the prior written consent of the Authority.

84.8 **Delivery to the Authority**

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to a member of the public including any documents in the possession, custody or control of a sub-contractor of any tier are delivered up to the Authority.

84.9 **Audit Commission**

The Parties acknowledge that the Audit Commission has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

84.10 **Official Secrets Act**

The provisions of this Clause 84 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

85. **FREEDOM OF INFORMATION**

85.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 85.2 to 85.7 inclusive below.

85.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within [five (5)] Business Days of receiving a Request for Information and the Contractor shall:

85.2.1 provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within [ten (10)] Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

85.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

85.3 Following notification under Clause 85.2, and up until such time as the Contractor has provided the Authority with all the Information specified in Clause 85.2.1, the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

85.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

85.3.2 whether Information is to be disclosed in response to a Request for Information; and

in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for

Information unless expressly authorised to do so by the Authority.

- 85.4 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.
- 85.5 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Business Days of receiving it.
- 85.6 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Regulations.
- 85.7 In the event of a request from the Authority pursuant to Clause 85.2.2 above, the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request, the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority's own FOIA policy from time to time.
- 85.8 The Contractor acknowledges that (notwithstanding the provisions of Clause 84 (Confidentiality)) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

85.8.1 in certain circumstances without consulting with the Contractor;

85.8.2 following consultation with the Contractor and having taken their views into account,

provided always that where Clause 85.8.1 above applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

86. PUBLIC RELATIONS AND PUBLICITY

86.1 Restriction

The Contractor shall not by itself, its employees or agents and shall procure that its Sub-Contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project without the prior written approval of the Authority.

86.2 Photographs

No facilities to photograph or film in or upon any property used in relation to the Project shall be given or permitted by the Contractor unless the Authority has given its prior written approval.

87. INTELLECTUAL PROPERTY

87.1 Licence from the Contractor to the Authority

Subject to Clauses 87.6 to 87.7, the Contractor hereby grants to the Authority, or shall procure the grant to the Authority of, a perpetual, transferable, non-exclusive, royalty free, irrevocable licence in respect of the Intellectual Property Rights (other than those assigned to the Authority pursuant to Clauses 87.3 (Assignment to the Authority) arising or used under this Contract and/or relating to the Contractor Materials (including, without limitation, the Intellectual Property Rights subsisting in the Contractor Materials, any Intellectual Property Rights used in connection with the Licensed Purposes and any other Intellectual Property Rights subsisting in computer software or in any systems developed or used by or for the Contractor identifying difficulties with the Facility and/or the delivery of the Service) to use such Intellectual Property Rights for the Licensed Purposes provided that such licence shall only take effect:

87.1.1 upon termination of this Contract or the exercise of the Senior Lender's rights of step-in under the Direct Agreement;

87.1.2 where necessary prior to the events listed in Clause 87.1.1 to the extent required by the Authority's officers and employees in carrying out their duties, for the purposes of receiving the Service and otherwise exercising its rights in accordance with this Contract; and/or

87.1.3 to enable the Authority, and/or to permit the Authority to authorise and permit a replacement contractor, to carry out services equivalent to all or any part of the Service immediately on the occurrence of any Step-In Event. Such licence shall commence on the occurrence of a Step-In Event and shall continue in force in respect of such Step-In Event until the cessation of such Step-In Event.

Any licence to use granted under this Clause 87.1 shall include, without limitation, a right to use, amend, copy, extend or modify any of the Contractor Materials. The Authority shall be permitted to grant sub-licences on the same terms, mutatis mutandis, as those of the licence granted by the Contractor to the Authority under this Clause 87.1 and the licence granted under this Clause 87.1 shall be transferable to third parties having or acquiring an interest in the Assets and/or the Service or any part thereof. Without prejudice to the foregoing, the Contractor warrants, represents and undertakes that in relation to any Intellectual Property Rights owned by a third party it shall procure the right to grant the licence set out in this Clause 87.1 or shall procure that the owner of the Intellectual Property Rights directly grants to the Authority the licence set out in Clause 87.1.

87.2 Ownership of Trade Marks and Data

The Contractor acknowledges that the Authority is or (where such rights have not yet been created) will be the proprietor of:

87.2.1 the Project Data, all copies thereof and all Intellectual Property Rights in, and to, the Project Data;

87.2.2 the Authority Project Intellectual Property; and

87.2.3 the Trade Marks and all Intellectual Property Rights in, and to, the Trade Marks.

87.3 Assignment to the Authority

The Contractor hereby assigns to the Authority with full title guarantee (free from all liens, charges, encumbrances and third party rights), as a present assignment of present and future rights, all right title and interest in and to:

87.3.1 the Project Data, all copies thereof and all Intellectual Property Rights in any Project Data in each case generated by or for the Contractor and/or any Contractor Related Party pursuant to this Contract;

87.3.2 any Intellectual Property Rights and goodwill generated by the Contractor and/or any Contractor Related Party through the use of the Trade Marks,

with the intent that they shall vest in the Authority forthwith upon the same coming into existence.

87.4 **Copies of licensed materials to be made available to the Authority**

The Contractor shall promptly deliver to the Authority at the Authority's request and in any event on termination or expiry of this Contract:

87.4.1 a copy of any Contractor Materials requested by the Authority in respect of which it is granted a licence pursuant to Clause 87.1 including a complete and up to date set of software manuals and software licences; and

87.4.2 all Project Data in the Contractor's possession, custody or control at the date of such request,

subject, in each case, to the Authority paying the Contractor's reasonable copying fees. If the Authority no longer has a licence to use any such Contractor Materials, then the Authority shall forthwith return all such materials so supplied to the Contractor, immediately following the ending of such licence.

87.5 **Further assurance by the Contractor**

The Contractor shall, if and when necessary as required by the Authority, at the Authority's expense sign, execute and do and use its reasonable endeavours to procure any third party properly executes all documents and does all acts and things as the Authority may reasonably require to fully and effectively enable the Authority to obtain the benefit of the licence (including the right to grant sub-licences) granted under Clause 87.1 and/or the rights assigned to it pursuant to Clause 87.3.

87.6 **Computer Data**

To the extent that any of the [specify relevant data] generated by or maintained on a computer or similar system, the Contractor shall:

87.6.1 use all reasonable endeavours to procure, for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software in which the Intellectual Property Rights are not owned by the Contractor to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Licensed Purposes. As an alternative, the Contractor may provide such data, materials

or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and

87.6.2 where the Contractor and/or any Contractor Related Party owns the Intellectual Property Rights in any relevant software and such software comprises customisations of other software that is generally available to be licensed (a “Commercially Available Software Package”), provided the Authority obtains a licence to use such Commercially Available Software Package, the Contractor shall provide or shall procure that the relevant Contractor Party shall provide to the Authority a copy of such customisations (in machine-executable and source code forms) together with the relevant version of the Commercially Available Software Package to which the customisations have been applied and training to those personnel nominated by the Authority; and

87.6.3 where the Contractor owns the Intellectual Property Rights in any relevant software and has the source code, enter into with the Authority and the National Computing Centre Limited an escrow agreement with respect to the same based on the then current multi-licensee escrow deposit agreement or standard single licensee escrow deposit agreement as appropriate in each case.

87.7 **Licence to use Trade Marks and Data**

The Authority hereby grants to the Contractor a non-exclusive, non-transferable, royalty free licence for the Contract Period to use and copy:

87.7.1 (subject to Clause 87.8), the Trade Marks;

87.7.2 the Project Data; and

87.7.3 any other Authority Project Intellectual Property,

solely for the purpose of carrying out the Service and/or the Contractor's obligations pursuant to this Contract in connection with the Project (the “Permitted Purposes”) and only to the extent necessary for the Permitted Purposes. The licence granted to the Contractor under this Clause 87.7 shall include the right for the Contractor to grant a sub-licence to any Contractor Related Party for the Permitted Purposes (but only to the extent necessary for the Permitted Purposes) on terms no less onerous than those set out in this Contract. The Contractor shall procure that each such Contractor Related

Party shall only use and copy such items as permitted by the licence set out in this Clause 87.7.

87.8 Directions of Authority

The Contractor shall observe, and shall procure that all Contractor Related Parties observe, all reasonable directions given by the Authority from time to time in relation to the permitted form and manner of use and representation of the Trade Marks.

87.9 Indemnity in favour of the Authority

The Contractor shall indemnify the Authority and keep the Authority fully and effectively indemnified against any and all costs, claims, losses, liabilities and expenses which the Authority may sustain or incur, or which may be brought or established against the Authority or by any of its permitted sub-licensees, and which in any case arise out of or in relation to or by reason of any claim or allegation that:

- 87.9.1 the use or reproduction, modification, merger and adaptation by the Authority or by its permitted sub-licensees of the Contractor Materials, in accordance with the terms of the licence granted under Clause 87.1, infringes any Intellectual Property Rights of any third party; and/or
- 87.9.2 the maintenance, management, provision, carrying out, replacement and operation of the Apparatus and/or the Service in accordance with the terms of the licence granted under Clause 87.1, infringes any Intellectual Property Rights of any third party; and/or
- 87.9.3 the maintenance, management, provision, carrying out, replacement and operation of services analogous to the Service but provided by a third party in accordance with the terms of the licence granted under Clause 87.1, infringes any Intellectual Property Rights of any third party; and/or
- 87.9.4 the receipt of the Service and/or any services analogous to the Service but provided by a third party infringes any Intellectual Property Rights of any third party,

whether, in each case, such costs, claims, liabilities and expenses are incurred directly by the Authority or as a result, without limitation, of any indemnity given at any time by the Authority to any sub-licensee upon the same terms mutatis mutandis as this Clause 87.9.

87.10 **Materials which come into being in the future**

Where any of the Contractor Materials referred to in this Clause 87 has yet to come into existence, the provisions of this Clause 87 shall apply to such Contractor Materials immediately upon the same coming into existence.

87.11 **Consequences of Termination/Expiry**

Upon expiry or earlier termination of this Contract (howsoever caused):

87.11.1 the licence granted by the Authority to the Contractor pursuant to Clause 87.7 shall cease to have effect; and

87.11.2 the Contractor shall cease use of the Project Data, the Trade Marks, and all other Authority Project Intellectual Property and return to the Authority or, at the Authority's request, destroy all copies (whether hard copy or electronic) of or embodying any of the Project Data and/or the Authority Project Intellectual Property (the "Authority Materials") in the power, possession or control of the Contractor or any Contractor Related Party and shall, at the request of the Authority, remove all references to the Trade Marks from any items, livery, vehicles, buildings, letterhead, systems or documents in the power, possession or control of the Contractor or any Contractor Related Party. For this purpose, the Parties shall (acting reasonably) agree the time and manner of any required action and (in default of such agreement within twenty (20) Business Days after the Expiry Date or the Termination Date (as the case may be)), the Contractor shall permit the Authority to enter on to the premises at any reasonable time or times, (save in an Emergency), where the Authority Materials are held to identify and remove the Authority Materials.

88. **QUALITY MANAGEMENT SYSTEMS**

88.1 The Contractor shall procure that all aspects of the Works and the Services are the subject of, and are conducted in accordance with the approved quality assurance systems as provided for in the Authority's Requirements.

89. **DATA PROTECTION**

89.1 **General**

89.1.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification

under the DPA covering the data processing to be performed in connection with the Project.

89.1.2 The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Project and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

89.2 No Disclosure

89.2.1 The Contractor shall not disclose Personal Data to any third parties other than:

- (a) to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works and/or the Services; or
- (b) to the extent required under a court order,

provided that disclosure under Clause 89.2.1(a) (No Disclosure) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 89.2.1 (No Disclosure) and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data which either the Contractor or a Sub-Contractor is required to make under Clause 89.2.1(b) (No Disclosure) immediately upon becoming aware of such a requirement.

89.2.2 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

89.2.3 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub-Contractors referred to in Clause 89.2.2 (No Disclosure). Within twenty (20) Business Days of such a request, the Contractor shall supply or procure the supply of written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

89.3 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach

of this Clause 89 (Data Protection) by the Contractor and/or any act or omission of any Sub-Contractor.

90. **CONSENTS AND APPROVALS**

90.1 **Good Faith and Diligent Pursuance of Obligations**

Each Party shall and shall procure that any representative(s) appointed upon its behalf pursuant to this Contract shall without prejudice to any otherwise unqualified right of the Authority act in good faith and deal in a timely and diligent manner in relation to the carrying of any service, duty or obligation under this Contract and any Ancillary Document.

90.2 **Contractor Obligations**

Neither the giving of any approval, inspection, knowledge of the terms of any contract or document nor the review of any document or course of action by, or on behalf of, the Authority or any person authorised by the Authority pursuant to this Contract and any Ancillary Document shall relieve the Contractor of any of its obligations under this Contract or any Ancillary Document.

90.3 **Examination by the Authority or its Representatives**

Without limitation to Clause 90.2, no examination or lack of examination by the Authority or any person authorised on its behalf, of the Contractor's drawings, documents, calculations or details relating to the design, construction, completion, commissioning and testing of the Facility or the management or provision of the Service or otherwise nor any comment, rejection or approval expressed by such person in regard thereto, either with or without modifications, shall in any respect relieve or absolve the Contractor from any obligations or liability under or in connection with this Contract and any Ancillary Document.

91. **COSTS AND EXPENSES**

Except where expressed otherwise, each party shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation, execution and completion of this Contract and the Ancillary Documents.

92. **ECONOMIC AND MONETARY UNION**

92.1 **Continuity of Contracts**

Without prejudice to Article 3 of Regulation (EC) No. 103/97 of 15 June 1997 of the Authority of Ministers of the European Union, the introduction of the euro in the United Kingdom shall not, of itself:

92.1.1 have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under this Contract or any Ancillary Document; or

92.1.2 give any party to this Contract or any Ancillary Document the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under this Contract or any Ancillary Document.

92.2 **Sterling References**

If, following the introduction of the euro, Sterling is substituted by the euro as the currency of the United Kingdom, then all references in this Contract and any Ancillary Document to Sterling or £ shall be construed as references to euro or € (as the case may be), at the agreed Sterling-euro conversion rate on the date of that substitution. PROVIDED that the provisions of this Clause 92 shall not apply during any transitional period when Sterling is a sub-unit of the euro, unless the Parties otherwise agree.

92.3 **Consequential Changes**

Without prejudice to Clauses 92.1 and 92.2 the Parties shall negotiate in good faith in order to agree any amendments to this Contract and/or any Ancillary Document which the Authority determines to be reasonably necessary as a result of the introduction of the euro (and, if relevant, so as to ensure that the terms of this Contract and any Ancillary Document reflect then current market practices and conventions relating to the introduction of the euro).

93. **WAIVER**

93.1 **Waiver to be Written**

No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

93.2 **Extent of Waiver**

No waiver under Clause 93.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

94. NO AGENCY

94.1 No Partnership or Employment

Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

94.2 Power to Bind

Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having the authority or power to bind the Authority in any way.

94.3 Deemed Knowledge

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Contractor Related Party.

95. ENTIRE AGREEMENT

95.1 Prior Representations etc Superseded

Except where expressly provided in this Contract, this Contract 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 Contract.

95.2 Acknowledgements

Each of the Parties acknowledges that:

95.2.1 subject to Clause 5.4 (Contractor Warranty), it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

95.2.2 this Clause shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract which were induced by fraud, for which the remedies available

shall be all those available under the law governing this Contract.

96. SEVERABILITY

If any term, condition or provision of this Contract 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 Contract.

97. COUNTERPARTS

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

98. NOTICES

98.1 Form and Service of Notices

All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post, facsimile or by hand, or leaving the same at:

Contractor	Authority
[INSERT NAME]	[INSERT NAME]
[INSERT ADDRESS]	[INSERT ADDRESS]
[INSERT FAX NUMBER]	[INSERT FAX NUMBER]

98.2 Change of Details

Either Party to this Contract (and either the Authority's Representative or the Contractor's Representative) may change its nominated address or facsimile number by prior notice to the other Party.

98.3 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:

98.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

98.3.2 by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

99. **RIGHTS OF THIRD PARTIES EXCLUSION**

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Contract except Schedule 20, paragraphs 3.A.1, 3.A.2, 3.A.6, 3.A.7 [and 3.A.14], which shall be enforceable by the Transferring Employees [and by the Transferring Original Employees].

100. **GOVERNING LAW AND JURISDICTION**

The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Schedule 22 (Dispute Resolution Procedure), the Parties submit to the exclusive jurisdiction of the Courts of England and Wales.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SCHEDULE 1

SCHEDULE 1 (DEFINITIONS)

1999 Act	means the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007);
Abandon	means not to carry out any Works contemplated by the Construction Programme at [a Site] for twenty (20) consecutive Business Days or during sixty (60) Business Days (whether consecutive or not) in any Contract Year;
Accepted	<p>means that the Contractor or any Contractor Related Party has accepted Contract Waste delivered by or on behalf of the Authority at the Delivery Point [or the Contingent Delivery Point in accordance with the terms of the Contingency Plan];</p> <p>Ad Hoc Contract Waste which cannot be accepted at the Delivery Point [or the Contingency Delivery Point in accordance with the terms of the Contingency Plan] shall be nevertheless considered Accepted if the Contractor arranges for a third party to accept the Ad Hoc Contract Waste and the third party does accept such Ad Hoc Contract Waste;</p> <p>(and the terms Accept and Contract Waste Accepted shall be construed accordingly);</p>
Acceptance Test Certificate	means a certificate issued by the Independent Certifier that the Acceptance Tests have been satisfied;
Acceptance Longstop Date	means such date that is twelve (12) Months after the Planned Services Commencement Date;
Acceptance Tests	means the Tests so described in Schedule 11 (Tests);
Accrued Rights	has the meaning given to it in paragraph [10.8] (Authority Rights) of Schedule 24 (Direct Agreement);
Accrued Rights Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Actual Landfill Tonnage	has the meaning given to it in Schedule 4

(Payment Mechanism);

Actual Relevant Insurance Cost

has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);

Ad Hoc Waste

means those categories or components of Contract Waste which are either:

- (i) received separately by the Contractor; or
- (ii) segregated from delivered mixed Loads by the Contractor in accordance with the Waste Acceptance Protocol

and require in accordance with all or any of Good Industry Practice, Consents, Guidance, Legislation and the terms of this Contract segregation from and different treatment or landfill from other Contract Waste;

Additional Permitted Borrowing

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

- (i) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (ii) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under paragraph 11.4 of the Direct Agreement as it applies to such Additional Permitted Borrowing;

and provided further that any such excess amount of principal which is (i) invested as part of any Qualifying Variation or (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the date of this Contract, disregarding any subsequent amendment or (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to Clause 7.4.2(a), shall not be



	counted as Additional Permitted Borrowing;
Additional Permitted Borrowings Limit	<p>means an amount equal to:</p> <ul style="list-style-type: none"> (a) ten percent (10%) of the Original Senior Commitment, for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced to fifty percent (50%) or less of the Original Senior Commitment, and thereafter; (b) the higher of: <ul style="list-style-type: none"> (i) five percent (5%) of the Original Senior Commitment; and (ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in (a);
Adjoining Owners	means all owners and occupiers of Adjoining Property;
Adjoining Property	means any land and/or property adjoining or in the neighbourhood of the Site(s) and each and every part thereof including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;
Adjudicator	has the meaning given to it in paragraph 3 (Adjudication), of Schedule 22 (Dispute Resolution Procedure);
Adjusted Amount	has the meaning given to it in Clause 58.1.4;
Adjusted Estimated Fair Value of the Contract	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Adjusted Highest Compliant Tender Price	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Administrative Area	means the area defined by the map attached at Schedule [];

Admission Body	has the meaning given to it in Schedule 20 (Employment and Pensions);
Adverse Rights	means all (if any) rights of light and air and other rights and easements whatever (including any rights and easements in respect of Conduits) and all (if any) other restrictions enjoyed over the Site(s) by any Adjoining Property or Adjoining Owner;
Affected Party	has the meaning given to it in the definition of Force Majeure Event in this Schedule 1 (Definitions);
Affiliate	means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act, save that for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
Agent	means [] in its capacity as agent for the Senior Lenders under the Senior Financing Agreements;
Agreed Abatement	has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);
Agreed Form	means in relation to any document, the form of the document agreed between the Parties and initialled by or on behalf of the Parties for the purpose of identification;
Alterations	has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);
Ancillary Documents	means those documents to which the Authority is not a party to and which are listed in Part 1 (Ancillary Documents) of Schedule 5 (Ancillary Documents and Financing Agreements) as they may be amended or replaced from time to time;
Ancillary Rights	means: <ul style="list-style-type: none"> (a) a non-exclusive licence to enter and remain upon those parts of the Sites that the Contractor and/or any Contractor



Related Party requires access to in order to carry out the Works;

- (b) such rights of access to and egress from the Sites as are necessary for the Contractor and any Contractor Related Party to perform their obligations and exercise their rights under this Contract and in particular for the purposes of implementing the Works including those highlighted [] on the Site Plans, provided that such rights may be varied by the Authority and such variation will be deemed to be a Medium Value Change;
- (c) rights of free and uninterrupted passage and running of water soil gas electricity telephone and other services including those highlighted [] on the Site Plans provided that such rights of passage may be varied by the Authority to such alternative routes as the Authority may reasonably specify from time to time; and
- (d) the right where necessary to inspect repair maintain or renew the Services Media and the right (at the cost of the Contractor) to connect into the Services Media and to construct such new Services Media as may from time to time be necessary to serve the Sites provided that the prior written consent of the Authority is obtained (such consent not to be unreasonably withheld or delayed),

provided that:

- (e) the rights are granted insofar as the Authority is capable of granting them and such rights are subject to the Disclosed Title Matters; and
- (f) the rights shall not in any circumstances entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Sites (save as may be required by the Contractor and approved by the Authority (such approval not to be unreasonably

withheld or delayed) in order to comply with relevant health and safety legislation) on a temporary basis;

APB Distribution	means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;
Appeal Contingency	has the meaning given to it in Schedule 26 (Planning);
Appointed Representative	has the meaning given to it in Schedule 24 (Direct Agreement);
Approval Criteria	has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);
Architectural Enhancement	has the meaning given to it in Schedule 26 (Planning);
As Built Drawings	means drawings, technical information, models, operation and maintenance manuals to encompass the method of construction, manufacture, operation and maintenance of each element of a Facility in sufficient detail to allow a competent person to understand all material elements of the construction of the Facility and to maintain, dismantle, reassemble, adjust and operate all plant and equipment forming the same;
Assets	<p>means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Contract including:</p> <ul style="list-style-type: none"> (a) any land or buildings (including the Facility); (b) any plant, machinery or equipment; (c) any books and records (including operating and maintenance manuals, the Operating Manual, health and safety manuals, documents maintained in accordance with the Waste (Wales) Measure 2010 as built drawings and other



know how);

- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights (including the novation of Off Take and Third Party Waste Contracts);
- (f) any intellectual property rights;
- (g) subject to clause 80.7 any Consents; and
- (h) where termination occurs pursuant to paragraph 3.5 of Schedule 26 (Planning) [or paragraph 11.1.5 of Schedule 27 (Approach to Permit Risk)], all documents, letters and instructions and enclosures to and opinions of Leading Counsel or the Contractor's consultants relating to any Planning Application, Environmental Permit, Planning Permission, Proceedings or Permit Proceedings

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

Assigned Employees

has the meaning given to it in paragraph 2.5.1(a) (Retendering - Employment Obligations) of Schedule 20 (Employment and Pensions);

Associated Company

means in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include [Holdco and] each of the Shareholders save that for the purposes of determining whether one entity is an Associated Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

Authority Change

has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);

Authority Change Notice

has the meaning given to it in Part 1 (General Provisions) of Schedule 21 (Change Protocol);



Authority Construction Collateral Warranty	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Construction Liability Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Construction Liquidated Damages Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Default	means one of the following events: <ul style="list-style-type: none"> (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Contractor [and/or shares of Holdco] by the Authority or other Relevant Authority; (b) a failure by the Authority to make payment of any amount of money exceeding £[] (Indexed) that is due and payable by the Authority under this Contract within twenty (20) Business Days of service of a formal written demand by the Contractor, where that amount fell due and payable [two (2)] (or more) Months prior to the date of service of the written demand; (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of two (2) Months; or (d) a breach by the Authority of Clause 81.1 (Restrictions on Transfer of this Contract by the Authority) occurs;
Authority Default Termination Sum	means the amount payable in accordance with Clause 66 (Compensation on Termination for Authority Default);
Authority Existing Employee	has the meaning given to it in Schedule 20 (Employment and Pensions);
Authority Initial Confirmation	has the meaning given in paragraph 2.3 of Part 4 (High Value Changes) of Schedule 21 (Change

	Protocol));
Authority Liability Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Materials	shall have the meaning given to it in Clause 87.11.2 (Consequences of Termination/Expiry);
Authority Operating Liability Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Operating Life Cycle Works Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority Operating Termination Cap	has the meaning given to it in Schedule 24 (Direct Agreement);
Authority's Policies	means the policies of the Authority referred to in Schedule 13 (Authority's Policies);
Authority Property	has the meaning given to it in Clause 61.1.2 (Indemnities);
Authority Project Intellectual Property	means all Intellectual Property Rights owned by the Authority and subsisting in any Disclosed Data, the Project Data, the Trade Marks and/or any other materials, information documents data and/or know how, provided to or made available by the Authority to any Contractor Related Party at any time during the Contract Period;
Authority Related Party	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) an officer, servant, employee or agent of the Authority acting in that capacity; (b) any contractor or sub-contractor of the Authority of any tier (including for the avoidance of doubt any Partner) and their directors, officers, servants, employees or agents acting in that capacity; <p>but excluding in any case the Contractor and any Contractor Related Parties;</p>
Authority's Representative	means the representative appointed by the Authority pursuant to Clause 9.1 (Representatives of the Authority);
Authority's	means the requirements of the Authority in respect

Requirements	of the Project set out in Schedule 2 (Authority's Requirements);
Authority Stage 1 Confirmation	has the meaning given in paragraph 4.2(a) of Schedule 21 (Change Protocol) Part 4 (High Value Change);
Authority Stage 2 Confirmation	has the meaning given in paragraph 7.1(a) of Schedule 21 (Change Protocol) Part 4 (High Value Change);
Barred Lists	means the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006;
Barring Scheme	[REDACTED];
Base Case	means the Financial Model agreed between the parties prior to the date of this Contract (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Unitary Charge. When Base Case is used in conjunction with discount rates, the reference to Base Case shall be the Base Case with cash flow in constant prices when real discount rates are used and in current prices if nominal discount rates are used;
Base Case Change Date	has the meaning given to it in Schedule 19 (Revision Of Base Case And Custody);
Base Case Equity IRR	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Base Cost	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Base Relevant Insurance Costs	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Base Relevant Insurance Reduction	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Base Senior Debt Termination Amount	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);

Benchmarking Process	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Benchmarking Report	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
Business Interruption Cover	has the meaning given to it in Schedule 10 (Required Insurances);
Capital Expenditure	means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
CDM Regulations	means the Construction (Design and Management) Regulations 2007;
Certification Requirements	means the requirements which must be satisfied for a contract to be a certified contract for the purposes of the Local Government (Contracts) Act 1997;
Cessation Date	has the meaning given to it in Schedule 20 (Employment and Pensions);
Challenge Period	has the meaning given to it in Schedule 26 (Planning) and;
Change	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Change Notice	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Change Protocol	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Change in Costs	means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or any Sub-Contractors (without double counting), including, as relevant, the following:



- (a) the costs of continued employment of, or making redundant, staff who are no longer required,
- (b) the costs of employing additional staff,
- (c) reasonable professional fees,
- (d) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Charge,
- (e) the effects on costs of implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement,
- (f) operating costs, or life cycle, maintenance or replacement costs,
- (g) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible),
- (h) the costs required to ensure continued compliance with the Financing Agreements,
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy, and
- (j) Losses, including reasonable legal expenses on an indemnity basis;

provided that the Change in Costs shall only include any breakage or other costs associated with a Third Party Waste Contract or Off Take Contract to the extent the Contractor has complied with the provisions of Clause 51 (Third Party Waste and Off Take Contracts).

Change in Law

means the coming into effect after the date of this Contract of:

- (a) Legislation, other than any Legislation which on the date of this Contract has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Communities;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

Change in Project Costs

has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Change in Revenue

means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor and/or [any Sub-Contractor] including subject to Clause 50.2 (Third Party Income) (without double counting);

Change of Ownership

means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor [or Holdco] (including the control over the exercise of voting rights conferred on those shares or



the control over the right to appoint or remove directors or the rights to dividends); and/or

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

Code has the meaning given to it in Schedule 20 (Employment and Pensions);

Code Dispute Resolution Procedure means the document set out in Appendix 3 to Schedule 20 (Employment and Pensions);

Code Obligations has the meaning given to it in Schedule 20 (Employment and Pensions);

Collateral Warranty means a collateral warranty executed as a deed between the Authority and either (as the case may be) the Construction Sub-Contractor, a member of the Professional Team, or the Operating Sub-Contractor [specify any other relevant sub-contractor/professional] in the relevant form as set out in Schedule 25 (Form of Collateral Warranty);

Commencement Date means the date of this Contract;

Commercial Waste has the meaning given in Section 75(7) of the EPA;

Commercially Sensitive Information means the sub set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 23 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 23 (Commercially Sensitive Information);

Commissioning Payment means the amount calculated in accordance with paragraph 13 of Schedule 4 (Payment Mechanism);

Commissioning Period means the period between the Readiness Date and the Services Commencement Date;

Commissioning Requirements means the requirements for the commissioning contained in [Part A (Commissioning Requirements)] of Schedule 23 (Authority's

Requirements);

Committed Stand by Facility

means a standby facility committed to by the Senior Lenders at the date of this Contract or, without prejudice to Clause 7.4.2 (a), as the same may be amended as allowed by Clause 7.4.1 for the purposes of funding any unforeseen cost overruns, increased expenses or loss of revenues to be incurred by the Contractor;

Companies Act

means the Companies Act 2006;

Comparable Market

has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Compensation Date

has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);

Compensation Event

means in respect of the period from the date of this Contract until the Services Commencement Date a breach by the Authority of any of its obligations under this Contract;

Compensation Event TPI Adjustment

has the meaning given to it in Schedule 19 (Revision of Base Case and Custody);

Compensation Regulations

has the meaning given to it in Schedule 20 (Employment and Pensions);

Compliant Tender

has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);

Compliant Tenderer

has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);

Conduits

means all pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus and includes any fixtures, louvers, cowls and any other ancillary apparatus;

Confidential Information

means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade



secrets, Intellectual Property Rights, know-how, of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and

(b) Commercially Sensitive Information;

Confirmation Notice

has the meaning given to it in Part 1 (Definitions) of Schedule 21 Part 1 (Change Protocol);

Consents

means all permissions, consents, approvals, certificates, permits, licenses and authorisations of a Relevant Authority required for the performance of any of the Contractor's obligations under this Contract including for the avoidance of doubt:

(a) all Environmental Permits;

(b) all Planning Permissions; and

(c) all Planning Obligations;

Consents List

has the meaning given to it in Clause 12.5.1;

Construction Accrued Rights Liquidated Damages Value

has the meaning given to it in Schedule 24 (Direct Agreement);

Construction Accrued Rights Value

has the meaning given to it in Schedule 24 (Direct Agreement);

Construction/Operating Sub-Contract

has the meaning given to it in Schedule 24 (Direct Agreement);

Construction Panel

has the meaning given to it in paragraph 4 (Identity of Adjudicator) of Schedule 22 (Dispute Resolution Procedure);

Construction Period Insurance

has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);

Construction Programme

means the programme for the carrying out of the Works as contained in Part 3 (Construction Programme) of Schedule 3 (Contractor's Proposals);

Construction Sub-Contract	means, subject to Clause 7 (Amendment of Documents) the Construction Sub-Contract(s) in the Agreed Form between the Contractor and the Construction Sub-Contractor relating to the Works;
Construction Sub-Contract Dispute	has the meaning given to it in paragraph 17.1 (Similar Disputes) of Schedule 22 (Dispute Resolution Procedure);
Construction Sub-Contractor	means [INSERT NAME(S) AND COMPANY REGISTERED NUMBER(S)], or such other Sub-Contractor(s) as the Contractor may, subject to Clause 81 (Assignment and Sub-Contracting) appoint to carry out the Works;
Construction Sub-Contractor Default	has the meaning given to it in the Construction Sub-Contract;
Construction Sub-Contractor's Liability Cap	has the meaning given to it in the Construction Sub-Contract;
Construction Sub-Contractor's Liquidated Damages Cap	has the meaning given to it in the Construction Sub-Contract;
Contamination	means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);
Contingency Plans	means the contingency arrangements forming part of the Contractor's Proposals;
Contingent Funding Liabilities	<p>means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of the:</p> <ul style="list-style-type: none"> (a) Shareholders; and/or (b) the Subordinated Lender; and/or (c) any other parties providing equity or subordinated debt; <p>owed under any of the Finance Documents to the Contractor[, Holdco] and/or the Senior Lenders together with, without double counting, any</p>

security (by way of letter of credit, guarantee or otherwise) for those liabilities;

Contract means this agreement (main body) executed by the Parties and all its Schedules and annexures thereto;

Contract Month means each successive calendar Month in a Contract Year;

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

Contract Waste means all Municipal Waste arising from time to time in the Partnership's Administrative Area and delivered to the Contractor by or on behalf of the Authority. For the avoidance of doubt, Contract Waste does not include Third Party Waste and Substitute Waste;

Contract Waste Shortfall has the meaning given in Clause 25.2.3(b);

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

- (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the day immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;

Contractor Change has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Contractor Change Notice has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Contractor Default means any one or more of the following events:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services;



- (b) a Persistent Breach occurs;
- (c) a court makes an order that the Contractor [or Holdco] be wound up or a resolution for a voluntary winding-up of the Contractor [or Holdco] is passed;
- (d) any receiver or receiver manager in respect of the Contractor [or Holdco] is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor [or Holdco] that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor [or Holdco];
- (f) an administration order is made or an administrator is appointed in respect of the Contractor [or Holdco];
- (g) a breach of 81.2 (Restriction on the Contractor) or clause occurs;
- (h) a breach of Clause 82 (Change of Ownership) occurs;
- (i) the Contractor Abandons the Works at any time;
- (j) failure to submit a Planning Application by the [];
- (k) failure to commence the Works by such date as is [] Months after the Planned Works Commencement Date;
- (l) the Readiness Certificate for the Facility has not been issued by the Readiness Longstop Date;
- (m) the Acceptance Test Certificate for the Facility has not been issued by the Acceptance Longstop Date;

- (n) if the tonnage to which Non-Acceptance Deductions applies is equal to or exceeds:
 - (i) [] tonnes in any consecutive period of [three (3) Months]; or
 - (ii) [] tonnes in any [] Month period;
- (o) if the Contractor fails to process at least []% of Contract Waste at the Facility:
 - (i) in any consecutive period of [six (6) Months]; or
 - (ii) more than [] Months in any [] Month period; or
- (p) if Actual Landfill Tonnage is equal to or greater than [X]% of Target Landfill Tonnage:
 - (i) for more than [] Months in any consecutive period of [] Months; or
 - (ii) more than [] Months in any [] Month period; or
- (q) [Other Payment Mechanism and Performance Framework triggers for discussion during dialogue.]
- (r) subject to Clause 57 (Uninsurability) a breach by the Contractor of its obligations to take out and maintain any of the Required Insurances;
- [(s) subject to the limit on liability pursuant to Clause 61.3.4 (Breach of Statutory Duty) reach or exceed 75% (seventy five percent) of the limit on liability imposed under that clause;]

Contractor Initial Response

has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);

Contractor Materials	means all or any programmes, software, code, databases, data materials, works (whether literary, artistic or otherwise), know how and/or information which are used from time to time by the Contractor and/or any Contractor Related Party or are otherwise relevant to the maintenance, management, provision, replacement, carrying out and operation of the relevant Facility and/or the Service;
Contractor Related Party	means the Contractor's agents and Sub-Contractors (including without limitation the Construction Sub-Contractor and the Operating Sub-Contractor) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any person on or at the Site(s) at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party);
Contractor Response	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Contractor Stage 1 Response	has the meaning given to it in paragraph 3.1 (Authority Stage 1 Confirmation) of Schedule 21 (Change Protocol) Part 4 (High Value Changes);
Contractor Stage 2 Response	has the meaning given to it in paragraph 5.1 (Agreement of Contractor Stage 2 Response) of Schedule 21 (Change Protocol) Part 4 (High Value Changes);
Contractor's Proposals	means the proposals of the Contractor to deliver the Project to satisfy the Authority's Requirements, as set out in Schedule 3 (Contractor's Proposals);
Contractor's Representative	means the person to be appointed by the Contractor pursuant to Clause 9.2 (Representatives of the Contractor);

Contractor's Share

means the percentage figure corresponding to that part of the Cumulative Capital Expenditure at the relevant time, as shown in the first column of the table set out below:

Expenditure ⁷	Contractor's Share ⁸
£ 0 - £[a] million (inclusive)	100%
£[a] million to £[b] million (inclusive)	80%
£[b] million to £[c] million (inclusive)	60%
£[c] million to £[d] million (inclusive)	40%
£[d] million to £[e] million (inclusive)	20%
£[e] million to £[f] million (inclusive)	10%
£[f] million and above	0%

Contractor Warranted Data

means the information relating to the Contractor and its Affiliates contained Schedule 6 (Contractor Warranted Data);

Contract Year

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

- (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the day immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last day of the Contract Period and ending on that day;

⁷ These figures are to be bid as part of the bid submission. In each case they are not to be indexed.

⁸ These figures are illustrative only and it is open for the bidders to propose value for money alternatives.

Convictions	means, other than in relation to minor road-traffic offences, any previous prosecutions, convictions cautions and binding over orders (but excluding any spent convictions);
COSHH	Means Control of Substances Hazardous to Health Regulations 2002;
Criminal Records Bureau	means the bureau established pursuant to Part V of the Police Act 1997;
Cumulative Capital Expenditure	means the aggregate of: <ul style="list-style-type: none"> (a) all Capital Expenditure which has been incurred as a result of each General Change in Law that has come into effect during the Services Period; and (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under Clause 44 (Change in Law);
Custodian	has the meaning given to it in Schedule 19 (Revision Of Base Case And Custody);
Custody Agreement	has the meaning given to it in Schedule 19 (Revision Of Base Case And Custody);
Deductions	means all negative adjustments to the [Monthly Payment or Unitary Charge] as provided for in Schedule 4;
Deemed New Contract	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Deemed Refusal	has the meaning given to it in Schedule 26 (Planning);
Default Interest	means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;
Delivery Point	means the delivery point to which the Partners (or its or their sub-contractors) will deliver Contract Waste as set out in the Waste Acceptance Plans;

Design Proposals	means the Contractor's design for the Facility as set out in Schedule 29 (Design Proposals);
Design Data	means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Project in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Works and/or the Services or the performance of the Contractor's obligations under this Contract;
Direct Agreement	means the direct agreement dated on or about the date of this Contract and made between the Authority, the Contractor and the Agent in the form set out in Schedule 24 (Direct Agreement);
Direct Losses	means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses
Directive	has the meaning given to it in Schedule 20 (Employment and Pensions);
Disclosed Data	<p>means information relating to the Project disclosed to the Contractor and its Shareholders and advisers including:</p> <ul style="list-style-type: none"> (a) the ISDS; (b) the Descriptive Document issued by the Authority on 18 June 2010 in relation to the Project; and (c) the data room accessible via the portal at www.etenderwales.bravosolution.co.uk;
Discriminatory Change in Law	<p>means a Change in Law, the terms of which apply expressly to:</p> <ul style="list-style-type: none"> (a) the Project and not to similar projects procured under the PFI; (b) the Contractor and not to other persons; and/or

	(c) PFI Contractors and not to other persons;
Disputed Amount	has the meaning given to it in Clause 45.5.2 (Disputed Amounts);
Dispute Resolution Procedure	means the procedure for the resolution of disputes set out in Schedule 22 (Dispute Resolution Procedure);
Distribution	means: <ul style="list-style-type: none"> (a) whether in cash or in kind any: <ul style="list-style-type: none"> (i) dividend or other distribution in respect of share capital; (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital; (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise); (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms, or (b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;
DPA	means the Data Protection Act 1998;

EEA	has the meaning given to it in Schedule 16 (Refinancing);
Eligible Employees	has the meaning given to it in Schedule 20 (Employment and Pensions);
Emergency	means an event causing or, in the reasonable opinion of a party, threatening to cause death or serious injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services (and whether or not an Emergency has arisen shall be determined in the case of any dispute by the Authority acting reasonably);
Employee Costs	has the meaning given to it in Schedule 20 (Employment and Pensions);
Employee Liability Information	has the meaning given to it in Schedule 20 (Employment and Pensions);
Enforced Closure	means that a Facility is required by Legislation and/or any Environmental Permit to be closed to the reception of Waste;
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Environmental Permitting Regulations	means the Environmental and Permitting (England and Wales) Regulations 2007 SI 2007 No. 3538;
Environmental Permit	means the permit required and issued by the Permitting Authority pursuant to the Environmental Permitting Regulations in respect of the Facility;
EPA	means the Environmental Protection Act 1990;
Equal Pay Legislation	has the meaning given to it in Schedule 20 (Employment and Pensions);
Equal Pay Ruling	has the meaning given to it in Schedule 20

(Employment and Pensions);

Equipment	means all moveable plant and equipment to be provided and maintained by the Contractor in order to comply with its obligations under this Contract;
Equipment List	means the list detailing all Equipment prepared and updated in accordance with Clause 30 (Equipment);
Equity IRR	has the meaning given to it in Schedule 16 (Refinancing);
Estimated Change in Project Costs	means in respect of any Relevant Event the aggregate of any estimated Change in Costs and/or (without double counting) Change in Revenue (as relevant);
Estimated Fair Value of the Contract	has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);
Exceptional Cost	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Exceptional Saving	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Excusing Cause	means those events listed in Clause 41.2 (Relief from Deductions));
Executive	shall have the meaning given in the CDM Regulations;
Exempt Refinancing	has the meaning given to it in Schedule 16 (Refinancing);
Expert	has the meaning given to it in Schedule 24 (Direct Agreement);
Expiry Date	means the 25th (twenty-fifth) anniversary of the Planned Services Commencement Date or as extended in accordance with Clause 3.3 (Option to Extend the Contract Period)
Facility	means [specify the treatment facilities] and all supporting infrastructure including associated plant and amenities to be designed, constructed, tested and commissioned pursuant to this Contract and

“Facilities” shall be interpreted accordingly;

Fair Value	means the amount at which an asset or liability could be exchanged on an arm's length transaction between informed and willing parties, other than in a forced liquidation or sale;
Fees Regulations	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
Final Equipment List	has the meaning given in Clause 30.1.5 (Equipment);
Final Statement	has the meaning given to it in the Construction Sub-Contract;
Final Warning Notice	means a notice served under Clause 67.4.2 (Persistent Breach);
Financial Close	has the meaning given to it in the Senior Credit Agreement, as at the date of this Contract;
Financial Model	has the meaning given to it in the Senior Financing Agreements;
Financing Agreements	means all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any agreements or instruments to be entered into by the Contractor or any of its Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing);
Financing Default	means [];
Final Employee List	has the meaning given to it in paragraph 2.A.6 (Final Employee List) of Schedule 20 (Employment and Pensions);
First Contractor	has the meaning given to it in Schedule 20 (Employment and Pensions);
First Employee List	has the meaning given to it in paragraph 2.A.5 (Employment Costs) of Schedule 20 (Employment and Pensions);
First Insurance Review	has the meaning given to it in Part 5 (Insurance



Date Premium Risk Sharing) of Schedule 10 (Required Insurances);

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

Force Majeure Event means the occurrence after the date of this Contract of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of the Contractor or its sub-contractors of any tier except where such actions or breach of the Contractor constitute solely the receipt or treatment by the Contractor or Sub-Contractor of Contract Waste (containing nuclear, chemical or biological contamination) in accordance with the Contract; or
- (c) pressure waves caused by devices travelling at supersonic speeds,

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

Force Majeure Termination Sum has the meaning given to it in Part 1 (Definitions) of Schedule 17 (Compensation on Termination);

Force Majeure TPI Adjustment has the meaning given to it in paragraph Schedule 19 (Revision of Base Case and Custody);

Freehold Site(s) means the freehold site(s) listed at Schedule 7 (Sites Information);

Future Service Provider has the meaning given to it in paragraph 2.A.13 (Contractor Indemnities) of Schedule 20 (Employment and Pensions);

General Change in Law	means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law or a Qualifying Change in Law;
Good Industry Practice	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or Construction Sub-Contractor or Operating Sub-Contractor or any sub-contractor under the same or similar circumstances;
Guidance	means any applicable guidance or directions with which the Contractor is bound to comply;
Handback Requirements	means the requirements on termination or expiry of this Contract set out in Part 1 (PR4 – Handback Requirements) of Schedule 2 (Authority's Requirements);
High Value Changes	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Highest Compliant Tender Price	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Holdco	means [insert details of the Contractor's 100% holding company if any];
Holding Company	has the meaning given to it in Section 1159 of the Companies Act save that for the purposes of determining whether one entity is a Holding Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
Household Waste	has the meaning attributed to it in Section 75(5) and Section 89 of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations 1992.
Indemnified Party	has the meaning given to it in Clause 61.4 (Notification of Claims);
Indemnifying Party	has the meaning given to it in Clause 61.4 (Notification of Claims);
Independent Certifier	means the person appointed jointly by the Authority and the Contractor to act as independent



	certifier to the Project in accordance with the Independent Certifier's Deed of Appointment;
Independent Certifier's Deed of Appointment	means the deed of appointment of the Independent Certifier in the Agreed Form;
Independent Safeguarding Authority	means the non-departmental public body established to generate the Vetting and Barring Scheme;
Independent Technical Advisor	has the meaning given to it in Part 1 (Definitions) of Schedule 21 (Change Protocol);
Index	has the meaning given to it in Schedule 4 (Payment Mechanism);
Indexation Date	has the meaning given to it in Schedule 4 (Payment Mechanism);
Indexed	has the meaning given to it in Schedule 4 (Payment Mechanism);
Indirect Losses	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature excluding for the avoidance of doubt any loss of revenue and/or loss of Third Party Income recoverable under the express terms of this Contract;
Information	has the meaning given under Section 84 of the Freedom of Information Act 2000;
Initial Financing Agreements	means the Financing Agreements put in place upon signature of this Contract as follows: [];
Instalment Dates	has the meaning given to it in paragraph 4.2.1(a) of Schedule 17 (Compensation on Termination) Part 7 (General);
Insurance Cost Decrease	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Cost Differential	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);

Insurance Cost Increase	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Cost Index	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Review Date	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Review Period	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Review Procedure	has the meaning given to it in Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances);
Insurance Term	means any terms and/or conditions required to be included in a policy of insurance by Clause 55 (Required Insurances) and/or Schedule 10 (Required Insurances) but excluding any risk;
Insurance Undertaking	has the meaning given to it in Schedule 16 (Refinancing);
Intellectual Property Rights	means any and all patents, trade marks, service marks, copyrights, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Contractor or any Contractor Related Party for the purposes of carrying out the Works and/or providing the Services and/or otherwise for the purposes of this Contract;
Interim Payment	has the meaning given to it in the Construction Sub-Contract;
Interim Project Report	means [];
Intervening Contract	has the meaning given to it in Schedule 20

(Employment and Pensions);

Joint Insurance Account	means the joint bank account in the names of the Authority and the Contractor, having account number [] and held with [];
Joint Insurance Cost Report	has the meaning given to it in paragraph 2.2 of Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Judicial Review Challenge	has the meaning given to it in Schedule 26 (Planning);
Junior Debt	means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;
Key Facility	means [Note: this definition should encompass those facilities which are to be the main waste treatment facility and not to include transfer stations, MRFs, composting facilities and other such minor facilities];
Landfill	<p>(a) for the purposes of Landfill Tax has the meaning attributed to it by Section 65(1) of the Finance Act 1996; and</p> <p>(b) for all other purposes has the meaning given to it in Waste Emissions Trading Act 2003;</p> <p>and "Landfilled" and "Landfilling" shall be interpreted accordingly;</p>
Landfill Directive	has the meaning given in Council Directive 1999/31/EC;
Landfill Tax	has the meaning set out in Section 39(1) of the Finance Act 1996;
Latest Service Element	means [<i>specify element of financial model relating to Market Tested Services</i>];
Leading Counsel	has the meaning given to it in Schedule 26 (Planning) [in respect of matters relating to planning and in Schedule 27 (Approach to Permit Risk) in respect of matters relating to Environmental Permits];

Lease	means the headlease of the Freehold Site(s) in the form set out in Part [] of Schedule 7 (Sites Information);
Lease Completion Date	means the date upon which the Lease is completed being [specify on a project specific basis];
Leasehold Site(s)	means the leasehold site(s) listed at Schedule 7 (Sites Information);
Lender(s)	has the meaning given to it in Schedule 25 (Form of Collateral Warranty);
Legal Requirements	means that a Facility complies with all Legislation so that is its lawfully able to receive Contract Waste demonstrated inter alia by the obtaining and maintenance of a valid Planning Permission and Environmental Permit;
Legislation	<p>means:</p> <ul style="list-style-type: none"> (a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978; (b) any exercise of the Royal Prerogative; and (c) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, <p>in each case in the United Kingdom;</p>
Licence	has the meaning given in Clause 10.1.3 (Access during Construction);
Licensed Purposes	<p>means:</p> <ul style="list-style-type: none"> (a) the maintenance, management, provision, carrying out, replacement and/or operation of the Facility and/or the Service; and/or (b) the maintenance, management, provision, carrying out, replacement and/or operation of services analogous to the Service but provided by a third party; and/or (c) the receipt of the Service and/or any services analogous to the Service but

provided by a third party;

Life Cycle Works Cap	has the meaning given to it in the Operating Sub-Contract;
Liquid Market	has the meaning given to it in Schedule 17 (Compensation on Termination);
Local Government Pension Scheme	has the meaning given to it in Schedule 20 (Employment and Pensions);
Lock in Period	means the period expiring on the date that is [twelve (12) months] after the Services Commencement Date;
Losses	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
Low Value Change	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Low Value Change Request	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Low Value Change Threshold	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Maintenance Requirements	means those requirements in respect of the maintenance of the Facility set out in Part 1 (PR3 – Service Requirements) of Schedule 2 (Authority's Requirements);
Market Costs	means the charges made by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question;
Market Tested Services	means [<i>specify on a project specific basis</i>];
Market Testing	market testing in accordance with Clause 34.1 (Market Testing Procedure);
Market Testing Proposal	has the meaning given to it in Clause 34.1.2 (Market Testing Procedure);

Market Testing Review Dates	means [<i>specify on a project specific basis</i>];
Market Value Availability Deduction Amount	has the meaning given to it in Schedule 17 (Compensation on Termination);
Maximum Tonnage	has the meaning given to Maximum Tonnage of Contract Waste in Schedule 4 (Payment Mechanism);
Maximum Unitary Charge	has the meaning given to it in Schedule 17 (Compensation on Termination);
Medium Value Change	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Medium Value Change Threshold	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Method Statements	means the Works Method Statement and the Services Method Statements;
Mileage Deductions	means the amount calculated in accordance with paragraph 7 of Schedule 4 (Payment Mechanism);
Minimum Tonnage	means [] tonnes of Contract Waste per year;
Month	<p>means any month in a Contract Year provided that:</p> <p>(a) the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and</p> <p>(b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on that day,</p> <p>and the term Months shall be construed accordingly;</p>
Monthly Operating Payment	has the meaning given to it in the Operating Sub-Contract;
Monthly Payment	has the meaning given to it in Schedule 4 (Payment Mechanism);

Municipal Waste	means all Waste which by virtue of Legislation a local authority has a statutory duty or power to collect, including (without limitation) Household Waste, Commercial Waste, fly tipped waste and street cleansing arisings (and, in relation to Commercial Waste, which it does in fact collect);
Named Employee	means all potential staff or persons performing any of the Services at the Visitors Centre;
National Performance Indicators	[has the meaning given to it in Schedule 15 (Best Value and Continuous Improvement);]
Net Present Value	means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;
New Contract	has the meaning given to it in Schedule 17 (Compensation on Termination);
New Contractor	means the person who has entered or who will enter into the New Contract with the Authority or where applicable to the retendering procedure in Schedule 17 the Deemed New Contract;
New Contractor Rectification Period	means such period as is reasonable in the circumstances from the date of the New Contract to allow the New Contractor to carry out the New Contractor Rectification Works as shall be agreed by the parties or in default of agreement determined pursuant to Clause 60 (Dispute Resolution);
New Contractor Rectification Plan	means the rectification plan to be implemented by the New Contractor setting out the New Contractor Rectification Works and timescales;
New Contractor Rectification Works	means such works (including new and rectification works) and implementation of such new systems as shall be required to enable the New Contractor to achieve the standards and targets set out in Schedule 2 (Authority' Requirements);
New Employee	has the meaning given to it in Schedule 20 (Employment and Pensions);
NNDR	means the National Non Domestic Rates (or

	successor or replacement thereof) as contained in the Local Government Finance Act 1988;
Non-Acceptance Deduction	means the deduction calculated in accordance with paragraph 8 of Schedule 4 (Payment Mechanism);
Not Accepted	means Contract Waste which the Contractor has not accepted at a Delivery Point [or the Contingent Delivery Point as a direct result of the Contractor's failure to comply with the terms of the Contingency Plan] and was delivered by or on behalf of the Authority during the Commissioning Period and/or the Services Period; (and the terms does Not Accept and Contract Waste Not Accepted shall be construed accordingly).
Notice Date	has the meaning given to it in Schedule 17 (Compensation on Termination);
Notice of Non-Completion	has the meaning given to it in Clause 21.2.8(b);
Notifiable Financings	has the meaning given to it in Schedule 16 (Refinancing);
Off-Site Expenditure	has the meaning given to it in Schedule 26 (Planning);
Off-Site Works	has the meaning given to it in Schedule 26 (Planning);
Off-Take Contracts	means [<i>specify relevant off-take contracts for process residues/electricity/heat/power/SRF and any other relevant matter</i>];
Operating Accrued Rights Life Cycle Works Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Operating Accrued Rights Termination Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Operating Accrued Rights Value	has the meaning given to it in Schedule 24 (Direct Agreement);
Operating Manual	has the meaning given to it in Clause 28.1

(Maintenance of Manual);

Operating Sub-Contract	means, subject to Clause 7 (Amendment of Documents) the agreement in the Agreed Form between the Contractor and the Operating Sub-Contractor relating to the Services;
Operating Sub-Contract Dispute	has the meaning given to it in paragraph 17.2 (Similar Disputes) of Schedule 22 (Dispute Resolution Procedure);
Operating Sub-Contractor	means [INSERT NAME AND COMPANY NUMBER], or such other Sub-Contractor as the Contractor may, subject to Clause 81 (Assignment and Sub-Contracting), appoint to provide the Services;
Operating Sub-Contractor Default	has the meaning given to it in the Operating Sub-Contract;
Operating Sub-Contractor Liability Cap	has the meaning given to it in the Operating Sub-Contract;
Operating Sub-Contractor Termination Cap	has the meaning given to it in the Operating Sub-Contract;
Operational Panel	has the meaning given to it in paragraph 4.1 (Identity of Adjudicator) of Schedule 22 (Dispute Resolution Procedure);
Option Period	has the meaning given to it in Clause 57.4 (Relevant Payment);
Original Employee	has the meaning given to it in Schedule 20 (Employment and Pensions);
Original Facilities	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Original Senior Commitment	means the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);
Outline Commissioning Plan	means the plan provided by the Contractor in accordance with the Works Requirements as set out in the Works Method Statement;

Outstanding Principal	has the meaning given to it in Schedule 17 (Compensation on Termination);
Outstanding Work	has the meaning given to it in Clause 79.4 (Maintenance Work);
Partner Admission Agreement	has the meaning given to it in Schedule 20 (Employment and Pensions);
Party	means a party to this Contract and 'Parties' shall be construed accordingly;
Past Service Reserve	has the meaning given to it in Schedule 20 (Employment and Pensions);
Pay	has the meaning given to it in Schedule 20 (Employment and Pensions);
Payment Mechanism	means the payment mechanism set out in Schedule 4 (Payment Mechanism);
Payment Period	means each Month during the Contract Period;
Performance Deductions	has the meaning given to it in Schedule 4 (Payment Mechanism);
Performance Standard	means the standards set out at [] of Part B (Performance Measurement Framework) of Schedule 2 (Authority's Requirements);
Permitted Borrowing	means, without double counting, any: <ul style="list-style-type: none"> (a) advance to the Contractor under the Senior Financing Agreements, (disregarding any amendments that have not been approved for the purposes of clause 7.4.2(a) (Changes to Financing Agreements) provided that such advance is not made under any Committed Stand-by Facility; (b) Additional Permitted Borrowing;

- (c) advance to the Contractor under any Committed Standby Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Contractor incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and
- (d) interest on the above amounts and (disregarding any amendments that have not been approved for the purposes of clause 7.4.2(a) (Changes to Financing Agreements) other amounts accrued or payable under the terms of the Senior Financing Agreements,

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

Permitting Authority

means the relevant competent regulatory authority for the purposes of the issuing of an Environmental Permit;

Persistent Breach

means a breach for which a Final Warning Notice (referred to in Clause 67.3.2 (Persistent Breach)) has been issued, (which has continued for more than thirty (30) days or recurred three (3) or more times within six (6) Months after the date on which such Final Warning Notice is served on the Contractor;

Personal Data

means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;

Personnel

means the employees, servants, agents, sub-contractors or other representatives, of the Contractor, or of any Sub-Contractor, involved directly, or indirectly, in the provision of the Service;

PFI

means the Government's Private Finance Initiative or any similar or replacement initiative;



PFI Contractor	means a person that has contracted with the Government, a local authority or other public or statutory body to provide services under the PFI;
PFI Insurance Market	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Physical Damage Policies	has the meaning given to it in Clause 56.1 (Reinstatement);
Planned Maintenance	means the maintenance of the Facility(ies) prescribed in PR3.4 Planned Maintenance from time to time;
Planned Services Commencement Date	means 1 April 2016 or as adjusted in accordance with the terms of this Contract;
Planned Readiness Date	means [<i>fixed date</i>] or as adjusted in accordance with the terms of this Contract;
Planned Works Commencement Date	means [<i>specify date by reference to relevant facility</i>] or as adjusted in accordance with the terms of this Contract;
Planning Act	means the Town and Country Planning Act 1990;
Planning Agreement	has the meaning given to it in Schedule 26 (Planning);
Planning Application	means any planning application submitted or to be submitted by or on behalf of the Contractor pursuant to paragraph 2 (Planning Consents) of Schedule 26 (Planning) to the appropriate Planning Authority in respect of the [specified Works] (or any part) (including any amendment to the application) pursuant to the Planning Act [will include reference to changes in use if applicable];
Planning Authority	means the relevant authority for the purposes of the Planning Act;
Planning Obligation	means any agreement or obligation undertaken pursuant to: <ul style="list-style-type: none"> (a) section 106 of the Planning Act; (b) section 111 Local Government Act 1972; (c) sections 38 or 278 Highways Act 1980;

- (d) section 104 Water Industry Act 1991 or any other provision of similar intent, within the meaning of the Water Act 1989, with a Relevant Authority for the supply of water or the drainage of surface or foul water from the Site; or
- (e) any agreement with a Relevant Authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any of them;

Planning Permission

means the planning permission granted in relation to [*specify Facility and identify the permission specifically on a project specific basis*] being in every case either:

- (a) detailed planning permission; or
- (b) outline planning permission together with such approvals of reserved matters as are required to enable the Contractor to commence the [specified works]; or
- (c) in every case granted by Planning Authority the Secretary of State or an inspector appointed by him for that purpose;

Planning Permission Longstop Date

has the meaning given to it in Schedule 26 (Planning);

Portfolio Cost Saving

has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);

Post Termination Service Amount

has the meaning given to it in Schedule 17 (Compensation on Termination);

Power and Engineering Insurance Market

has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);

Pre-Refinancing Equity IRR

has the meaning given to it in Schedule 16 (Refinancing);

Prescribed Rate

means percent 2 (two)% above the base rate from time to time of [*INSERT NAME*] Bank plc;

Price Reference Date

means [];

Proceedings

means any of the following:

- (a) a calling in or determination by the Secretary of State or any inspector appointed by him of the Planning Application under Section 77 of the Planning Act;
- (b) an appeal against refusal including Deemed Refusal) of any Planning Application;
- (c) an application seeking to remove or modify any conditions imposed by the Planning Permission;
- (d) an appeal against refusal including deemed Refusal of any application to remove or modify any conditions imposed by the Planning Permission; and
- (e) an application to the Court pursuant to Section 288 of the Planning Act;

Prohibited Act

means:

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- (b) entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant



contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority; or

- (c) committing any offence:
 - (i) under the Bribery Act 2010, Prevention of Corruption Acts 1889-1916;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority;
- (d) defrauding or attempting to defraud or conspiring to defraud the Authority;

Prohibited Act	has the meaning given to it in Schedule 17 (Compensation on Termination) Part 4 (Compensation following Corrupt Gifts and Fraud);
Termination Amount	
Prohibited Materials	means those products and materials set out at Schedule 33 (Prohibited Materials);
Project	means the provision of waste management services to the Authority by the Contractor as contemplated by this Contract including the carrying out of the Works and the provision of the Services;
Project Accounts	has the meaning given to it in Schedule 16 (Refinancing);
Project Data	means [];
Project Insurance Change	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Project IRR	[to be defined by Authority and Bidder financial teams on a project specific basis];
Project Management Fee	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);

Proposed Workforce	has the meaning given to it in paragraph 2.A.8 (Workforce Information) of Schedule 20 (Employment and Pensions);
Protester Action	means any picketing, demonstration, blockade, embargo or other protester action (other than as a result of industrial action which affects only the employees of the Contractor or its Sub-Contractors or in respect of matters arising from this Contract or the Facility to be constructed pursuant to this Contract) taking place at the Facility or directly affecting access to the Facility;
Qualification Criteria	<p>means the criteria that the Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with the procurement regulations) shall be:</p> <ul style="list-style-type: none"> (a) the New Contract terms, (b) tenderers demonstrating they have the financial ability to pay the capital sum tendered for the New Contract and the financial ability to deliver the Works and/or the Services (as appropriate) for the price tendered, (c) the tenderers only bidding on the basis of a single capital payment to be made on the date of the New Contract, (d) the tenderers (either itself or through the proposed sub-contractors) being experienced in providing the Works and/or Services or similar services, (e) the technical solution being proposed by the tenderers is capable of delivery and the tenderers (either themselves or through the proposed sub-contractors) being technically capable of delivery of the Works and/or Services, and (f) any other tender criteria agreed by the Authority and the Contractor;
Qualifying Bank Transaction	has the meaning given to it in Schedule 16 (Refinancing);

Qualifying Change in Law

means:

- (a) a Discriminatory Change in Law; and/or
- (b) a Specific Change in Law; and/or
- (c) a General Change in Law, which comes into effect after the Services Commencement Date and which involves Capital Expenditure;

which was not foreseeable at the date of this Contract; or

- (d) any Legislation or Guidance coming into effect after the date of this Contract giving effect to any of those documents or policies listed in the Waste Law List; and/or
- (e) any change to or revocation of any condition of an Environmental Permit for the Key Facility] other than where such change or revocation arises as a result of:
 - (i) the acts or omissions of the Contractor or any Contractor Related Party (save for acts or omissions directly resulting from compliance with the Contractor's obligations under the Contract); or
 - (ii) any breach of the Contract by the Contractor or any Contractor Related Party;
- (f) a change made by the Environment Agency (and confirmed in writing) to any guidance in relation to, or any explanation or interpretation of, any Legislation or Guidance relating to a [Key] Consent for the [Key] Facility, where the Contractor can demonstrate that it had, acting reasonably and in accordance with Good Industry Practice, relied upon such guidance, explanation or interpretation, except to the extent that such change

arises as a result of:

- (i) the acts or omissions of the Contractor or any Contractor Related Party (save for acts or omissions directly resulting from compliance with the Contractor's obligations under the Contract); or
- (ii) any breach of the Contract by the Contractor or any Contractor Related Party;

Qualifying Change in Law TPI Adjustment has the meaning given to it in Schedule 19 (Revision of Base Case and Custody);

Qualifying Institution has the meaning given to it in Schedule 16 (Refinancing);

Qualifying Refinancing has the meaning given to it in Schedule 16 (Refinancing);

Qualifying Variation means either:

- (a) a change in the Works and/or the Services in respect of which either an Authority Change Notice or a Contractor Change Notice has been served, and in the case of:
 - (i) an Authority Change Notice, the Authority has confirmed the Estimate and, where the Contractor is not funding all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; and
 - (ii) a Contractor Notice of Change, has been accepted by the Authority, or
- (b) a Qualifying Change in Law;

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

Readiness Date	means in respect of a Facility the date on which the Readiness Test Certificate is issued in respect of that Facility or in the event of referral for determination under the Dispute Resolution Procedure pursuant to Clause 21.4.1 the date upon which it is determined that the Facility passed the Readiness Tests;
Readiness Longstop Date	means such date as is twelve (12) Months after the Planned Readiness Date;
Readiness Test Certificate	means a certificate issued by the Independent Certifier that the Readiness Tests have been satisfied;
Readiness Tests	means the Tests so described in Schedule 11 (Tests);
Recipient	has the meaning given to it in Clause 49.1.2 (VAT on Payments);
Rectification Costs	has the meaning given to it in Schedule 17 (Compensation on Termination);
Reference Price	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Refinancing	has the meaning given to it in Schedule 16 (Refinancing);
Refinancing Gain	has the meaning given to it in Schedule 16 (Refinancing);
Regulated Collective Investment Scheme	has the meaning given to it in Schedule 16 (Refinancing);
Reinstatement Outline	has the meaning given to it in Clause 56.3.1;
Reinstatement Plan	has the meaning given to it in Clause 56.3.5;
Reinstatement Works	has the meaning given to it in Clause 56.3.1 (Obligations);

Relevant Assets	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Relevant Assumptions	has the meaning given to it in Schedule 17 (Compensation on Termination);
Relevant Authority	means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Relevant Discharge Terms	means the terms referred to in Section 6 (Local Government (Contracts) Act 1997);
Relevant Employees	has the meaning given to it in Schedule 20 (Employment and Pensions);
Relevant Event	means an Authority Change, a Qualifying Change in Law, a Compensation Event or any other matter as a result of which there may be a revision of the Unitary Charge in accordance with Schedule 19 (Revision of Base Case and Custody);
Relevant Incident	has the meaning given to it in Clause 56.3 (Obligations);
Relevant Insurance	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Relevant Insurance Inception Date	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Relevant Insurance Market	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Relevant Person	means a Shareholder and any of its Affiliates;
Relevant Payment	has the meaning given in Clause 57.4;
Relevant Proceeds	means any amounts standing to the credit of the Joint Insurance Account in accordance with Clause 56.3.6 (Reinstatement);
Relevant Required Insurances	has the meaning given to it in Schedule 24 (Direct Agreement);
Relevant Sub-Contractor	has the meaning given to it in Schedule 24 (Direct Agreement);

Relevant Transfer	has the meaning given to it in Schedule 20 (Employment and Pensions);
Relevant Transfer Date	has the meaning given to it in Schedule 20 (Employment and Pensions);
Relevant Year	has the meaning given to it in Schedule 24 (Direct Agreement);
Relief Event	<p>means:</p> <ul style="list-style-type: none"> (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion; (b) failure by any statutory undertaker, utility company, local authority or other like body (but excluding for the avoidance of doubt the Authority as purchaser) to carry out works or provide services; (c) any accidental loss or damage to the Facility or any roads servicing it; (d) any failure or shortage of power, fuel or transport; (e) any blockade or embargo which does not constitute a Force Majeure Event; (f) any: <ul style="list-style-type: none"> (i) official or unofficial strike; (ii) lockout; (iii) go-slow; or (iv) other dispute; <p>generally affecting the haulage, construction, waste management industry or a significant sector of it;</p> <ul style="list-style-type: none"> (g) the occurrence of Protester Action provided that the Contractor has complied

with its obligations pursuant to Clause 42;

- (h) the discovery of fossils, antiquities or human remains requiring action in accordance with Clause 14 (Fossils and Antiquities); or
- (i) the delivery to a Facility as part of a delivery of Waste during the Services Period of munitions, hazardous materials or human remains which directly results in Enforced Closure provided that such Waste has been Accepted, handled and processed by the Contractor in accordance with this Contract;

unless:

- (A) any of the events listed in paragraphs (a) to (i) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any of its sub-contractors; or
- (B) in the case of paragraph (i) above arises (directly or indirectly) as a result of the negligence of the Contractor or any of its sub-contractors;

Remuneration Costs has the meaning given to it in paragraph 2.A.8 (Workforce Information) Schedule 20 (Employment and Pensions);

Reorganisation Costs has the meaning given to it in paragraph 2.A.8 (Workforce Information) Schedule 20 (Employment and Pensions);

Representative has the meaning given to it in Schedule 24 (Direct Agreement);

Requests for Information shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term 'request' shall apply);

Required Action has the meaning given to it in Clause 33.3 (Action by Authority);

Required Insurances	means the insurances specified in Schedule 10 (Required Insurances);
Required Period	has the meaning given to it in Schedule 24 (Direct Agreement);
Required Standard	has the meaning given to it in Clause 79.3.1 (Results of Survey);
Restricted Share Transfer	<p>means any transfer of shares in the Contractor [or Holdco]:</p> <ul style="list-style-type: none"> (a) during the Lock in Period; or (b) to any person engaged or with substantial interests in gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons; (c) to any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of residual waste treatment in the area; or (d) to any person whose activities in the reasonable opinion of the Authority, could pose a threat to national security;
Restrictions	means all matters (whether arising before or after the date of this Contract) affecting a Site(s) or its use registered or capable of registration as local land charges, and all notices, charges, orders, resolutions, demands, proposals, requirements, regulations, restrictions, agreements, directions or other matters affecting a Site(s) or its use served or made by any local or other competent authority or otherwise arising under any Legislation;
Retendering Information	has the meaning given to it in paragraph [2.5.1] (Retendering - Employment Obligations) [2.A.16] (Retendering) of Schedule 20 (Employment and Pensions);
Retention Fund Account	has the meaning given to it in Clause 79.5 (Retention Fund);

Returning Employees	has the meaning given to it in paragraph [2.6.1] (Termination of Contract) [2.A.17] (Termination of Contract) of Schedule 20 (Employment and Pensions);
Revenue	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Review Procedure	means the procedure set out in Schedule 9 (Review Procedure);
Reviewable Design Data	means the items of Design Data listed in the Appendix to the Review Procedure;
Revised Senior Debt Termination Amount	has the meaning given to it in Schedule 17 (Compensation on Termination);
RPIX	means the index published in Table 5 (excluding mortgage interest payments) of Business Monitor (MM23) published by the Office of National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better or worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;
Satisfactory Planning Permission	has the meaning given to it in Schedule 26 (Planning);
Schedule of Programmed Maintenance	means the schedule to be submitted by the Contractor on an annual basis containing the information prescribed in PR3.4 Planned Maintenance and on a monthly basis containing the information prescribed in PR3.3 Information and Reporting;
Senior Credit Agreement	means [] as at the date of this Contract or as amended with the prior written approval of the Authority pursuant to clause 7.4.2 (Changes to Financing Agreements and Ancillary Documents);

Senior Debt	means the financing provided by the Senior Lenders under the Senior Financing Agreements;
Senior Debt Discharge Date	has the meaning given to it in Schedule 24 (Direct Agreement);
Senior Debt Rate	has the meaning given to it in Schedule 17 (Compensation on Termination);
Senior Debt Service Costs	has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);
Senior Financing Agreements	means [] as at the date of this Contract or, without prejudice to clause 7.4.2 as the same may be amended as allowed by clause 7.4.1 (Changes to Financing Agreements and Ancillary Documents);
Senior Lender	means a person providing finance to the Contractor under the Senior Financing Agreements;
Service Commencement	means the commencement of the Services;
Service Delivery Plan	means the plans set out in Part 2 of Schedule 3 (Contractor's Proposals);
Service Transfer Date	has the meaning given to it in Schedule 20 (Employment and Pensions);
Services	means the whole of the services or any of them to be provided by the Contractor pursuant to this Contract which are necessary for the Contractor to undertake in order to comply with the Service Requirements, the Services Method Statements and the other provisions of this Contract;
Services Commencement Date	means the date on which Service Commencement occurs in accordance with Clause 21.1.3 (Completion of the Works);
Services Method Statements	means the proposals for the method of providing the Services to satisfy the Service Requirements forming part of the Contractor's Proposals and set out in Part 2 of Schedule 3 (Contractor's Proposals);
Services Media	means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables,

meters, switches, channels, flues and all other conducting media appliances and apparatus including any fixtures, louvers, cowls and other ancillary apparatus;

Services Period means the period specified in Clause 3.2 (Commencement and Duration);

Service Requirements means the specification contained in Part 1 (PR3 – Service Requirements) of Schedule 2 (Authority's Requirements);

Shareholders means any person from time to time holding share capital in the Contractor or its Holding Company;

Shortfall Period has the meaning given in Clause 25.2.3(c);

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

Site Plan means the plan of the Site(s) set out in the Agreed Form;

Site(s) means the area edged [red] on the relevant Site Plan together with the Facility [and the service ducts and media for all utilities and services serving the Facility;]

Small Works Rates has the meaning given to it in Schedule 21 Part 1 (Change Protocol);

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

Snagging List means the list to be prepared by the Independent Certifier in accordance with Clause 21.5.1 (Snagging Items) containing Snagging Items;

Specific Change in Law means:

- (a) any Change in Law which specifically refers to:

- (i) the provision of any services the same as or similar to any of the Services; or
 - (ii) the construction, operation and maintenance of premises for the provision of any services the same as or similar to the Services; or
 - (iii) to the holding of shares in companies whose main business is providing services the same as or similar to the Services or the construction operation and maintenance of premises for the provision of any service the same as or similar to any of the Services;
- (b) any Change in Law which specifically refers to emissions from industrial facilities; or
- (c) any Change in Law that discriminates against the sale of electricity generated from a thermal treatment facility;

Step-In Date has the meaning given to it in Schedule 24 (Direct Agreement);

Step-in Event means those events referred to in Clause 33.1 (Right to Step-in);

Step-In Period has the meaning given to it in Schedule 24 (Direct Agreement);

Step-Out Date has the meaning given to it in paragraph 7.1 (Step-Out) of Schedule 24 (Direct Agreement);

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

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

Sub-Contractor Breakage Costs	has the meaning given to it in Schedule 17 (Compensation on Termination);
Subordinated Financing Agreements	means [] as at the date of this Contract or as amended with the prior written approval of the Authority;
Subordinated Lenders	means a person providing finance under a Subordinated Financing Agreement;
Substitute Waste	means waste (other than Contract Waste) which is to be received at the Facility in the event that the amount of Contract Waste falls below the Minimum Tonnage in a Contract Year;
Substitute Waste Amount	means an amount calculated as being the number tonnes of Substitute Waste contracted for by the Contractor in a Contract Year multiplied by the Substitute Waste Price;
Substitute Waste Contract	means the contract entered into by the Contractor and the Substitute Waste Contractor provided any such contracts entered into with Affiliates of the Contractor shall be excluded unless the contracts with the Affiliates have been entered into on an arms length basis;
Substitute Waste Contractor	means the person providing the Substitute Waste;
Substitute Waste Notice	has the meaning given in Clause 25.2.3;
Substitute Waste Plan	means the plan for the disposal of Substitute Waste developed from the Outline Substitute Waste Plan and updated in accordance with Clause 25.2;
Substitute Waste Price	means the gate fee per tonne payable by the Substitute Waste Contractor under or in connection with the Substitute Waste Contract;
Successful Tenderer	has the meaning given to it in Clause 34.3.1 (Adjustments to Unitary Charge);
Suitable Substitute Contractor	means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as: <ul style="list-style-type: none"> (a) having the legal capacity, power and



authority to become a party to and perform the obligations of the Contractor under the Contract;

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

(c) being a Suitable Third Party;

Suitable Third Party means any person who is not an Unsuitable Third Party;

Superior Landlord means [] or its successors in title entitled to the reversionary interest in the headlease from time to time;

Supplier has the meaning given to it in Clause 49.1.2 (VAT on Payments);

Target Landfill Tonnage has the meaning given to it in Schedule 4 (Payment Mechanism);

Tax means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Contract and imposed by a Relevant Authority;

Tender Costs has the meaning given to it in Schedule 17 (Compensation on Termination);

Tender Documents has the meaning given to it in Clause 34.1.1(d) (Market Testing Procedure);

Tender Process has the meaning given to it in Schedule 17 (Compensation on Termination);

Tender Process Monitor has the meaning given to it in Schedule 17 (Compensation on Termination);

Tendering Report has the meaning given to it in Schedule 21 Part 1 (Change Protocol);

Termination Date	means any date of early termination of this Contract in accordance with Part XII (Termination and Compensation on Termination);
Termination Discount Rate	Date has the meaning given to it in Schedule 17 (Compensation on Termination);
Termination Notice	means a notice of termination issued in accordance with this Contract;
Termination Sum	has the meaning given to it in Schedule 17 (Compensation on Termination);
Test Certificate	means the Readiness Test Certificate or the Acceptance Test Certificate as appropriate;
Testing and Commissioning Plan	means the detail plan developed from the Outline Commissioning Plan in accordance with the Commissioning Requirements;
Tests	means the Readiness Tests and Acceptance Tests as appropriate;
Third Party Consents	<p>means, in relation to any Adverse Right which would or might be interfered with by the carrying out of the Works or Services, the consent in writing of all Adjoining Owners entitled to or interested in the Adverse Right in question to either:</p> <ul style="list-style-type: none"> (a) the removal or diversion (whether temporarily or permanently) of the subject matter of the Adverse Right in question; or (b) the carrying out of the Works or Services notwithstanding such interference; <p>such consent in each case to be on terms previously approved in writing by the Authority (such approval not to be unreasonably withheld or delayed);</p>
Third Party Costs	has the meaning given to it in Schedule 21 Part 1 (Change Protocol);
Third Party Income	means the Contractor's or Affiliates [and/or Sub-Contractor's] income from third parties (other than the Authority under this Contract) associated with the Project including without limitation that derived from the sale of or making arrangements in relation

to [*heat, power, recycle, RDF, SRF etc*];

Third Party Waste means all waste received at the Facility other than Contract Waste;

Third Party Waste Contracts means contracts entered into by the Contractor and/or the Sub-Contractor in respect of Third Party Waste excluding Off-Take Contracts.

Threshold Equity IRR means [INSERT NUMBER] per cent;

Threshold Operating Capacity means the [*specify Facility*] operating at no less than [[]% capacity] over a given period;

TPI Adjusted Base Case Equity IRR has the meaning given to it in Clause 6.8 of Schedule 19 (Revision of Base Case and Custody);

Trade Marks means [*insert details of Authority trade marks, if any, to be licensed*] (whether unregistered or registered and including any applications for registration) and other Intellectual Property Rights subsisting in such trade marks from time to time;

Transfer Amount has the meaning given to it in Schedule 20 (Employment and Pensions);

Transfer Date has the meaning given to it in Schedule 20 (Employment and Pensions);

Transfer Value has the meaning given to it in Schedule 20 (Employment and Pensions);

Transferring Employee has the meaning given to it in Schedule 20 (Employment and Pensions);

Transferring Original Employee has the meaning given to it in Schedule 20 (Employment and Pensions);

TUPE has the meaning given to it in Schedule 20 (Employment and Pensions);

Unavoidable Fixed Costs has the meaning given to it in Schedule 10 Part 5 (Insurance Premium Risk Sharing);

Uninsurable means in relation to a risk, either that:

- (a) insurance is not available to the Contractor in respect of the Project in the worldwide

insurance market with reputable insurers of good standing in respect of that risk; or

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

Unitary Charge

means the payment calculated in accordance with Schedule 4 (Payment Mechanism);

Unrestricted Assets

has the meaning given to it in Schedule 24 (Direct Agreement);

Unsuitable Person

means any person who:

- (a) has any Conviction;
- (b) in the reasonable opinion of the Authority:
 - (i) is or is likely to cause damage to the reputation of the Authority; or
 - (ii) persistently fails or would fail to comply with the health and safety or other material obligations of the Contractor under this Contract; or
 - (iii) is not a fit and proper person to be engaged, or employed in or in connection with the provisions or performance of any part of the Service; or
 - (iv) may present an actual or potential risk to the health, safety or welfare of any Authority Related Party or member of the public; or
 - (v) is not appropriately trained, qualified, skilled and/or competent to carry out any part of the Service;

Unsuitable Third Party

means any of:

- (a) any person or party who has a material interest in the production, distribution or

sale of tobacco products, alcoholic drinks and/or pornography;

- (b) any person or party whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of residual waste treatment in the area; or
- (c) any person or party whose activities, in the reasonable opinion of the Authority, could pose a threat to national security;

VAT means any value added taxes;

Vetting and Barring Scheme means the vetting and barring scheme provided for under the Safeguarding Vulnerable Groups Act 2006 and operated by the Independent Safeguarding Authority;

Visitors Centre means the visitor centre to be developed at the Site in accordance with this Contract;

Warning Notice has the meaning given to it in Schedule 24 (Direct Agreement);

Waste has the meaning ascribed to it in Section 75 of the EPA;

Waste Acceptance Protocol means the protocol set out in Schedule *[to be completed]*;

Waste Collection Authority means a waste collection authority in accordance with Section 30(3) of the EPA;

Waste Disposal Authority means a waste disposal authority in accordance with Section 30(2) of the EPA;

Waste Law List means the anticipated Specific Changes in Law set out in Schedule 14 (Waste Law List);

WCAs means the Waste Collection Authorities in the Authority's Administrative Area being *[specify waste collection authorities where relevant]*;

Whole Life Costs has the meaning given to it in Schedule 21 Part 1 (Change Protocol);

Works	means all of the works (including design and works necessary for obtaining access to the Site(s), commissioning and conduct of the Tests) to be undertaken in accordance with this Contract in accordance with the Works Requirements, Commissioning Requirements and the Works Method Statements;
Works Delivery Plans	means the plans set out in Part 1 of Schedule 3 (Contractor's Proposals);
Works Method Statements	means the proposals for the method of carrying out the Works to satisfy the Works requirements forming part of the Contractor's Proposals and set out in Part 1 of Schedule 3 (Contractor's Proposals);
Works Period	means the period from the Commencement Date to the Services Commencement Date; and
Works Requirements	means the specification contained in Part 1 (PR1 – Works Requirements) of Schedule 2 (Authority's Requirements).



**PROSIECT GWYRDD
RESIDUAL WASTE TREATMENT CONTRACT
SCHEDULES 2 ONWARDS**

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SCHEDULE 2
AUTHORITY'S REQUIREMENTS
PART A
PERFORMANCE REQUIREMENTS

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AUTHORITY'S REQUIREMENTS
PR1 - WORKS REQUIREMENTS

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SCHEDULE 2
AUTHORITY'S REQUIREMENTS
PR2 – COMMISSIONING REQUIREMENTS

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SCHEDULE 2
AUTHORITY'S REQUIREMENTS
PR3 - SERVICE REQUIREMENTS

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SCHEDULE 2
AUTHORITY'S REQUIREMENTS
PR4 – HANDBACK REQUIREMENTS

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SCHEDULE 2
AUTHORITY'S REQUIREMENTS
PART B
PERFORMANCE MANAGEMENT FRAMEWORK

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SCHEDULE 2
AUTHORITY'S REQUIREMENTS
PART C
DEFINITIONS

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SCHEDULE 3
CONTRACTOR'S PROPOSALS
PART 1
WORKS DELIVERY PLAN
(To include Works Method Statements)

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SCHEDULE 3
CONTRACTOR'S PROPOSALS
PART 2
SERVICE DELIVERY PLAN
(To include Services Method Statements)

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SCHEDULE 3
CONTRACTOR'S PROPOSALS
PART 3
CONSTRUCTION PROGRAMME¹

¹ Bidders to propose. Construction Programme to confirm all dates and proposed timescales during planning, permitting and Construction Period. Key (contractual) to be extracted and confirmed in Schedule 8 (Key Dates).

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SCHEDULE 4

PAYMENT MECHANISM

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SCHEDULE 5
ANCILLARY DOCUMENTS AND FINANCING AGREEMENTS
PART 1
ANCILLARY DOCUMENTS

[Note: Bidders to list those key documents related to the Project to which the Authority is not a party.

These shall include Construction Sub-Contracts, Operating Sub-Contracts, Off Take Contracts, Third Party Waste Contracts and any arrangements or Sub-Contracts for Third Party Income (including where these are to be let by a special purpose trading company) but exclude Financing Agreements].

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SCHEDULE 5
ANCILLARY DOCUMENTS AND FINANCING AGREEMENTS
PART 2
INITIAL FINANCING AGREEMENTS

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SCHEDULE 6
CONTRACTOR WARRANTED DATA

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SCHEDULE 7
SITES INFORMATION

[[Note: Site details and proposed form of Lease(s)/Underlease(s) relating to Site(s) to be included here]²

² Authorities to include at ISDS if an Authority Site is offered for the procurement. If Bidders are proposing their own site(s) then Bidders must provide information as to ownership, title and proposed form of property structure, associated lease(s), underlease(s) as applicable to the proposed Solution.

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SCHEDULE 8

KEY DATES

Milestone	Date <i>[Note to Bidders: unless expressed otherwise, can be either a fixed date or on a time elapsed basis]</i>	Contractual consequence <i>[Note to Bidders: please confirm proposed impact (if any) of delay or failure to achieve date e.g. in terms of remedies that would be available to the Authority]</i>
Financial Close		
[Interim Services Commencement Date]		
Planning – preparation and pre application discussions		
Environmental Permit – preparation and pre application discussions		
Planning – submission of Planning Application		
Planning Application Longstop Date		Failure to submit Planning Application by Planning Application Longstop Date is a Contractor Default
Environmental Permit – submission of Environmental Permit Application		
Judicial review or challenge period assumed		
Planning Permission Longstop Date		Where the Contractor fails to achieve Planning Permission or to secure an Environmental Permit by the Planning Permission

		<p>Longstop Date:</p> <p>(a) in the case of planning failure, the Authority is obliged to terminate the Contract pursuant to paragraph 3.5 of Schedule 26 (Planning) or to require the Contractor to submit a Revised Project Plan;</p> <p>(b) in the case of failure to secure an Environmental Permit, the Authority is obliged to terminate the Contract pursuant to paragraph 11.1.5 of Schedule 27 (Approach to Permit Risk)</p>
Planned Works Commencement Date		Failure to commence the Works by [] Months after the Planned Works Commencement Date is a Contractor Default
Works Period		
Commissioning Period		
Planned Readiness Date		
Planned Acceptance Date		
Planned Services Commencement Date		
Readiness Longstop Date	[] Months after the Planned Readiness Date	[Failure to obtain Readiness Certificate by Readiness Longstop Date is a Contractor Default]
Acceptance Longstop Date	[12] Months after the Planned Services Commencement Date	Failure to obtain Acceptance Test Certificate by Acceptance Longstop Date is a Contractor Default

Expiry Date	The [] anniversary of the date of this Contract	
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SCHEDULE 9

REVIEW PROCEDURE

Guidance drafting as follows:

1. SUBMITTED ITEMS

- 1.1. The provisions of this Schedule shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed in accordance with Schedule 9 (Review Procedure).
- 1.2. Subject to any express provision of this Contract, the manner, form and timing of any submission to be made by the Contractor to the Authority for review under the Review Procedure shall be a matter for the Contractor to determine. Each submission under the Review Procedure shall be accompanied by a copy of the proposed document or course of action to be reviewed (including, where applicable, any Reviewable Design Data) 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 reasonably practicable and, if the Submitted Item comprises an item of Reviewable Design Data within fifteen (15) Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to the Authority's Representative (or such other period as the Parties may agree), the Authority's Representative shall return one copy of the relevant Submitted Item to the Contractor endorsed "no comment" or (subject to and in accordance with paragraph 3) (Grounds of Objection) "comments" as appropriate; and
 - 1.2.2. subject to paragraph 1.3 below, 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 paragraph 1.3.1, within fifteen (15) Business Days (or within such other period as the Parties may agree in writing) of the date of its submission to the Authority's Representative, then the Authority's Representative shall be deemed to have returned the Submitted Item to the Contractor endorsed "no comment" (and, in the case of Reviewable Design Data, endorsed "Level A - no comment"); and
- 1.3. If the Authority's Representative raises comments on any Submitted Item in accordance with paragraph 3 (Grounds of Objection) he shall state the ground upon which such comments are based and 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, either:
 - 1.3.1. request written clarification of the basis for such comments and, if clarification is not received within ten (10) Business Days of such request by the Contractor, refer the matter for determination in accordance with Schedule 22 (Dispute Resolution Procedure); or

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1.3.2. at its own risk, and without prejudice to Clause 15 (Design Development), proceed with further design or construction disregarding such comments.

- 1.4. Should the Contractor submit any item of Reviewable Design Data later than was previously agreed with the Authority then the provisions of paragraph 1.3.2 shall not apply to such item of Reviewable Design Data. In such circumstances the Authority shall return the relevant item of Reviewable Design Data as soon as it is reasonably able to do so.

2. FURTHER INFORMATION

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. comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- 2.2. 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

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 ground that the Submitted Item would (on the balance of probabilities) breach any Legislation but otherwise may raise comments in relation to a Submitted Item only as follows:

- 3.1. in relation to any Submitted Item if:
 - 3.1.1. the Contractor's ability to perform its obligations under this Contract would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
 - 3.1.2. the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of the Authority under this Contract or its ability to enforce any such right;
- 3.2. in relation to Reviewable Design Data submitted pursuant to Clause 15 (Design Development) if:
 - 3.2.1. the Submitted Item is not in accordance with the Works Requirements; or
 - 3.2.2. the Submitted Item is not in accordance with the Method Statements;
 - 3.2.3. the Submitted Item would increase the likelihood of Deductions following the Services Commencement Date.
- 3.3. in relation to the submission of any proposed revision or substitution for the Commissioning Plans or any part of any Commissioning Plans (as the case

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may be) pursuant to Clause 21.2.1 (Testing and Commissioning), on the grounds that:

- 3.3.1. the proposed revision or substitution is not in accordance with Good Industry Practice;
 - 3.3.2. the revised Commissioning Plan would materially increase disruption to the Authority and/or the WCAs in respect of Contract Waste deliveries pursuant to Clause 21 (Completion of the Works);
 - 3.3.3. the proposed revision or substitution would (on the balance of probabilities) result in an inferior standard of performance of the relevant Facility to the standard of performance in accordance with the Method Statement relating to that facility prior to such proposed revision or substitution; and
- 3.4. in relation to the Substitute Waste Plan
- 3.4.1. the proposed Substitute Waste Plan does not comprehensively address the contents of a Substitute Waste Notice;
 - 3.4.2. the proposed Substitute Waste Plan does not include potential sources of Waste which would be suitable for treatment at the Facility;
 - 3.4.3. the Authority is able to identify a source of Waste which would result in a higher overall Substitute Waste Price;
 - 3.4.4. the proposed Substitute Waste Plan does not demonstrate that the Contractor will use reasonable endeavours.
- 3.5. in relation to the submission of any Schedule of Programmed Maintenance, any revision to any Schedule of Programmed Maintenance pursuant to Clause 26.3 (Programmed Maintenance) on the grounds that:
- 3.5.1. carrying out the Programmed Maintenance in the period or at the times suggested would (on the balance of probabilities) interfere with the operations of the Authority (and/or the WCAs) and such interference could be avoided or mitigated by the Contractor rescheduling the Programmed Maintenance; or
 - 3.5.2. the proposed method of performance of the Programmed Maintenance would not be in accordance with the requirements of Clause 26 (Maintenance), the Service Requirements and the Services Method Statements for that Service; or
 - 3.5.3. the safety of users of the Facility would (on the balance of probabilities) be adversely affected; or
 - 3.5.4. the period for carrying out the Programmed Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant works;

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- 3.6. in relation to the submission of the Substitute Waste Plan pursuant to Clause 25.2.1 and any subsequent revision thereto pursuant to Clause 25.2.2 on the grounds that:
- 3.6.1. in respect of the Substitute Waste Plan submitted pursuant to Clause 25.2.1, the plan does not demonstrate justifiable reasons for the departures from the Outline Substitute Waste Plan; and
 - 3.6.2. the Authority does not consider (acting reasonably) that the plan could be implemented and that the Contractor would not be able to comply with the provisions of Clause 25.2.4 in the event of a Contract Waste Shortfall.
- 3.7. In relation to the submission of new or amended or replacement Sub-Contracts, Off Take Contracts or Third Party Waste Contracts that the Submitted Item or proposed arrangement does not comply with:
- 3.7.1. Clause 51.1 or 5.2 (as regards Off Take and Third Party Waste Contracts);
 - 3.7.2. Clause 81.2 (Restriction on Contractor) and 81.6 (Refusal of Consent).

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 Contract, in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with Schedule 22 (Dispute Resolution Procedure) and the Contractor shall not act on the Submitted Item until such matter is so determined or otherwise agreed.
- 4.3. In the case of a Submitted Item comprising Reviewable Design Data, if the Authority's Representative returns the Submitted Item endorsed other than "Level A - no comment", the Contractor shall:
- 4.3.1. where the Authority's Representative has endorsed the Submitted Item "Level B - proceed subject to amendment as noted", either proceed to construct or proceed to the next level of design of the part of the Works to which the Submitted Item relates but take into account any amendments required by the Authority's Representative in his comments;
 - 4.3.2. where the Authority's Representative has endorsed the Submitted Item "Level C - subject to amendment as noted" not act upon the Submitted Item, amend the Submitted Item in accordance with the Authority's Representative's comments and re-submit the same to the Authority's Representative in accordance with paragraph 4.4; and

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- 4.3.3. where the Authority's Representative has endorsed the Submitted Item "Level D - rejected" not act upon the Submitted Item, amend the Submitted Item and re-submit the Submitted Item to the Authority's Representative in accordance with paragraph 4.4;

unless the Contractor disputes that any such comment or proposed amendment is on grounds permitted by this Contract, in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with Schedule 22 (Dispute Resolution Procedure) and the Contractor shall not act on the Submitted Item until such matter is so determined or otherwise agreed. If the Contractor commences or permits the commencement of construction during such a dispute and it is subsequently determined in accordance with Schedule 22 (Dispute Resolution Procedure) that the Contractor was not entitled to proceed with construction in accordance with paragraph 4 of Schedule 9 (Review Procedure) then the Contractor shall forthwith, at its own cost, undo, remove from the Site and replace (in a manner complying with this Contract) any parts of the Works which it has been determined the Contractor was not entitled to construct.

- 4.4. Within [five (5)] Business Days of receiving the comments of the Authority's Representative on any Submitted Item comprising Reviewable Design Data, the Contractor shall (except in the case contemplated in paragraph 4.3.1 Level B) send a copy of the Submitted Item as amended to the Authority's Representative pursuant to paragraph 4.3 and the provisions of paragraphs 1.3.1, 4.1 and 4.3 shall apply (changed according to context) to such re-submission.
- 4.5. 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" or otherwise endorsed in accordance with paragraph 4.3.1 Level B or 4.3.2 Level C) 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 Contract, such return or deemed return of any Submitted Item shall not otherwise relieve the Contractor of its obligations under this Contract nor is it an acknowledgement by the Authority that the Contractor has complied with such obligations.

5. DOCUMENTATION MANAGEMENT

- 5.1. The Contractor shall issue [three (3)] copies of all Submitted Items to the Authority 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. Save as expressly provided in this Contract no review, comment or approval by the Authority shall operate to exclude or limit the Contractor's obligations or liabilities under the Contract (or the Authority's rights under the Contract).

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6. **AUTHORITY CHANGE**

- 6.1. No approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute a Change save to the extent provided in this Schedule.
- 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 Schedule 22 (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 and 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 be construed or regarded as an Authority Change.

7. **CONTRACTOR CHANGES**

If the Authority considers that any Submission amounts to a Contractor Change Notice pursuant to paragraph 4 of Part 5 (Contractor Changes) of Schedule 21 (Change Protocol) the Authority shall notify the Contractor accordingly whereupon the provisions of paragraph 4 of Part 5 (Contractor Changes) of Schedule 21 (Change Protocol) shall apply and not this Schedule 9 (Review Procedure).

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SCHEDULE 9
REVIEW PROCEDURE
APPENDIX 1
REVIEWABLE DESIGN DATA

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SCHEDULE 10

REQUIRED INSURANCES

This Schedule 10 comprises six Parts-

PART 1: Policies to be taken out by the Contractor and maintained during the Works Period

PART 2: Policies to be taken out by the Contractor and maintained during the Services Period

PART 3: [Contractors Pollution Liability Insurance to be taken out by the Contractor and maintained throughout the Contract Period]

PART 4: Endorsements

PART 5: Broker's Letter of Undertaking

PART 6: Insurance Premium Risk Sharing

**SCHEDULE 10
REQUIRED INSURANCES**

PART 1

**POLICIES TO BE TAKEN OUT BY THE CONTRACTOR AND MAINTAINED
DURING THE WORKS PERIOD**

Common to each policy in Part I (unless stated otherwise):

Insureds:

1. Authority.
2. Contractor.
3. Construction Sub-Contractor.
4. Operating Sub-Contractor in respect of phased handover and commissioning.
5. Construction sub-contractors 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

The permanent and temporary works, materials [(including but not limited to equipment supplied by the Authority)], goods, plant and equipment for incorporation in the works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Construction Sub-Contractor or the Construction Sub-Contractor's sub-contractors) 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 sub-contract plus provision to include cover features and extensions as appropriate.

1.4. Maximum Deductible

Three hundred and fifty thousand pounds (£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 (£100,000) for all other claims.

1.5. Territorial Limits

Europe including offsite storage and during inland transit.

1.6. Period of Insurance

From the date of the Contract until the Services Commencement Date and thereafter in respect of defects liability until expiry of the [twelve (12)] months defects liability period.

1.7. Cover Features & Extensions

1.7.1. Terrorism.

1.7.2. Munitions of war clause.

1.7.3. Additional costs of completion clause.

1.7.4. Professional fees clause.

1.7.5. Debris removal clause.

1.7.6. Seventy two (72) hour clause.

1.7.7. European Union local authorities clause.

1.7.8. Free issue materials clause.

1.7.9. Ten (10%) escalation clause.

1.7.10. Automatic reinstatement of sum insured clause.

1.7.11. Loss minimisation.

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- 1.7.12. Marine 50/50 clause.
- 1.7.13. Extended maintenance
- 1.7.14. Plans and documents.
- 1.7.15. Computer data reinstatement.
- 1.7.16. Fire Joint Code of Practice.
- 1.7.17. Payments on account.
- 1.7.18. Temporary repairs.
- 1.7.19. Increased costs of constructing incomplete or unbuilt Works.
- 1.7.20. Off-site storage and repairs.
- 1.7.21. Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.

1.8. Principal Exclusions

- 1.8.1. War and related perils (United Kingdom insurance market agreed wording).
- 1.8.2. Nuclear/radioactive risks (United Kingdom insurance 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. [Waste fuel quality clause].
- 1.8.9. [Refractory linings from first application of heat clause].
- 1.8.10. [Piling clause].
- 1.8.11. Design exclusion DE5 (1995) Design Improvement or LEG03/06 design exclusion.

2. DELAY IN START UP INSURANCE (DSU)

2.1. Insureds

- 2.1.1. Contractor.
- 2.1.2. Senior Lenders.
- 2.1.3. Subordinated Lenders.
- 2.1.4. [Authority,]
each for their respective rights and interests in the Project.

2.2. Indemnity

In respect of:

- 2.2.1. loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Project as a result of loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with paragraph 1 of Part 1 of this Schedule, 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

[Thirty six (36) months.]

2.6. Period of Insurance

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

2.7. Cover Features & Extensions

- 2.7.1. Denial of access.
- 2.7.2. Utilities.
- 2.7.3. Terrorism.
- 2.7.4. Automatic Reinstatement of sum insured.
- 2.7.5. Professional Fees.
- 2.7.6. Payments on account.
- 2.7.7. Specific suppliers extension.
- 2.7.8. Waiver of subrogation against the Authority, Construction Sub-Contractor and Operating Sub-Contractor.

2.8. Principal Exclusions

- 2.8.1. The exclusions under 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 Insured 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,

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

3.2. Limit of Indemnity

Not less than fifty million pounds (£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

Fifty thousand pounds (£50,000) 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, Canada and Australia.

3.6. Period of Insurance

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

3.7. Cover Features & 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. Costs in addition to the limit (other than USA, Canada and Australia).
- 3.7.7. Liability arising from CDM Regulations.
- 3.7.8. Health and Safety at Work Act(s) clause.
- 3.7.9. Data Protection Act clause.
- 3.7.10. Insured to include directors, officers and employees of insured parties.
- 3.7.11. Consumer Protection Act 1987 clause.

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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 (United Kingdom insurance market agreed wording).

3.8.2. Nuclear/radioactive risks (United Kingdom insurance market agreed wording).

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

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 Insured.

3.8.6. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all 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 CAR policy or DSU policy.

3.8.11. Cyber risks and data recognition.

4. [MARINE CARGO INSURANCE]

4.1. Insured Property

All property and interest of every description 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.

4.2. Coverage

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

4.3. Limit of Indemnity

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

4.4. Maximum Deductible

Fifty thousand pounds (£50,000)] each occurrence

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4.5. Territorial Limits

Worldwide.

4.6. 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.

4.7. Cover Features and Extensions

4.7.1. Terrorism.

4.7.2. Institute Cargo Clauses (A).

4.7.3. Institute War Clauses (Cargo).

4.7.4. Institute Strikes Clauses (Cargo).

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

4.7.6. Institute Classification Clauses.

4.7.7. Institute War Cancellation Clauses, other non-cancellable.

4.7.8. Accumulation Clause, 200%.

4.7.9. Pre-shipment risks.

4.8. Principal Exclusions

4.8.1. As per Institute Cargo Clauses (A).

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

4.8.3. Inherent vice or nature of the subject matter insured.

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

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

4.8.6. Insufficiency or unsuitability of packing.

4.8.7. Delay.

4.8.8. Vessel not ISM Code certified/SOLAS Convention.

4.8.9. War and Radioactivity on Land.

5. [MARINE CARGO DELAY IN START UP INSURANCE]**5.1. Insureds**

5.1.1. Contractor;

5.1.2. Senior Lenders;

5.1.3. Subordinated Lenders; and

5.1.4. [Authority],

each for their respective rights and interests in the Contract.

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5.2. Indemnity

In respect of:

- 5.2.1. loss of anticipated Revenue and anticipated third party income 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 Marine Cargo Insurance specified at paragraph 4 of Part 1 of this Schedule 10, including loss or damage which would be indemnifiable but for the application of any deductible; and
- 5.2.2. 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.

5.3. Sum Insured

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

5.4. Maximum Excess

Sixty days(60) days.

5.5. Minimum Indemnity Period

[Twenty four (24) months].

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. As per Marine Cargo Insurance specified at paragraph 4 of Part 1 of this Schedule 10.
- 5.7.2. Payments on account
- 5.7.3. Repayment of liquidated and ascertained damages.
- 5.7.4. Waiver of subrogation against the Authority, Construction Sub-Contractor and Operating Sub-Contractor.
- 5.7.5. Additional increased costs of working.

5.8. Principal Exclusions

As per Marine Cargo Insurance specified at paragraph 4 of Part 1 of this Schedule 10 other than for consequential financial losses.

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**SCHEDULE 10
REQUIRED INSURANCES**

PART 2

**POLICIES TO BE TAKEN OUT BY THE CONTRACTOR AND MAINTAINED
DURING THE SERVICES PERIOD³**

Common to all policies in Part II (unless stated otherwise):

Insureds:

1. Authority.
2. Contractor.
3. Operating Sub-Contractor.
4. Operating sub-subcontractors of any tier to the extent required to be insured under contract.
5. Senior Lenders.
6. Subordinated Lenders

each for their respective rights and interests in the Project.

³ Other classes of insurance may be included by Authorities but any extension to insurances where uninsurability protection is provided will require WIDP/IUK approval.

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6. PROPERTY DAMAGE INSURANCE

6.1. Insured Property

Any real and personal property of whatsoever nature and description which is the subject matter of the Project and which is the property of the Contractor or for which the Contractor may be responsible including but not limited to the new facilities, unless more specifically insured under the Contractors "All Risks" Insurance (CAR) specified in paragraph 1 of Part 1 of this Schedule 10 (Insurance).

6.2. Coverage

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

6.3. Sum Insured

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

6.4. Maximum Deductible

Two hundred and fifty thousand pounds (£250,000) each and every claim (increased in accordance with Clause 55.13)

6.5. Territorial Limits

United Kingdom plus elsewhere whilst in inland transit.

6.6. Period of Insurance

From the Services Commencement Date or as otherwise specified in the Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise by the Parties.

6.7. Cover Features & Extensions

6.7.1. Terrorism

6.7.2. Automatic reinstatement of sum insured.

6.7.3. Capital additions clause.

6.7.4. Seventy two (72) hour clause.

6.7.5. European Union local authorities clause.

6.7.6. Professional fees.

6.7.7. Debris removal.

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

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

6.7.10. Expediting expenses.

6.7.11. Temporary offsite storage.

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6.7.12. Plans and documents.

6.7.13. Reinstatement of computer data.

6.7.14. Temporary repairs.

6.8. **Principal Exclusions**

6.9. War and related perils (United Kingdom insurance market agreed wording).

6.10. Nuclear/radioactive risks (United Kingdom insurance market agreed wording).

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

6.12. Wear, tear and gradual deterioration.

6.13. Consequential financial losses.

6.14. Cyber risks.

6.15. Losses recovered under the CAR policy.

6.16. [Waste fuel quality clause].

6.17. [Refractory linings from first application of heat clause].

7. **BUSINESS INTERRUPTION INSURANCE**

7.1. **Insureds**

7.1.1. Contractor.

7.1.2. Senior Lenders.

7.1.3. Subordinated Lenders.

7.1.4. [Authority]

each for their respective rights and interests in the Project.

7.2. **Indemnity**

In respect of:

7.2.1. loss of anticipated Revenue 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 Property Damage Insurance effected in accordance with paragraph 1 of Part 2 of this Schedule including physical loss or damage which would be indemnifiable but for the application of any deductible;

7.2.2. 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 Indemnity Period.

7.3. **Sum Insured**

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

7.4. **Maximum Excess**

[Sixty (60) Days.]

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7.5. Minimum Indemnity Period

[Thirty six (36) months]

Period of Insurance

From the Services Commencement Date for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

7.6. Cover Features & Extensions

7.6.1. Denial of access.

7.6.2. Terrorism.

7.6.3. Utilities.

7.6.4. Accountants Clause.

7.6.5. Automatic reinstatement of sum insured.

7.6.6. Waiver of subrogation against the Authority and Operating Sub-Contractors.

7.6.7. Specified suppliers and customers extension.

7.7. Principal Exclusions

7.7.1. Exclusions under the Property Damage Insurance, other than for consequential financial losses.

7.7.2. Delayed response by a public body or state authority.

8. THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**8.1. Interest**

To indemnify the Insured 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:

8.1.1. death, or bodily injury, illness, death, disease contracted by any person;

8.1.2. loss or damage to property;

8.1.3. 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,

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

8.2. Limit of Indemnity

Not less than fifty million pounds (£50,000) (increased in accordance with Clause 55.13) in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

8.3. Maximum Deductible

Fifty thousand pounds (£50,000) for each and every occurrence of property damage (increased in accordance with Clause 55.13). (Personal injury claims will be paid in full).

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8.4. Territorial Limits

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

8.5. Jurisdiction

Worldwide excluding USA, Canada and Australia.

8.6. Period of Insurance

From the Services Commencement Date or as otherwise specified in the Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise.

8.7. Cover Features & Extensions

- 8.7.1. Munitions of war.
- 8.7.2. Cross liability clause.
- 8.7.3. Contingent motor.
- 8.7.4. Legal defence costs.
- 8.7.5. Costs in addition to the limit (other than USA, Canada and Australia)
- 8.7.6. Contractual liability.
- 8.7.7. Data Protection Act clause.
- 8.7.8. Insured to include directors, officers and employees of insured parties.
- 8.7.9. Consumer Protection Act 1987 clause.
- 8.7.10. Libel and slander.
- 8.7.11. Infringement of privacy or wrongful arrest.
- 8.7.12. Defence, appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007.
- 8.7.13. Health and Safety at Work Act(s) clause.

8.8. Principal Exclusions

- 8.8.1. War and related (United Kingdom insurance market agreed wording).
- 8.8.2. Nuclear/radioactive risks (United Kingdom insurance market agreed wording).
- 8.8.3. Liability for death, illness, disease or bodily injury sustained by employees of the insured.
- 8.8.4. Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 8.8.5. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
- 8.8.6. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party.

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- 8.8.7. Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.
- 8.8.8. Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 8.8.9. Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 8.8.10. Losses under the property damage policy or business interruption policy.

SCHEDULE 10
REQUIRED INSURANCES
PART 3

**[Contractors Pollution Liability Insurance] to be taken out by the Contractor
and maintained throughout the Contract Period]**

Common to all policies in Part 3 (unless stated otherwise):

Insureds:

1. Authority
2. Contractor
3. Operating Sub-Contractor
4. Operating sub-sub-contractors of any tier
5. Construction Contractor (for the maintenance period only)
6. Construction sub-contractors (for the maintenance period only)
7. Senior Lenders
8. Subordinated Lenders

each for their respective rights and interests in the Project.

9. CONTRACTORS POLLUTION LIABILITY (CPL) INSURANCE

9.1. Interest

To indemnify the Insured 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 (including but not limited to a local authority, Environment Agency or a judicial authority) or a third party, including the Authority, and resulting in a claim or claims first made against the Insureds and reported to the insurer during the policy period. A pollution incident relates to either pollution in existence at the Effective Date disturbed or in some way aggravated, released or made worse by the Contractor and/or its Sub-Contractors or pollution caused by the Contractor and/or its Sub-Contractors in connection with the Contract, the execution of the Works, the Site and provision of the Services subsequent to the Effective Date.

9.2. Limit of Indemnity

Not less than five million pounds (£5,000,000) in respect of any one loss, the number of losses being unlimited and not less than fifteen million pounds (£15,000,000) in the aggregate during the policy period, the policy period not to exceed three years. (increased in accordance with Clause 54.13)

9.3. Maximum Deductible

One hundred thousand pounds (£100,000) for each and every loss (increased in accordance with Clause 54.13).

9.4. Territorial Limits

At or emanating from the Sites

9.5. Jurisdiction

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European Union.

9.6. Period of Insurance

From the Effective Date and throughout the Contract Period (the policy period not to exceed three years)

9.7. Cover Features and Extensions

- 9.7.1. Regulatory or third party claims for on site clean-up of pre-existing and new conditions arising from the act or omission of the Insured.
- 9.7.2. Regulatory or third party claims for off-site clean-up of pre-existing and new conditions arising from the act or omission of the Insured.
- 9.7.3. Third party claims for on-site and off-site property damage from pre-existing and new conditions arising from the act or omission of the Insured.
- 9.7.4. Legal costs.
- 9.7.5. Retroactive date, policy inception.
- 9.7.6. Liability arising from the Works and the Services.
- 9.7.7. Contract Agreement to be an insured contract.

9.8. Principal Exclusions

- 9.8.1. War and related perils (United Kingdom insurance market agreed wording).
- 9.8.2. Nuclear/radioactive risks (United Kingdom insurance market agreed wording).
- 9.8.3. Asbestos (exclusion not to extend to asbestos remediation costs with respect to soil and groundwater).
- 9.8.4. 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.
- 9.8.5. Criminal fines and penalties.
- 9.8.6. Terrorism.

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SCHEDULE 10
REQUIRED INSURANCES
PART 4
ENDORSEMENTS

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Contract.

Endorsement 1

Cancellation

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

- (a) at least thirty (30) days before any such cancellation or termination is to take effect;
- (b) at least thirty (30) days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- (c) of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

Endorsement 2

Multiple Insured/Non-Vitiation Clause

Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

It is understood and agreed that any payment or payments by insurers to any one or more of the insured shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "Vitiating Act") committed by that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

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For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

- (a) 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;
- (b) where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
- (c) save as set out in a request from insurers to the Authority in accordance with (c) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this 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.

Endorsement 3

Communications

All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered;
- (b) if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Contractor at the relevant time. The initial address and facsimile number of the Authority are as follows:

The Authority:

Address:

Facsimile No: []

Attention: The Chief Executive from time to time of the Authority

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

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Endorsement 4

Loss Payee (applicable only to the Physical Damage Policies)

Subject to the provision of Clause 56.2 all proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.

Endorsement 5

Primary Insurance

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

Endorsement 6

Ringfencing

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

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SCHEDULE 10
REQUIRED INSURANCES

PART 5

BROKER'S LETTER OF UNDERTAKING

To: The Authority

Dear Sirs

Agreement dated [] entered into between [] Limited (the "Contractor") and [] (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 Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to Clause 55 (Required Insurances) and Schedule 10 (Required Insurances) of the Agreement:
 - 2.1. where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
 - 2.2. are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect in respect of all the matters specified in the Agreement; and that
 - 2.3. all premiums due to 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 solvency or ability to pay claims; and that
 - 2.4. the endorsements set out in Part 4 (Endorsements) to Schedule 10 (Required Insurances) of the Agreement are as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes 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 twenty (20) Business 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 promptly of the details thereof;
- 4.1.2. to notify you at least twenty (20) Business 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

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- 4.1.3. to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Required Insurances specified at Clause 55 of the Agreement.

4.2. Advisory Obligations

- 4.2.1. to notify you promptly of any default in the payment of any premium 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 twenty (20) Business 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 twenty (20) Business Days before it is to take effect;
- 4.2.3. to notify you of any act or omission, breach or default of which we have knowledge which in our reasonable opinion may either 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;
- 4.2.4. to advise the Contractor of its duties of disclosure to insurers and to specifically advise upon:
- (a) the 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. to disclose to insurers all information made available to us from any source and any fact, change of circumstances or occurrence made known to us from any source which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers as soon as practicable after we become aware of such information, 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 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.

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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. to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in Clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly 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 funds, 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 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 each Authority throughout the settlement, payment and administration of such Insurance Claims.
- 4.4.5. to advise the Authority promptly upon receipt of notice of any material changes which we are instructed to make in the terms of the Required Insurances and which, if effected, in our opinion as insurance brokers would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;
- 4.4.6. to advise the Authority in advance of any change to the terms of, or any lapse, non-renewal and/or cancellation of any policy maintained in respect of the Required Insurances; and
- 4.4.7. to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Part 4 (Endorsements) to Schedule 10 (Required Insurances) of the Agreement.

4.5. Insurance Cost Reporting Procedures

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 as set forth in Part 6 (Insurance Premium Risk Sharing) to Schedule 10 (Required Insurances) of the Agreement. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

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5. NOTIFICATION DETAILS

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:

[] Authority

6. We shall supply further letters in this form on renewal of each of the Required Insurances and at other times as requested by the Authority and shall supply copies of such letters to those parties identified to us by the Authority for such purposes.

Yours faithfully

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

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SCHEDULE 10 REQUIRED INSURANCES

PART 6 INSURANCE PREMIUM RISK SHARING

1. DEFINITIONS

For the purposes of this Part 5 (Insurance Premium Risk Sharing) of this Schedule 10 (Required 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 <i>£[Participants to provide IPRSS Base Cost proposals by way of completion of Authority ISDS insurance cost matrices and to be agreed with the Authority]</i> being the amount as agreed at the Bid Date and set out in the Financial Model 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 Services Commencement Date, expressed in real terms as at the Bid Date;
Base Relevant Insurance Costs	means, the aggregate of the Base Costs which were (at Bid Date) projected to be incurred to maintain the Relevant Insurance during the Insurance Review Period indexed by actual RPIX from the Bid Date 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	<p>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:</p> <p>(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</p>

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been unavailable at the Bid Date (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 the Bid Date;

Business Interruption Cover

shall bear the meaning ascribed to it in Schedule 10 (Required Insurances);

Construction Period Insurance

means the Required Insurance in respect of the period from the date of this Contract to the Services Commencement Date;

Contract Period

means the period from and including the date of this Contract to the Expiry Date, or if earlier, the Termination 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:

Insurance Cost Differential = (ARIC – BRIC) – PIC)

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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 date of this Contract 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 Procedure means the procedure set out in paragraph 2 of this Part 6;

Insurance Review Period means a two 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;

Joint Insurance Cost Report shall bear the meaning ascribed to it in paragraph 2.2 of this Part 6;

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 date of this Contract the Power and Engineering Insurance Market is in Europe;

Project Insurance Change

means any net increase (which shall be expressed as a positive number) or net decrease (which shall be expressed as a negative number) 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 Related 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 Part 1 of this Schedule 10 (Required 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;

Public Private Partnership Insurance Market

means the insurance market which insures the majority of all public private partnership projects across all public private partnership sectors (as determined by the number of public private partnership projects, but excluding all waste public private partnership projects). At the date of this Contract the Public Private Partnership Insurance Market is in the United Kingdom;

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;

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- (b) coal fired plants;
- (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 Insurance;
- (b) Business Interruption Cover except to the extent that it relates to Unavoidable Fixed Costs;

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 Services Commencement Date;

Relevant Insurance Market means the PFI Insurance Market and the Power and Engineering Insurance Market, weighted respectively as to *[To be confirmed by Participant %]* and *[To be confirmed by Participant]%*;

Required Insurance shall bear the meaning ascribed to it in the Contract;

RPIX shall bear the meaning ascribed to it in the Contract;

Revenue is defined as 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;
- (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 should mean 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 (save for the Construction Sub-Contractor and the Operating Sub-Contractor);
- (c) payments which are not entirely at arm's length;
- (d) This will comprise the insurances in the required insurance schedule contained in the Contract, which should be based on the Standard Required Insurance Schedule;.
- (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 Agreements;
 - (ii) standby or contingent facilities or funds of Senior Debt or equity which the Contractor is entitled to have available;
 - (iii) 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;

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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;
- (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 fifty thousand pounds (£50,000) being the amount stated in Clause 55.9.

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 Power and 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 review 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

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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 Public Private Partnership Insurance Market, including all available evidence of changes to circumstances generally prevailing in the Public Private Partnership 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 Public Private Partnership 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 2.2.7 this Part 5 (Insurance Premium Risk Sharing) of this Schedule 10 (Required Insurances). 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. At the same time the Contractor should send a copy of its Insurance Summary Sheet to HM Treasury private finance unit or its nominee and the Welsh Assembly Government. 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 Schedule 22 (Dispute Resolution Procedure), provided always that references in Schedule 22 (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.

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- 2.4. The Authority may make the Joint Insurance Cost Report available to any of its or HM Treasury's or Welsh Assembly Government's agents or advisers or other bodies nominated by HM Treasury or the Welsh Assembly Government 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 twenty (20) Business 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 twenty (20) Business 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.
- 3.4. Where the capacity of the Facility (ies) exceeds the Maximum Tonnage, the Authority's share of the Exceptional Cost or Exceptional Saving shall be reduced pro rata to reflect the Authority's usage. The Authority's usage shall be the annual Maximum Tonnage expressed as a percentage of the annual maximum capacity of the Facility

4. INSURANCE COST INDEX

If at any time an Insurance Cost Index is published and intended for use in Public Private Partnership contracts of a similar nature to this Contract, 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.

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SCHEDULE 11
TESTS
PART 1
READINESS TESTS

[Note: Authority to take technical advice as to the list of Readiness Tests to be carried out to establish the Facility is ready to receive waste (cold commissioning).]

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SCHEDULE 11
TESTS
PART 2
ACCEPTANCE TESTS

SCHEDULE 12
INDEPENDENT CERTIFIER'S DEED OF APPOINTMENT

SCHEDULE 13
AUTHORITY'S POLICIES

SCHEDULE 14
WASTE LAW LIST

SCHEDULE 15
NOT USED

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SCHEDULE 16

REFINANCING

1. DEFINITIONS

In each part of this Schedule 16 (Refinancing) the following expressions (in addition to those specified in Schedule 1 (Definitions) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

EEA	from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
Equity IRR	the projected blended rate of return to the Relevant Persons over the full term of this Contract, having regard to Distributions made and projected to be made;
Exempt Refinancing	<ul style="list-style-type: none"> (a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge; (b) a change in taxation or change in accounting treatment; (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of: <ul style="list-style-type: none"> (i) breach of representations and warranties or undertakings; (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority); (iii) late or non-provision of information, consents or licences; (iv) amendments to Sub-Contracts; (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority));

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- (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements and/or amounts released from the [Escrow Account] during the [Initial Availability Period], each as defined in the Senior Financing Agreements as at Financial Close or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given;
- (vii) changes to milestones for drawdown and/or amounts released from the [Escrow Account] during the [Initial Availability Period] set out in the Senior Financing Agreements as at Financial Close or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given;
- (viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements as at Financial Close or as amended with the prior written approval of the Authority); or
- (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements as at Financial Close or as amended with the prior written approval of the Authority);
- (d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Contract;
- (e) any sale of shares in the Contractor [or Holdco] by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor [or Holdco] provided that this paragraph (e) shall, in respect of shares in Holdco, only apply so long as

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Holdco holds 100% of the issued share capital of the Contractor;

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

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

Refinancing

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreement (other than any Subordinated Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Contractor whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Contractor's ability to carry out any of (a) to (c) above

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

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting)

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over the remaining term of this Contract following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of the Contract following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

Insurance Undertaking

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

Pre-Refinancing Equity IRR

the nominal post-tax (which shall be post Contractor tax pre Shareholder tax for the Contractor but pre tax for the Shareholders) Equity IRR calculated immediately prior to the Refinancing;

Project Accounts

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

Qualifying Bank Transaction

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Financing Agreements in favour of:
 - (i) any other Senior Lender;
 - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
 - (iii) a local authority or public authority;
 - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two (2) years) assets of at least ten million pounds (£10,000,000)

(or its equivalent in any other currency at the relevant time);

- (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two (2) years) at least fifty (50) members and assets under management of at least ten million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);
 - (vi) an EEA or Swiss Insurance Undertaking;
 - (vii) a Regulated Collective Investment Scheme;
 - (viii) [any Qualifying Institution]; or
 - (ix) any other institution in respect of which the prior written consent of the Authority has been given;
- (c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Contractor [or Holdco], whether by way of security or otherwise, in favour of:
- (i) any other Senior Lender;
 - (ii) any institution specified in paragraphs (b)(ii) to (vii) above;
 - (iii) any Qualifying Institution; or
 - (iv) any other institution in respect of which the prior written consent of the Authority has been given;

Qualifying Institution [];

Qualifying Refinancing any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing

Regulated Collective Investment Scheme has the meaning given in the rules from time to time of the Financial Services Authority.

Shareholder means any person from time to time holding share capital in the Contractor or [Holdco].

2. REQUIREMENT FOR AUTHORITY CONSENT

The Contractor shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Contractor shall at all times act in good faith with respect to (a) any Refinancing or (b) any potential or proposed Refinancing under paragraph 9 of this Schedule 16.

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3. SHARE OF GAIN

The Authority shall be entitled to receive:

- (a) a fifty per cent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of £1 million;
- (b) a sixty per cent (60%) share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of £3 million, and also
- (c) a eighty per cent (80%) share of any other Refinancing Gain arising from a Qualifying Refinancing.

4. NO WITHHOLDING OR DELAY

The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in paragraph 3 of this Schedule 16.

5. CONTRACTOR DETAILS

The Contractor shall promptly provide the Authority with full details of any proposed Qualifying Refinancing including a copy of the proposed Financial Model relating to it (if any) and the basis for the assumptions used in the proposed Financial Model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any Financial Model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing whether at Refinancing is a Qualifying Refinancing or not).

5.1. Receipt of Gain

The Authority shall have the right to elect to receive its share of any Refinancing Gain as either:

- 5.1.1. a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
- 5.1.2. a reduction in the Unitary Charge over the remainder of the Contract Period; or
- 5.1.3. a combination of any of the above.

6. METHOD OF CALCULATION

The Authority and the Contractor will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under paragraph 5.1 (Receipt of Gain)). If the Contractor and the Authority fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with the Dispute Resolution Procedure.

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7. COSTS

The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority by the Contractor within twenty (20) Business Days of any Qualifying Refinancing.

8. NOTIFIABLE FINANCINGS

Without prejudice to the other provisions of this Schedule, the Contractor shall:

- (a) notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
- (b) include a provision in the Financing Agreements (other than the Subordinated Financing Agreements) whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements (other than the Subordinated Financing Agreements)

9. AUTHORITY RIGHT TO REQUEST REFINANCING

- 9.1. If the Authority (acting reasonably) considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements (other than the Subordinated Financing Agreements) the Authority may, by notice in writing to the Contractor, require the Contractor to request potential funders to provide terms for a potential Refinancing (a "Refinancing Notice").
- 9.2. The Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available. The Contractor and Authority shall meet to discuss the Refinancing Notice within 28 days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten days following the meeting.
- 9.3. If the Authority serves a Refinancing Notice which is not withdrawn pursuant to paragraph 9.2 of this Schedule 16 (Refinancing) then the Contractor shall:
 - 9.3.1. act promptly, diligently and in good faith with respect to the potential Refinancing;
 - 9.3.2. use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that the Contractor shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating in the same business in the United Kingdom to that operated by the Contractor, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of paragraph 7 of this Schedule 16 (Refinancing); and

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9.3.3. either:

- (a) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Authority (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in paragraph 9.3.2 of this Schedule 16 (Refinancing) above and (ii) initial drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
- (b) if the Contractor (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements (other than the Subordinated Financing Agreements) in accordance with the requirements of paragraph 9.3.2 provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction of the Authority that the Contractor has complied with its obligations in paragraphs 9.3.1 and 9.3.2 of this Schedule 16 (Refinancing);

9.4. Following receipt of the information referred to in paragraph 9.3.3(a) of this Schedule 16 (Refinancing), the Authority shall (in its absolute discretion) either:

9.4.1. instruct the Contractor to implement the proposed Refinancing; or

9.4.2. instruct the Contractor to discontinue the proposed Refinancing

provided that if the Authority reasonably considers that the requirements of paragraph 9.3.3(a) of this Schedule 16 (Refinancing) have not been satisfied, the Authority may require the Contractor to satisfy its obligations under paragraph 9.3.3(a) of this Schedule 16 (Refinancing) whereupon the provisions of paragraphs 9.3 and 9.4 of this Schedule 16 (Refinancing) shall apply as if the Authority had served a Refinancing Notice.

9.5. If the Authority instructs the Contractor to implement the proposed Refinancing:

9.5.1. the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented; and

9.5.2. such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

9.5.3. the provisions of paragraphs 1 to 8 of this Schedule 16 (Refinancing) shall apply.

9.6. If:

9.6.1. the Authority instructs the Contractor to discontinue the potential Refinancing pursuant to paragraph 9.4.2 of this Schedule 16 (Refinancing); or

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- 9.6.2. the requirements of paragraph 9.3.3(b) of this Schedule 16 (Refinancing) are satisfied then, the Authority shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Authority within 28 days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Contractor except insofar as (a) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (b) the Authority has, by prior written agreement, approved the use of such internal management resource.
- 9.7. The Authority shall be entitled to issue a Refinancing Notice under paragraph 9.1 of this Schedule 16 (Refinancing) at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under paragraph 9.2 of this Schedule 16 (Refinancing) has been issued for the purpose of this paragraph 9.7.

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SCHEDULE 17
COMPENSATION ON TERMINATION
PART 1
DEFINITIONS

Required drafting:

In each part of this Schedule 17 (Compensation on Termination) the following expressions (in addition to those specified in Schedule 1 (Definitions) shall save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

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

- (a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under Clause 46 (Set Off)

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the Estimated Fair Value of the Contract is calculated;
- (ii) any insurance proceeds and other amounts owing to the Contractor to the extent not included in (i) above; and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and
- (B) the Authority has received such amounts in accordance with this Contract or such amounts are standing to the credit of the Joint Insurance Account;

Adjusted Highest means the Highest Compliant Tender Price less the

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Compliant Tender Price

aggregate of:

- (a) any Post Termination Service Amounts paid to the Contractor to date;
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under Clause 46 (Set Off)

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest priced Compliant Tender is received;
- (ii) any insurance proceeds and other amounts owing to the Contractor to the extent not included in (i) above; and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
- (B) the Authority has received such amounts in accordance with the Contract;

Agent

means [] in its capacity as agent for the Senior Lenders under the Senior Financing Agreements;

Base Case Equity IRR

means []%;

Base Senior Debt Termination Amount

means, subject to Clause 7.4.2 (Changes to Financing Agreements and Ancillary Documents):

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

except that where this sub-paragraph (a) applies following termination of this Contract pursuant to paragraph 3.5 of Schedule 26 (Planning) [and/or paragraph 11.1.5 of Schedule 27 (Approach to Permit Risk)] the amount payable by the Authority under this sub-paragraph shall be no greater than [];and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the

Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,

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

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have;

Compensation Date

means either:

- (a) if paragraph 2 (Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default) applies, the earlier of:
 - (i) the date that the New Contract is entered into; and
 - (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor; or
- (b) if paragraph 3 (No Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default)

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applies, the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined;-

Compliant Tender means any tender submitted by a Compliant Tenderer that meets the Qualification Criteria notified under paragraph 2.3 of Part 3 (Compensation on Termination for Contractor Default);

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

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

- (a) if this Contract is terminated prior to the Services Commencement Date, then the Services Commencement Date shall be extended by such period as would have been granted to allow a New Contractor to achieve the issue of the Acceptance Certificate;
- (b) any accrued [performance points and/or warning notices] shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions be cancelled;
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date; and
- (d) in the event that any New Contractor Rectification Works are required (in relation to a Facility that has, at the Termination Date, had an Acceptance Test Certificate issued) to enable the New Contractor to provide the Services to the full specification and standards required by this Contract then provided that the New Contractor complies with the New Contractor Rectification Plan the Authority shall not exercise its rights to terminate the Contract under Clause 67 (Termination for Contractor Default) by reason of any failure to achieve some or all of the specification and/or standards required by this Contract during the New Contractor Rectification Period solely as a consequence of the New Contractor Rectification Works being required. Such provision shall for the avoidance of doubt not affect the Authority's entitlement to make adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) as a result of failure to achieve the specification and/or standards required by this Contract during the

New Contractor Rectification Period.

Estimated Fair Value of the Contract	means the amount determined in accordance with paragraph 3 (No Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default) that a third party would pay to the Authority as the market value of the Deemed New Contract;
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 or liquidation sale;
Force Majeure Termination Sum	means the sum calculated in accordance with paragraph 1.2 of Part 5 (Compensation on Termination for Force Majeure or Uninsurability) of this Schedule 17 (Compensation on Termination) as the same may be adjusted in accordance with paragraph 1.4 to 1.6 (inclusive) of Part 5 (Compensation on Termination for a Force Majeure Event or Uninsurability) of this Schedule 17 (Compensation on Termination);
Highest Compliant Tender Price	means the price offered by the Compliant Tenderer (if any) with the highest tender price and if no Compliant Tenders are received, [to include period when Contractor Default no Compliant Tenders derogation applies] zero;
Instalment Dates	has the meaning given to it in paragraph 4.2.1(a) of Part 7 (General)
Junior Debt	means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;
Liquid Market	means there are sufficient willing parties (being at least two (2) parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to the Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;
Market Value Availability Deduction Amount	means for any Month or part of a Month, an amount equal to the Deductions [specify] that were made to the Unitary Charge under Schedule 4 (Payment Mechanism) in the Month immediately preceding the Termination Date, less

an amount equal to [specify deduction] that was made for a Facility where Contract Waste was not Accepted at the Termination Date but where subsequently Contract Waste is able to be Accepted whether as a result of the Authority incurring Rectification Costs or otherwise;

Maximum Unitary Charge

means in respect of a Month, the Base Payment payable during that Month as adjusted in accordance with paragraph [] of Schedule 4 (Payment Mechanism) [and (specify pass through costs subject to the applicable caps)] and allowing for indexation in accordance with Schedule 4 (Payment Mechanism);

New Contract

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

- (a) if this Contract is terminated prior to the Services Commencement Date, then the Planned Services Commencement Date shall be extended by a period to allow a New Contractor to achieve the issue of the Acceptance Certificate;
- (b) [any accrued [performance points and/or warning notices] shall for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, shall be cancelled;]
- (c) the term of such agreement shall be equal to the term from the Termination Date to the Expiry Date;
- (d) the inclusion of a provision confirming that in the event that any New Contractor Rectification Works are required (in relation to a Facility that has, at the Termination Date, had an Acceptance Test Certificate issued) to enable the New Contractor to achieve the full specification and standards required by this Contract then provided the New Contractor complies with the New Contractor Rectification Plan for the New Contractor Rectification Period the Authority shall not exercise its rights to terminate the Contract under Clause 67 (Termination for Contractor Default) by reason of any failure to achieve some or all of the specification and/or standards required by this Contract during the New Contractor Rectification Period solely as a consequence of the New Contractor Rectification Works being required. Such provision shall for the avoidance of doubt not affect the Authority's entitlement to make adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) as a result of failure to achieve

the specification and/or standards required by this Contract during the New Contract Rectification Period; and

- (e) any other amendments which do not adversely affect the Contractor;

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

Notice Date means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value is agreed between the Parties pursuant to paragraph 3 (No Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default);

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

Prohibited Act Termination Amount shall bear the meaning ascribed to it in Part 4 (Compensation following Corrupt Gifts and Fraud) in this Schedule 17 (Compensation on Termination);

Post Termination Service Amount⁴ means for the purposes of paragraph 2 (Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default), for the whole or any part of a Month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Unitary Charge which would have been payable in that Month under this Contract including any Third Party Income actually received by the Authority less any costs (and depreciation and other charges) incurred in generating such Third Party Income had this Contract not been terminated, less an amount equal to the aggregate of:

- (a) the Market Value Availability Deduction Amount for that Month;
- (b) the Rectification Costs incurred by the Authority in that Month;
- (c) the Authority share of any Third Party Income in that month; and
- (d) (where relevant) the amount by which the Post

⁴ This payment is made both to ensure that the Authority is incentivised to expedite the retender and that any value received by the Authority is reflected post termination. Usage based payments will need to be addressed specifically.

Termination Service Amount for the previous Month was less than zero;⁵⁶

Prohibited Act Termination Amount shall bear the meaning ascribed to it in Part 4 (Compensation following Corrupt Gifts and Fraud) in this Schedule 17 (Compensation on Termination);

Rectification Costs means for the purposes of any Termination Date that occurs during the Services Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular Month or part of a Month in providing the Services including Landfill, pre and post treatment or other disposal costs to the extent necessary;

Relevant Assumptions means the assumptions that:

- (i) the sale of the Contractor is on the basis that there is no default by the Authority; and
- (ii) the sale is on a going concern basis, that no restrictions exist on the transfer of share capital; and
- (iii) no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded; and
- (iv) Third Party Income is assumed to be no higher than the lower of
 - (1) the average Third Party Income received by the Contractor on a monthly basis in the twenty four (24) month period immediately prior to the month in which the Termination Date occurs (or where there have been more than six months but less than twenty four months from the Services Commencement Date the average of such Third Party Income in the months during the Service Period or where the Termination Date is sooner than sixth months from the Services Commencement Date limb 2 below shall apply) and
 - (2) the amount relating to Third Party Income set out in the original Base Case,

but that otherwise the actual state of affairs of the Contractor and the Project is taken into account;

⁵ In the event that a Third Party Income revenue sharing mechanism is in place, amounts owing to the Authority through the operation of the sharing mechanism should be deducted – see Section 4.4.5 of the Defra Derogations Guidance.

⁶ A positive Post Termination Service Amount will occur where the cost incurred by the Authority in procuring the Service itself (including Rectification Costs) is less than the Unitary Charge. A negative Post Termination Service Amount will arise if the costs incurred in providing the Service (including Rectification Costs) are greater than the Unitary Charge.

Revised Senior Debt Termination Amount

means subject to Clause 7.4.2 (Changes to Financing Agreements and Ancillary Documents):

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

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

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

(i) all credit balances on any bank accounts (but excluding the Joint Insurance Account held by or on behalf of the Contractor) on the Termination Date;

(ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;

(iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract

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

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(v) APB Distributions;

Senior Debt Rate

means [incorporate the non default interest rate as defined in the Senior Financing Agreements] or such other lower rate as the Parties may agree;

Sub-Contractor Breakage Costs

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

- (a) the Losses are incurred in connection with the Project and in respect of the provision of services or completion of works, including:
 - (i) any materials or goods ordered or Sub-Contracts, placed that cannot be cancelled without such Losses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
 - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project;
 - (iv) redundancy payments; and
 - (v) loss of profit demonstrated to the reasonable satisfaction of the Authority by the Contractor (but only for a period not exceeding [two (2)] years from the Termination Date, or, where the Expiry Date is less than [two (2)] years from the Termination Date, the period from the Termination Date to the Expiry Date);

[except that where this definition applies following termination of this Contract pursuant to paragraph 3.5 of Schedule 26 (Planning) the Authority's liability to compensate the Contractor for Losses arising under paragraph (a) above shall be no greater than [£[]]; and

- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Contractor and the relevant Sub-Contractor, Off Take contractor or Third Party Waste contractor has each used its reasonable endeavours to mitigate the

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Losses;

Losses as referred to in this definition may, without prejudice to the generality of the other provisions of this definition, include Losses which relate to the breakage or cancellation of Off Take Contracts or Third Party Waste Contracts but only to the extent that the terms of such Off Take or Third Party Waste Contracts are in compliance with clause 51 of the Contract and such contracts cannot be cancelled without incurring such Losses;

Tender Costs

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

Tender Process

means the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with paragraph 2 (Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default);

Tender Process Monitor

means a third party appointed by the Contractor pursuant to paragraph 2 (Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default);

Termination Date Discount Rate

means a discount rate expressed as $[(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1]$ where:

- (a) "real base case project IRR" is the real pre-tax Project IRR as set out in the Base Case;
- (b) "i" is the agreed assumed forecast rate of increase in the Index set out in the Contract for the remaining term of the Contract;
- (c) "Gilt A" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life as determined from the Base Case at Financial Close of the Senior Debt; and
- (d) "Gilt B" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life as determined from the Base Case as at the Termination Date, of the Senior Debt outstanding on that date

Termination Sum

means any compensation payable by the Authority to the Contractor on an early termination of this Contract under

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Clauses 66 (Compensation on Termination for Authority Default), 68 (Compensation on Termination for Contractor Default), 70 (Compensation on Termination for Force Majeure), 72 (Compensation on Termination for Corrupt Gifts and Fraud), 74 (Compensation on Voluntary Termination by the Authority), and 76 (Compensation on Termination for Breach of the Refinancing Provisions) (excluding the Adjusted Highest Compliant Tender Price);

SCHEDULE 17
COMPENSATION ON TERMINATION

PART 2

**COMPENSATION FOLLOWING AUTHORITY DEFAULT OR AUTHORITY
VOLUNTARY TERMINATION**

1. CALCULATION OF PAYMENT

1.1. On termination of this Contract pursuant to:

1.1.1. Clause 65 (Termination for Authority Default);

1.1.2. Clause 73 (Voluntary Termination by the Authority); or

1.1.3. the Authority shall pay the Contractor the "Authority Default Termination Sum" in accordance with paragraph 4 (Method of Payment of Compensation on Termination) of Part 7 (General) of this Schedule 17 (Compensation on Termination).

1.2. Subject to paragraphs 1.4 to 1.6 below, the Authority Default Termination Sum shall be an amount equal to the aggregate of:

1.2.1. the Base Senior Debt Termination Amount;

1.2.2. redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs; and

1.2.3. either:

[an amount which when taken together with:

(a) dividends (or other distributions) paid by the Contractor on its share capital on or before the Termination Date;

(b) interest paid and principal repaid by the Contractor under the Subordinated Financing Agreements on or before the Termination Date,

taking account of the actual timing of all such payments, gives a real internal rate of return on the share capital subscribed and amounts advanced under the Subordinated Financing Agreements equal to the Base Case Equity IRR;]

OR

[the aggregate amount for which the share capital of the Contractor and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions];

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[all amounts shown in the Base Case as payable by the Contractor from the Termination Date, either in dividends or other distributions on the share capital of the Contractor or as payments of interest or repayments of principal made by the Contractor under the Subordinated Financing Agreements, each amount discounted back at the Base Case Equity IRR from the date on which it is shown to be payable in the Base Case to the Termination Date].

- 1.3. On payment of the amount referred to in paragraph 1.1 above, 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 in accordance with Clause 80 (Consequences of Termination or Expiry).
- 1.4. If the aggregate of the amounts referred to in paragraph 1.2.1 and paragraph 1.2.3 is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.2 provided always that:
 - 1.4.1. the amount referred to in paragraph 1.2.2 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
 - 1.4.2. if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.
- 1.5. If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under paragraph 11.4 of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.6. If the Contractor has wilfully or through gross negligence failed to comply with its obligations under paragraph 11.4 of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this paragraph 1, then the Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

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SCHEDULE 17
COMPENSATION ON TERMINATION
PART 3
COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT

Required drafting (see Section 21.2 of SoPC4) as follows:

The following provisions of this Part 3 (Compensation on Termination for Contractor Default) shall apply on termination of the Contract pursuant to Clause 67 (Termination for Contractor Default) and any compensation payable by the Authority to the Contractor shall be determined accordingly.

1. RETENDERING ELECTION

1.1. If the Authority terminates this Contract pursuant to Clause 67 (Termination for Contractor Default) following the occurrence of a Contractor Default then subject to paragraph 1.2, the Authority shall be entitled⁷ either to:

1.1.1. retender the provision of the Project in accordance with paragraph 2; or

1.1.2. require an expert determination in accordance with paragraph 3.

1.2. The Authority shall be entitled to elect to retender the provision of the Project in accordance with paragraph 2 if:

1.2.1. the Authority notifies the Contractor on or before the date falling twenty (20) Business Days after the Termination Date; and

1.2.2. there is a Liquid Market; and either:

(a) the Senior Lenders have not exercised their rights to step-in under paragraph 5 of the Direct Agreement; or

(b) the Contractor or the Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under this Contract to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,⁸

but otherwise the Authority shall not be entitled to re-tender the provision of the Services and paragraph 3 shall apply.

2. RETENDERING PROCEDURE

If the Authority elects to retender the provision of the Project under paragraph 1.1.1, then the following provisions shall apply:

2.1. The objective of the retendering procedure shall be to establish and pay to the Contractor the Adjusted Highest Compliant Tender Price, as a result of the Tender Process.

⁷ The presumption should be in favour of a retender.

⁸ The Retendering Procedure should apply during both the Construction and Service Period.

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- 2.2. The Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.
- 2.3. The Authority shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms.
- 2.4. The Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under Clause 84 (Confidentiality) that is reasonably required as part of the Tender Process.
- 2.5. The Contractor may, at its own cost, appoint a person (the “Tender Process Monitor”) to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Lenders on the Authority’s compliance with the Tender Process and making representations to the Authority. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price.
- 2.6. The Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure.
- 2.7. For all or any part of a Month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:
 - 2.7.1. the Post Termination Service Amount for that Month, on or before the date falling ten (10) Business Days after the end of that Month; and
 - 2.7.2. the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.
- 2.8. If any Post Termination Service Amount is less than zero, then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price.

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- 2.9. The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into.
- 2.10. As soon as practicable after tenders have been received or in the case of paragraph 2.10.2 below following the expiry of the time stipulated for the return of tenders, either:
- 2.10.1. the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Adjusted Highest Compliant Tender Price; or
- 2.10.2. where the Termination Date occurred during the period commencing on the Commencement Date and ending on [the [Bidders to bid back]th anniversary of] [*Note: Bidders to delete if Works Period only derogation is bid back*] the Services Commencement Date and the Authority has received no Compliant Tenders within the time stipulated for the return of such tenders then the following provisions of this paragraph 2 shall not apply to that termination and the provisions of paragraph 3 (No Retendering Procedure) shall apply. [*Note: Bidders to delete whole paragraph if derogation not required and where the derogation is required then the period during which the derogation applies (i.e. the Applicable Period as set out in the WIDP Direction of Travel Paper) will need to be approved by both WIDP and Infrastructure UK.*].
- 2.11. If the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to the Dispute Resolution Procedure, the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling [twenty (20)] Business Days after it has been determined under the Dispute Resolution Procedure and the Authority shall pay interest to the Contractor at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which has been withheld from the date specified in paragraph 2.12 below until the date specified in this paragraph 2.11. For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in paragraph 2.12, with the disputed amount being dealt with in accordance with this paragraph 2.11.
- 2.12. Subject to paragraphs 2.11 and 2.15, the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling [twenty (20)] Business Days after the date of the New Contract.
- 2.13. The discharge by the Authority of its payment obligation in paragraphs 2.11 and/or 2.12 above shall be in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract and the Ancillary Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the

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Termination Date that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.

- 2.14. Subject to paragraphs 2.15 and 2.18, if the Authority has not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two (2) years after the Termination Date then the provisions of this paragraph 2 shall not apply to that termination and the provisions of paragraph 3 shall apply instead.
- 2.15. If the Adjusted Highest Compliant Tender Price is zero (0) or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Contract and any other Ancillary Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.
- 2.16. If the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract.
- 2.17. The Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under paragraph 3 by notifying the Contractor that this election has been made.
- 2.18. If the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within [twenty (20)] Business Days of such notification.

3. NO RETENDERING PROCEDURE

If either the Authority is not entitled to retender the provision of the Project under paragraph 1 or paragraph 2.10.2 applies, or the Authority elects to require an expert determination in accordance with this paragraph 3, then the following procedure shall apply:

- 3.1. Subject to paragraph 3.2 below, the Contractor shall not be entitled to receive any Post Termination Service Amount.
- 3.2. If the Authority elects to require an expert determination in accordance with this paragraph 3 after it has elected to follow the procedure under paragraph 2, then the Authority shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with paragraph 2.7.
- 3.3. In agreeing or determining the Estimated Fair Value of the Contract, the Parties shall be obliged to follow the principles set out below:
- 3.3.1. all forecast amounts (including Third Party Income) shall be calculated in nominal terms at current prices, recognising the adjustment for

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indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Contract;

- 3.3.2. the total of all future payments of the full Unitary Charge (without deductions) and Third Party Income forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate save that Third Party Income forecast shall be no higher than the lower of (i) the average Third Party Income received by the Contractor on a monthly basis in the twenty four (24) months immediately prior to the Termination Date and (ii) the amount relating to Third Party income set out in the original Base Case;
- 3.3.3. the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to paragraph 3.3.2, such costs to include (without double counting):
- (a) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
 - (b) the costs forecast to be incurred by the Authority in providing the Services to the standards required (including, where necessary and without limitation, landfill costs, pre and post treatment and other disposal costs);
 - (c) all costs (and depreciation and other charges) projected to be required to generate such Third Party Income forecast; and
 - (d) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Authority to complete construction or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the full Unitary Charge and the Third Party Income referred to in paragraph 3.3.2.

- 3.4. If the Parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling [twenty (20)] Business Days after the date on which the Authority elected to require an expert determination in accordance with this paragraph 3, then the Adjusted Estimated Fair Value of the Contract shall be determined in accordance with the Dispute Resolution Procedure.
- 3.5. Subject to paragraph 4.2 (Instalments) of Part 7 (General) the Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling [forty (40)] Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this paragraph 3.
- 3.6. The discharge by the Authority of its obligation in paragraph 3.5 is in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract or other Ancillary Document whether in contract, tort, restitution or otherwise, save for any liability that arose

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prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.

- 3.7. To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Contractor to the Authority on the Compensation Date.

4. TRANSFER OF ASSETS ON CONTRACTOR DEFAULT

On termination under Clause 67 (Termination for Contractor Default), the Authority shall have the option to require the Contractor to transfer to the Authority all of its right title and interest in and to the Assets [(or such part of the Assets as may be required by the Authority)] in accordance with Clause 80 (Consequences of Termination or Expiry).

SCHEDULE 17
COMPENSATION ON TERMINATION
PART 4

COMPENSATION FOLLOWING CORRUPT GIFTS AND FRAUD

1. On termination of this Contract in accordance with Clause 71 (Termination on Corrupt Gifts and Fraud) then the Authority shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount.
2. Such amount shall be determined and paid in accordance with paragraph 4 (Method of Payment of Compensation on Termination) of Part 7 (General).
3. If termination occurs in accordance with Clause 71 (Termination on Corrupt Gifts and Fraud) then the Authority may require the Contractor to transfer its rights, title and interest in and to the Assets (or such part of the Assets as may be required by the Authority) to the Authority.

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SCHEDULE 17
COMPENSATION ON TERMINATION

PART 5

**COMPENSATION ON TERMINATION FOR FORCE MAJEURE OR
UNINSURABILITY**

1. AMOUNT

1.1. On termination of this Contract pursuant to:

1.1.1. Clause 57.3.1(a) or 57.3.1(b); or

1.1.2. Clause 69 (Termination on Force Majeure),

the Authority shall pay to the Contractor the Force Majeure Termination Sum in accordance with this Part 5 (Compensation on Termination for Force Majeure or Uninsurability).

1.2. Subject to paragraphs 1.4 to 1.6 below the Force Majeure Termination Sum shall be an amount equal to the aggregate of:

1.2.1. the Base Senior Debt Termination Amount;

1.2.2. the Junior Debt less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;

1.2.3. all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the shareholders of the Contractor (save to the extent deducted under paragraph 1.2.2 above); and

1.2.4. redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs.

1.3. If the amounts referred to in paragraphs 1.2.2 and/or 1.2.3 are less than zero, then, for the purposes of the calculation in paragraph 1 they shall be deemed to be zero.

1.4. If the aggregate of the amounts referred to in paragraphs 1.2.1, 1.2.2 and 1.2.3 is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2.4 provided always that:

1.4.1. the amount referred to in paragraph 1.2.4 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and

1.4.2. if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be

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paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.

- 1.5. If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under paragraph 11.4.4 (a) of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.6. If the Contractor has wilfully or through gross negligence failed to comply with its obligations under paragraph 11.4.4 (b) of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part 5 (Compensation on Termination for Force Majeure or Uninsurability), then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 1.7. If a Force Majeure Termination occurs as a result of the operation of clause 3.5 of Schedule 26 (Planning) then for the purposes of clauses 1.2 above:
 - 1.7.1. The Base Senior Debt Termination Amount shall be no higher than [£] (excluding the breakage of any hedging arrangements which shall be calculated to reflect the date of Termination);
 - 1.7.2. The amounts under paragraphs 1.2.2 and 1.2.3 (Junior Debt and subscription in equity shall be no higher than [£]; and
 - 1.7.3. The amounts under paragraph 1.2.4 shall be no higher than [£] and paragraph 1.4 shall not apply.
- 1.8. If a Force Majeure Termination occurs as a result of the operation of clause 3.5 of Schedule 27 (Approach to Permit Risk) then for the purposes of clauses 1.2 above:
 - 1.8.1. The Base Senior Debt Termination Amount shall be no higher than [£] (excluding the breakage of any hedging arrangements which shall be calculated to reflect the date of Termination);
 - 1.8.2. The amounts under paragraphs 1.2.2 and 1.2.3 (Junior Debt and subscription in equity shall be no higher than [£]; and
 - 1.8.3. The amounts under 1.2.4 shall be no higher than [£] and paragraph 1.4 shall not apply.

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2. PAYMENT

The Force Majeure Termination Sum payable pursuant to this paragraph 2 of Part 5 (Compensation on Termination for Force Majeure or Uninsurability) shall be paid in accordance with paragraph 4 (Method of Payment of Compensation on Termination) of Part 7 (General).

3. TRANSFER OF ASSETS

On termination, the Authority shall have the option to require the Contractor to transfer to the Authority or as directed by the Authority all of its right, title and interest in and to the Assets [(or such part of the Assets as may be required by the Authority)] in accordance with Clause 80 (Consequences of Termination or Expiry).

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SCHEDULE 17
COMPENSATION ON TERMINATION

PART 6

COMPENSATION FOLLOWING BREACH OF THE REFINANCING PROVISIONS

1. CALCULATION OF COMPENSATION

On termination of this Contract pursuant to Clause 75 (Termination for Breach of Refinancing Provisions) the Authority shall pay to the Contractor an amount equal to the Revised Senior Debt Termination Amount.

2. PAYMENT

Such amount shall be paid in accordance with paragraph 4 of Part 7 (General) of this Schedule 17 (Compensation on Termination).

3. TRANSFER OF ASSETS

On termination pursuant to Clause 75 (Termination for Breach of Refinancing Provisions) the Authority shall have the option to require the Contractor to transfer its right title in and to the Assets (or such part of the Assets as may be required by the Authority) to the Authority or as directed by the Authority in accordance with Clause 80 (Consequences of Termination or Expiry).

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SCHEDULE 17
COMPENSATION ON TERMINATION
PART 7
GENERAL

1. GROSS UP OF TERMINATION PAYMENTS

If any amount of compensation payable by the Authority under Part 2 (Compensation following Authority Default or Authority Voluntary Termination), Part 4 (Compensation following Corrupt Gifts and Fraud), Part 5 (Compensation on Termination for Force Majeure and Uninsurability), and Part 6 (Compensation following Breach of the Refinancing Provisions) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

2. SET OFF ON TERMINATION

Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Part 2 (Compensation following Authority Default or Authority Voluntary Termination), Part 4 (Compensation following Corrupt Gifts and Fraud), Part 5 (Compensation on Termination for Force Majeure and Uninsurability), and Part 6 (Compensation Following Breach of the Refinancing Provisions) save to the extent that after such an amount has been set off, the termination payment made would be an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount as the case may be at that time.

3. EXCLUSIVITY OF REMEDY

Any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Contract or any Ancillary Document. The compensation payable under Part 2 (Compensation following Authority Default or Authority Voluntary Termination), Part 4 (Compensation following Corrupt Gifts and Fraud), Part 5 (Compensation on Termination for Force Majeure and Uninsurability) and Part 6 (Compensation Following Breach of the Refinancing Provisions) shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract.

4. METHOD OF PAYMENT OF COMPENSATION ON TERMINATION

4.1. Termination Sum

The Authority shall pay to the Contractor the Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate on or before the

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date falling forty (40) Business Days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with paragraph 4.2 of this Part 7 (General).

4.2. Instalments

The Authority may, other than on an Authority Default or where this Contract terminates in the circumstances set out in Clause 4 (Local Government (Contracts) Act 1997), elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:

4.2.1. In instalments as follows:

- (a) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal (where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal) on the dates (the "Instalment Dates") and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the [Senior Credit Agreement] (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; and
- (b) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) shall be paid in equal instalments on the Instalment Dates;
- (c) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Senior Lenders under the terms of the Senior Credit Agreement (disregarding any changes to such amounts or dates that have not been approved by the Authority other than changes giving rise to an Additional Permitted Borrowing) had the Termination Date not occurred; or
- (d) as the Parties may otherwise agree.

4.3. Interest

From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

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4.4. **Payment of Outstanding Element**

If the Authority has elected to pay in accordance with paragraph 4.2 it may (on twenty (20) Business Days' prior written notice to the Contractor) elect to pay the outstanding part of the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.

4.5. **Authority Default in Payment**

If the Authority:

4.5.1. fails to make a payment to the Contractor in accordance with paragraphs 4.1 and/or 4.2 and/or 4.3; or

4.5.2. breaches Clause 81.1 (Restrictions on Transfer of this Contract by the Authority),

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

4.6. **Certificate of Agent**

The Authority shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at the relevant time. The receipt of the Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof as relevant shall discharge the Authority's obligations to pay such sums to the Contractor.

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SCHEDULE 18

LIAISON PROCEDURE

Guidance drafting as follows:

1. LIAISON COMMITTEE

- 1.1. The Authority and the Contractor shall establish and maintain throughout the Contract Period a joint liaison committee (the “Liaison Committee”), consisting of three (3) representatives from the Authority, three (3) representatives from the Contractor, a chairman appointer in accordance with paragraph 8 (the “Chairman”), and, where a majority of the Project Liaison Group so determines, additional representatives being properly qualified to participate in discussions relating to any particular matter, these members having no voting rights, which shall have the functions described below.
- 1.2. The Contractor and the Authority agree that for the duration of the Works the Contractor shall procure the attendance of the Construction Sub-Contractor during such parts of meetings of the Liaison Committee as the Parties shall agree. The Contractor and the Authority agree that during the Services Period the Contractor shall procure the attendance of the Operating Sub-Contractor during such parts of meetings of the Liaison Committee as the Parties shall agree.
- 1.3. Should the Authority and the Contractor agree that the best interests of the Project would be served by the removal of one or more members of the Liaison Committee, they may so direct in writing and the Authority or the Contractor, as the case may be, will put forward to the Authority and Contractor the name of a substitute member of the Liaison Committee.
- 1.4. The relevant person shall with the consent of the other Party, such consent not to be unreasonably withheld or delayed, become a member of the Liaison Committee as from the date of its next meeting.

2. FUNCTIONS

- 2.1. The functions of the Liaison Committee shall be:
 - 2.1.1. to provide a means for the joint review of all aspects of the performance of this Contract;
 - 2.1.2. to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Contract; and
 - 2.1.3. consideration of issues relating to:
 - (a) Consents, Planning Applications and Environmental Permits;
 - (b) the Construction Programme;
 - (c) provision of the Services, including transition between the phases;
 - (d) Authority Changes; and
 - (e) [others to be listed].

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3. ROLE

The role of the Liaison Committee is to make recommendations to the Authority and to the Contractor, which the Authority and the Contractor may accept or reject at their complete discretion. Neither the Liaison Committee itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Contract or to make any decision binding on the Parties. The Authority and the Contractor shall not rely on any act or omission of the Liaison Committee, or any members of the Liaison Committee acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of the Authority or of the Contractor under this Contract. No discussion, review or recommendation by the Liaison Committee shall relieve the Authority or the Contractor of any liability or vary any such liability or any right or benefit.

4. REPRESENTATIVES

The Authority and the Contractor may appoint their representatives on the Liaison Committee and remove those representatives and appoint replacements, by written notice delivered to the other at any time. A representative on the Liaison Committee may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other Parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

5. PRACTICES AND PROCEDURES

Subject to the provisions of this Schedule, the members of the Liaison Committee may adopt such procedures and practices for the conduct of the activities of the Liaison Committee as they consider appropriate, from time to time, provided that the quorum for a meeting of the Liaison Committee shall be four (4) (with at least two (2) members of the Authority and two (2) members of the Contractor present).

6. RECOMMENDATIONS

Recommendations of the Liaison Committee must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative of the Authority and not less than one (1) representative of the Contractor.

7. VOTING

Each member of the Liaison Committee shall have one (1) vote.

8. CHAIRMAN

The Chairman of the Liaison Committee shall be nominated by the Authority and by the Contractor alternately every six (6) months during the Contract Period (commencing with the Authority). The Chairman shall be in addition to each party's representatives on the Liaison Committee. The Chairman shall not have a vote.

9. FREQUENCY OF MEETINGS

The Liaison Committee shall meet at least once every month during the Works Period and thereafter at least once every quarter.

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10. CONVENING OF MEETINGS

Any member of the Liaison Committee may convene a meeting of the Liaison Committee at any time.

11. NOTICES OF MEETINGS

Not less than ten (10) Business Days notice (identifying the agenda items to be discussed at the meeting) shall be given to convene a meeting of the Liaison Committee, except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

12. ATTENDANCE AT MEETINGS

Meetings of the Liaison Committee should normally involve the attendance (in person or by alternative) of representatives at the meeting. Where the representatives of the Liaison Committee consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one (1) representative of the Authority and one (1) representative of the Contractor) meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

13. MINUTES

Minutes of all decisions (including those made by telephone or other telecommunication form) and meetings of the Liaison Committee shall be kept by the Contractor and copies circulated promptly to the Authority and the Contractor, normally within ten (10) Business Days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the Contractor and shall be open to inspection by the Authority and the Contractor at any time, upon request.

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SCHEDULE 19

REVISION OF BASE CASE AND CUSTODY

1. DEFINITIONS

In each part of this Schedule 19 the following expressions (in addition to those specified in Schedule 1 (Definitions) shall, save where the context or express provisions of this Contract otherwise requires or admits, have the following meanings:

Base Case Change Date means the date that any revisions to the Base Case are made and shall be the date that the Relevant Event becomes operative as set out in this Contract, or if no date is specified, the date agreed by the Parties pursuant to paragraph 4.2 of this Schedule 19.□

Custodian means [to be specified];

Custody Agreement means the agreement entered into between the Authority, the Contractor and the Custodian in respect of the safe custody of the Base Case;

2. APPLICATION – PURPOSE OF THIS SCHEDULE 19

This Schedule 19 describes the arrangements agreed by the Parties in relation to:

- 2.1. The custody of the Base Case; and
- 2.2. Where it is required by this Contract, determined in accordance with the Dispute Resolution Procedure or agreed between the Parties that the financial consequences of any Relevant Event or the payment of or release from any sum shall be addressed through an adjustment to the Unitary Charge (or any component thereof) and that this shall be facilitated by an adjustment to the Base Case.

3. CUSTODY ARRANGEMENTS FOR THE BASE CASE

- 3.1. The Contractor shall no later than [ten (10) Business Days after the date of this Contract deliver two (2) electronic copies on CD-Rom in [Microsoft Excel 2000] of the Base Case to the Custodian and one (1) copy to the Authority (for the Authority to hold on its own behalf).
- 3.2. The Contractor shall lodge with the Authority one (1) electronic copy on CD-Rom in [Microsoft Excel 2000] (or any media/software that replaces this) of each Base Case as may be revised from time to time pursuant to this Schedule 19 no later than ten (10) Business Days after any revisions have been effected and agreed with the Authority.
- 3.3. Any amendments to the Base Case shall reflect, be consistent with and be made only in accordance with the provisions of this Contract.

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- 3.4. Either Party shall have the right to inspect and audit the Base Case at their own cost at all reasonable times.
- 3.5. Save as expressly provided in this Contract, the costs of the custody arrangements with the Custodian shall be met by the Contractor.

4. REVISIONS TO THE BASE CASE

- 4.1. Where the Parties agree that the financial consequences of any Relevant Event or the payment of or release from any sum are best dealt with without a revision to the Base Case, they shall agree to make such revision to the Monthly Payment as necessary on a one-off or recurrent basis. Such change shall, on the next occasion that there is a revision to the Base Case in accordance with this Schedule 19 be consolidated as an update to the Unitary Charge and Base Case.
- 4.2. Prior to making any changes to the Base Case (subject to any express provision of this Contract to the contrary), the Parties shall agree the Base Case Change Date for the change and the basis of the revision to the Base Case.
- 4.3. Except for revisions due to:
 - 4.3.1. a Qualifying Refinancing (in which case the provisions of Schedule 16 (Refinancing) shall apply);
 - 4.3.2. a Contractor Change which results in costs savings (and such costs saving are shared in accordance with paragraph 4 of Part 5 (Contractor Change) of Schedule 21 (Change Protocol),

the Unitary Charge shall be revised so as to ensure that the Contractor is in no better and no worse position (as defined by paragraph 5.3) than it was prior to the Base Case Change Date and the event which gave rise to the need for the revision. In no circumstances shall any revision provide compensation to the Contractor for any deviation in performance from that predicted in the latest Base Case as agreed between the Parties or determined in accordance with the Dispute Resolution Procedure.

- 4.4. In calculating the Estimated Change in Project Costs and in assessing other adjustments to be made to the Base Case arising from a Relevant Event, the Contractor shall be entitled to take into account, inter alia:
 - 4.4.1. any Change in Costs and Change in Revenue without double counting any financing costs relating to the additional capital expenditure;
 - 4.4.2. reasonable economic assumptions prevailing at the time; and
 - 4.4.3. changes in the prospective technical performance of the Project arising as a result of the Relevant Event, provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the terms of this Contract, including (to the extent so borne by the Contractor under this Contract) changes in VAT rates, taxation rates, RPIX and the impact of adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism).

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- 4.5. The Contractor shall take all reasonable and appropriate steps to mitigate the effects of any revision including, in particular but without limitation, mitigating any adverse impact upon the Authority.
- 4.6. If the Base Case is to be revised, then the Contractor shall make appropriate electronic amendments to it to effect such revisions made in accordance with this Schedule 19.
- 4.7. Where a revision to the Unitary Charge is required, the Contractor shall, at its own cost, save as otherwise expressly provided, revise the Base Case and submit to the Authority a revised Base Case reflecting such adjustments.

5. PRINCIPLES OF ADJUSTMENT

- 5.1. The following guidelines shall be followed in revising the Base Case:
 - 5.1.1. wherever possible the revision shall be carried out without altering the logic, formulae, inputs and assumptions incorporated in the Base Case in any way whatsoever and only data such as costs incurred by the Contractor and the timing and amounts of draw downs of funding shall be changed;
 - 5.1.2. where it is necessary to amend the logic, formulae, inputs and assumptions incorporated in the Base Case to permit revisions to be made, this shall be carried out to the minimum extent necessary and in accordance with generally accepted accounting principles;
 - 5.1.3. where any amendment is made to the logic, formulae, inputs and assumptions incorporated in the Base Case, the Base Case, as amended shall first be run with the data included in the Base Case immediately prior to amendment to ensure that the outputs (including but not limited to loan life cover and debt service ratios) from the Base Case as amended correspond to the outputs immediately prior to amendment and the difference in the real pre-tax Project IRR after and immediately prior to amendment does not differ by more than five (5) basis points (being zero point zero five percent (0.05%)) as shown in the resulting figure); and
 - 5.1.4. the Parties may only agree changes or additions to the guidelines set out in this paragraph 5.1.4 these assumptions where they are required in relation to circumstances not dealt with by the assumptions in the Base Case; and
 - 5.1.5. unless otherwise agreed by the Parties in writing, the Contractor shall not be permitted to backdate any increase in the Unitary Charge as a result of an Authority Change.
- 5.2. Any amendment to the logic, formulae, inputs and assumptions incorporated in the Base Case shall be fully recorded so that the manner in which the revised Unitary Charge is calculated can be readily verified.

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- 5.3. Any reference in this Contract to "no better and no worse" and to leaving the Contractor being in a "no better and no worse position", shall be construed as to ensure that:
- 5.3.1. on comparing the output of the Base Case (as at the Base Case Change Date) before and after entering into the required Base Case revisions, such comparison of the output from such Base Case shows that:
- (a) the TPI Adjusted Base Case Equity IRR in circumstances where the Contractor has been generating Third Party Income at levels below those forecast in the Base Case or the Base Equity IRR in other cases shall be unchanged (assessed to two decimal places); and
 - (b) the Contractor shall be in a position which is unchanged in relation to the minimum and average debt service cover ratio, and the minimum and average loan life cover ratio (where the Contractor has been generating Third Party Income at levels below those forecast in the Base Case, such ratios should be adjusted downwards to reflect those circumstances);
- 5.3.2. the ability of the Contractor to comply with this Contract is not adversely affected or improved as a consequence of the Relevant Event.
- 5.4. If any material change in the risk profile of the Project arises from the revision, taking account of similar projects exposed to similar risks to those arising out of the circumstances giving rise to the revision, the Parties may agree that the nominal post-Contractor tax pre-Shareholder tax Equity IRR may be adjusted and such revision may only be an upwards adjustment.
- 5.5. In adjusting the Base Case the individual prices and rates which make up the Unitary Charge should reflect the drivers and methodology used to determine those prices and rates as shown in the original Base Case at the Commencement Date.

6. PRINCIPLES RELATING TO THIRD PARTY INCOME

For the purposes of calculating the financial adjustment in relation to Third Party Income pursuant to the provisions of this Schedule 19 (Revision of Base Case and Custody), the following principles shall be applied:

- 6.1. If the Relevant Event arises from a Qualifying Change in Law (or any event that this Contract deems to be a Qualifying Change in Law), subject to paragraph 6.1.1 the adjustment to the Unitary Charge due in respect of the resulting lost Third Party Income (the "Qualifying Change in Law TPI Adjustment"), shall compensate the Contractor for the Third Party Income that would otherwise have been receivable but for the occurrence of a Qualifying Change in Law;
- 6.1.1. when taken together with all other Third Party Income receivable by the Contractor, the Qualifying Change in Law TPI Adjustment:
- (a) where prior to the occurrence of the Qualifying Change in Law the Contractor has been generating Third Party Income at levels equal to or in excess of those forecast in the original Base Case shall not result in the Third Party Income exceeding the levels forecast in the original Base Case; and

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- (b) where the Contractor has been generating Third Party Income at levels below those forecast in the original Base Case, shall not result in Third Party Income exceeding an amount equal to the lower of:

- (i) the Contractor's share of the Third Party Income forecast in the [original] Base Case; and
- (ii) the TPI Average as defined in paragraph 6.6 below;

6.2. If the Relevant Event arises from a Compensation Event (or an event the Contract deems to be a Compensation Event), subject to paragraph 6.2.1 the adjustment to the Unitary Charge due in respect of the resulting lost Third Party Income [(the "Compensation Event TPI Adjustment")]:

[EITHER

shall when taken together with all other Third Party Income receivable by the Contractor, put the Contractor in a no better, no worse position in respect of Third Party Income than would otherwise have been received but for the occurrence of the Compensation Event;]

6.2.1. When taken together with all other Third Party Income receivable by the Contractor, the Compensation Event TPI Adjustment:

- (a) where prior to the occurrence of the Compensation Event the Contractor has been generating Third Party Income at levels equal to or in excess of those forecast in the [original] Base Case, shall not result in the Third Party Income exceeding the levels forecast in the Base Case; and
- (b) where the Contractor has been generating Third Party Income at levels below those forecast in the [original] Base Case, shall not result in Third Party Income exceeding an amount equal to the lower of:
 - (i) the Contractor's share of the Third Party Income forecast in the original Base Case; and
 - (ii) the TPI Average as defined in paragraph 6.6 below;

6.3. If the Relevant Event arises from an Authority Change the adjustment to the Unitary Charge shall take in account the resulting lost Third Party Income and any net change in the cost of generating such Third Party Income such that when taken together with all other Third Party Income receivable by the Contractor and the net cost of generating such Third Party Income, put the Contractor in a no better, no worse position;

6.4. If the Authority issues a notice to continue in accordance with Clause 69.7 (Notice to Continue), subject to paragraph 6.4.1 the adjustment to the Unitary Charge due in respect of the resulting loss in Third Party Income (the "Force Majeure TPI Adjustment"), shall compensate the Contractor for the Third Party Income that would otherwise have been receivable but for the occurrence of the Force Majeure Event;

6.4.1. When taken together with all other Third Party Income receivable by the Contractor, the Force Majeure TPI Adjustment:

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- (a) where prior to the occurrence of the Force Majeure Event the Contractor has been generating Third Party Income at levels equal to or in excess of those forecast in the [original] Base Case, shall not result in Third Party Income exceeding the levels forecast in the [original] Base Case; and
- (b) where the Contractor has been generating Third Party Income at levels below those forecast in the [original] Base Case, shall not result in Third Party Income exceeding an amount equal to the lower of:
 - (i) the Third Party Income forecast in the [original] Base Case; and
 - (ii) the TPI Average as defined in paragraph 6.6 below.

6.5. Where pursuant to Clause 33.4 the Authority steps in circumstances where the Contractor is not in breach, the Contractor's compensation for lost Third Party Income will be amount equal to the higher of

- (a) The amount of Third Party Income actually received by the Authority as a result of taking the Required Action and
- (b) An amount relating to the period of the Required Action calculated on the basis of the lower of
 - (i) the Third Party Income forecast in the [original] Base Case; and
 - (ii) the TPI Average as defined in paragraph 6.6 below

6.6. The TPI Average shall be calculated as

- (a) Where the Relevant Event or Step In occurs more than twenty-four 24 months since the Services Commencement Date, the TPI Average shall be the average Monthly Third Party Income received by the Contractor on a monthly basis over the [twenty-four (24) Month] period immediately prior to the occurrence of the Relevant Event; or
- (b) Where the Relevant Event or Step In occurs where there have been more than six (6) months but fewer than twenty-four (24) months since the Services Commencement Date, or the parties otherwise agree that there is insufficient data for an average monthly Third Party Income to be calculated over twenty-four months (24 months), the applicable period shall be reduced to such reasonable period as the parties may agree. If subsequently the actual Third Party Income received during the period from six (6) to twenty-four (24) months since the Services Commencement Date is calculated as being less than the amount compensated, the amount by which the Third Party Income received is less than the amount compensated shall be deducted from the Contractor's share of any future excess Third Party Income; or
- (c) Where the Relevant Event or Step In occurs prior to or fewer than six (6) months since the Services Commencement Date, the

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amount of any Third Party Income compensated shall be as forecast in the Base Case. If subsequently the actual Third Party Income received during the period prior to or fewer than six (6) months since the Services Commencement Date is calculated as being less than the amount compensated, the amount by which the Third Party Income received is less than the amount compensated shall be deducted from the Contractor's share of any future excess Third Party Income;

6.7. Compensation for lost Third Party Income shall always be less the Authority's share of such income.

6.8. The TPI Adjusted Base Case Equity IRR

[Insert the project specific mechanism to adjust the Base Case Equity IRR to reflect the capping of the Third Party Income. For example, the TPI Adjusted Base Case Equity IRR is the real post tax blended equity IRR (pre-tax with respect to Shareholders) that is calculated by replacing the TPI assumptions in the Base Case with the TPI Average TPI during the Relevant Event or Step In period. For the avoidance of doubt, the TPI Adjusted Base Case Equity IRR shall never be higher than the Base Case Equity IRR given that compensation in such circumstances is capped at Base Case levels.]

7. PROCEDURE

7.1. The Base Case shall be revised by the Contractor in accordance with the provisions of this Schedule 19 within fifteen (15) Business Days of the Base Case Change Date.

7.2. If the Base Case is to be revised:

7.2.1. the Contractor shall withdraw one (1) electronic copy of Base Case from the Custodian in order to make appropriate electronic amendments to it to enable the Contractor to effect the subsequent revisions;

7.2.2. the Contractor shall at its own cost, save as otherwise expressly provided, revise the Base Case and submit to the Authority the revised Base Case for approval (such approval not to be unreasonably withheld).

7.3. The revised Base Case produced pursuant to paragraph 6.2 shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

7.4. The Contractor shall ensure that each iteration of the Financial Model is provided with a unique reference number and date.

7.5. The costs of undertaking a revision of the Base Case shall be treated as a project cost in respect of all Relevant Events and (for the avoidance of doubt) shall be incorporated within the revised inputs associated with the revisions to the Financial Model as a result of such Relevant Event.

7.6. Where practicable, the Contractor shall use all reasonable endeavours to carry out revisions to the Unitary Charge at the end of a Contract Year in order that

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the revised Unitary Charge may take effect at the beginning of the next Contract Year.

7.7. Following agreement of the revised Base Case, the Contractor shall:

7.7.1. promptly deliver a copy of the revised Base Case to the Authority in accordance with the provisions of paragraph 3.2;

7.7.2. return a copy of the revised Base Case to the Authority, having observed the necessary version control in accordance with paragraph 6.4 and the necessary revisions to the Unitary Charge to be made in accordance with this Schedule 19; and

7.7.3. the necessary adjustments to the Unitary Charge shall be made from the Base Case Change Date but any upward revisions of the Unitary Charge shall not be due and payable until the copies of the revised Base Case have been returned to the Custodian and a copy provided to the Authority.

7.8. Unless otherwise agreed by the Parties in writing, the Contractor shall not be permitted to backdate any increase in the Unitary Charge as a result of a Change.

7.9. If the Contractor does not perform the revisions required by, and in accordance with this Schedule 19, the Authority may do so and determine the revised Unitary Charge accordingly. All costs incurred by the Authority in doing so shall be paid by the Contractor.

8. DISPUTES

8.1. Where the Contractor and the Authority are unable to agree the revisions to the Base Case (including the actual version of the Base Case to be used prior to the required changes being made) within twenty (20) Business Days of submission of the revised Base Case Financial Model by the Contractor to the Authority (or such other time period as is agreed between the Parties), then the matter shall be determined in accordance with the Dispute Resolution Procedure. Where the Adjudicator so requires, he shall have the assistance of an independent auditor appointed by agreement between the Contractor and the Authority or failing such agreement by the appropriate institution to be named.

8.2. Without prejudice to paragraph 6.1, where the Parties are unable to agree any matter arising under this Schedule 19, either party may refer matters for determination pursuant to the Dispute Resolutions Procedure.

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SCHEDULE 20

EMPLOYMENT AND PENSIONS

1. DEFINITIONS

In this Schedule 20 (Employment and Pensions) the following expressions (in addition to those specified in Schedule 1 (Definitions)) shall save where the context or the express provisions of this Contract otherwise requires or admits have the following meanings:

Admission Body	means a transferee admission body for the purposes of regulation 5A of the LGPS Regulations;
Assigned Employees	has the meaning set out in paragraph 2.5.1(a);
Authority Existing Employee	means in relation to any service equivalent to any of the Services all these persons employed by the Authority under a contract of employment (but excluding any person engaged by the Authority as an independent contractor or persons employed by any sub-contractor engaged by the Authority) who are wholly or substantially engaged in the provision of that service as at the Service Transfer Date;
Cessation Date	means any date on which the Contractor or relevant Sub-Contractor ceases to be an Admitted Body other than as a result of the termination of this Contract or because it ceases to employ any Eligible Employees;
Code	means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in DCLG Circular 3/03 Annex D;
Code Dispute Resolution Procedure	means the document set out in Appendix 3 to Schedule 20 (Employment and Pensions);□
Code Obligations	means the express obligations of the Contractor in paragraph 2A which derive from the Code;
Compensation Regulations	means the Local Government (Discretionary Payments) Regulations 1996 (as amended) and the Local Government (Early Termination of Employment) Discretionary Compensation) (England and Wales) Regulation 2006;
Directive	means the EC Council Directive 2001/23/EC;
Eligible Employees	(a) the Transferring Employees who are active members of (or eligible to join) the LGPS on a Relevant

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Transfer Date;

- (b) the Transferring Original Employees who are active members of or have the rights to acquire benefits under either the LGPS or a broadly comparable pension scheme provided by their existing employer on a Relevant Transfer Date; and
- (c) any other individuals nominated by the Contractor or Sub-Contractor (as appropriate),

for so long as they are employees in connection with the provision of the Services or part of such Services.

Employee Costs

means:

- (a) the costs incurred by the Contractor (or any relevant Sub-Contractor) associated with employing any Transferring Staff from the [Services Commencement Date] to the earlier of (i) the date of dismissal by the Contractor (or relevant Sub-Contractor or Secondary Contractor as appropriate) by reason of redundancy under paragraph 2.2 (Transfer of Employees) of Schedule 20 (Employment and Pensions) or, (ii) thirty (30) Business Days from the Services Commencement Date; and
- (b) any redundancy payment, notice pay or payment in lieu of notice, and any accrued but untaken holiday entitlements due to any Transferring Staff and which are required by Legislation or by contract to be made to such Transferring Staff and which arise as a result of their dismissal by reason of redundancy under paragraph 2.2 (Transfer of Employees) of Schedule 20 (Employment and Pensions) where notice is given within two (2) Months of the [Services Commencement Date];

Employee Liability Information

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

Equal Pay Legislation

all and any anti-discrimination and equal pay opportunities laws, including but not limited to the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Equal Treatment Directive (Recast) Directive 06/54/EC), Article 117 of the Treaty of Rome, the Disability Discrimination Act 1995, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2002), the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment

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Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006 and the Equality Act 2006;

Equal Pay Ruling

- (a) a determination by an employment tribunal or court of competent jurisdiction or the settlement or compromise to which the Authority shall have consented in either case relating to any claim brought by any Transferring Employee on before or after the Relevant Service Transfer Date under Equal Pay Legislation that the terms and conditions of employment of the Transferring Employee relating to Pay contravene the Equal Pay Legislation; and/or
- (b) in relation to any Transferring Employee (in relation to their period of employment until the Relevant Service Transfer Date) any alteration to the salaries and payscales prescribed by the NJC terms and conditions in order to settle, address or compromise threatened or extant claim under the Equal Pay Legislation against local authority employers and/or employers engaged as at the date of this Contract or substantially engaged in the provision of services to local authority employers;

First Contractor

means the person with whom the Authority initially contracted for the provision of services which are similar to the Services;

First Employee List

has the meaning given to it in paragraph 2.A.5;

Final Employee List

has the meaning given to it in paragraph 2.A.6;

Future Service Provider

has the meaning given to it in paragraph 2.A.13

Intervening Contract

means a contract with the Authority for the provision of services which are similar to the Services, at times after they were provided under a contract with the First Contractor and before they are to be provided by the Contractor;

Local Government Pension Scheme

means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;

New Employee

means those new employees employed by the Contractor and/or any Sub-Contractor to provide the Services (including any Relevant Employee) who will be working

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	alongside the Transferring Employees;
Original Employee	means those employees of the Authority who as a result of the application of TUPE, in relation to what was done for the purposes of carrying out the contract between the Authority and the First Contractor, became employees of someone other than the Authority;
Partner Admission Agreement	an admission agreement entered into in accordance with Regulation 5A of the LGPS Regulations by the Administering Authority, the Authority and the Contractor or Sub-Contractor (as appropriate);
Past Service Reserve	means the actuarial value, calculated on the basis that the provisions of Section 62 of the Pensions Act 1995 applies directly to the Local Government Pension Scheme or Contractor Scheme (the "Transferring Scheme"), of the aggregate of the benefits, whether immediate, prospective or contingent, payable under the Transferring Scheme to and in respect of each transferring member, his spouse and dependants, by reference to pensionable service in the Transferring Scheme, but making proper allowance for projected increases in the rate of pensionable salary of each transferring member from the cessation of pensionable service to the expected date of withdrawal, retirement or death and increases (whether or not pursuant to a legal obligation) in pensions in payment using demographic and actuarial assumptions which are overall no less conservative than those adopted for the most recent funding valuation of the Transferring Scheme;
Pay	the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a Transferring Employee receives either directly or indirectly in respect of his or her employment with the Authority;
Proposed Workforce	has the meaning set out in paragraph 2.A.8 (Workforce Information);
Relevant Employees	means the employees who are the subject of a Relevant Transfer;
Relevant Transfer	means a relevant transfer for the purposes of TUPE;
Relevant Transfer Date	the date on which an Eligible Employee transfers to the Contractor and/or one or more Sub-Contractor whether by virtue of any Relevant Transfer or deemed Relevant Transfers or otherwise;

Remuneration Costs	has the meaning set out in paragraph 2.A.8 (Workforce Information);
Reorganisation Costs	has the meaning set out in paragraph 2.A.8 (Workforce Information);
Retendering Information	has the meaning set out in paragraph [2.5.1] [2.A.16];
Returning Employees	has the meaning set out in paragraph [2.6.2] [2.A.17];
Service Transfer Date	the transfer on a date agreed by the Parties to the Contractor of responsibility for provision of (or procuring the provision by Sub-Contractors or Secondary Contractors of) the Services in accordance with the Contract;
Transfer Amount	means the aggregate of the Transfer Values as at the Relevant Transfer Date of, respectively, those Eligible Employees who elect to transfer their benefits;
Transfer Date	means the date the Transferring Employees are transferred to the employment of the Contractor and the date that the Transferring Original Employees are transferred to the employment of a subsequent contractor;
Transfer Value	means the actuarial value of the benefits of each member of the Local Government Pension Scheme or Contractor Scheme (on a secondary transfer of employees), as the case may be, who elects to transfer their benefits pursuant to the terms of this Contract calculated on a Past Service Reserve basis and without any reduction having been applied to reflect any deficiencies in the assets relative to the liabilities of the Local Government Pension Scheme or Contractor Scheme;
Transferring Employee	means an employee of the Authority (excluding without limitation any person engaged by the Authority as an independent contractor or persons employed by any subcontractor engaged by the Authority) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract between the Authority and the Contractor, a contract of employment with someone other than the Authority;
Transferring Original Employee	means an employee of the Authority: (a) who became, by the application of the Transfer of Undertakings (Protection of Employment) Regulations

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1981 or TUPE in relation to what was done for the purposes of carrying out a contract between the Authority and the First Contractor, an employee of someone other than the Authority;

- (b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or TUPE in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than the existing employer; and
- (c) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Agreement between the Authority and the Contractor, a contract of employment with someone other than the Authority.

TUPE

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the Directive into English law.

2. EMPLOYMENT MATTERS

2.1. No Employee Transfer

The Authority and the Contractor agree that there are no individuals presently employed by the Authority [or by any existing third party contractor to the Authority] whose contracts of employment will, by virtue of the transfer to the Contractor of responsibility for the provision of [(or procuring the provision by any Sub-Contractor)] any part of the Service in accordance with this Contract and in accordance with the TUPE, have effect after the [Services Commencement Date] as if originally made between those persons and the Contractor or the relevant Sub-Contractor.

2.2. Transfer of Employees

If it is subsequently agreed or determined that there are persons presently employed by the Authority, [or any existing third party contractor to the Authority] whose contracts of employment do have effect after the [Services Commencement Date] as if originally made between those persons and the Contractor or the relevant Sub-Contractor (the "Transferring Staff") then:

- 2.2.1. the Authority shall within twenty (20) Business Days of the date on which it was so agreed or determined have the opportunity to offer a position as an employee of the Authority to some or all of the Transferring Staff;
- 2.2.2. the Contractor shall procure that no person to whom a position has been offered in accordance with paragraph 2.2.1 shall be dismissed by reason of redundancy until the period for acceptance of the offer has expired and the person in question has not accepted the offer;

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- 2.2.3. subject to paragraph 2.2.1 and paragraph 2.2, the Contractor or any Sub-Contractor shall be entitled to dismiss any or all of the Transferring Staff by reason of redundancy;
- 2.2.4. the Contractor shall, and shall procure that any Sub-Contractor shall, carry out, in the required manner, any obligation to consult with the Transferring Staff, or any of them or their respective representatives, and shall use all reasonable endeavours to mitigate the amount of any Employee Costs payable in respect of the Transferring Staff or their dismissal.

Provided that the Contractor and any Sub-Contractor complies with its/their obligations under paragraphs 2.2.1, 2.2.2, 2.2.3 and 2.2.4 any Employee Costs reasonably incurred by the Contractor (or by a relevant Sub-Contractor) shall be indemnified by the Authority. The Authority shall also indemnify the Contractor against any Direct Losses reasonably incurred by the Contractor (or by a relevant Sub-Contractor) where such Direct Losses arise as a result of any act, fault or omission of the Authority occurring prior to the [Services Commencement Date] and relating to claims made against the Contractor (or any relevant Sub-Contractor) by any Transferring Staff.

2.3. Compliance with the Code

If the contracts of employment of any Transferring Staff do transfer to the Contractor or a Sub-Contractor and such individuals remain in the employment of the Contractor or such Sub-Contractor notwithstanding the provisions of paragraph 2.2, then the Contractor shall, and shall procure that any Sub-Contractor complies with its or their obligations pursuant to the Code and the Contractor shall (for itself and relevant Sub-Contractor) indemnify the Authority in respect of any failure to do so.

2.4. Contractor Indemnities

The Contractor shall indemnify and keep indemnified in full the Authority, and at the Authority's request each and every Future Service Provider against:

- 2.4.1. any claims in respect of emoluments and all other contractual or statutory payments and benefits unpaid by or due from the Contractor or any Sub-Contractor to any person entitled to such payments from the Contractor or any Sub-Contractor who is, or has been, employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Service which relate to any period of employment or engagement with the Contractor or any Sub-Contractor on or after the [Services Commencement Date] but prior to the date of expiry or termination of this Contract, and all income tax and pension and national insurance contributions payable thereon; and
- 2.4.2. insofar as paragraph 2.4.1 does not apply, all Direct Losses incurred by the Authority or any Future Service Provider as a result of any claim against any such party in respect of any liability to any person who is, or has been, employed or engaged (whether as a consequence of the TUPE or of the provisions of this paragraph 2) by the Contractor or any Sub-Contractor in connection with the provision of the Service, where such claim arises as a result of any act, fault or omission of the Contractor or any Sub-Contractor occurring after the Services

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Commencement Date and before the expiry or termination of this Contract.

2.5. Retendering - Employment Obligations

2.5.1. The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) Months immediately preceding the Expiry Date or following the service of a Termination Notice or as a consequence of the Authority notifying the Contractor of its intention to retender this Contract pursuant to Clause 80.6 (Retendering the Service on Expiry):

- (a) on receiving a request from the Authority provide in respect of any person engaged or employed by the Contractor (or any Sub-Contractor) in the provision of the Service (the “Assigned Employees”) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor (or of any Sub-Contractor or Secondary Contractor) until immediately before the Termination Date or the Expiry Date (as the case may be) would be Returning Employees (the “Retendering Information”);
- (b) provide the Retendering Information promptly and at no cost to the Authority;
- (c) notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed); and
- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Service, to provide the Service, save with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed),

2.5.2. Without prejudice to paragraphs 2.5.1 and 2.3 the Contractor shall provide and shall procure that any Sub-Contractor and or Secondary Contractor shall provide the Employee Liability Information at such time or times as are required by TUPE and shall warrant at the time of providing such Employee Liability Information that such Information will

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be updated to take account of any changes to such Information as are required by TUPE.

- 2.5.3. The Contractor shall, and shall keep indemnified in full, the Authority and, at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor (or Sub-Contractor or Secondary Contractor) failing to provide or promptly to provide the Authority with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information [provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Authority and was materially inaccurate or incomplete when originally provided].

2.6. Termination of Contract

- 2.6.1. On the expiry or earlier termination of this Contract, the Parties agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Services but the position shall be determined in accordance with Legislation at the Expiry Date or, if earlier, the Termination Date and the following provisions are without prejudice to such determination.
- 2.6.2. For the purposes of this paragraph 2, "Returning Employees" shall mean those employees wholly or mainly engaged in the provision of the Services immediately before the expiry or termination of this Contract whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or termination of this Contract for whatever reason (such date being termed the "Return Date"), the provisions of this paragraph 2.6, shall apply:
- (a) the Contractor shall, or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor (or the Sub-Contractor or Secondary Contractor) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor (or Sub-Contractor or Secondary Contractor) up to the Return Date are satisfied;
 - (b) without prejudice to paragraph 2.6.2(a), the Contractor shall:
 - (i) remain (and procure that any Sub-Contractor or Secondary Contractor shall remain) responsible for all the Contractor's (or Sub-Contractor's or Secondary Contractor's) Personnel (other than the Returning Employees) on or after the Return Date and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the

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Return Date, by or on behalf of, any of the Contractor's or Sub-Contractor's or Secondary Contractor's Personnel who do not constitute the Returning Employees;

- (ii) in respect of Returning Employees, the Contractor shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever, by or on behalf of, any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor or any Sub-Contractor or Secondary Contractor to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider;
- (iii) the Authority shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

2.7. Offer of Employment on Expiry or Termination

If TUPE does not apply on the Expiry Date or, if earlier, the Termination Date, the Authority shall procure that each Future Service Provider (or the Authority) (as appropriate) shall offer employment to the persons employed by the Contractor (or a Sub-Contractor or Secondary Contractor) and assigned to the provision of the Service immediately before the Return Date and the provision of this paragraph 2.7 shall apply:

- 2.7.1. if an offer of employment is made in accordance with this paragraph 2.7, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with paragraph 3 (Pensions)) as applied immediately before the Expiry Date or, if earlier, the Termination Date including full continuity of employment, except that the Authority or Future Service Provider may, at its absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of paragraph 2.5;
- 2.7.2. where any such offer as referred to in paragraph 2.7 is accepted, the Contractor shall indemnify and keep indemnified in full the Authority and/or any Future Service Provider on the same terms and conditions as those set out in paragraph 2.6 as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this paragraph 2, each and every such employee shall be treated as if they were a Returning Employee;
- 2.7.3. for the avoidance of doubt, where any such offer as referred to in this paragraph 2.7 is not accepted and TUPE does not apply, the employee

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shall remain an employee of the Contractor or Sub-Contractor or Secondary Contractor as appropriate.

2.8. Sub-Contractors

In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on any Sub-Contractor or Secondary Contractor in the same terms as those imposed on the Contractor pursuant to [paragraphs 2, 3 (Pensions) and Clause 37 (Contractor Employees)] and shall procure that the Sub-Contractor and/or Secondary Contractor complies with such terms. The Contractor shall indemnify, and keep the Authority indemnified, in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of, or in connection with, any failure on the part of the Contractor and/or the Sub-Contractor and/or Secondary Contractor to comply with this paragraph 2.8.

2.A. EMPLOYMENT MATTERS

2.A.1. Relevant Transfers

The Authority and the Contractor agree that the following events:

- (a) the occurrence of the Service Transfer Date; and
- (b) where the identity of a provider (including the Authority) of any service which constitutes or which will constitute one of the Services is changed whether in anticipation of changes pursuant to this Contract or not,

shall constitute a Relevant Transfer and that the contracts of employment (together with any collective agreements) of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to any benefits for old age, invalidity or survivors under any occupational pension scheme (save as required under sections 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of this Contract) the Contractor shall procure that the former and any new sub-contractor shall comply with their obligations under TUPE.

2.A.2. Compliance by Authority

The Authority shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this Contract and the Contractor shall comply and shall procure that each Sub-Contractor and/or Secondary Contractor shall comply with its/their obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and each of the Authority and the Contractor shall indemnify the other against any Direct Losses sustained as a result of any breach of this paragraph 2.A.2 by the Party in default.

2.A.3. Offer of Employment

- 2.A.3.1. If TUPE does not apply to any person who is an Authority Existing Employees, the Contractor shall offer to or shall procure the offer by the relevant Sub-Contractor or Secondary Contractor to each and every such employee a new contract of employment commencing on

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the Service Transfer Date under which the terms and conditions including full continuity of employment shall not differ from those enjoyed immediately prior to the Service Transfer Date (except insofar as such terms and conditions relate to an occupational pension scheme) and the offer shall be in writing, shall be open to acceptance for a period of not less than ten (10) Business Days and shall be made:

- (i) not less than ten (10) Business Days before the Service Transfer Date, if it is believed that TUPE shall not apply to a person; or
- (ii) if it is believed that TUPE applies to a person but it is subsequently decided that TUPE does not so apply as soon as is practicable and in any event no later than ten (10) Business Days after that decision is known to the Contractor;

2.A.3.2. Where any offer as referred to in paragraph 2.A.3.1 is accepted, the Authority shall indemnify, and keep indemnified in full, the Contractor on the same terms and conditions as those set out in paragraph 2.A.11 as if there had been a Relevant Transfer in respect of each and every Authority Existing Employee who has accepted any such offer and the provisions of paragraphs 2.A.5 to 2.A.8 (inclusive) shall apply in the event of any resulting increase or decrease in the Remuneration Costs and Reorganisation Costs;

2.A.3.3. Where any such offer as referred to in paragraph 2.A.3.1 is accepted, the Contractor shall act, and shall procure that each relevant Sub-Contractor and Secondary Contractor shall act in all respects as if TUPE had applied to each and every Authority Existing Employee who has accepted any such offer and shall comply with paragraph 3 (Pensions) of this Contract in respect of each and every such employee who was immediately before the Service Transfer Date, an Authority Existing Employee;

2.A.3.4. Where any such offer as referred to in paragraph 2.A.3.1 is not accepted and TUPE does not apply, the Authority Existing Employee shall remain an employee of the Authority.

2.A.4. Emoluments and Outgoings

- (a) The Authority shall be responsible for [or shall procure that any other employer of a Relevant Employee is responsible for] all remuneration, benefits, entitlements and outgoings in respect of the [Relevant Employees/Transferring Employees], including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date; and
- (b) the Contractor shall be responsible or shall procure that any relevant Sub-Contractor is responsible, for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or

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engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Transfer Date.

2.A.5. Employment Costs

The Authority has supplied to the Contractor the information, as at the date of this Contract contained in Appendix 1 to this Schedule 20 (the “First Employee List”) regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of, and other matters affecting each of those employees of the Authority and of any sub-contractor of the Authority who it is expected, if they remain in the employment of the Authority or of any relevant sub-contractor of the Authority as the case may be until immediately before the Service Transfer Date, would be Relevant Employees, but the Authority gives no warranty as to the accuracy or completeness of this information.

2.A.6. Final Employee List

The Authority shall supply to the Contractor an update of the First Employee List at [three monthly] intervals from the date of this Agreement and an updated list ten (10) Business Days before the Service Transfer Date. The Authority shall also supply to the Contractor within five (5) Business Days after the Service Transfer Date information, which was correct as at the Service Transfer Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list is the Final Employee List [and where there is more than one Service Transfer Date the Final Employee List means each list so prepared in respect of each Service and at each Service Transfer Date]. The Authority gives and shall give no warranty as to the accuracy or completeness of any information contained in [any update of the First Employee List or in] the Final Employee List.

2.A.7. Without prejudice to paragraphs 2.A.5, 2.A.6 and 2.A.10 (Union Recognition) the Authority shall or shall procure if it has contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Authority shall:

- (a) provide the Employee Liability Information to the Contractor at such time or times as are required by TUPE; and
- (b) update the Employee Liability Information to take account of any changes as required by TUPE.

The Authority gives and shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Authority or any of its relevant sub-contractors.

2.A.8. Workforce Information

The Contractor has provided to the Authority and the Authority has agreed the details set out in Appendix 2 (Workforce Information) of this Schedule 20 which shows in respect of each of the Services, the following information:

- (a) the workforce which the Contractor proposes to establish to provide the Service (the “Proposed Workforce”) classified by reference to grade, job description, hours worked, shift patterns,

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pay scales, rates of pay, terms and conditions and pension arrangements;

- (b) the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Services. These costs (the “Remuneration Costs”) have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- (c) the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce [(including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment)]. These costs (the “Reorganisation Costs”) have been calculated by the Contractor and the Sub-Contractors on the basis of (amongst other things) the information contained in the First Employee List.

2.A.9. Adjustment of Reorganisation and Remuneration Costs

If at any time (including after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to the remainder of this paragraph 2.A.9) there shall be a revision of the Unitary Charge to compensate for any difference:

If the circumstances described in paragraph 2.A.9 arise:

- (a) in circumstances where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the provision of Services; and
- (b) the Contractor and the relevant Sub-Contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Unitary Charge shall be calculated as if they had done so.
- (c) In calculating any adjustment to be made to the Unitary Charge pursuant to this paragraph 2.A.9:
 - (i) no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;
 - (ii) to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be

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compensated as a result of any indexation of the Unitary Charge under this Contract;

- (iii) to avoid doubt, any changes in costs which fall to be dealt with under this paragraph 2.A.9 and which arise from a Change in Law shall be dealt with in accordance with the provisions of this paragraph 2.A.9 and shall not be taken into account for the purposes of Clause 44 (Change in Law);
 - (iv) no downwards adjustments under this paragraph 2.A.9 shall be made in respect of overpayments made by the Contractor (or a Sub-Contractor) to any Relevant Employees which arise from reliance on the Final Employee List to the extent that the Contractor (or the Sub-Contractor) is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
 - (v) if there are underpayments by the Contractor or a Sub-Contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Unitary Charge in respect of all such liabilities of the Contractor or the Sub-Contractor or for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Transfer Date shall be dealt with in accordance with paragraph 2.A.4(a) or 2.A.12) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs; and
 - (vi) in order to prevent duplication, no adjustment shall be made under this paragraph 2.A.9 if any indemnity given by the Authority under any other provision of this Contract would apply.
- (d) Either Party may propose an adjustment to Unitary Charge pursuant to paragraph 2.A.9 by giving not less than ten (10) Business Days notice to the other. Each Party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other Party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to this paragraph 2.A.9.
- (e) In relation to all matters described in paragraphs 2.A.9(a), 2.A.9(b) and 2.A.9(c) the Contractor and the Authority shall, and the Contractor shall procure that the relevant Sub-Contractor or Secondary Contractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

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- (f) The Authority shall and the Contractor shall, and shall procure that each Sub-Contractor shall, take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the activities of the Authority (including the Services) and to the employees who transfer.

2.A.10. Union Recognition

The Authority shall, and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Authority shall, supply to the Contractor no later than five (5) Business Days prior to the Service Transfer Date true copies of its trade union recognition agreement(s) and the Contractor shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE, recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor or) after the transfer to the same extent as they were recognised by the Authority or the relevant sub-contractor before the Service Transfer Date.

2.A.11. Replacement Sub-Contractor

The Contractor shall procure that, on each occasion on which a Sub-Contractor is replaced pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor shall, in accordance with TUPE, recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the appointment of the Sub-Contractor in respect of the provision of the Services at the Authority's premises.

2.A.12. Indemnities

The Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Direct Losses incurred by the Contractor (or any relevant Sub-Contractor) in connection with or as a result of:

- (a) a breach by the Authority of its obligations under paragraph 2.A.4(a); [and]
- (b) [subject to paragraph 2.A.13 (Contractor Indemnities)] any claim or demand by (i) any Transferring Employee or (ii) by any trade union or staff association or employee representative in respect of all or any of the Transferring Employees, in either case that arises out of the employment of any such Transferring Employee provided that this arises from any act, fault or omission of the Authority in relation to any such employee prior to the date of the Relevant Transfer including any act, fault or omission that leads to an Equal Pay Ruling;
- (c) where the costs of an Equal Pay Ruling are to be borne by the Authority pursuant to the provisions of paragraph 2.A.12(b) in respect of all future payments to the Transferring Employees and/or New Employees following the Decision Date then the Unitary Charge shall immediately be adjusted in respect of all

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such future payments to the Transferring Employees and/or New Employees by adding the costs of such Equal Pay Ruling to the Unitary Charge as are appropriate on an ongoing basis until the date of any benchmarking or Market Testing. For the avoidance of doubt, in respect of all payments relating to the period prior to the Decision Date the Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Direct Losses incurred by the Contractor in connection with or as a result of or in connection with the Equal Pay Ruling.

- (d) where any liability in relation to any Transferring Employee, in respect of his or her employment by the Authority or its termination which transfers in whole or part in accordance with TUPE and/or the Directive arises partly as a result of any act or omission occurring on or before the Service Transfer Date and partly as a result of any act or omission occurring after the Service Transfer Date the Authority shall indemnify and keep indemnified in full the Contractor or the relevant Sub-Contractor against only such part of the Direct Losses sustained by the Contractor or any Sub-Contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the relevant Service Transfer Date,

and the indemnities contained in paragraphs 2.A.12(a) and 2.A.12(b) shall apply as if references in those paragraphs to any Transferring Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the Authority also included a reference to the relevant Third Party Contractor employer of the Relevant Employee prior to the Service Transfer Date to the extent that the Authority recovers any sum in respect of the subject matter of those indemnities under any indemnity or other legal entitlement it has against such Third Party Contractor. The Authority shall use all reasonable endeavours to recover any such sums under any such entitlement as mentioned in paragraphs 2.A.12(a) and 2.A.12(b).

2.A.13. Contractor Indemnities

The Contractor shall indemnify and keep indemnified in full, the Authority, and at the Authority's request each and every service provider who shall provide any service equivalent to any of the Services immediately after expiry or earlier termination of this Contract (a Future Service Provider) against:

- (a) all Direct Losses incurred by the Authority or any Future Service Provider in connection with, or as a result of, any claim or demand against the Authority or any Future Service Provider by (i) any person who is, or has been, employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of

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the Contractor and/or any Sub-Contractor after the Service Transfer Date;

- (b) all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of a breach by the Contractor of its obligations under paragraph 2.A.4(b); and
- (c) all Direct Losses incurred by the Authority or any Future Service Provider – Service Provider in connection with, or as a result of, any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from, or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date;
- (d) The Contractor shall indemnify and keep indemnified in full the Authority, against all Direct Losses incurred by the Authority in connection with or as a result of:
 - (i) any claim by any Relevant Employee that any proposed or actual substantial change by the Contractor or any Sub-Contractor to the Relevant Employees' working conditions, or any proposed measures of the Contractor or the relevant Sub-Contractor are to that employee's detriment whether such claim arises before or after the Service Transfer Date; and
 - (ii) any claim arising out of any misrepresentation or misstatement whether negligent or otherwise made by the Contractor or a Sub-Contractor to the Relevant Employees or their representatives whether before, on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.

The indemnities in this paragraph 2.A.13 shall not apply in respect of any sum for which the Authority is to indemnify the Contractor or a relevant Sub-Contractor pursuant to paragraph 2.A.12 or as a result of any adjustment to the Unitary Charge in accordance with paragraph 2.A.9 or to the extent that the claim arises from a wrongful act or omission of the Authority or any Future Service Provider.

2.A.14. Provision of Details and Indemnity

The Contractor shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by the Authority, provide to the Authority details of any measures which the Contractor or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that

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fact, and shall indemnify the Authority against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.

2.A.15. Compliance with Code Obligations

The Authority and the Contractor shall have regard to the Code in interpreting and applying the Code Obligations and the provisions set out below shall apply:

- (a) subject to paragraph 2.A.15, the Contractor shall procure that any New Employees shall be employed on terms and conditions of employment which are, overall fair and reasonable and no less favourable than those of the Transferring Employees engaged in the provision of the Services who are working alongside and holding the same or a similar position to that of the New Employees;
- (b) the Contractor shall procure that any relevant Sub-Contractor shall consult with the recognised trade unions and, where there is no recognised trade union, any other employee representative body on the terms to be offered to the New Employees pursuant to paragraph 2.A.15(a);
- (c) in addition to the obligations under paragraph 2.A.15(a) the Contractor shall procure that the New Employees are offered either:
 - (i) membership of the LGPS where the employer has admission body status within the scheme and makes the requisite contribution; or
 - (ii) membership of a good quality employer pension scheme, being either:
 - (A) a contracted-out final salary based defined benefit scheme; or
 - (B) a defined contribution scheme under which the employer must match employee contributions up to six per cent (6%); or
 - (iii) a stakeholder pension scheme, under which the employer matches employee contributions up to at least six per cent (6%);
- (d) during the Contract Period the Contractor shall, on request by the Authority, provide or procure that the Authority is provided with such accurate and complete information as reasonably requested by the Authority as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees and the New Employees, where this is required to monitor the Contractor's compliance with its Code Obligations;
- (e) the Contractor shall, and shall procure that any relevant Sub-Contractor shall, support any central Government sponsored review and monitoring programme on the impact of the Code and on request by the Authority provide the Authority with such

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accurate and complete information as reasonably requested by the Authority as soon as reasonably practicable in order to assist the Authority in doing this;

- (f) the Authority and the Contractor shall, in the first instance seek to resolve by discussions between them, any complaints from any employee or any recognised trade union in relation to compliance by the Contractor or any Sub-Contractor of its Code Obligations;
- (g) where it appears to the Authority or the Contractor that it is not possible to resolve the matter by continuing discussions between them pursuant to paragraph 2.A.15(f) or where an employee of the Contractor or any recognised trade union writes to the Authority to confirm that it has been unable to resolve its complaint directly with the Contractor or any Sub-Contractor in relation to the Contractor's Code Obligations:
 - (i) the Authority shall first write to the Contractor to seek an explanation for the alleged failure by the Contractor to comply with its Code Obligations. The Contractor shall or shall procure that the relevant Sub-Contractor shall provide such an explanation in writing within five (5) Business Days of receipt of the request from the Authority;
 - (ii) if the response provided by the Contractor or any Sub-Contractor satisfies the Authority that the Code Obligations have been met, then the Authority will inform the complainant of this and the matter shall be deemed to have been concluded;
 - (iii) in the event that the Authority is not satisfied with the response provided by the Contractor or any Sub-Contractor or the Authority shall write to the Contractor within five (5) Business Days of such response to require the Contractor to take immediate action to resolve this dispute; and
 - (iv) if, following such a request by the Authority the Contractor still appears to the Authority not to be complying with its Code Obligations, the matter shall be dealt with in accordance with the Code Dispute Resolution Procedure.

2.A.15.2. [The Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Direct Losses incurred by the Contractor or any relevant Sub-Contractor in respect of the costs relating to the terms and conditions of employment of the New Employees pursuant to compliance with the Code Obligations under this paragraph 2.A.15 as a result of an Equal Pay Ruling]

OR

[The Authority shall pursuant to paragraph 2.A.12(c) be responsible for any Direct Losses relating to the terms and conditions of employment of the New Employees

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pursuant to compliance with the Code Obligations under this paragraph 2.A.15 as a result of an Equal Pay Ruling.^{9]}

2.A.16. **Retendering**

2.A.16.1. The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) Months immediately preceding the expiry of this Contract or following the service of a Termination Notice or as a consequence of the Authority notifying the Contractor of its intention to retender this Contract:

- (a) on receiving a written request from the Authority provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services (the “Assigned Employees”) full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters¹⁰ affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor (or of any Sub-Contractor) until immediately before the Termination Date, would be Returning Employees (the “Retendering Information”);
- (b) provide the Retendering Information promptly and at no cost to the Authority;
- (c) notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed); and

⁹ This version of the paragraph to be used where the Authority wants to adjust the Unitary Charge for Direct Losses relating to New Employees terms and conditions under the Code arising from an Equal Pay Ruling.

¹⁰ The list would normally show:

Staff Ref No:
DoB
Age
Job Title
Start Date
Continuous Service Date – length of reckonable service
Contracted hours
Sex (M/F)
Site
Department
NI letter (A or D)
Scale and point
Salary
Superannuation (including contribution rates, length of reckonable pensionable service etc)

Allow/deduction code.

N.B. This is not necessarily an exhaustive list

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- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed),

2.A.16.2. The Contractor shall, and shall keep indemnified in full, the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor (or Sub-Contractor) failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in, or omission, from the Retendering Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Authority and was materially inaccurate or incomplete when provided.

2.A.17. **Termination of Contract**

2.A.17.1. On the expiry or earlier termination of this Contract, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to a Service but the position shall be determined in accordance with the law at the date of expiry or termination as the case may be and this paragraph 2.A.17 is without prejudice to such determination.

2.A.17.2. For the purposes of this paragraph 2.A.17 "Returning Employees" shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the expiry or termination of this Contract whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or earlier termination of this Contract for whatever reason (such date being termed the "Return Date"), the provisions of this paragraph 2.A.17 will apply.

(a) the Contractor shall, or shall procure that, all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor or any Sub-Contractor who had been engaged in the provision of the Services and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor (or Sub-Contractor) up to the Return Date are satisfied;

(b) without prejudice to paragraph 2.A.17.2(a):

- (i) the Contractor shall remain (and procure that any Sub-Contractor shall remain) responsible for all the Contractor's (or Sub-Contractor's) employees (other than the Returning Employees) on or after the time of expiry or termination of

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this Contract and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever, whether arising before or on or after the Return Date by or on behalf of any of the Contractor's or Sub-Contractor's employees who do not constitute the Returning Employees;

- (ii) the Authority shall ensure or shall procure that all wages, salaries and other benefits of the Returning Employees (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees on and after the Return Date are satisfied;
- (iii) the Contractor shall remain (and procure that Sub-Contractors shall remain) (as relevant) responsible for all the Contractor's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Authority and any Future Service Provider Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before or on or after the Return Date by or on behalf of any of the Contractor's or Sub-Contractors' employees who do not constitute the Returning Employees;
- (iv) in respect of those employees who constitute Returning Employees, the Contractor shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period after the Relevant Service Transfer Date but on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor (or any Sub-Contractor) to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider;
- (v) the Authority shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

2.A.17.3. The Authority shall indemnify the Contractor (for itself and for the benefit of each relevant Sub-Contractor) in respect of those

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employees who constitute Returning Employees against all Direct Losses incurred by the Contractor or any relevant Sub-Contractor in connection with or as a result of any failure by the Authority or any Future Service Provider to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact so apply save to the extent that any such failure arises as a result of any act or omission of the Contractor or any relevant Sub-Contractor.

2.A.18. Offer of Employment on Expiry or Termination

If TUPE does not apply on the expiry or earlier termination of this Agreement, the Authority shall procure that each Future Service Provider (including the Authority) shall offer employment to the persons employed by the Contractor or a Sub-Contractor in the provision of the Services immediately before the Return Date.

- (a) If an offer of employment is made in accordance with this paragraph 2.A.18, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with paragraph 3 (Pensions)) as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the Authority or Future Service Provider may, at its absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of paragraph 2.A.16;
- (b) Where any such offer as referred to in paragraph 2.A.18(a) is accepted, the Contractor shall indemnify and keep indemnified in full the Authority and/or any Future Service Provider on the same terms and conditions as those set out in paragraph 2.A.13 as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this paragraph 2.A.18 each and every such employee shall be treated as if they were a Returning Employee;
- (c) Where any offer as referred to in paragraph 2.A.18(a) is not accepted and TUPE does not apply, the relevant employee shall remain an employee of the Contractor or Sub-Contractor as appropriate.

2.A.19. Sub-Contractors

In the event that the Contractor enters into any Sub-Contract in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this [paragraph 2A, paragraph 3 (Pensions) and Clause 37 (Contractor Employees)] and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of, or in connection with, any failure on the part of the Contractor to comply with such terms.

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3. PENSIONS¹¹

3.1. No Employee Transfer

The Authority and the Contractor agree that there are no individuals presently employed by the Authority [or by any existing third party contractor to the Authority] who are, or who are eligible to be, prior to the Relevant Transfer, members of the Local Government Pension Scheme (“LGPS”).

3.2. Pensions for New Employees

The Contractor shall procure that any New Employee shall be provided with membership of or participation in one of the schemes or arrangements set out below:

- 3.2.1. membership of the LGPS where the employer has admission body status within the scheme and makes the requisite contribution; or
- 3.2.2. membership of a good quality employer pension scheme, being either:
 - (a) a contracted-out final salary based defined benefit scheme; or
 - (b) a defined contribution scheme under which the employer must match employee contributions up to six per cent (6%); or
- 3.2.3. a stakeholder pension scheme, under which the employer matches employee contributions up to at least six per cent (6%).

3.3. Co-operation on Termination

On the termination or expiry of this Contract (for whatever reason) for a reasonable period both before and after such termination, the Contractor undertakes to co-operate fully with the Authority (and any successor which provides to the Authority services in the nature of any of or any part of the Service) in order to achieve a smooth transfer of the ongoing pension liabilities for future service whereby any employee transferring to such successor are provided with pension benefits which are broadly similar to or better than those with which they were provided under this Contract.

¹¹ This pension paragraph assumes there are no employees. If there are employees paragraph 3A should be used and renumbered.

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3.A. PENSIONS

3.A.1. Contractor to Become an Admission Body

Where the Contractor or a Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and wishes to offer those Eligible Employees membership of the LGPS, the Contractor shall procure that it and/or each relevant Sub-Contractor and/or each relevant Secondary Contractor shall become an Admission Body. The Contractor shall before the Relevant Transfer Date execute and procure that each relevant Sub-Contractor executes a Partner Admission Agreement which will have effect from and including the Relevant Transfer Date.

3.A.2. Partner Admission Agreement

The Authority shall before the Relevant Transfer Date execute each of the Partner Admission Agreements referred to in paragraph 3.A.1 (Contractor to Become an Admission Body) and shall use reasonable endeavours to ensure that the Administering Authority executes each such Partner Admission Agreement before the Relevant Transfer Date.

3.A.3. Indemnity for a Breach of the Partner Admission Agreement

Without prejudice to the generality of this paragraph 3.A, the Contractor hereby indemnifies the Authority and/or any Future Service Provider and, in each case, their sub-contractors on demand from and against all Direct Losses suffered or incurred by it or them which arise from any breach by the Contractor or any Sub-Contractor of the terms of the Partner Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).

3.A.4. Indemnity or Bond

Without prejudice to the generality of the requirements of this paragraph 3.A, the Contractor shall procure that it and each relevant Sub-Contractor shall as soon as reasonably practicable obtain any indemnity or bond required in accordance with the Partner Admission Agreements.

3.A.5. Right of Set-Off

The Authority shall have a right to set off against any payments due to the Contractor under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Contractor or from any relevant Sub-Contractor under the Partner Admission Agreement.

3.A.6. Contractor Ceases to be an Admission Body

If the Contractor or any Sub-Contractor employs any Eligible Employees from a Relevant Transfer Date and:

- (a) the Contractor or any relevant Sub-Contractor does not wish to offer those Eligible Employees membership of the LGPS; or
- (b) the Authority, the Contractor or any relevant Sub-Contractor are of the opinion that it is not possible to operate the provisions of paragraphs 3.A.1 (Contractor to Become an Admission Body) to 3.A.5 (Right of Set-Off) inclusive; or

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- (c) if for any reason after the Relevant Transfer Date the Contractor or any relevant Sub-Contractor ceases to be an Admission Body other than on the date of termination or expiry of this Contract or because it ceases to employ any Eligible Employees,

then the provisions of paragraphs 3.A.1 (Contractor to Become an Admission Body) to 3.A.5 (Right of Set-Off) inclusive shall not apply (without prejudice to any rights of the Authority under those paragraphs) and the provisions of paragraph 3.A.7 (Contractor Scheme) shall apply.

3.A.7. Contractor Scheme

Where this paragraph 3.A.7 applies pursuant to paragraph 3.A.6, the following shall apply:

3.A.7.1. The Contractor shall or shall procure that any relevant Sub-Contractor shall not later than the Relevant Transfer Date or the Cessation Date (as the case may be) nominate to the Authority in writing the occupational pension scheme or schemes which it proposes shall be the "Contractor Scheme" for the purposes of this paragraph 3.A.7. Such pension scheme or schemes must be:

- (a) established within three (3) Months prior to the Relevant Transfer Date or Cessation Date (as the case may be) and maintained until any payment to be made under Appendix 4 (Bulk Transfer Terms) to this Schedule 20 (Employment and Pensions) is made;
- (b) reasonably acceptable to the Authority (such acceptance not to be unreasonably withheld or delayed);
- (c) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; and
- (d) certified by the Government Actuary's Department or an actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are the same as, broadly comparable to or better than those provided by the LGPS. [However, in the case of Eligible Employees who are Transferring Original Employees and who are being offered membership of the Contractor Scheme with effect from the Relevant Transfer Date, the Contractor Scheme must be certified as providing benefits which are the same as, broadly comparable to or better than provided under their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS)];

3.A.7.2. The Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that it shall and shall procure that any relevant Sub-Contractor shall procure that:

- (a) the Eligible Employees shall by [three (3)] Months before the Relevant Transfer Date or the Cessation Date (as the case may be) be offered membership of the Contractor Scheme with effect

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from and including the Relevant Transfer Date or Cessation Date (as the case may be);

- (b) the Contractor Scheme shall provide benefits in respect of the Eligible Employees' periods of service on and after the Relevant Transfer Date or Cessation Date (as the case may be) which the Government Actuary's Department or an actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department shall certify to be the same as, broadly comparable to or better than the benefits which the Eligible Employees were entitled to under the LGPS at the Relevant Transfer Date or the Cessation Date (as the case may be) [In the case of Eligible Employees who are Transferring Original Employees, the benefits provided from the Relevant Transfer Date must be the same as, broadly comparable to or better than the benefits provided by their pension scheme immediately before the Relevant Transfer Date (where this scheme was not the LGPS)];
- (c) where the Contractor Scheme has not been established at the Relevant Transfer Date or Cessation Date (as the case may be)' the Eligible Employees shall be provided with benefits in respect to death in service which are no less favourable than the death in service benefits provided by the LGPS immediately before the Relevant Transfer Date or Cessation Date (as the case may be). Such benefits will continue to be provided until death in service benefits are provided by the Contractor Scheme;
- (d) if the Contractor Scheme is terminated, a replacement pension scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Contractor or relevant Sub-Contractor. The replacement scheme must comply with this paragraph 3.A.7 (Contractor Scheme) as if it were the Contractor Scheme; and
- (e) before the Relevant Transfer Date or Cessation Date (as the case may be) the trustees of the Contractor Scheme shall undertake by deed to the Authority and to the Administering Authority that they shall co-operate with the provisions of paragraphs 3.A.7.1(a) to (d) (Contractor Scheme), 3.A.8.1(a), 3.A.8.1(b) and 3.A.8.1(d) (Undertaking from the Contractor) and Appendix 4 (Bulk Transfer Terms) to the extent applicable to them.

3.A.7.3. Appendix 4 (Bulk Transfer Terms) shall apply in relation to the terms for bulk transfers from the LGPS to the Contractor's Scheme following the Relevant Transfer Date and any subsequent bulk transfers on termination or expiry of this Agreement.

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3.A.8. Undertaking from the Contractor

3.A.8.1. The Contractor undertakes to the Authority (for the benefit of the Authority itself and for the Authority as agent and trustee for the benefit of the Eligible Employees) that:

- (a) all information which the Authority or the Administering Authority or their respective professional advisers may reasonably request from the Contractor or any relevant Sub-Contractor for the administration of the LGPS or concerning any other matters raised in paragraph 3.A.7 (Contractor Scheme), paragraph 3.A.8 (Undertaking from the Contractor) or Appendix 4 (Bulk Transfer Terms) shall be supplied to them as expeditiously as possible;
- (b) it shall not and shall procure that any relevant Sub-Contractor shall not, without the consent in writing of the Authority (which shall only be given subject to the payment by the Contractor or the relevant Sub-Contractor of such reasonable costs as the Authority or the Administering Authority may require) consent to instigate, encourage or assist any event which could impose on the LGPS or on the Authority a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;
- (c) until the Relevant Transfer Date, it shall not and shall procure that any relevant Sub-Contractor shall not issue any announcements (whether in writing or not) to the Eligible Employees concerning the matters stated in paragraphs 3.A.1 (Contractor to Become an Admission Body) to 3.A.6 (Contractor Ceases to be an Admission Body) inclusive without the consent in writing of the Authority and the Administering Authority (not to be unreasonably withheld or delayed);
- (d) it shall not and shall procure that any relevant Sub-Contractor shall not take or omit to take any action which would materially affect the benefits under the LGPS or under the Contractor Scheme of any Eligible Employees who are or will be employed wholly or partially in connection with the Services without the prior written agreement of the Authority (not to be unreasonably withheld or delayed) provided that the Contractor and/or such Sub-Contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employees; and
- (e) it shall and shall procure that any relevant Sub-Contractor shall offer any of its Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of the LGPS membership of the Contractor Scheme as soon as reasonably practicable after ceasing to be so engaged [unless such an Eligible Employee has voluntarily agreed to the loss of his LGPS membership as part of the change].

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3.A.9. Discretionary Benefits

- 3.A.9.1. Where the Contractor or a Sub-Contractor is an Admission Body, the Contractor shall and/or shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority; and
- 3.A.9.2. Where the award of benefits in paragraph 3.A.9.1 is not permitted under the [Compensation Regulations and/or] the LGPS or the Contractor and/or a Sub-Contractor is not an Admission Body, the Contractor shall and/or shall procure that any Sub-Contractor shall award benefits to the Eligible Employees which are identical to the benefits the Eligible Employees would have received under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority.
- 3.A.9.3. Under paragraph 3.A.9.1 and 3.A.9.2, where such benefits are of a discretionary nature, they shall be awarded on the basis of the Authority's written policy in relation to such benefits at the time of the Relevant Transfer Date (which the Authority shall provide upon request). Where the payment of such benefits is not, for whatever reason, possible, the Contractor shall and/or shall procure that any relevant Sub-Contractor or Secondary Contractor shall compensate the Eligible Employees in a manner which is broadly comparable or equivalent in cash terms.

3.A.10. Claims from Eligible Employees or Trade Unions

- 3.A.10.1. The Contractor hereby indemnifies the Authority and/or any Future Service Provider and, in each case, their sub-contractors from and against all Direct Losses suffered or incurred by it or them which arise from claims by Eligible Employees of the Contractor and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees which losses:
- (a) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
 - (b) arise out of the failure of the Contractor and/or any relevant Sub-Contractor or Secondary Contractor to comply with the provisions of this paragraph 3.A before the date of termination or expiry of this Contract.

3.A.11. Liability for Costs

The costs of the Authority necessarily and reasonably incurred in connection with the Partner Admission Agreement and/or of obtaining the necessary certification of comparability in accordance with paragraph 3.A.7.1(d) (Contractor Scheme) shall be borne by the Contractor.

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3.A.12. Transfer to another Employer

3.A.12.1. Save on expiry or termination of this Contract, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Contractor shall and shall procure that any relevant Sub-Contractor and Secondary Contractor shall:

- (a) consult with and inform those Eligible Employees of the pension provisions relating to that transfer; and
- (b) procure that the employer to which the Eligible Employees are transferred (the “New Employer”) complies with the provisions of this paragraph 3.A provided that references to the “Sub-Contractor” will become references to the New Employer, references to “Relevant Transfer Date” will become references to the date of the transfer to the New Employer and references to “Eligible Employees” will become references to the Eligible Employees so transferred to the New Employer.

3.A.13. Pension Issues on Expiry or Termination

3.A.13.1. The Contractor shall and shall procure that each relevant Sub-Contractor shall:

- (a) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Eligible Employees);
- (b) promptly provide to the Authority such documents and information mentioned in paragraph 3.A which the Authority may reasonably request in advance of the expiry or termination of this Contract; and
- (c) fully co-operate (and procure that the trustees of the Contractor's Scheme shall fully co-operate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.

3.A.14. [Transferring Original Employees]

Where there are Transferring Original Employees who are not Eligible Employees but who are active members of or have the right to acquire benefits under an occupational pension scheme provided by their existing employer on a Relevant Transfer Date, the Contractor shall and shall procure that any relevant Sub-Contractor shall provide pension benefits in respect of those Transferring Original Employees' periods of service on and after the Relevant Transfer Date which the Government Actuary's Department or an actuary nominated by the Authority shall certify to be the same as, broadly comparable to or better than the benefits provided

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by the Transferring Original Employees' existing pension scheme immediately before the Relevant Transfer Date.]

SCHEDULE 20
EMPLOYMENT AND PENSIONS
APPENDIX 1
FIRST EMPLOYEE LIST

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SCHEDULE 20
EMPLOYMENT AND PENSIONS
APPENDIX 2
WORKFORCE INFORMATION

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SCHEDULE 20 EMPLOYMENT AND PENSIONS

APPENDIX 3

CODE DISPUTE RESOLUTION PROCEDURE

The Parties must exhaust all normal local procedures as required by paragraph 9 and paragraph 13 of the Code of Practice before invoking the Alternative Dispute Resolution procedure (“ADR”) provided for in paragraph 14 of the Code of Practice.

The ADR will be under the supervision of an independent person appointed from an approved list supplied by ACAS. If the Parties so agree, they may appoint two “wing members” with an employer and trade union background to assist the independent person.

1. THE DISPUTE RESOLUTION PROCESS:

Disputes will be resolved using the following three-stage procedure.

1.1. Stage 1: Initial reference to the Independent Person.

The independent person will be invited to answer three questions:

1.1.1. Is this a dispute about the application of the Code of Practice?

If the answer is no, the matter can proceed no further. If yes, then the independent person will move to question 1.1.2.

1.1.2. Have the Parties exhausted local procedures?

If the answer is no, then the Parties will be invited to make further local efforts to resolve the dispute. If yes, then the independent person will conduct an independent assessment, by answering question 1.1.3 and giving reasons for the answer.

1.1.3. Do the terms and conditions of employment on offer to new employees comply with the Code of Practice?

If the answer is yes, then the matter is deemed to be concluded and the contractor can continue to offer the same package of conditions to new employees. If the answer is no, then the dispute will proceed to Stage 2.

Time limit: Twenty (20) Business Days.

1.2. Stage 2: Discussions with a view to reaching an agreement on compliant terms and conditions

Stage 2 begins with the Parties being invited to seek to resolve the matter through further discussions.

The independent person will make themselves available to the Parties to facilitate the process. The Parties also have the option of establishing other arrangements for mediation.

If the Parties can reach an agreement consistent with the Code of Practice then the matter is closed and the new package of conditions of employment will be applied both to new starters and to those employed during the dispute.

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If no agreement can be reached within the allotted time then the dispute will proceed to Stage 3.

Time limit: Ten (10) Business Days with the possibility that this might be extended by the agreement of the Parties and with the consent of the independent person.

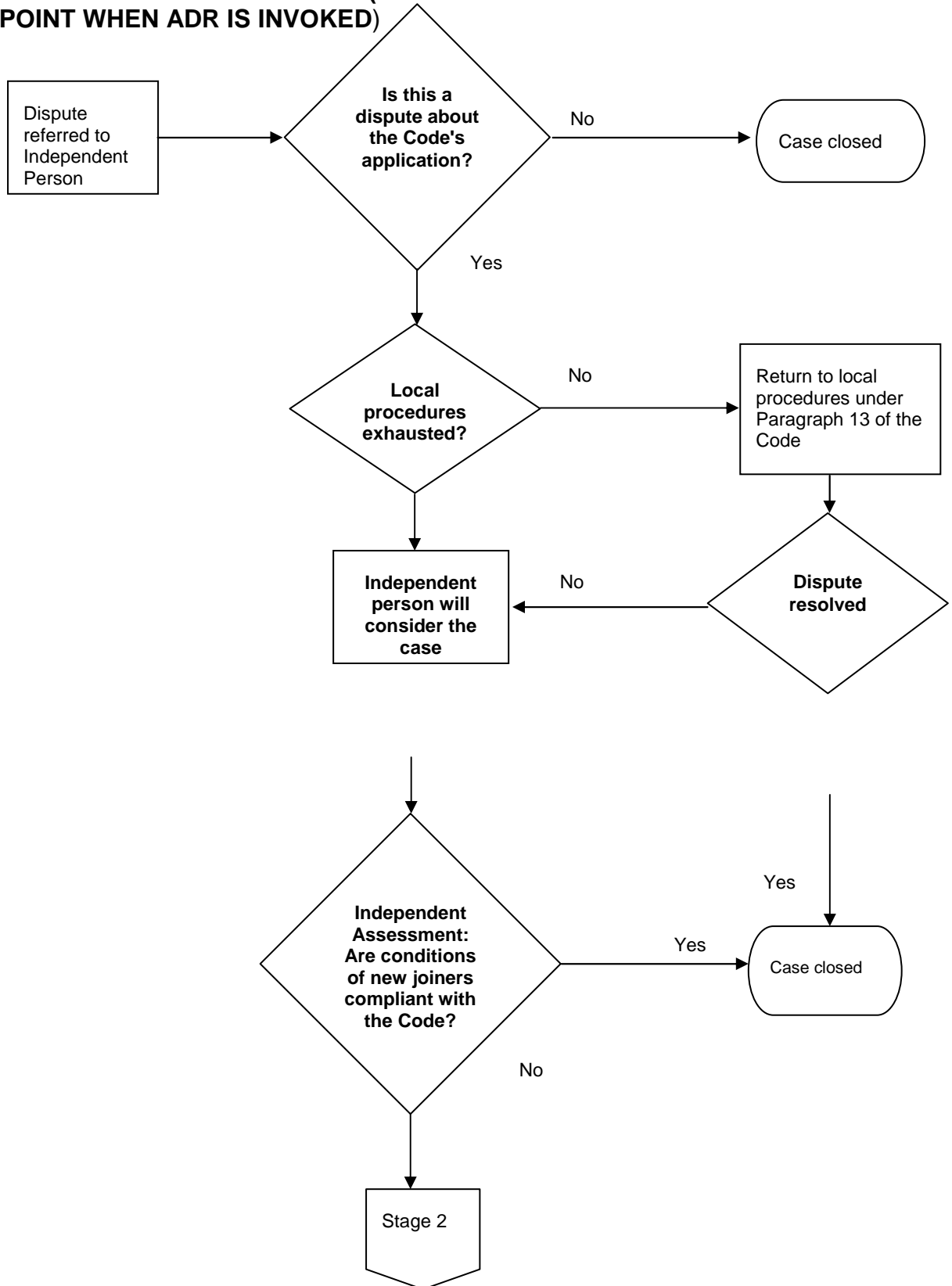
1.3. Stage 3: Final Reference to the Independent Person

The independent person invites the Parties to make final submissions. If the independent person then believes it would be worthwhile, the Parties may be given a short period of further discussion.

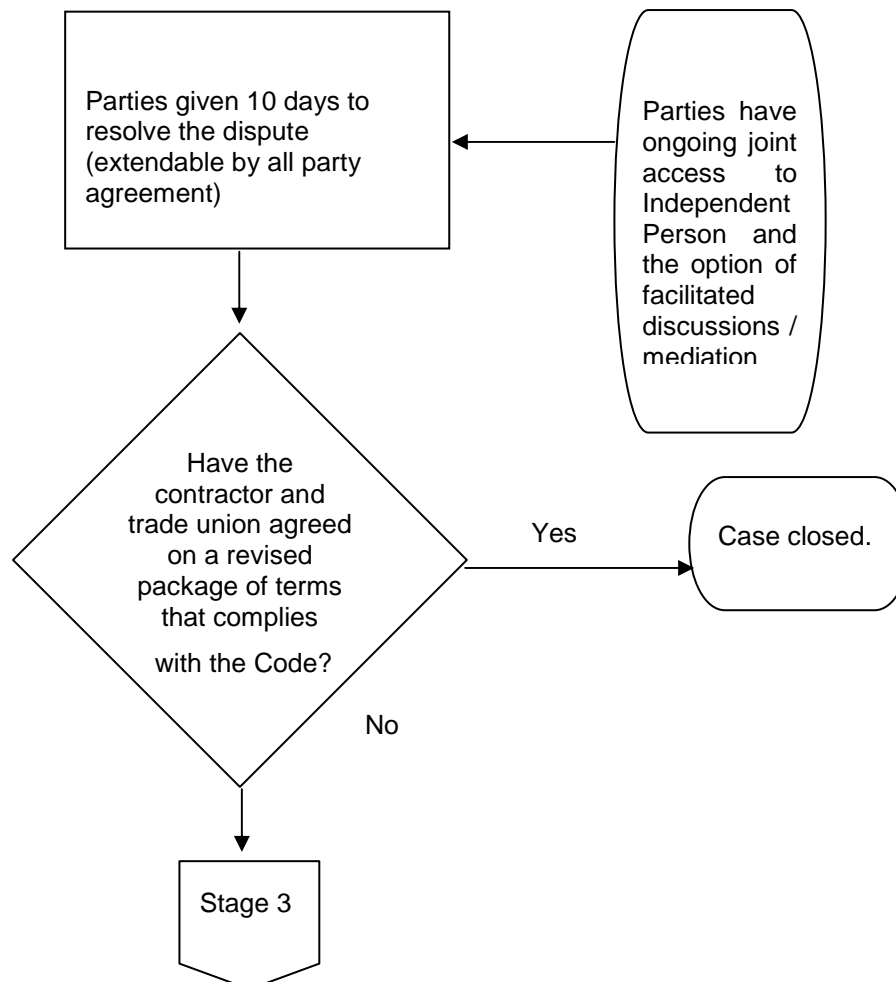
If there is no value in giving the Parties more time - or if during any discussion the Parties were unable to agree on how to bring the matter to a successful conclusion - then the independent person will proceed to a final binding arbitration. Having heard the evidence and reached a conclusion the independent person will impose a revised package of terms and conditions applicable to each of the affected employees.

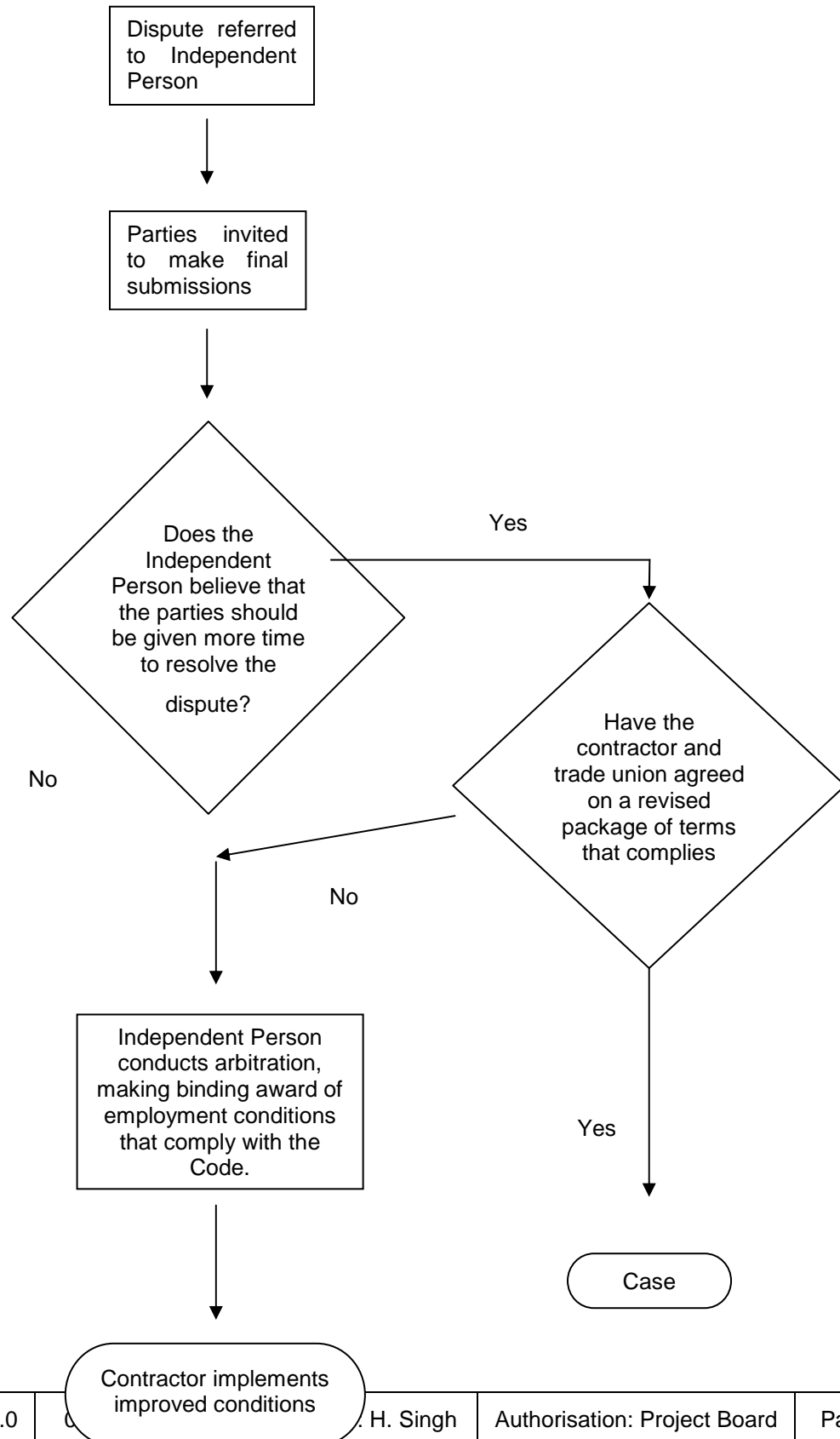
Time limit: Ten (10) Business Days.

1. STAGE 1: REFERRAL TO INDEPENDENT PERSON AND EXECUTION OF INDEPENDENT ASSESSMENT (20 WORKING DAYS IN TOTAL FROM THE POINT WHEN ADR IS INVOKED)



2. STAGE 2: PARTIES GIVEN TIME TO RESOLVE THE DISPUTE, WITH ONGOING JOINT ACCESS TO THE INDEPENDENT PERSON AND WITH THE OPTION OF MEDIATION (10 BUSINESS DAYS, EXTENDABLE BY AGREEMENT)



3. STAGE 3: FINAL SUBMISSION AND ARBITRATION (10 BUSINESS DAYS)

SCHEDULE 20
EMPLOYMENT AND PENSIONS
APPENDIX 4
BULK TRANSFER TERMS

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SCHEDULE 21
CHANGE PROTOCOL
PART 1
GENERAL PROVISIONS

Application of this Change Protocol

This Schedule 21 (Change Protocol) is divided into 6 Parts as follows:

- Part 1:** applies to all Authority and Contractor Changes.
- Parts 2- 4:** apply to Authority Changes from the Services Commencement Date and thereafter throughout the Services Period.
- Part 5:** applies to Contractor Changes at any time during the Contract Period.
- Part 6:** applies to Construction Changes (i.e. an Authority Change which affects the Works and which takes effect during the period from the date of this Contract until the [end of the defects liability period]¹² under the Construction Sub-Contract and/or an Architectural Enhancement arising in accordance with paragraph 3.9 of Schedule 26 (Planning) in each case as shall be processed in accordance with Part 6 of this Schedule 21 (Change Protocol).

For the avoidance of doubt, Qualifying Changes in Law shall be treated as Authority Changes for the purposes of this Schedule 21 (Change Protocol) (but not for Schedule 19 (Revision of Base Case and custody)).

GENERAL PROVISIONS

1. DEFINITIONS

In each part of this Schedule 21 (Change Protocol) the following expressions (in addition to those specified in Schedule 1 (Definitions)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

- Agreed Abatement** means:
- (a) in the case of a Low Value Change [£20] indexed;
 - (b) in the case of a Medium Value Change [£50] indexed;¹³
and
 - (c) in the case of a High Value Change [£80] indexed;¹⁴

¹² Amend to reflect the correct terminology for the Construction Sub-Contract (i.e. so that it applies to the final testing to be undertaken under the Construction Sub-Contract which is very often beyond the Acceptance Date in the Contract).

¹³ Figures indicative only – to be discussed by the Authority on a project by project basis. Authorities should note that these agreed abatements will apply as a liquidated damage and sole remedy for both the process failure (eg to respond to a notice) and a substantive failure to apply the Change. Authorities may consider, therefore, whether to include two levels of deductions.

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Alterations	means any alteration, demolition, extension or addition to a Facility in each case of a structural nature;
Approval Criteria	<p>means the criteria against which any Contractor Stage 2 Response will be evaluated by the Authority and which will be specified by the Authority in the Authority Change Notice and which shall be based on:</p> <ul style="list-style-type: none"> (a) compliance with the Authority's specifications for the Change; (b) evidencing value for money; (c) affordability to the Authority in terms of developing a final price within the Contractor's Stage 2 Response; and (d) compliance with all relevant Legislation, Guidance and Consents; <p>and such Approval Criteria shall be reasonable and achievable taking into account Good Industry Practice and the scope and price of the required High Value Change;</p>
Authority Change	<p>means:</p> <p>A Change that is initiated by the Authority by submitting a Low Value Change Request or an Authority Change Notice to the Contractor;</p> <p>For the purpose of this schedule 21 (Change Protocol) a Qualifying Change in Law shall also be treated as an Authority Change (subject to paragraph [] of Part 1 below)</p>
Authority Change Notice	<p>means</p> <p>a written notice submitted by the Authority requiring a Medium Value Change a High Value Change or a Construction Change and setting out the information specified in the relevant paragraph of this Change Protocol or</p> <p>in the case of Qualifying Changes in Law a notice issued by either party in the form specified in clause 44.1;</p>
Authority Initial Confirmation	has the meaning given in paragraph 2.4 of Part 4 (High Value Change);
Authority Stage 1	has the meaning given in paragraph 3.2(a) of Part 4 (High

The Payment Mechanism will need to be amended to reflect this provision and it should also be linked to any Change Protocol Service.

¹⁴ The Payment Mechanism will need to be amended to reflect this provision and it should also be linked to any Change Protocol Service.

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Confirmation	Value Changes) of this Change Protocol;
Authority Stage 2 Confirmation	has the meaning given in paragraph 6.1(a) of Part 4 (High Value Changes) of this Change Protocol;
Benchmarking Process	means the process set out in paragraph 8 of Part 4 (High Value Changes) of this Change Protocol;
Benchmarking Report	means the report produced by the Contractor in accordance with the requirements of paragraph 8 of Part 4 (High Value Changes) (which shall, for the avoidance of doubt, include the information required by paragraph 8.2 of Part 4 (High Value Change)) of this Change Protocol;
Capital Expenditure	means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the [UK] from time to time;
Change	means any change, variation, extension or reduction in the Facility and/or the Services requested by the Contractor or Authority and/or deemed to be an Authority Change by virtue of an express provision of the Contract
Change Notice	means an Authority Change Notice and/or Contractor Change Notice as the context shall require;
Change in Project Costs	means a fixed and final price for carrying out the relevant Change;
Change Protocol	means the protocol for Changes as set out in this Schedule 21 (Change Protocol);□
Comparable Market	means local authority [waste treatment facilities] operated under PFI or other forms of PPP Projects;
Competitive Tendering Process	means the process set out in paragraph 7 of Part 4 (High Value Changes) of the Change Protocol
Confirmation Notice	means a written notice issued by the Authority pursuant to the relevant provision of this Change Protocol (or pursuant to paragraph 4.11 of Schedule 15 (Best Value) setting out the agreed details of the Change, including the agreed cost, method of payment and the times of its implementation which shall be in the form set out in Appendix 4 to this Change Protocol;
Construction	means an Authority Change which affects the Works and which takes effect during the period from the date of this

Change	Contract until the [end of the defects liability period] ¹⁵ under the Construction Subcontract and/or an Architectural Enhancement arising in accordance with paragraph 3.9 of Schedule 26 (Planning) in each case as shall be processed in accordance with Part 6 of this Schedule 21 (Change Protocol)
Contractor Change	means a Change that is initiated by the Contractor by submitting a Contractor Change Notice to the Authority;
Contractor Change Notice	means a written notice submitted by the Contractor requesting a Change and setting out the information required by the relevant paragraph of this Change Protocol;
Contractor Initial Response	means the written response of the Contractor referred to in paragraph 2.1 of Part 4 (High Value Change) of this Change Protocol;
Contractor Response	means the written response of the Contractor to an Authority Change Notice which shall include the information listed in the relevant paragraph of this Change Protocol;
Contractor Stage 1 Response	shall have the meaning given in paragraph 2.1 of Part 4 (High Value Changes) of this Change Protocol;
Contractor Stage 2 Response	shall have the meaning given in paragraph 4.1 of Part 4 (High Value Changes) of this Change Protocol;
High Value Changes	means a Change which is not a Low Value Change or a Medium Value Change, and which is likely to either cost more than £[200,000] (indexed) to implement, or require an adjustment to the Unitary Charge that is greater than [2]% of the maximum [Annual Unitary Charge] (as the case may be);
Independent Technical Advisor	means a person who is independent of the Authority or any Contractor Party who has not less than [five (5)] years experience in projects operated under PFI or other forms of PPP expertise in pricing works and/or services of the type required by the relevant High Value Change and has relevant experience in the [waste treatment/management sector];
Low Value Change	means: (a) works (or a series of related works) of a minor nature, or the provision of plant and equipment, having a cost,

¹⁵ Amend to reflect the correct terminology for the Construction Sub-Contract (i.e. so that it applies to the final testing under the Construction Sub-Contract which is very often beyond the Acceptance Date in the Contract).

not exceeding [£10,000] (indexed); or

- (b) any change or amendment (or series of related changes or amendments) (whether temporary or permanent) of the Services or any of them where the cost of each change or amendment (or series of related changes or amendments), in the reasonable opinion of the Authority, does not exceed [£10,000] (indexed) [and does not require adjustment of the Unitary Charge] and which does not affect achievement of any [Completion Date];

Low Value Change Request	means a request for a Low Value Change [in the form set out in Appendix 3 to this Change Protocol];
Low Value Change Threshold	means where the Low Value Changes in any Contract Year exceeds [] (indexed) in number or cost or in excess of the aggregate sum of [] (indexed); ¹⁶
Medium Value Change	means a Change, which is not a Low Value Change, and which, in the reasonable opinion of the Authority, is likely to either cost less than £[] (indexed) ¹⁷ to implement, or require an adjustment to the Unitary Charge that is less than []% of the maximum Annual Unitary Charge in the relevant Contract Year (as the case may be);
Medium Value Change Threshold	means where the Medium Value Changes in any Contract Year exceeds [] in number or cost in excess of the aggregated sum of [] (indexed);
Original Facilities	means the Facility as at the Services Commencement Date (including any Changes incorporated into the Works);
Project Management Fee	means a fee in respect of project management services calculated in accordance with paragraph 2.5 of Part 4 (High Value Changes) of this Change Protocol;
Reference Price	means a high level price calculated by the Independent Technical Advisor which is his estimate of the cost of implementing a proposed High Value Change and which shall include and show separately the information specified in paragraph 9.3 of 4 (High Value Changes) of this Change Protocol;
Tendering Report	means a report prepared by the Contractor which shall include the information required by paragraph 7.6 of Part 4

¹⁶ Bid Back items. However the Authority should specify minimum number/cost and request bidders to better the minimum. The Contractor may be prepared to offer a discount if the Changes are "batched" and processed at regular intervals e.g. monthly or annually. Assuming there is a Change Protocol Service, some of these costs should be part of the fee for that Service.

¹⁷ Authority to specify or could be a Bid Back item. This is the recommended maximum.

(High Value Changes) of this Change Protocol;

Third Party Costs means the costs incurred by a third party which shall include but not be limited to any sub-contractor, consultant or advisor (including the Operating Sub-Contractor when the Operating Sub-Contractor is an affiliate of the Contractor);

Whole Life Costs means, in relation to any Medium Value Change or High Value Change, the estimated and (to the extent that such information is available) the actual cost of operating and maintaining such Medium Value Change or High Value Change over its intended design life (consistent with the Contractor Response);

2. LIMITS ON CHANGES

2.1. Neither party may propose or implement an Authority or Contractor Change:

- (a) which requires the Works to be carried out and/or the Services to be performed or a Change to be implemented in a way that infringes any Legislation or Guidance or is inconsistent with Good Industry Practice;
- (b) which would cause any Consent to be revoked (or a new Consent required to implement the relevant Change to be unobtainable) in accordance with the principles set out in paragraph 2.5;
- (c) which would materially and adversely affect the Contractor's ability to deliver the Services carried out (except for that part of the Service which has been specified as requiring to be amended in the Change Notice) in a manner not compensated pursuant to this Change Protocol;
- (d) which would materially and adversely affect the health and safety of any person;
- (e) which would require the Contractor to implement the Change in an unreasonable period of time;
- (f) which would (if implemented) materially and adversely change the nature of the Project (including its risk profile) ; and/or
- (g) whereby the Authority does not have the legal power or capacity to require the implementation of such Change.

2.2. The Contractor may, within ten (10) Business Days of receipt of an Authority Change Notice (or such longer period as reasonably set out by the Authority in the Authority Change Notice in consultation with the Contractor and taking into account the characteristics of the Authority Change and/or any modification to the Authority Change) state in writing whether it objects to the Authority Change Notice on any of the grounds set out in paragraph 2.1. The Contractor may request a further 10 day extension to the period if Senior Lender due diligence is required. The Authority shall, within ten (10) Business Days of receipt of such notice provide written confirmation that either:

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- (a) the Authority Change Notice is withdrawn; or
 - (b) the objection by the Contractor shall be referred for determination in accordance with the Dispute Resolution Procedure.
- 2.3. For the avoidance of doubt the Authority has an absolute discretion to accept or reject any Contractor Change unless such Change is required as a result of a Change in Law.

3. CONSENTS FOR AUTHORITY CHANGES

3.1. The Parties agree that where the implementation of any Authority Change involves a requirement for the Contractor to obtain new Consents or the modification of existing Consents, the following overriding principles shall apply to the development and implementation of the relevant Change:

- (a) the Parties shall from time to time (as may be necessary) agree the estimated costs (if any) or (as may be appropriate) the revised estimated costs likely to be incurred in obtaining the relevant new Consents or the modification of the existing Consents and in relation to such relevant Change;
- (b) the Authority shall be entitled to withdraw that Change at any time on the basis that the estimated costs (or revised estimated costs as may be appropriate) are too high subjects to payment of any costs already incurred in accordance with paragraph (d);
- (c) the Contractor shall not be obliged to proceed with that Change (including the preparation of any Contractor Stage 1 Response or Contractor Stage 2 Response) if at any time, there is no agreement on costs;
- (d) the relevant Change shall establish a longstop date for obtaining of the relevant new Consents or the modification of the existing Consents and a definition of a satisfactory consent;
- (e) the Contractor shall be obliged to use all reasonable endeavours to obtain a satisfactory consent or the modification of the existing Consents by the longstop date. [all reasonable endeavours having the same meaning as All Reasonable Endeavours in Schedules 26 (Planning) and 27 (Approach to Permit Risk)];¹⁸
- (f) subject to compliance with paragraph (c) and provided that the Parties have agreed an estimate of such costs in accordance with paragraph (a), any additional costs and expenses (or any required modifications to the Change) arising from any delay in obtaining the relevant new Consent or the modification or any existing Consent or any deviation in the terms of the relevant Consent from the assumed terms shall be for the account of the Authority;

the Contractor shall not be required to implement the relevant Change in the event that, despite using reasonable endeavours the satisfactory Consents or the modification of the existing Consents cannot be obtained.

¹⁸ Amend if Schedules 26 and/or 27 are not used.

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- 3.2. This paragraph 3 (Consents for Authority Changes) shall not apply to Contractor Changes (in respect of which Consents are a Contractor risk) or Architectural Enhancements (which by definition arise in the context of planning as provided in Schedule 26 (Planning)).

4. CHANGE PROCESS

- 4.1. Either party may serve a Change Notice proposing a Change and such Change Notice shall be processed in accordance with the following sections of this Change Protocol:
- (a) an Authority Change to the Facility and/or the Services or the Facility which is a Low Value Change shall be processed in accordance with Part 2 (Low Value Change) of this Change Protocol;
 - (b) an Authority Change to the Facility and/or the Services which is a Medium Value Change shall be processed in accordance with Part 3 (Medium Value Change) of this Change Protocol;
 - (c) an Authority Change to the Facility and/or the Services which is a High Value Change shall be processed in accordance with Part 4 of this Change Protocol;
 - (d) a Contractor Change to the Works, and/or Facility and/or the Services shall be processed in accordance with Part 5 of this Change Protocol.
 - (e) an Authority Change during relating to the period prior to the Services Commencement Date shall be processed in accordance with Part 6 of this Change Protocol.

5. FUNDING

- 5.1. In the case of a Medium Value Change, a High Value Change or, a Construction Change (including in any case Changes which arise from a Qualifying Change in Law) the Authority may request in the Authority Change Notice that the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to the Authority and the Senior Lenders.
- 5.2. If the Contractor has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within forty (40) Business Days of the date that the Authority issued an Authority Change Notice making such request the Contractor shall inform the Authority in writing of what funding (if any) it has managed to obtain. The Contractor shall have no obligation to carry out the Authority Change, which shall be deemed to be withdrawn, unless the Authority confirms in writing within twenty (20) Business Days of receipt of such notice by the Contractor, that it will pay the Capital Expenditure for which funding is not available.
- 5.3. The Authority may, at any time notify the Contractor in writing that it will meet all or, to the extent the Contractor has obtained funding for part of the Capital Expenditure, the remaining part of the Capital Expenditure.
- 5.4. For the avoidance of doubt, subject to Clause 44 (Change in Law), the Authority shall pay the Capital Expenditure incurred in carrying out any Low Value Change required by the Authority.

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- 5.5. In the case of a Contractor Change, any funding shall (unless otherwise agreed) be provided by the Contractor except to the extent a Qualifying Change in Law applies in which case the provisions of Clause 44 (Change in Law) shall apply.

6. DUE DILIGENCE

- 6.1. The Senior Lender may carry out legal, financial, technical and insurance due diligence on any proposal for an Authority Change:
- (a) in the case of a Low Value Change, when the Low Value Change Threshold has been exceeded; or
 - (b) in the case of a Medium Value Change where the Medium Value Change Threshold has been exceeded; or
 - (c) in the case of a High Value Change as required.
- 6.2. In the event that the Senior Lender needs to procure such legal, technical, financial or insurance due diligence, the parties shall agree a budget and capped cost for the due diligence provided that the costs for the due diligence shall not exceed [2%] of the overall value of the relevant Authority Change.
- 6.3. The Contractor shall procure that:
- (a) the Senior Lenders shall promptly give any consents which are required pursuant to the Financing Agreements to any Change and shall only withhold its consent on one (or more) of the grounds set out in paragraph 2.1;
 - (b) the Insurance Broker shall be notified by the Contractor promptly of any material Change (materiality being judged in relation to the size and nature of the scope of the Change and any necessary authorisation obtained).

7. IMPLEMENTATION

- 7.1. Where the Authority has issued a Confirmation Notice in respect of a Change:
- (a) where applicable, the parties shall execute any deed of amendment to this Contract;
 - (b) the Contractor shall promptly implement any Change within the timescales set out in the Confirmation Notice and shall do so in a manner which minimises any inconvenience to the Authority;
 - (c) the Contractor shall notify the Authority when it believes the Change has been completed;
 - (d) where applicable, the Unitary Charge shall be revised in accordance with Schedule 19 (Revision of Base Case and Custody).
- 7.2. No amendments of this Contract shall be made as a result of a Low Value Change [or a Medium Value Change,] unless otherwise agreed between the parties.

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7.3. If the Contractor does not:

- (a) respond to a Low Value Change Request an Authority Change Notice (in the case of a High Value Change either at Stage 1 or Stage 2); or
- (b) complete or implement the Change within the specified timescales,

then the Unitary Charge shall be abated at the rate of the Agreed Abatement for every day of delay from the date the Contractor Response should have been submitted or the Change should have been completed or implemented until the date the Contractor Response is submitted or the Change is completed or implemented (as the case may be) provided that the operation of this paragraph will be the sole financial remedy of the Authority, and without prejudice to the Authority's rights under Clause 68 (Compensation on Termination for Contractor Default), in respect of such non-compliance and provided that this paragraph will not apply where the cause of such non-compliance was the act or omission of the Authority or any Authority Related Party.

7.4. All Changes shall be implemented under the terms of this Contract and in particular all provisions applying to the Works shall apply to the carrying out of any additional works or changes to the Works.

7.5. The Contractor shall keep a record of all Changes (both completed and outstanding) and provide the Authority with these records whenever reasonably required by the Authority.

8. IMPLEMENTATION OF A CHANGE BY THE AUTHORITY

8.1. The Authority may implement any Change itself pursuant to paragraph 4.5 (Implementation) of Part 2 (Low Value Changes), or paragraph 2.9 of Part 3 (Medium Value Changes) or paragraph 6.4 (Authority Stage 2 Confirmation) of Part 4 (High Value Changes) provided that where the Change is an Alteration it may only be implemented by the Authority:

- (a) if it comprises the provision of separate facilities at the relevant Facility and does not require any Alteration to any existing buildings or other facilities (other than any Alterations comprising connection into utilities or other service media at the relevant Facility necessary to implement the relevant Change); or
- (b) the Authority shall undertake the Change in accordance with Good Industry Practice and shall pay to the Contractor any Direct Losses (including any Third Party Income) incurred by the Contractor as a result of a failure to do so.

9. PAYMENT

9.1. The Authority shall pay the Contractor the agreed cost for carrying out or implementing any Authority Change:

- (a) which is a Low Value Change, in accordance with paragraph 5 (Payment) of Part 2 (Low Value Changes); or

- (b) which is a Medium Value Change a High Value Change or a Construction Change either by way of:
 - (i) an adjustment to the Unitary Charge, by incorporating the Change in Project Costs in accordance with Schedule 19 (Revision of Base Case and Custody); or
 - (ii) subject to paragraph 9.2, within twenty (20) Business Days of receipt of an invoice submitted by the Contractor for the agreed amount,

provided that in the case of paragraph 9.1(b)(i) no adjustment of the Unitary Charge shall take place until the aggregate value of the adjustment required exceeds the sum of £[●] (indexed) or, once a year if the aggregate sum is not achieved in any Payment Year.

9.2. Where the Authority agrees to pay any Capital Expenditure incurred in carrying out a Change:

- (a) the Authority and Contractor shall agree:
 - (i) a payment schedule in respect of the payment of the Capital Expenditure reflecting the amount and timing of the costs to be incurred by the Contractor in carrying out the Authority Change, to the extent borne by the Authority; and
 - (ii) where payment for part of the Authority Change reflects the carrying out of, or specific progress towards, an element within the Authority Change, an objective means of providing evidence confirming that the part of the Authority Change corresponding to each occasion when payment is due under the payment schedule has been duly carried out,

and such payment schedule and evidence shall be determined in accordance with the Dispute Resolution Procedure in the event of the Authority and Contractor failing to agree its terms;

- (b) the Authority shall make a payment to the Contractor within twenty (20) Business Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with the agreed payment schedule (as may be varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Authority Change has been carried out; and
- (c) if payment is not made in accordance with paragraph 9.2(b), the Authority shall pay interest at the Prescribed Rate to the Contractor on the amount unpaid from the date twenty (20) Business Days after receipt of the relevant invoice until the date of payment.

9.3. Where, pursuant to paragraph 5.1, due diligence has been carried out by the Senior Lender, then the Authority shall reimburse the Contractor for the actual costs of the Senior Lender carrying out due diligence of a proposed Authority Change, provided that:

- (a) in the case of a Low Value Change, the Low Value Change Threshold has been exceeded; or

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- (b) in the case of a Medium Value Change, the Medium Value Change Threshold has been exceeded; and
- (c) the sums due shall never exceed the lower of the cap set out in paragraph 5.2 and the caps or fixed sum set out in the relevant Contractor Response;

and, where the costs of the due diligence have not been included in the Change in Project Costs, the Authority shall pay such costs within twenty (20) Business Days of receipt of an invoice submitted by the Contractor for the agreed amount.

9.4. Notwithstanding any other provision of this Change Protocol:

- (a) the provisions of Schedule 19 (Revision of Base Case) shall apply to ensure that the Contractor is in a no better no worse position as defined therein and in relation to the principles relating to Third Party Income and nothing in this Schedule 21 (Change Protocol) nor in any estimate or cost calculated herein shall take precedence over the principles of Schedule 19 (Revision of Base Case).
- (b) the provisions of Clause 44 (Change in Law) shall apply to the payment of any costs incurred or any savings made in carrying out or implementing any Change which is required as a result of a Qualifying Change in Law; and
- (c) the provisions of Clause 35 (Best Value) shall apply to the payment of any costs incurred or any savings made in carrying out or implementing any Change which is required as a result of a Best Value Change.

10. QUALIFYING CHANGES IN LAW

10.1. Where a Change resulting from a Qualifying Change in Law is referred to this Change Protocol through the application of Clause 44 (Change in Law), the provisions relating to an Authority Change in this Change Protocol shall apply save that:

- (a) notwithstanding anything to the contrary elsewhere in this Schedule 21 (Change Protocol), the Authority Change relating to the Qualifying Change in Law may not be withdrawn by the Authority;
- (b) the provisions of clause 44.2 shall be taken into account and shall apply to the Contractor Response (Medium Value Changes) or the Contractor Stage 2 Response (High Value Changes); and
- (c) the provisions of clause 44 (and the Contractor's Share) shall apply to funding of any capital expenditure.

11. DISPUTES

Any dispute arising in respect of this Change Protocol will be resolved in accordance with the Dispute Resolution Procedure.

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SCHEDULE 21
CHANGE PROTOCOL
PART 2
LOW VALUE CHANGES

1. NOTIFICATION AND SPECIFICATION

- 1.1. Subject to paragraph 2.1 limits in Change of Part 1 (General Provisions), the Contractor shall carry out any Low Value Change requested by the Authority.
- 1.2. If a Low Value Change is required by the Authority, it shall submit to the Contractor a Low Value Change Request.

2. CONTRACTOR RESPONSE

- 2.1. Within five (5) Business Days of receipt of the Low Value Change Request, the Contractor shall in writing provide a fixed price for implementing the required Low Value Change which shall be calculated in accordance with paragraph 2.2 of this Part 2 of this Change Protocol together with a period for completion or implementation.
- 2.2. The cost of implementing any Low Value Change shall be calculated on the basis that:
 - (a) wherever practicable the Contractor shall procure that such works are carried out by an existing on-site and suitably qualified employee of a Sub-Contractor and no labour element shall be charged to the Authority in respect of such works. Where the Low Value Change cannot be carried out by an existing on-site and suitably qualified employee of a Sub-Contractor with out overtime being payable, , the cost of the labour element shall be calculated in accordance with the Small Works Rates or, where such rates are not applicable, in accordance with rates which are fair and reasonable; and
 - (b) the materials element shall be charged at the cost of materials to the Contractor or to the contractor carrying out the work (net of all discounts) and there shall be no management fee, margin, overhead, contingency or other cost applied to such costs.
- 2.3. The Contractor shall make no additional charge to the Authority for processing, implementing or managing a Low Value Change [unless the number of Low Value Changes in any Contract Year exceeds []¹⁹. Any Low Value Changes in excess of this limit, shall be charged at a fee of £[50] (indexed) for each subsequent []²⁰ Change].
- 2.4. The Authority may, within five (5) Business Days of receipt, object in writing to the Contractor's response given pursuant to paragraph 2.1 of this Part 2 of this Change Protocol and in such circumstances the parties shall act reasonably to agree, as soon as practicable, how the Low Value Change is to be priced and/or implemented. If the parties cannot agree the Low Value Change, the

¹⁹ Figure to be bid back item.

²⁰ Figure to be bid back item.

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Authority may withdraw the Low Value Change Request or (if the Authority chooses) carry out the Low Value Change itself or refer the matter to the Dispute Resolution Procedure [in which case paragraph 4.3 of this Part 2 of this Change Protocol shall apply].

3. DUE DILIGENCE

The provisions of paragraph 6 (Due Diligence) of Part 1 (General Provisions) of this Part 2 of this Change Protocol shall apply.

4. IMPLEMENTATION

- 4.1. If the Authority has not objected pursuant to paragraph 2.4 of this Part 2 of this Change Protocol, the Contractor shall implement the required Low Value Change within the period specified in the Contractor Response or within such other period agreed between the parties.
- 4.2. The Contractor shall implement the required Low Value Change so as to minimise any inconvenience to the Authority and shall notify the Authority when it believes the Low Value Change has been completed.
- 4.3. Paragraph 7.2, 7.3 and 7.4 of Part 1 of this Change Protocol shall apply and any dispute pursuant to this Part 2 of this Change Protocol may be referred by either party to the Dispute Resolution Procedure. Provided that the Contractor shall, where such dispute concerns the cost of the Low Value Change and if instructed so to do by the Authority, carry out or implement the Low Value Change within the prescribed timescales notwithstanding the dispute.
- 4.4. Any dispute pursuant to this Part 2 may be referred by either party to the Dispute Resolution Procedure, provided that the Contractor shall, where such dispute concerns the cost of the Low Value Change and if instructed to do so by the Authority, carry out or implement the Low Value Change within the prescribed timescales notwithstanding the dispute.
- 4.5. Where the Contractor has either:
 - (a) failed to provide a response pursuant to paragraph 2.1 within fifteen (15) Business Days of the date of the Low Value Change Request; or
 - (b) has provided a response pursuant to paragraph 2.1 but has failed to fully implement the Low Value Change within ten (10) Business Days of the date that has been determined or agreed in accordance with paragraph 2.4 or paragraph 4.1 as being the date on which the Low Value Change should have been implemented

then the Authority may notify the Contractor that the Low Value Change Notice is withdrawn and following such notification, the Authority may procure the implementation of the Low Value Change without further recourse to the Contractor and the provisions of paragraph 8 (Implementation of Change by the Authority) of Part 1 (General Provisions) shall apply.

5. PAYMENT

- 5.1. Following the implementation of a Low Value Change, the Contractor shall include the costs of any Low Value Change in the next Draft Monthly Payment Report following completion or implementation of the relevant Low Value

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Change and the Authority shall pay such agreed costs as part of the following monthly Unitary Charge unless paragraph 5.2 applies.

- 5.2. No adjustment of the Unitary Charge shall be made as a result of any Low Value Change unless agreed between the parties. Where it is agreed that an adjustment of the Unitary Charge is required, the Base Case shall be adjusted to give effect to such Low Value Changes once each Contract Year and all relevant Low Value Changes that have occurred in the preceding Contract Year shall be aggregated together into a single cumulative adjustment and the adjustment as set out in Schedule 19 (Revision of Base Case and Custody).

SCHEDULE 21 CHANGE PROTOCOL

PART 3

MEDIUM VALUE CHANGES

1. NOTIFICATION AND SPECIFICATION²¹

- 1.1. If an Medium Value Change is required by the Authority, it shall serve an Authority Change Notice on the Contractor.
- 1.2. The Authority Change Notice shall, where applicable, include, but not be limited to, the following information:
 - (a) a statement that it is a Medium Value Change and whether or not the Change is required as a result of a Change in Law;
 - (b) a description of any works (or alteration to a Facility) required in sufficient detail to allow the design and pricing of the Medium Value Change by the Contractor;
 - (c) whether, in respect of any additional works, the Contractor is expected to provide maintenance and lifecycle services in respect of such additional works;
 - (d) the location for the works or services required;
 - (e) the timing of the works or services required [together with any adjustments required to any fixed dates in the Contract;
 - (f) in respect of additional or varied services, a description of such service or variation to a Service together with the anticipated date of implementation of the variation or commencement of the new service in sufficient detail to allow the pricing of the Medium Value Change by the Contractor;
 - (g) whether any Consents are required in order to implement the Change;
 - (h) either confirmation that the Authority will fund the Medium Value Change itself and its proposals for payment (whether in stages or otherwise) or a request that the Contractor raises finance for the Authority Change as required by paragraph 9.1 (Payment) of Part 1 of this Change Protocol; and
 - (i) the date by which the Contractor shall provide the Contractor Response to the Authority (which shall be appropriate to the complexity of the Change required and shall not be less than ten (10) Business Days from the date of the Authority Change Notice) or forty (40) Business Days if the Authority requests that the Contractor obtain funding of the Capital Expenditure under paragraph 5.1 of Part 1.

²¹ The Authority may consider whether a pro forma should be included as an Appendix to this Schedule 21.

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2. CONTRACTOR RESPONSE

2.1. Subject to paragraph 2 (Limits on Changes) of Part 1 (General Provisions) of this Change Protocol, within the period specified in the Authority Change Notice (or a further 10 days if the Contractor requests the same because Senior Lender due diligence is required or such other period as the parties may agree), the Contractor shall provide the Authority with a Contractor Response which shall include (where applicable) the following information:

- (a) a detailed programme for the design, Authority review of the design, construction and/or installation of the Medium Value Change (including the procuring of any Consents);
- (b) a detailed programme for commissioning and implementing any change in, or addition to the Services, including the provision and/or training of any staff;
- (c) the proposed method of certification of any construction or operational aspects of the Medium Value Change if not covered by the procedures set out in this Contract.
- (d) the proposed consultants, sub-contractors and suppliers the Contractor intends to appoint to process the Medium Value Change;
- (e) details of any impact of the Medium Value Change on the carrying out of the Works or the provision of the Services and in particular, details of any relief from compliance with any obligations of this Contract required during the implementation of the Medium Value Change;
- (f) any Estimated Change in Project Costs that result from the Medium Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the Medium Value Change;
- (g) where the Authority has specified in the Authority Change Notice that the Contractor shall raise finance for the Authority Change, the steps the Contractor has or will take to secure such finance;
- (h) any Third Party Costs (approved in accordance with paragraph 1.2 (i) of Part 3 (Medium Value Changes)) and the details of the third-party activity that will be incurred in providing the Contractor Response including (where applicable pursuant to paragraph 6 (Due Diligence) of Part 1 (General Provisions)) of this Change Protocol the anticipated cost of the Senior Lender carrying out due diligence (which shall be a capped sum) together with a proposed process for approval of such costs by the Authority before they are incurred;²² and
- (i) any amendment to this Contract or any Ancillary Document or any Financing Agreement required as a result of the Medium Value Change.
- (j) In calculating the Estimated Change in Project Costs (including the Whole Life Costs) and/or Capital Expenditure the Contractor shall ensure that:

²² Authority may wish to ask for a cap on the estimate or a fixed price. Note paragraph 5 of Part 1.

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- (k) any professional fees, contingencies, overheads and/or profit margins charged by any consultant, sub-contractor or supplier in respect of construction and/or installation and/or lifecycle and/or service provision shall be the equivalent rates set out in Part 3 of Appendix 2 of this Change Protocol. If the Contractor can demonstrate to the reasonable satisfaction of the Authority that the fees, overheads and profit margins being charged by consultants, sub-contractors and/or suppliers in current market conditions have changed significantly from those set out in Part 3 of Appendix 2 of this Change Protocol, then the Authority shall agree to amend the rates set out in Part [3] of Appendix 2 of this Change Protocol to reflect current market rates;
- (l) the value of any Medium Value Change other than in respect of those matters in 3.2(a) above shall be calculated by reference fair, reasonable and comparable market rates.

Agreement of Contractor Response

- 2.2. If the Authority requests to approve any Third Party Costs prior to that Third Party being appointed to prepare the Contractor's Response, the time period for the Contractor to submit its response in accordance with paragraph 2.1 shall be suspended from the date on which such Third Party Costs are submitted for approval until approval is granted (or the parties have otherwise agreed or such Third Party Costs or they have been determined through the Dispute Resolution Procedure).
- 2.3. As soon as practicable and in any event no later than [ten (10)] Business Days after the Authority receives the Contractor Response, the parties shall discuss and endeavour to agree the issues set out in the Contractor Response, and the Contractor shall:
 - (a) provide evidence that the Contractor has used reasonable endeavours (including, where practicable, and without prejudice to the provisions of paragraph 8 (Competitive Tendering) of Part 4 (High Value Change) of this Change Protocol, (the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
 - (b) demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Contractor; and
 - (c) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the Authority Change, has been taken into account in the Estimated Change in Project Costs.
 - (d) If the Contractor fails to provide the information required by paragraph 2.2 of this Part 2 of this Change Protocol or satisfy the provisions of paragraphs 2.3(a) – 2.3(c) (inclusive) of this Part 2 of this Change Protocol the Authority may (in writing) reject the Contractor Response, in which event the parties shall meet within ten (10) Business Days of the

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notice of rejection to discuss the reason for the Authority's rejection of the Contractor Response. The Contractor shall use reasonable endeavours to address the Authority's concern about the quality and content of the Contractor Response. In particular, the Contractor shall provide any additional information or documentation that the Authority shall reasonably require which relates to the contents of the Authority Change Notice and/or the Contractor Response and/or the information required by paragraphs 2.3(a) – 2.3(c) (inclusive) of this Part 2 of this Change Protocol. The Authority may require the Contractor to resubmit the Contractor Response amended to take account of, and address, the Authority's concerns and the Contractor shall submit such revised Contractor Response within twenty (20) Business Days of such request.

- 2.4. If the parties cannot agree on the contents of the Contractor Response (as may be amended pursuant to paragraph 2.3(d) of this Part 2 of this Change Protocol), then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue an Authority Confirmation in respect of the disputed Medium Value Claim.

Authority Confirmation

- 2.5. The Authority shall, in writing, either confirm or withdraw the Authority Change Notice or reject the Contractor Response and in the event that the Authority:
- (a) confirms the Authority Change Notice then the Authority shall issue a Confirmation Notice which shall set out the Change in Project Costs and agreed timescales for implementation [and attach the agreed Contractor Response] amended as agreed; or
 - (b) withdraws an Authority Change Notice, paragraph 2.7 of this Part 2 of this Change Protocol shall apply; or
 - (c) rejects the Contractors Response, paragraph 2.8 of this Part 2 of this Change Protocol shall apply.
- 2.6. If the Authority does not issue a written notice pursuant to paragraph 2.5 of this Part 2 of this Change Protocol within twenty (20) Business Days of the contents of the Contractor Response having been agreed in accordance with paragraph 2.3(d) of this Part 2 of this Change Protocol or determined pursuant to paragraph 2.4 of this Part 2 of this Change Protocol then the Authority Change Notice shall be deemed to have been withdrawn.
- 2.7. Where an Authority Change Notice is withdrawn pursuant to paragraph 2.5 of this Part 2 of this Change Protocol or deemed to have been withdrawn pursuant to paragraph 2.6 of this Part 2 of this Change Protocol or paragraph 5.2 (Funding) of Part 1 (General Provisions), the Authority shall pay to the Contractor the Third-Party Costs incurred by the Contractor in preparing such Contractor Response provided that:
- (a) such sums shall not exceed any agreed Third Party Costs
 - (b) the Contractor included in the Contractor Response a cost breakdown of the estimate of Third Party costs to be incurred by the Contractor in preparing the Contractor Response and the Authority has:

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- (c) acting reasonably approved such estimate of Third-Party Costs and the type of third-party prior to any Third-Party Costs being incurred; and
 - (d) acting reasonably agreed that, given the nature of the proposed Medium Value Change, it was reasonable for the relevant third-party to incur costs in preparing the Contractor Response on the basis of the extent of the proposed Medium Value Change and the work required in submitting an accurate Contractor Response in compliance with this Change Protocol;
 - (e) been provided with such evidence as it may reasonably require in order to verify such Third-Party Costs; and
 - (f) confirmed that no cap or fixed fee given by the Contractor (whether in the Contractor Response or otherwise) in respect of any Third-Party Cost has been exceeded.
- 2.8. The Authority shall not be responsible for payment of any costs incurred by the Contractor in preparing the Contractor Response where the Authority has rejected the Contractor Response on the grounds of non-compliance in any material respects with the requirements of this Protocol.
- 2.9. Where:
- (a) the Contractor has either:
 - (i) failed to provide a Contractor Response in accordance with paragraph 2 within the time period specified in the Authority Change Notice or such other time period as agreed between the parties; or
 - (ii) provided a Contractor Response in accordance with paragraph 2 but has failed to fully implement the Medium Value Change within ten (10) Business Days of the date set out in the Confirmation Notice referred to in paragraph 2.6(a) as being the date by which the Medium Value Change should have been implemented; or
 - (iii) it is determined pursuant to paragraph 2.4 that the Contractor has failed to submit a fair and reasonable Contractor Response
- then the Authority may notify the Contractor that the Authority Change Notice is withdrawn and following such notification, may procure the implementation of the Medium Value Change without further recourse to the Contractor and the provisions of paragraph 8 (implementation of a Change by the Authority) of Part 1 (General Provisions) shall apply.

3. DUE DILIGENCE

The provisions of paragraph 6 (Due Diligence) of Part 1 (General Provisions) of this Change Protocol shall apply.

4. IMPLEMENTATION

- 4.1. The provisions of paragraph 7 of Part 1 (General Provisions) of this Change Protocol shall apply.

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4.2. Where the Medium Value Change:

- (a) is implemented at a Facility and constitutes works, the procedure set out and agreed in the Contractor Response for certifying the completion of the Medium Value Change shall apply to determine whether the Medium Value Change has been completed appropriately.
- (b) constitutes additional or varied Services, the Payment Mechanism shall apply to determine whether the Medium Value Change has been properly implemented.

5. PAYMENT

The provisions of paragraph 9 of Part 1 (General Provisions) of this Change Protocol shall apply.

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SCHEDULE 21 CHANGE PROTOCOL

PART 4

HIGH VALUE CHANGES AND/OR AN AUTHORITY CHANGE PURSUANT TO SCHEDULE 26 (PLANNING) [AND/OR SCHEDULE 27 (APPROACH TO PERMIT RISK)]

1. NOTIFICATION AND SPECIFICATION

- 1.1. The Authority and the Contractor shall co-operate and collaborate to ensure that each party has early notification of the prospect of a High Value Change. Without prejudice to paragraph 1.2 of this Part 4 of this Change Protocol, the Authority shall involve the Contractor as early as is practicable in the specification of the High Value Change to ensure that the developed specifications reflect input from the Contractor and/or the relevant Contractor Parties.
- 1.2. The Authority may, at any time, issue a Authority Change Notice which shall state:
- (a) that it is a High Value Change and whether it is required as a result of a Change in Law; or
 - (b) that the High Value Change shall be valued either:
 - (i) by means of the Competitive Tendering Process; or
 - (ii) by means of the Benchmarking Process and whether input should be obtained from a reputable source or the Comparable Market; or
 - (iii) by means of valuation by an Independent Technical Adviser (with the agreement of the Contractor)
 - (c) if applicable, affordability thresholds for the proposed works or services comprising the relevant High Value Change;
 - (d) if applicable, a specification of any proposed works, in the same format and with similar detail as that provided in the Works Requirements wherever possible, and where not possible, in sufficient detail to allow the design and pricing of a solution to the High Value Change;
 - (e) if applicable, a specification of the proposed services (or any change to the Services), in the same format with similar detail as that provided in the Service Requirements wherever possible and, where not possible, in sufficient detail to allow the pricing of the required works and/or additional services (or change to a Service);
 - (f) the location for the works or services required;
 - (g) the timing of the works or services required;
 - (h) whether the Contractor is expected to provide maintenance and/or lifecycle services in respect of any additional works;

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- (i) an outline risk allocation matrix setting out the Authority's preferred risk profile in respect of the High Value Change;
- (j) a time period for submission of the Contractor Stage 1 Response which shall be reasonable, taking into account the complexity of the High Value Change and, in any event, shall not be less than sixty (60) Business Days from the date of the Authority Initial Confirmation;
- (k) in the event that the Authority Change will require Capital Expenditure, whether the Authority intends to pay the Capital Expenditure involved in implementing the Change and its proposals for payment (whether in stages or otherwise) or whether the Authority requires the Contractor to use its reasonable efforts to obtain funding in accordance with paragraph 5 (Funding) of Part 1 (General Provisions) of this Change Protocol; and
- (l) the Approval Criteria.

2. CONTRACTOR INITIAL RESPONSE

- 2.1. Subject to paragraph 2 (Limits on Changes) of Part 1 (General Provisions) within ten (10) (Business Days of receipt of the Authority Change Notice (or such longer period as reasonably set out by the Authority in the Authority Change Notice in consultation with the Contractor and taking into account the characteristics of the Authority Change and/or any modification to the Authority Change, the Contractor shall provide the Authority with a Contractor Initial Response which shall comprise:
- (a) an indication of the Estimated Change in Project Costs that will result from the implementation of the Authority Change
 - (b) the Third Party Costs that will be incurred with respect to the activities referred to in paragraph 2.1(c) of Part 4 (High Value Changes) below) as a firm or capped sum;
 - (c) the details of the third-party activity that will be incurred in providing (and discussing with the Authority) the Contractor Stage 1 Response;
 - (d) where applicable pursuant to paragraph 6 (Due Diligence (of Part 1) (General Provisions), (the anticipated cost of the insurers carrying out due diligence) (which shall be capped or a firm sum) (; and
 - (e) the Project Management Fee which shall be a capped sum, calculated in accordance with paragraph 2.5 that will be incurred in providing (and discussing with the Authority) the Contractor Stage 1 Response.
- 2.2. The time period for the initial Response shall be extended by 10 days if Contractor requests the same because Senior Lender due diligence is required.
- 2.3. The Authority shall consider in good faith the Contractor Initial Response. If the Authority finds that any material aspects of the Contractor Initial Response are unsatisfactory, it shall notify the Contractor of the same, giving reasons, and offer reasonable assistance to the Contractor to enable it to address such deficiencies and resubmit the Contractor Initial Response as soon as reasonably practicable.

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2.4. The Authority shall, within ten (10) Business Days of receipt of the Contractor Initial Response (as may be amended pursuant to paragraph 2.3), confirm in writing (an Authority Initial Confirmation) to the Contractor that either:

- (a) the Contractor should proceed with developing a Contractor Stage 1 Response and the Authority shall confirm in the Authority Initial Confirmation:
 - (i) the agreed Project Management Fee in relation to the development of the Contractor Stage 1 Response and a reasonable period within which to discuss the same with the Authority pursuant to paragraph 3.1;
 - (ii) the agreed Third Party Costs in relation to the development of the Contractor Stage 1 Response; and
 - (iii) the agreed date by which the Contractor Stage 1 Response shall be submitted which date shall reflect the complexity of the High Value Change and, where not agreed by the parties (each acting reasonably) shall be not more than [sixty (60)] Business Days from the date of the Authority Initial Confirmation;
- (b) or that the Authority withdraws the Authority Change Notice.

2.5. The Contractor may charge a Project Management Fee for the time incurred by its employees (or relevant Subcontractor) in project managing the development, procurement and implementation of the High Value Change. The Project Management Fee shall:

- (a) be based on actual time spent (validated by timesheet records);
- (b) be calculated at the daily rates as set out in Part 4 of Appendix 2 (Project Management Fee) of this Change Protocol but capped at [£10,000] in relation to the Initial Response and the sum set out in the Contractor Authority Stage 1 or Stage 2 Confirmation as applicable to those stages;
- (c) not include the time of any person who is not an employee of the Contractor or relevant Sub-Contractor;
- (d) not include any mark-up or profit cost or additional overheads; or
- (e) be paid in two stages as follows:
 - (i) on the Authority issuing an Authority Stage 1 Confirmation pursuant to paragraph 3.2; and
 - (ii) on the Authority issuing an Authority Stage 2 Confirmation pursuant to paragraph 6.1 (a) or withdrawing the High Value Change pursuant to paragraph 6.1(b).

and at each stage, the Contractor shall charge (subject to the applicable cap) only for the time incurred by its staff up to completion of that stage.

2.6. Subject to paragraph 2 of Part 1 (Limits on Changes) of this Change Protocol, within the period specified in the Authority Change Notice (or if no time is specified within thirty (30) Business Days) the Contractor shall submit a report

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(a Contractor Stage 1 Response), which shall (where applicable) include, but not be limited to, the following information which shall contain sufficient detail to enable the Authority to make an informed decision pursuant to paragraph 3 and shall take account of the Authority's affordability thresholds set out in the Authority Change Notice:

- (a) an outline programme for implementation of the Change including time periods for design development, Authority review of the design, anticipated dates of any applications for Consents (including planning applications) and time periods for the provision and training of staff;
- (b) a broad indication of the impact of carrying out and implementing of the High Value Change on the provision of the Services and in particular whether relief from compliance with any obligations set out in this Contract is likely to be required, including the obligations of the Contractor to meet the performance regime and any fixed dates during the Service Period during the implementation of the High Value Change;
- (c) an outline of the Estimated Change in Project Costs that will result from implementing the High Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change;
- (d) any Capital Expenditure that is required or no longer required as a result of the High Value Change and where the Authority has specified in the Authority Change Notice that the Contractor shall use its reasonable endeavours to raise financing for the Authority Change, the steps the Contractor has or will take to secure such financing;
- (e) an estimate of any loss of, or increase in, third-party revenues that may result from the High Value Change;
- (f) the proposed Project Management Fee to develop a Contractor Stage 2 Response which shall be a capped fee²³ calculated in accordance with paragraph 2.5 of this Part 4 of this Change Protocol;
- (g) a budget (or budgets) [together with a capped or fixed fee] for Third-Party Costs and details of the third-party activity likely to be incurred by the Contractor, such as, third-party advice, the carrying out of surveys, obtaining Consents, the Senior Lender carrying out due diligence and independent certification that may be required to be completed prior to agreement of the High Value Change in relation to the development of a Contractor Stage 2 Response together with a proposed process for approval of such costs by the Authority before they are incurred;
- (h) a summary of any amendments required to this Contract or any Ancillary Document or the Financing Agreements as a result of the Change;
- (i) a value for money assessment explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost; and

²³ The Authority may agree to a fixed fee, and if so it should be fixed in stages. Note the provisions of paragraph 2.2.

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- (j) an estimate of the time period required by the Contractor to develop a Contractor Stage 2 Response for the High Value Change should the Authority notify the Contractor pursuant to paragraph 3.2(a) of its requirements for a Contractor Stage 2 Response.
- 2.7. In preparing the outline Estimated Change in Project Costs, including the calculation of any Capital Expenditure, the Contractor shall, as specified by the Authority in the Authority Change Notice) either comply with the:
- (a) provisions of paragraph 7 of this Part 4 of this Change Protocol if the Competitive Tendering Process is to apply;
 - (b) provisions of paragraph 8 of this Part 4 of this Change Protocol if the Benchmarking Process is to apply; or
 - (c) provisions of paragraph 9 of this Part 4 of this Change Protocol if an Independent Technical Advisor has been or will be appointed with the agreement of the Contractor.
- 2.8. The Contractor shall ensure that the performance risk involved in implementing the High Value Change and any interface risks involved in linking new facilities or services with the Facility and/or the Services are reflected (depending on the risk profile of the High Value Change in the Estimated Change in Project Costs and not priced separately over and above the Estimated Change in Project Costs. The Contractor shall not include any separate charge or fee payable to the Contractor or any sub-contractor of the Contractor in the costs included in the Estimated Change in Project Costs.
- (a) In developing a Contractor Stage 1 Response the Contractor shall liaise with the Authority [and relevant end users (being such persons or organisations as the Contractor in consultation with the Authority considers appropriate)]. The Authority shall provide to the Contractor such information as to its requirements as the Contractor may reasonably require and shall assist the Contractor in the review of any draft designs in relation to the Contractor Stage 1 Response. Any and all information and other input or feedback provided by the Authority to the Contractor shall, unless expressly stated otherwise by the Authority, be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.

3. AUTHORITY STAGE 1 CONFIRMATION

- 3.1. The Authority shall consider in good faith, the Contractor Stage 1 Response. If the Authority finds that any material aspects of the Contractor Stage 1 Response are unsatisfactory to it, it shall notify the Contractor of the same and offer reasonable assistance to the Contractor to enable it to address such deficiencies and resubmit the Contractor Stage 1 Response as soon as reasonably practicable.

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- 3.2. The Authority shall, within thirty (30) Business Days (or such longer period as the parties may agree) of receipt of the Contractor Stage 1 Response (as may be amended pursuant to paragraph 3.1 of this Part 4 of this Change Protocol), confirm in writing to the Contractor that either:
- (a) the Contractor should proceed with developing a Contractor Stage 2 Response by a date fixed by reference to the time the Contractor has estimated in the Stage 1 response (an Authority Stage 1 Confirmation); or
 - (b) the Authority withdraws the Authority Change Notice,
- and in the event the Authority does not give such written confirmation within the specific time period then the Authority Change Notice shall be deemed withdrawn and paragraph 3.4 shall apply.
- 3.3. The Authority shall pay the Contractor the Project Management Fee and the Third Party Costs set out in the Authority Initial Confirmation and due at Stage 1 within twenty (20) Business Days of receipt of an invoice for the agreed sum submitted by the Contractor.

4. CONTRACTOR STAGE 2 RESPONSE

- 4.1. Within the time period specified in the Authority Stage 1 Confirmation (or if no time is specified within sixty (60) Business Days of receipt of the Authority Stage 1 Confirmation), the Contractor shall submit a report (a Contractor Stage 2 Response) which shall where applicable, include but not be limited to the following information:
- (a) (where applicable) a detailed design solution (at the minimum to RIBA Stage D);
 - (b) the proposed consultants, sub-contractors and suppliers which the Contractor intends to appoint to process the High Value Change;
 - (c) details of any Consents required in order to implement the High Value Change;
 - (d) details of any impact (stoppage or changes) on the provision of the Services and in particular whether (and what) relief from compliance with obligations set out in this Contract is required, including the obligations to meet the performance regime during the implementation of the High Value Change and the duration of such relief;
 - (e) the proposed method of certification of any construction or operational aspects of the High Value Change if not covered by the procedures in this Contract;
 - (f) a detailed timetable for implementation of the High Value Change and/or an Authority Change;²⁴

²⁴ The timetable should identify the different phases of the detailed design development, and indicate which of the deliverables will be issued in which phase, and the points at which the Contractor will require the Authority to issue any further confirmations to proceed, to trigger the activities necessary to delivery the next phase of the implementation programme.

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- (g) any surveys and investigations and associated reports that are reasonably necessary to ascertain (in relation to a High Value Change which involves the construction of additional buildings) information as to the nature, location and condition of the relevant land (including hydrological, geological, geotechnical and sub-surface conditions) together with information relating to archaeological finds, areas of archaeological, scientific or natural interest and (in relation to the refurbishment of any existing buildings) information on the condition and quality of existing structures and, in particular, the presence of any latent defects;
- (h) a completed risk register showing the potential risks identified in relation to the delivery of the High Value Change the occurrence of which are capable of adversely affecting the time for completion, cost and/or quality of the Project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritisation of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritised as serious risks;
- (i) any approval required from the insurers and/or the Senior Lenders together with details of the fixed or capped sum for the due diligence costs incurred or to be incurred in obtaining the same;
- (j) details of any Third-Party Costs incurred in preparing the Contractor Stage 2 Response and/or to be incurred in implementing the High Value Change together with details of Authority approvals given to sums already expended and confirmation that costs to be incurred are included in the Change in Project Costs;
- (k) a draft deed of amendment setting out any amendment(s) required to this Contract and/or any Ancillary Document and/or any Financing Agreement required as a result of the High Value Change;
- (l) the amount of any loss of or increase in third-party revenues that may result from the High Value Change
- (m) if requested by the Authority, details of any funding obtained and the adjustments required to the Unitary Charge together with a proposed revised financial model including the detailed price estimates;
- (n) a final Change in Project Costs that result from the High Value Change taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change, all reasonable Third-Party Costs incurred or likely to be incurred by the Contractor and any increase or decrease in operating costs and any loss of or increase in third-party revenue that results from the High Value Change;
- (o) evidence that the Contractor has used reasonable endeavours (including, where practicable and without prejudice to the provisions of paragraph 7.4 of this Part 4 of this Change Protocol, the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;

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- (p) a demonstration of how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Contractor;
- (q) a demonstration that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the High Value Change, has been taken into account in the Capital Expenditure and/or Estimated Change in Project Costs;
- (r) a value for money assessment explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost; and
- (s) an explanation (together with appropriate supporting evidence) as to why the Contractor Stage 2 Response meets the Approval Criteria.

The Contractor shall also include in the Contractor Stage 2 Response the following information:

- (t) if the Authority specified in the Authority Change Notice that paragraph 7 of this Part 4 of this Change Protocol will apply, the Tendering Report;
 - (u) if the Authority specified in the Authority Change Notice that paragraph 8 of this Part 4 of this Change Protocol will apply, a Benchmarking Report demonstrating that the unit rates for construction, lifecycle and maintenance services used to calculate the Change in Project Costs fall within reasonable ranges compared to industry benchmarks obtained from [a reputable, independent source] [the Comparable Market]; or
 - (v) if the Authority and Contractor agreed that paragraph 9 will apply, the Reference Price with details of how the Reference Price was used to calculate the Change in Project Costs and any comments made by the Independent Technical Adviser on the Change in Project Costs.
- 4.2. In developing a Contractor Stage 2 Response, the Contractor shall continue to liaise with the Authority [and relevant end users (being such persons or organisations as the Authority in consultation with the Contractor considers appropriate)].²⁵
- 4.3. Without prejudice to paragraph 4.2 of this Part 4 of this Change Protocol, the Authority shall co-operate with the Contractor in relation to any Contractor Stage 2 Response being developed by the Contractor, including (without limitation) promptly providing:
- (a) written confirmation of any change to the affordability thresholds and any amendment to the Authority's requirements both as set out in the Authority Change Notice;
 - (b) changes to funding which the Authority receives or to the way in which funding may be applied, either or both of which may affect whether a High Value Change is affordable;

²⁵ Authority to decide whether this is appropriate on a project specific basis.

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- (c) any information reasonably required by the Contractor to enable the Contractor to submit a full and complete Contractor Stage 2 Response and any such other information as the Contractor may reasonably require and shall assist the Contractor in the review of any draft designs and in the development of other aspects of the Contractor Stage 2 Response (but not where this would involve the Authority incurring additional material expense); and
- (d) reasonable assistance to the Contractor in relation to procurement by the Contractor of all relevant Consents

provided that any and all information and other input or feedback provided by the Authority to the Contractor shall be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.

- 4.4. The Contractor shall notify the Authority as soon as it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on the viability of any High Value Change including any planning issues likely to cause a material delay in the anticipated programme for the High Value Change or material cost increases.

5. AGREEMENT OF CONTRACTOR STAGE 2 RESPONSE

- 5.1. As soon as practicable and in any event not more than [twenty (20)] Business Days after the Authority receives the Contractor Stage 2 Response, the parties shall discuss and endeavour to agree the issues set out in the Contractor Stage 2 Response. The Authority may require (and the Contractor shall provide) further information it reasonably requires to enable the Authority to evaluate the Contractor Stage 2 Response and, in particular, decide whether the Contractor Stage 2 Response meets the Approval Criteria. In particular, the Contractor shall:

- (a) provide evidence that the Contractor has used reasonable endeavours (including, where practicable (and without prejudice to the provisions of paragraph 5.4 of this Part 4 of this Change Protocol), the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Contractor; and
- (c) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the High Value Change, has been taken into account in the Change in Project Costs,

and the Contractor shall reply promptly and fully to all requests by the Authority for further information.

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- 5.2. The Authority may modify the Authority Change Notice (which modification shall be in writing). The Contractor shall, as soon as practicable and in any event not more than ten (10) Business Days or such other period as the parties may agree after receipt of such modification, notify the Authority that:
- (a) either any such modification is sufficiently material as to amount to a new Authority Change Notice (and demonstrate why this is the case) or otherwise
 - (b) of any consequential changes to the Contractor Stage 2 Response (which shall be deemed accordingly amended).
- 5.3. If acting reasonably, the Authority is of the view that any material aspect of the Stage 2 Response fails to meet the Approval Criteria [and/or otherwise fails to satisfy any material requirement of this Change Protocol] the Authority shall notify the Contractor of the same and shall specify in writing and explain to the Contractor in what respects the Contractor Stage 2 Response does not meet the Approval Criteria [and/or fails to comply with any material requirement of this Change Protocol]. The Contractor shall, within twenty (20) Business Days (or such other period as is agreed by the parties) of such notification, revise and re-submit the Contractor Stage 2 Response.
- 5.4. If the revised Contractor Stage 2 Response does not address the shortcomings notified by the Authority pursuant to paragraph 5.3 and the Authority is of the view, acting reasonably, that revised Contractor Stage 2 Response does not satisfy the Approval Criteria [or any other material requirement of this Change Protocol] then paragraph 6.1(c) of this Part 4 of this Change Protocol shall apply.
- 5.5. If the parties cannot agree on the contents of the Contractor Stage 2 Response, then either party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue a Stage 2 Confirmation in respect of the disputed High Value Change.

6. AUTHORITY STAGE 2 CONFIRMATION

- 6.1. As soon as reasonably practicable after the receipt of the Contractor Stage 2 Response or the revised Contractor Stage 2 Response (as the case may be) the Authority shall either:
- (a) issue written confirmation (an Authority Stage 2 Confirmation) and shall pay the Contractor the Project Management Fee due at Stage 2 within twenty (20) Business Days of the date of issue of the Authority Stage 2 Confirmation or, if later, receipt of a valid invoice for the agreed amount; or
 - (b) issue a written notice withdrawing the Authority Change Notice in which case provisions of paragraph 6.3 of this Part 4 of this Change Protocol shall apply; or
 - (c) issue a written notice rejecting the Contractor Stage 2 Response in which case the Authority shall not be responsible for any costs incurred by the Contractor in preparing the Contractor Stage 2 Response (including any outstanding part of the Project Management Fee or any

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due diligence costs incurred by the Senior Lender). Provided that the Authority may only reject the Contractor Stage 2 Response on the grounds that the Contractor Stage 2 Response has materially failed to meet one or more of the Approval Criteria or the Contractor has failed to comply with any material requirement of this Change Protocol.

- 6.2. If the Authority does not issue a written notice pursuant to paragraph 6.1 of this Part 4 of this Change Protocol within twenty (20) Business Days of receipt of a written notice served by the Contractor (which notice may only be served after expiry of a period of [three (3)] Months from the date the Authority receives the Contractor Stage 2 Response) requiring the Authority either to confirm the Contractor Stage 2 Response or withdraw the Authority Change Notice then the Authority Change Notice shall be deemed to have been withdrawn.
- 6.3. Where an Authority Change Notice is withdrawn pursuant to paragraph 6.1(b) of this Part 4 of this Change Protocol or deemed to have been withdrawn pursuant to paragraph 7.1 of this Part 4 of this Change Protocol, the Authority shall pay to the Contractor within twenty (20) Business Days of receipt of an invoice for such amount, the reasonable Third-Party Costs (which shall not be greater than that proposed in the Stage One Response including any costs incurred by the Senior Lender in carrying out due diligence) incurred by the Contractor in preparing the Contractor Stage 2 Response together with the outstanding balance of the Project Management Fee provided that:
- (a) the Contractor has satisfied the Approval Criteria and other requirements of this Change Protocol in all material respects;
 - (b) the Contractor has included in the Contractor Stage 1 Response a cost breakdown of the estimate of third-party costs to be incurred by the Contractor in preparing the Contractor Stage 2 Response and the Authority has (acting reasonably);
 - (c) approved such estimate of third-party costs and the type of third-party prior to any Third-Party Costs being incurred;
 - (d) agreed that, given the nature of the proposed High Value Change it was reasonable for the relevant third-party to incur costs in preparing the Contractor Stage 2 Response on the basis of the extent of the proposed High Value Change and the work required in submitting an accurate Contractor Stage 2 Response in compliance with this Change Protocol;
 - (e) been provided with such evidence as it may reasonably require in order to verify such Third-Party Costs; and
 - (f) no cap or fixed fee agreed with the Contractor (whether in the Contractor Stage 1 Response or otherwise) in respect of any Third-Party Costs has been exceeded.
- 6.4. Where the Authority Change is either withdrawn or rejected, the Authority shall be entitled to procure the High Value Change outside the terms of the this Contract and the provisions of paragraph 7 (Implementation of Change of the Authority) of Part 1 (General Provisions) shall apply.

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7. COMPETITIVE TENDERING

7.1. Where this paragraph 7 applies, the Contractor shall, in preparing the Contractor Stage 2 Response, as far as practicable structure the works and/or services required by the High Value Change and/or an Authority Change pursuant to Schedule 26 (Planning) [and/or Schedule 27 (Approach to Permit Risk)] into a number of discrete work packages (which may include the procurement of items of equipment only or be labour only package of works), and shall invite at least three (3) competitive tenders for each work package. Where legally required, the Competitive Tendering process shall be conducted in accordance with Public Contracts Regulations 2006 (as amended) and the principles of the Treaty of Rome.

7.2. The Contractor and the Authority shall agree:

- (a) the work packages to be priced through competitive tendering based on what is judged to provide best value for money;
- (b) the procurement process;
- (c) the evaluation criteria;
- (d) any additional interface risks between the carrying out of any additional works and/or services by a third party, and the Facility and/or carrying out of the Works and/or the delivery of the Services; and
- (e) that the preferred tenderer shall be selected on the basis of the most economically advantageous tender.

7.3. The Contractor shall be responsible for:

- (a) running the competition for the work packages;
- (b) evaluating and selecting the preferred tenderers;
- (c) negotiating and finalising appointment of the preferred tenderers; and
- (d) managing the implementation of the works and services required as part of the High Value Change

provided that the Authority shall approve the preferred tenderer(s) acting reasonably within twenty (20) Business Days following the conclusion of the tendering process either appoint or object to the preferred tenderer(s) but no sub-contractor shall be appointed, until or unless, an Authority Stage 2 Confirmation is issued.

7.4. On conclusion of the tendering process, the Contractor shall submit with the Contractor Stage 2 Response a Tendering Report and the Change in Project Costs shall be based on the prices determined through the tendering process.

7.5. The Tendering Report shall include, but not be limited to, the following information.

- (a) details of the companies which were asked to tender for each work package, indicating whether a compliant bid was in fact submitted;
- (b) the basis upon which each company was invited to tender including their appropriate experience and expertise;

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- (c) how details of how the evaluation process was carried out including the scoring for each tenderer;
- (d) the basis of the recommendation of the successful tenderer for each work package;
- (e) confirmation that the tendered price is a fixed price which includes all costs, overheads, risks and contingencies and will not be liable to change or adjustment; and
- (f) any other relevant information.

8. BENCHMARKING PROCESS²⁶

- 8.1. Where this paragraph 8 applies, the Contractor shall benchmark all construction, facilities management and lifecycle costs (including professional fees, contingencies, overheads and profit margins) using benchmarks available from a reputable independent source that are generally recognized in the industry.
- 8.2. The Contractor shall submit with the Contractor Stage 2 Response a detailed Benchmarking Report which shall set out details of how the benchmarking exercise was carried out and providing evidence that the construction costs, operating costs and financing costs included in the Change in Project Costs has supported by actual input from a reputable independent source and the Comparable Market as specified in the Authority Change Notice. In particular the Benchmarking Report shall include full supporting evidence of the assumptions, source of market price and information's and conclusions reached including:
- (a) the methodology and all assumptions by which the Estimated Change in Project Costs was determined;
 - (b) assumptions made in respect of the Comparable Market
 - (c) full details of sources of the information used including evidence as to reputation and independence of such sources;
 - (d) such other details as the parties may agree.

9. INDEPENDENT TECHNICAL ADVISER²⁷

Joint Appointment of Independent Technical Adviser

²⁶ This will need to be amended depending on whether there is a suitable benchmarking system or group, and what is actually being benchmarked. Note also the definition of Comparable Market.

²⁷ As an alternative, the Authority could also simply opt for a technical and cost audit of the estimate prepared by the Contractor carried out by its own technical advisers. This approach will work well where the works and/or services in question are relatively straightforward and good comparative data exist for pricing them. For more complex changes, the Independent Technical Adviser route may offer a better solution.

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- 9.1. Where this paragraph 9 applies, upon issue of an Authority Change Notice or the parties agreeing that an Authority Change Notice will shortly be issued in respect of a High Value Change the Authority and the Contractor shall jointly appoint an Independent Technical Adviser to assist in the processing of the High Value Change. The terms of reference for the Independent Technical Adviser shall include:
- (a) developing a Reference Price; and
 - (b) commenting on the Estimated Change in Project Costs and the Change in Project Costs.
- 9.2. Upon appointment of the Independent Technical Adviser (or if later, upon service of the Authority Change Notice pursuant to paragraph 1.2), the Authority and the Contractor shall instruct the Independent Technical Adviser to develop a Reference Price.
- 9.3. The Independent Technical Advisor shall develop a Reference Price in consultation with the Contractor and the Authority. The Reference Price shall include (as applicable) all finance, design development, construction, lifecycle, maintenance and operating costs and savings (including professional fees and charges, overheads, profits and contingencies and explicitly including the pricing for any performance risks associated with implementing the change based on the outline risk allocation matrix included in the Authority Change Notice). The parties agree that the Reference Price shall include the pricing of performance risk and that no separate Contractor mark up should be included in the Estimated Change in Project Cost or the Change in Project Costs.
- 9.4. The Independent Technical Advisor shall provide to the Contractor and the Authority the Reference Price. The Contractor shall use the Reference Price to produce the Estimated Change in Project Costs and, subsequently, the Change in Project Costs. The Independent Technical Adviser shall comment on the Estimated Change in Project Costs and the Change in Project Costs within the time periods to be agreed by the Contractor and the Authority and specified in the appointment of the Independent Technical Adviser.
- 9.5. The Authority shall be responsible for the payment of all fees payable to the Independent Technical Advisor. For the avoidance of doubt, any costs incurred by the Contractor pursuant to this paragraph 9 shall form part of the Project Management Fee or Third Party Costs and no additional sums shall be paid to the Contractor.

10. FUNDING

The provisions of paragraph 5 (Funding) of Part 1 (General Provisions) of this Change Protocol shall apply.

11. DUE DILIGENCE

The provisions of paragraph 6 (Due Diligence) of Part 1 (General Provisions) of this Change Protocol shall apply.

12. IMPLEMENTATION

The provisions of paragraph 7 (Implementation) of Part 1 (General Provisions) of this Change Protocol shall apply.

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13. PAYMENT

The provisions of paragraph 9 (Payment) of Part 1 (General Provisions) of this Change Protocol shall apply.

SCHEDULE 21
CHANGE PROTOCOL
PART 5
CONTRACTOR CHANGE

1. If the Contractor wishes to introduce a Contractor Change, it shall serve a Contractor Change Notice on the Authority.
2. The Contractor Change Notice shall:
 - (a) set out the proposed Contractor Change in sufficient detail to enable the Authority to evaluate it in full;
 - (b) specify whether the Contractor Change is:
 - (i) a Low Value Change;
 - (ii) a Medium Value Change;
 - (iii) a High Value Change; and/or
 - (iv) is required as a result of a Change in Law;
 - (c) specify the Contractor's reasons for proposing the Contractor Change;
 - (d) indicate any implications of the Contractor Change;
 - (e) indicate what savings, if any, will be generated by the Contractor Change:
 - (i) whether a revision of the Unitary Charge is proposed (and, if so, give details of such proposed revision); or
 - (ii) whether such savings will be paid by a lump sum;
 - (f) if the Contractor Change is required as a result of a Qualifying Change in Law, what sums, if any, will be payable by the Authority;
 - (g) indicate if there are any critical dates by which a decision by the Authority is required;
 - (h) confirm all necessary consents have been obtained (or indicate the process for obtaining such consents) from the funders and the insurance brokers, to the extent required; and
 - (i) request the Authority to consult with the Contractor with a view to deciding whether to agree to the Contractor Change and, if so, what consequential changes the Authority requires as a result.
3. The Authority shall evaluate the Contractor Change Notice in good faith, taking into account all relevant issues, including whether:
 - (a) a revision of the Unitary Charge will occur;
 - (b) the Contractor Change may affect the quality of the Services and/or the Works or the likelihood of successful completion of the Works and/or delivery of the Services (or any of them);

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- (c) the Contractor Change may interfere with the relationship of the Authority with third parties;
 - (d) the financial strength of the Contractor is sufficient to perform the Services after implementation of the Contractor Change;
 - (e) the value and/or life expectancy of any of the Facility [and/or Assets]²⁸ is reduced; or
 - (f) the Contractor Change materially affects the risks or costs to which the Authority is exposed.
4. If the Contractor Change causes, or will cause, the Contractor's costs or those of a sub-contractor to decrease, there shall be a decrease in the Unitary Charge such that any cost savings (following deduction of costs reasonably incurred by the Contractor in implementing such Contractor Change) shall be shared on the basis of fifty per cent (50%)²⁹ of the saving being retained by the Contractor and fifty per cent (50%)³⁰ of the saving accruing for the benefit of the Authority.
 5. As soon as practicable after receiving the Contractor Change Notice, the parties shall meet and discuss the matters referred to in it. During discussions the Authority may propose modifications to, or accept or reject, the Contractor Change Notice at its absolute discretion except in relation to Changes in Law.
 6. If the Authority accepts the Contractor Change Notice (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement of the Contractor Change, the Authority shall issue an Authority Confirmation which shall set out the agreed Contractor Change and:
 - (a) the parties shall enter into any documents to amend this Contract or any relevant Ancillary Document which are necessary to give effect to the Contractor Change;
 - (b) if applicable, the Unitary Charge shall be revised in accordance with Schedule 19 (Revision of Base Case and Custody); and
 - (c) the Contractor Change shall be implemented within the period specified by the Authority in its notice of acceptance.
 7. If the Authority rejects the Contractor Change Notice, it shall not be obliged to give its reasons for such a rejection and the Contractor shall not be entitled to reimbursement by the Authority of any of its costs.
 8. Unless the Authority Confirmation expressly agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a Contractor Change and, subject to Clause 44 (Change in Law), any funding shall be provided by the Contractor.
 9. The Authority shall not reject a Contractor Change which is required in order to conform to a Change in Law. The costs of introducing a Contractor Change

²⁸ Only relevant if the Assets include property or land.

²⁹ Bid back item

³⁰ Bid back item

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resulting from a Qualifying Change in Law (including any resulting revision of the Unitary Charge) shall be dealt with in accordance with Clause 44 (Change in Law) and to the extent not dealt with therein, all costs shall be borne by the Contractor.

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SCHEDULE 21
CHANGE PROTOCOL

PART 6

CONSTRUCTION CHANGES

1. CONSTRUCTION CHANGES

1.1. The Authority may issue an Authority Change Notice relating to a Construction Change. The Authority Notice of Change shall

- (a) State whether the Authority Change arises from a Qualifying Change in Law; and
- (b) set out the Change in sufficient detail to enable the Contractor to calculate and provide the Estimated Change in Project Costs in accordance with paragraph 1.2 below (the Estimate); and
- (c) state whether the Authority shall require the Contractor to use its reasonable endeavours to obtain funding in accordance with Part 1 paragraph 3 of this Change Protocol.

1.2. Within 21 Business Days after having received the Authority Notice of Change (or such longer period as is reasonably agreed by the Parties having regard to the nature of the Change), the Contractor shall deliver to the Authority the Estimate . The Contractor may request a ten (10) day extension to the agreed period if Senior Lender due diligence is required. The estimate shall include the opinion of the Contractor on

- (a) any necessary change in the Works or Services;
- (b) whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve the Planned Readiness Date and/or Planned Services Commencement Date and/or meet the Authority's Requirements and/or the Contractor's Proposals during the implementation of the Authority Change ;
- (c) any loss of revenue (including subject to paragraph 6 (Principles relating to Third Party Income) of Schedule 19 (Revision of Base Case and Custody) that will result from the Authority Change ;
- (d) any Estimated Change in Project Costs that directly result from the Authority Change; and
- (e) any amendment required to this Contract or an Ancillary Document resulting from the Authority Change; and
- (f) any Capital Expenditure that is required or no longer required as a result of the Authority Change; and
- (g) any revised Tests and the proposed method of certifying completion of the construction if not covered by the procedures in clause 21 (Completion of the Works)

in each case giving in full detail the procedure for implementing the Authority Change

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- 1.3. If the Authority requests to approve any Third Party Costs prior to that Third Party being appointed to prepare the Contractor's Response, the time period for the Contractor to submit its response in accordance with paragraph 1.2 shall be suspended from the date on which such Third Party Costs are submitted for approval until approval is granted (or the parties have otherwise agreed or such Third Party Costs or they have been determined through the Dispute Resolution Procedure)

2. PARTIES TO DISCUSS

- 2.1. As soon as practicable after the Authority receives the Estimate the Parties shall discuss and agree the issues set out in the Estimate including:
- (a) providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige the Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
 - (b) providing evidence that where the Contractor does not intend to use its own resources to implement the Authority Change it shall comply with Good Industry Practice with the objective of ensuring that it obtains the best value for money when procuring any works, supplies, materials or equipment;
 - (c) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
 - (d) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by Authority Change concerned, has been taken into account in the amount which in its opinion has resulted
 - (e) providing evidence that the Contractor has used reasonable endeavours to pass any increase in costs to the existing or future customers of the Contractor or Operating Sub-Contractor as the case may be and has demonstrated to the reasonable satisfaction of the Authority that it is more likely than not able to pass any increase in costs to the customers of the Contractor other than the Authority.

3. CHANGE AGREED

- 3.1. If the Parties cannot agree the contents of the Estimate then the dispute shall be determined in accordance with the Dispute Resolution Procedure.
- 3.2. As soon as practicable after the contents of the Estimate have been agreed (and in any event within or otherwise determined, the Authority shall
- (a) issue a Confirmation Notice; or
 - (b) withdraw the Authority Notice of Change.
- 3.3. If the Authority does not issue a written notice pursuant to paragraph [] of this Part 5 of this Change Protocol within twenty (20) Business Days of receipt of a written notice served by the Contractor (which notice may only be served after

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expiry of a period of [three (3)] Months from the date the Authority receives the Estimate requiring the Authority either to confirm the Estimate or withdraw the Authority Change Notice then the Authority Change Notice shall be deemed to have been withdrawn.

- 3.4. Where an Authority Change Notice is withdrawn pursuant to paragraph 3.2 of this Part 5 of this Change Protocol or deemed to have been withdrawn pursuant to paragraph 3.3 of this Part 6 of this Change Protocol, the Authority shall pay to the Contractor within twenty (20) Business Days of receipt of an invoice for such amount, the reasonable Third-Party Costs (which shall not be greater than that proposed in the any agreed Third Party Costs including any costs incurred by the Senior Lender in carrying out due diligence) incurred by the Contractor in preparing the Estimate provided that
- (a) the Contractor has satisfied the Approval Criteria and other requirements of this Change Protocol in all material respects;
 - (b) the Contractor has included in the Estimate a cost breakdown of the estimate of third-party costs to be incurred by the Contractor in preparing the Contractor Stage 2 Response and the Authority has (acting reasonably):
 - (i) the Authority approved such estimate of third-party costs and the type of third-party prior to any Third-Party Costs being incurred and been provided with such evidence as it may reasonably require in order to verify such Third-Party Costs; and
 - (ii) No cap or fixed fee agreed with the Contractor in respect of any Third-Party Costs has been exceeded.

4. ARCHITECTURAL ENHANCEMENTS

- 4.1. If the provisions of paragraph 3.9.3 and 3.9.4 of schedule 26 (Planning) apply, the Architectural Enhancement shall stand as an Authority Notice of Change and, save as provided in paragraph 4.2 below, the principles set out in this Part 6 of Schedule 21 (Change Protocol) applying to the Contractor's Estimate shall apply to the estimates and evidence required of the Contractor.
- 4.2. Paragraph 3 above shall not apply to Architectural Enhancements and the Authority shall be entitled to take the action in paragraph 3.9.5 of Schedule 26 (Planning) and the consequences that flow therein.

5. FUNDING

The provisions of paragraph 5 (Funding) of Part 1 (General Provisions) of this Change Protocol shall apply.

6. DUE DILIGENCE

The provisions of paragraph 6 (Due Diligence) of Part 1 (General Provisions) of this Change Protocol shall apply.

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7. IMPLEMENTATION

The provisions of paragraph 7 (Implementation) of Part 1 (General Provisions) of this Change Protocol shall apply.

8. PAYMENT

The provisions of paragraph 9 (Payment) of Part 1 (General Provisions) of this Change Protocol shall apply.

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SCHEDULE 21
CHANGE PROTOCOL
APPENDIX 1
PRICING INFORMATION
FEES AND PROFIT MARGINS

Insert professional fees (on an hourly rate basis or as a percentage)

Insert contingencies, overheads and profit margin figures from sub-contractors
(each expressed as a %]

No indexation.

SCHEDULE 21
CHANGE PROTOCOL
APPENDIX 2
PRICING INFORMATION
CONTRACTOR MANAGEMENT COSTS

[insert hourly rate for costing Contractor time, fixed for life of the Project but indexed at RPIX].

[For Market Tested Services, include original rates, adjustable for RPIX as per Financial Model and resettable after Market Testing.]

[For Operating Sub-Contractor Management Costs, insert hourly rate for costing Contractor time, fixed for life of the Project but indexed at RPIX (as per Base Case) or otherwise periodically updated].

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SCHEDULE 21
CHANGE PROTOCOL
APPENDIX 3
PRICING INFORMATION
PROJECT MANAGEMENT FEE

[insert daily rate for different grades of Contractor or relevant sub contractor staff - to be reviewed every [two (2)] years and indexed meanwhile at RPIX].

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SCHEDULE 21
CHANGE PROTOCOL
LOW VALUE CHANGE REQUEST³¹

Low Value Change Request	Dated
To be completed by Authority Representative	
Change no:	
Brief description of the Change	
Change in Law/	
Budget for the Change	
Date for completion/implementation	
To be completed by Contractor Representative	
Confirmation of Price/Time (if applicable)	
Can be carried out within existing on site resources?	
If not, cost of labour rates	
lifecycle cost (if appropriate)	
additional operating cost (if appropriate)	
plant/equipment costs (if appropriate)	
Total cost	

³¹ This is a sample form only. Authority to draft/agree appropriate form.

SCHEDULE 22

DISPUTE RESOLUTION PROCEDURE

1. DISPUTE

Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Schedule 22 other than a dispute relating to the Code which shall be resolved in accordance with the Code Dispute Resolution Procedure.

2. CONSULTATION

If a dispute arises in relation to any aspect of this Contract, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

3. ADJUDICATION

Without prejudice to paragraph 1 above, either Party may give the other notice of intention to refer the dispute to adjudication and the adjudicator shall be selected in accordance with paragraph 4 (Identity of Adjudicator) (the “Adjudicator”).

4. IDENTITY OF ADJUDICATOR

The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:

- 4.1. there shall be two (2) panels of experts, one (1) in respect of construction matters (the “Construction Panel”) and one (1) in respect of operational and maintenance matters (the “Operational Panel”). All the experts on each panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-Contractor and any of the major competitors of the Contractor or relevant Sub-Contractor;
- 4.2. the Construction Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within [twenty (20)] Business Days of the date of this Contract;
- 4.3. the Operational Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within twenty (20) Business Days of the Commencement Date;
- 4.4. if any member of a panel resigns during the term of this Contract, a replacement expert shall be appointed by the Contractor and the Authority as soon as practicable;
- 4.5. if the Authority and the Contractor are unable to agree on the identity of the experts to be appointed to the panels, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within twenty (20) Business Days of any application for such appointment by either Party.

5. SUBMISSION OF ARGUMENTS

Within five (5) Business Days of appointment in relation to a particular dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments.

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The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

6. ADJUDICATOR'S DECISION

In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty (20) Business Days of appointment (or such other period as the Parties may agree after the reference or thirty (30) Business Days from the date of reference if the Party which referred the dispute agrees). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision.

7. ADJUDICATOR'S COSTS

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

8. ADJUDICATOR AS EXPERT

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

9. ADJUDICATOR'S POWERS

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

10. CONFIDENTIALITY

All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 84 (Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

11. LIABILITY OF ADJUDICATOR

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

12. REFERENCE TO ARBITRATION COURTS

If:

- 12.1. there is any dispute in respect of matters referred to in Clauses 34 (Market Testing), 44 (Change in Law), 66 (Compensation on Termination for Authority Default), 68 (Compensation on Termination for Contractor Default), 70

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(Compensation on Termination for Force Majeure), 72 (Compensation on Corrupt Gifts and Fraud), 74 (Compensation on Voluntary Termination by the Authority), 76 (Compensation on Termination for Breach of the Refinancing Provisions) or paragraphs 2 and 3 (Authority and Contractor Changes) of Schedule 21 (Change Protocol);

12.2. either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with paragraph 6 (Adjudicator's Decision); or

12.3. both Parties agree, then either Party may (within twenty (20) Business Days of receipt of the Adjudicator's decision, where appropriate), notify the other Party of its intention to refer the dispute to arbitration. Such notification shall invite the other party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than 10 years' standing (the "Arbitrator"). If the Parties are unable within ten (10) Business Days to agree the identity of the Arbitrator either party may request the President of the Law Society to make the appointment.

13. ARBITRATOR'S POWERS

The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract, to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one Party to the other. The arbitration shall take place in London.

14. DIRECTIONS OF THE ARBITRATOR

The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the Parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.

15. ARBITRATOR'S DECISION

The Arbitrator shall deliver his decision on any matter referred to him within [twenty (20)] Business Days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) Months (or such other period as the Parties may agree) of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both Parties. The costs of arbitration will be in the discretion of the Arbitrator.

16. PARTIES' OBLIGATIONS

The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Schedule 22 and shall give effect forthwith to every decision of the Adjudicator and the Arbitrator delivered under this Schedule 22.

17. SIMILAR DISPUTES

If any dispute arising under this Contract raises issues which relate to:

- 17.1. any dispute between the Contractor and the [Construction Sub-Contractor] arising under the [Construction Sub-Contract] or otherwise affects the relationship or rights of the Contractor and/or the [Construction Sub-Contractor] under the [Construction Sub-Contract] (the “Construction Sub-Contract Dispute”); or
- 17.2. any dispute between the Contractor and the Operating Sub-Contractor arising under the Operating Sub-Contract or otherwise affects the relationship or rights of the Contractor and/or the Operating Sub-Contractor under the Operating Sub-Contract (the “Operating Sub-Contract Dispute”),

then the Contractor may include as part of its submissions made to the Adjudicator or to the Arbitrator, submissions made by the Construction Sub-Contractor or by the Operating Sub-Contractor as appropriate.

18. JURISDICTION OVER SUB-CONTRACTORS

The Adjudicator or the Arbitrator as appropriate shall not have jurisdiction to determine the Construction Sub-Contract Dispute or the Operating Sub-Contract Dispute but the decision of the Adjudicator or the Arbitrator shall, subject to Clause 21, be binding on the Contractor and the [Construction Sub-Contractor] insofar as it determines the issues relating to the Construction Sub-Contract Dispute and on the Contractor and the Operating Sub-Contractor insofar as it determines the issues relating to the Operating Sub-Contract Dispute.

19. SUB-CONTRACTORS’ SUBMISSIONS

Any submissions made by the Construction Sub-Contractor or the Operating Sub-Contractor shall:

- 19.1. be made within the time limits applicable to the delivery of submissions by the Contractor; and
- 19.2. concern only those matters which relate to the dispute between the Authority and the Contractor under this Contract.

20. COSTS

Where the Construction Sub-Contractor or the Operating Sub-Contractor makes submissions in any reference before:

- 20.1. the Adjudicator, the Adjudicator’s costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds (2/3) by the Contractor; and
- 20.2. the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator.

21. AUTHORITY’S LIABILITY

The Authority shall have no liability to the Construction Sub-Contractor or the Operating Sub-Contractor arising out of or in connection with any decision of the Adjudicator or the Arbitration or in respect of the costs of the Construction Sub-Contractor or the Operating Sub-Contractor in participating in the resolution of any dispute under this Contract.

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22. ACCESS TO DOCUMENTS

The Contractor shall not allow the Construction Sub-Contractor or the Operating Sub-Contractor access to any document relevant to issues in dispute between the Authority and the Contractor save where:

- 22.1. the document is relevant also to the issues relating to the Construction Sub-Contract Dispute or the Operating Sub-Contract Dispute as the case may be; and
- 22.2. the Contractor has first delivered to the Authority a written undertaking from the Construction Sub-Contractor and/or the Operating Sub-Contractor (as appropriate) addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or the Arbitrator or any professional adviser engaged by the Construction Sub-Contractor or the Operating Sub-Contractor (as appropriate) to advise in connection with the dispute.

SCHEDULE 23
COMMERCIALLY SENSITIVE INFORMATION
PART 1
COMMERCIALLY SENSITIVE CONTRACTUAL PROVISIONS

Column 1			Column 2
Commercially Provisions	Sensitive	Contractual	For period ending on date below

SCHEDULE 23
COMMERCIALLY SENSITIVE INFORMATION
PART 2
COMMERCIALLY SENSITIVE MATERIAL

Column 1	Column 2
Commercially Sensitive Material	For period ending on date below

SCHEDULE 24
DIRECT AGREEMENT

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DATED [] 200[]

(1) [AUTHORITY]
(2) [FACILITY AGENT]
(3) [SECURITY TRUSTEE]
- and -
(4) [CONTRACTOR]

**RESIDUAL WASTE TREATMENT CONTRACT
DIRECT AGREEMENT**

THIS AGREEMENT is made on [] 200[]

BETWEEN:

- (1) [] whose principal premises are at [] (the "Authority");
- (2) [] [for itself and] as facility agent for the Lenders (the "Facility Agent");
- (3) [] as security trustee for the Secured Finance Parties (the "Security Trustee"); and
- (4) [] (company registered number []) whose registered office is at [] (the "Contractor"),

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

WHEREAS:

- (A) Under the Senior Financing Agreements dated on or around today's date, the Lenders have agreed to make available certain credit facilities to the Contractor.
- (B) Under the Contract, 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 Facility Agent and the Security Trustee.

IT IS AGREED as follows:

1. INTERPRETATION

Required Drafting

1.1. In this Agreement, unless the context otherwise requires:

"Accrued Rights"	has the meaning given to that term in paragraph 10.8 (Authority Rights);
"Accrued Rights Value"	means each of the [Construction Accrued Rights Liquidated Damages Value, the Construction Accrued Rights Value, the Operating Accrued Rights Life Cycle Works Value, the Operating Accrued Rights Termination Value and the Operating Accrued Rights Value];
"Appointed Representative"	means a Representative that has assumed the Contractor's rights under the Contract pursuant to paragraph 5.1 (Representative);
"Authority Construction Collateral Warranty"	means the Collateral Warranty between (1) the Authority, (2) the Contractor and (3) the Construction Sub-Contractor;

"Authority Construction Liability Cap"	means the Construction Sub-Contractor's Liability Cap less the Construction Accrued Rights Value;
"Authority Construction Liquidated Damages Cap"	means the Construction Sub-Contractor's Liquidated Damages Cap less the Construction Accrued Rights Liquidated Damages Value;
"Authority Liability Cap"	means each of the Authority Operating Liability Cap, the Authority Operating Termination Cap, [the Life Cycle Works Cap,] or the Authority Construction Liability Cap [, or the Authority Construction Liquidated Damages Cap];
"Authority Operating Collateral Warranty"	means the Collateral Warranty between (1) the Authority, (2) the Contractor and (3) the Operating Sub-Contractor;
"Authority Operating Liability Cap"	means the Operating Sub-Contractor Liability Cap for the Relevant Year less the Operating Accrued Rights Value;
"Authority Operating Life Cycle Works Cap"	means the Life Cycle Works Cap less the Operating Accrued Rights Life Cycle Works Value;
"Authority Operating Termination Cap"	means the Operating Sub-Contractor Termination Cap less the Operating Accrued Rights Termination Value;
"Construction Accrued Rights Liquidated Damages Value"	means the amounts that would count against the Construction Sub-Contractor's Liquidated Damages Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under paragraph 10.14, as the same may be adjusted in accordance with paragraph 20 (Dispute Resolution);
"Construction Accrued Rights Value"	means the amounts that would count against the Construction Sub-Contractor's Liability Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under paragraph 10.14, as the same may be adjusted in accordance with paragraph 20 (Dispute Resolution);
"Construction/Operating Sub-Contract"	means a contract relating to the provision of Works or Services which is the subject of a Collateral Warranty;
"Construction Sub-Contract"	means the Construction Sub-Contract as defined in the Contract and/or any novation thereof pursuant to the Authority Construction Collateral Warranty;
"Construction Sub-	has the meaning given to it in the Construction Sub-

Contractor Default"	Contract;
"Construction Sub-Contractor's Liability Cap"	has the meaning given to it in the Construction Sub-Contract;
"Construction Sub-Contractor's Liquidated Damages Cap"	has the meaning given to it in the Construction Sub-Contract;
"Contract"	means the contract dated on or about the date of this Agreement between the Authority and the Contractor;
"Expert"	means an expert appointed pursuant to paragraph 20 (Dispute Resolution) to determine a dispute relating to this Agreement;
"Final Statement"	has the meaning given to it in the Construction Sub-Contract;
"Interim Payment"	has the meaning given to it in the Construction Sub-Contract;
"Life Cycle Works Cap"	has the meaning given to it in the Operating Sub-Contract;
"Monthly Operating Payment"	has the meaning given to it in the Operating Sub-Contract;
"Operating Accrued Rights Life Cycle Works Value"	means the amount that would count against the Life Cycle Works Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under paragraph 10.14, as the same may be adjusted in accordance with paragraph 20 (Dispute Resolution);
"Operating Accrued Rights Termination Value"	means the amounts that would count against the Operating Sub-Contractor Termination Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under paragraph 10.14, as the same may be adjusted in accordance with paragraph 20 (Dispute Resolution);
"Operating Accrued Rights Value"	means the amount that would count against the Operating Sub-Contractor Liability Cap upon realisation of the Accrued Rights based upon the assessment notified to the Authority under paragraph 10.14, as the same may be adjusted in accordance with paragraph 20 (Dispute Resolution);
"Operating Sub-Contract"	means the Operating Sub-Contract as defined in the

	Contract and/or any novation thereof pursuant to the Authority Operating Collateral Warranty;
"Operating Sub-Contractor Default"	has the meaning given to it in the Operating Sub-Contract;
"Operating Sub-Contractor Liability Cap"	has the meaning given to it in the Operating Sub-Contract;
"Operating Sub-Contractor Termination Cap"	has the meaning given to it in the Operating Sub-Contract;
"Payment Mechanism"	means the payment mechanism set out in Schedule 4 to the Contract;
"Relevant Required Insurances"	means the Required Insurances described in paragraph 2 of Part 1 and paragraph 2 of Part 2 of Schedule 10 (Required Insurance) of the Contract; ³²
"Relevant Sub-Contractor"	means a sub-contracting party to a Construction/Operating Sub-Contract;
"Relevant Year"	means the Contract Year (as defined in the Contract) in which the Termination Date occurs;
"Representative"	means: <ul style="list-style-type: none"> (a) the Facility Agent, the Security Trustee, any Secured 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 Facility Agent, the Security Trustee, and/or any Secured 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 paragraph 4 (No Liquid Market) the period starting on the date of a Termination Notice and: <ul style="list-style-type: none"> (a) prior to and including the final Services Commencement Date, ending one hundred and twenty (120) days after the date of the

³² These are the Delay in Start Up and Business Interruption insurances.

Termination Notice;

- (b) after the final Services Commencement Date, ending ninety (90) days after the date of the Termination Notice; or
- (c) in either case, ending on such earlier date as the Facility 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 Secured Finance Party under the Senior Financing Agreements have been irrevocably paid in full;

"Step-In Date"

means the date on which the Facility Agent takes any action under paragraph 5.1 (Representative);

"Step-In Period"

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

- (a) the date specified in a notice issued pursuant to paragraph 7.1 (Step-Out);
- (b) the date of any transfer under paragraph 8 (Novation);
- (c) the date of any termination for breach under paragraph 6 (Step-in Period); and
- (d) the date of expiry of the Contract;

"Step-Out Date"

has the meaning given to it in paragraph 7.1 (Step-Out);

"Suitable Substitute Contractor"

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

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Contract;
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract; and
- (c) being a Suitable Third Party;

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

"Unrestricted Assets" means those Assets (or part thereof), excluding any revenues or cash balances or rights accrued as at the Expiry Date, or if earlier, the Termination Date, under or pursuant to or in connection with any of the Relevant Required Insurances (but not other Required Insurances), any Construction/Operating Sub-Contract or any Ancillary 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 expiry or termination of the Contract assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Contract;

"Warning Notice" means a formal warning notice served by the Authority under Clause 67.3 (Persistent Breach) of the Contract;

1.2. The following terms have the meaning given to them in the Contract and Schedules (as appropriate):³³

"Additional Permitted Borrowing"

"Adjusted Estimated Fair Value of the Contract"

"Affiliate"

"Assets"

"Business Day"

"Certification Requirements"

"Collateral Warranty "

"Construction Sub-Contractor"

"Distribution"

"Expiry Date"

"Final Warning Notice"

"Holdco"

"Joint Insurance Account"

"Liquid Market"

"Mileage Deductions"

³³ This list will need to be reviewed against the defined terms in the Contract.

"Non-Acceptance Deductions"

"Operating Sub-Contractor"

"Physical Damage Policy"

"Project"

"Ancillary Documents"

"Required Insurances"

"Senior Financing Agreements"

"Services"

"Services Commencement Date"

"Service Period"

"Termination Date"

"Termination Sum"

"Unitary Charge"

"Works"

1.3. The following terms have the meaning given to them in the Senior Financing Agreements.³⁴

["Direct Agreement"

"Event of Default"

"Lender"

"Proceeds Account"

"Secured Finance Party"

"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,

³⁴ This list will need to be reviewed against the defined terms in the Senior Financing Agreements.

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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

Required Drafting

2.1. The Authority acknowledges notice of, and consents to, the security interests granted over the Contractor's rights under the Ancillary Documents [and Relevant Required Insurances]³⁵ effected by the Contractor in favour of each Secured 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 Ancillary Document.

Guidance Drafting

2.3. Without prejudice to the provisions of Clause 82 (Change in Ownership) of the Contract the Authority acknowledges notice of and consents to the security interest granted by Holdco in favour of each Secured Finance Party over the entire issued share capital of the Contractor.

2.4. Notwithstanding the terms of the Senior Financing Agreements, where required by Clause 56.2 (Joint Insurance Account) of the Contract the Parties agree and shall direct that all insurance proceeds paid under the Physical Damage Policies shall be paid into the Joint Insurance Account except as otherwise agreed by the Facility Agent and the Authority and shall be applied in accordance with the Contract.

2.5. Subject to paragraph 2.4 the Contractor and the Facility Agent hereby instruct the Authority (and the Authority agrees) to pay all sums payable by the Authority to the Contractor under the Ancillary Documents into the [Proceeds Account]. Following the occurrence of an Event of Default, if so directed by the Facility Agent upon giving reasonable notice, the Authority shall, subject to paragraph 2.4, pay any sum which it is obliged to pay to the Contractor under the Ancillary Documents to a bank account specified by the Facility Agent.

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3. NOTICE OF TERMINATION AND EXISTING LIABILITIES

Required Drafting

3.1. The Authority shall not terminate or give notice terminating the Contract pursuant to Clause 67 (Termination for Contractor Default) of the same without giving to the Facility Agent:

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

- (a) the proposed Termination Date; and
- (b) 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 Facility 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):

- (a) at the time of the Termination Notice or the notification of an Event of Default; and
- (b) (if relevant) which will fall due on or prior to the end of the Required Period,

under the Ancillary Documents.

Guidance Drafting

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

3.2.1. any change in the amounts, liabilities or obligations referred to in paragraph 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 paragraph 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

Required Drafting

4.1. At any time during the Required Period the Facility Agent may issue a written notice (the "No Liquid Market Notice") to the Authority setting out the reasons why the Facility 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 Facility Agent of its opinion as to whether or not a Liquid Market exists. Where

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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 any Party may refer the dispute to be determined in accordance with paragraph 20 (Dispute Resolution).

- 4.3. If the Parties agree or it is determined in accordance with paragraph 20 (Dispute Resolution) that no Liquid Market exists, the Contract shall automatically terminate and the provisions of paragraph 3 (No Retendering Procedure) of Part 3 (Compensation on Termination for Contractor Default) Schedule 17 of the Contract shall apply.
- 4.4. If any dispute relating to this paragraph 4 is determined under paragraph 20 (Dispute Resolution), the Required Period shall be extended by the period of time spent determining such dispute pursuant to such paragraph.

5. REPRESENTATIVE

Required Drafting

- 5.1. Without prejudice to the rights of the Facility 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 Facility Agent or Security Trustee may procure that a Representative assumes, jointly and severally with the Contractor, all of the Contractor's rights under the Ancillary Documents.

- 5.2. The Facility 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 paragraph 5.

6. STEP-IN PERIOD

Required Drafting

- 6.1. Without prejudice to paragraph 3 (Notice of Termination and Existing Liabilities) but subject to paragraph 6.2, the Authority shall not terminate the Contract during the Step-In Period on grounds:
 - 6.1.1. that the Facility Agent or the Security Trustee has taken any action referred to in paragraph 5 (Representative) or enforced any Security Document; or
 - 6.1.2. arising on or 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,

unless, in the case of paragraph 6.1.2 above:

- (a) the grounds arose prior to the final Services Commencement Date and construction is not completed on or before the date falling

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twelve (12) months after the date on which the Authority would have been entitled to terminate the Contract for non-completion; or

- (b) the grounds arose after the final Services Commencement 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 Contract 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 Contract.

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

6.2.1. if permitted by paragraph 6.1;

6.2.2. if any amount referred to in paragraph 3.1.2(a) (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 paragraph 3.1.2(b) (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:

- (a) the date falling thirty (30) Business Days after the date on which the liability for these amounts is notified to the Facility Agent or, if later, the last day of the Required Period
- (b) the date falling twenty (20) Business Days after the date on which the liability for these amounts falls due; and
- (c) the last day of the Required Period; or

6.2.5. on grounds arising after the Step-In Date in accordance with the terms of the Contract provided that, subject to paragraph 7.3 (Step-Out), for the purposes only of termination under the Contract (and without prejudice to the rights of the Authority to make deductions and/or adjustments pursuant to the Payment Mechanism):

- (a) Non-Acceptance Deductions, Mileage Deductions, Warning Notices and Final Warning 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;

- (b) [Ratchets subsisting at the Step-In Date shall be suspended during the Step-In Period but shall be re-applied with effect from the Step Out Date]³⁶

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

7. STEP-OUT

Required Drafting

7.1. The Appointed Representative will, on the earlier of:

- 7.1.1. the date specified in a written notice from the Facility 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); and
- 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 Ancillary Documents arising prior to the Step Out Date and the rights of the Appointed Representative against the Authority shall be cancelled.
- 7.1.3. The Contractor shall continue to be bound by the terms of the Ancillary Documents, notwithstanding the occurrence of the Step-Out Date.
- 7.1.4. If following the Step-Out Date the Authority is satisfied (acting reasonably) that the circumstances giving rise to the Facility Agent electing to exercise its rights under paragraph 5 (Representative) have been remedied in full, then for the purposes of termination of the Contract only, and without prejudice to the rights of the Authority to make deductions/adjustments pursuant to the Payment Mechanism, any Non-Acceptance Deductions, Mileage Deductions, Warning Notices and Final Warning 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 Operating Sub-Contractor, or a defaulting sub-contractor to the Operating Sub-Contractor, and has elected to exercise its rights under Clauses 80.2 and 80.4.1 of the Contract, the provisions of Clause 81.5 (Replacement of Sub-Contractors) of the Contract will apply from the date of substitution or replacement of that Operating Sub-Contractor or sub-contractor to that Operating Sub-Contractor.

8. NOVATION

Required Drafting

8.1. Subject to paragraph 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,

³⁶ Where the payment mechanism includes a Ratchet Mechanism, this drafting can be included

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the Facility Agent 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 Contract to a Suitable Substitute Contractor.

- 8.2. The Authority shall notify the Facility Agent as to whether any person to whom the Facility Agent proposes to transfer the Contractor's rights and liabilities under the Ancillary 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 paragraph 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 Ancillary Documents from that date and the new contractor shall become liable for obligations arising on or after that date;
 - 8.4.2. any Non-Acceptance Deductions, Mileage Deductions, Warning Notices or Final Warning Notices incurred or Ratchets subsisting shall, for the purposes of termination of the Contract only, and without prejudice to the rights of the Authority to make deductions/adjustments, pursuant to the Payment Mechanism, be cancelled or disregarded;
 - 8.4.3. any then subsisting ground for termination of the Contract 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 facility 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. INSURANCE PROCEEDS

Required Drafting

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Financing Agreements, the Facility Agent shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of Clause 56 (Reinstatement) of the Contract and the Facility Agent agrees for itself and on behalf of the Secured Finance Parties that it shall not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Joint Insurance Account in accordance with Clause 56 (Reinstatement) of the Contract.

10. AUTHORITY RIGHTS

- 10.1. Notwithstanding any provision in the Collateral Warranties to the contrary, and without prejudice to paragraph 10.9, the Authority agrees that it will not exercise or seek to exercise any of its step-in rights or other rights under or in

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respect of any Collateral Warranty prior to termination of the Contract until the earlier of:

10.1.1. the Senior Debt Discharge Date; and

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

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

10.2.1. do anything pursuant to the Collateral Warranties or the Construction/Operating Sub-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 Construction/Operating Sub-Contracts;

10.2.2. 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 Construction/Operating Sub-Contracts;

10.2.3. 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;

10.2.4. 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;

10.2.5. save with the prior written consent of the Facility Agent, compete with the rights of the Secured 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 Contract or any other Ancillary Documents 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 Secured Finance Parties.

10.3. The Parties agree that:

10.3.1. 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

10.3.2. the exercise by the Authority of its rights pursuant to and in accordance with:

(a) paragraphs 10.5.1 and 10.5.2 to make deductions, retention or set-off against the Monthly Operating Payment under and in accordance with the Operating Sub-Contract;

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- (b) paragraphs 10.5.3 and [10.5.4] to terminate and claim termination compensation under and in accordance with the Operating Sub-Contract;
- (c) paragraphs 10.6.1, 10.6.2 and [10.6.4] to make deductions or withholdings against an Interim Payment under and in accordance with the Construction Sub-Contract; [or]
- (d) paragraph 10.6.3 to terminate and claim compensation under and in accordance with the Construction Sub-Contract;
- (e) [paragraphs 10.7.1 and 10.7.2 to make deductions, retention or set-off against the [Monthly] [Payment] under and in accordance with the [•] Agreement; or]
- (f) [paragraph 10.7.3 to terminate and claim termination compensation under and in accordance with the [•] Agreement,]

shall not prejudice the Accrued Rights.

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

10.4.1. in contravention of the provisions of paragraphs 10.2, 10.5 and/or 10.6 [and/or 10.7]; or

10.4.2. pursuant to paragraph 10.5.5(b) or 10.6.5 (b) [or 10.7.4(b)] 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 Facility Agent and pending such payment, hold the same on trust for the Facility Agent and the Secured Finance Parties.

10.5. In addition to its rights under paragraph 10.1, and subject to paragraphs 10.2 and 10.3, where the Contract 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 Operating Collateral Warranty, provided that:

10.5.1. 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 Operating Collateral Warranty and/or the Operating Sub-Contract other than the making of deductions, retention, or set-off against (and only up to the amount of) each Monthly Operating Payment under and in accordance with clause [•] and schedule [•] of the Operating Sub-Contract in respect of services provided following the Termination Date;³⁷

10.5.2. if and to the extent that realisation of the Accrued Rights would count against the Operating Sub-Contractor Liability Cap in the Relevant Year, the Authority shall only be entitled to make deductions, retention or set-off in the Relevant Year pursuant to paragraph 10.5.1 to the extent such

³⁷ The payment regime under the Operating Sub-Contract will need to be reviewed to ensure it is consistent with this provision.

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deductions, retention or set-off do not exceed the Authority Operating Liability Cap;³⁸

10.5.3. if and to the extent that realisation of the Accrued Rights would count against the Operating Sub-Contractor Termination Cap, the Authority shall only be entitled to exercise its rights to terminate the Operating Sub-Contract (pursuant to paragraph [●] thereof) and to claim termination compensation (pursuant to paragraph [●] thereof) to the extent that such compensation does not exceed the Authority Operating Termination Cap;³⁹

10.5.4. [if and to the extent that realisation of the Accrued Rights would count against the [Life Cycle Works Cap], the Authority shall only be entitled to claim any termination compensation which relates to the [Life Cycle Works Cap] to the extent that it does not exceed the [Authority Operating Life Cycle Works Cap], subject always to the maximum limit referred to in paragraph 10.5.3;⁴⁰]

10.5.5. if the Authority and the Facility Agent do not agree the Operating Accrued Rights Value:

- (a) either of the Authority or the Facility Agent may refer the dispute for resolution in accordance with paragraph 20 (Dispute Resolution); and
- (b) pending agreement or determination of the Operating Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority Operating Collateral Warranty subject always to paragraph 10.4; and

10.5.6. unless permitted by paragraph 10.13, the Authority shall not be entitled to exercise its rights under the Authority Operating Collateral Warranty where the event giving rise to termination of the Contract is an event of Operating Sub-Contractor Default.

10.6. In addition to its rights under paragraph 10.1, and subject to paragraphs 10.2 and 10.3, where the Contract 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 Construction Collateral Warranty, provided that:

10.6.1. 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 Construction Collateral Warranty and/or the Construction Sub-Contract other than the making of deductions or withholdings against (and only up to the amount of) each [Interim

³⁸ Operating Sub-Contracts usually contain a cap on the liability of the Operating Sub-Contractor in any given year. To the extent that realisation of Accrued Rights would count against that annual cap then the rights of the Authority under the relevant collateral warranty to claim against the Operating Sub-Contractor should be subordinated to those Accrued Rights.

³⁹ Operating Sub-Contracts usually contain a cap on the liability of the Operating Sub-Contractor on termination of the Operating Sub-Contract. To the extent that realisation of Accrued Rights would count against that cap on termination then the rights of the Authority under the relevant collateral warranty to claim on termination should be subordinated to those Accrued Rights.

⁴⁰ Operating Sub-Contracts may also contain other caps on liability e.g. a Life Cycle Works Cap. Again, any rights of the Authority to make a claim should be subordinated to Accrued Rights.

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Payment and/or Final Statement⁴¹] under and in accordance with paragraphs [•] and [•] of the Construction Sub-Contract in respect of works carried out following the Termination Date;

- 10.6.2. if and to the extent that realisation of the Accrued Rights would count against the Construction Sub-Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to paragraph 10.6.1 to the extent that such deductions or withholdings, when aggregated with any termination compensation claimed pursuant to paragraph 10.6.3, do not exceed the Authority Construction Liability Cap;⁴²
- 10.6.3. if and to the extent that realisation of the Accrued Rights would count against the Construction Sub-Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the Construction Sub-Contract (pursuant to paragraph [•] thereof) and to claim termination compensation (pursuant to paragraph [•] thereof), to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to paragraph 10.6.1, does not exceed the Authority Construction Liability Cap;⁴³
- 10.6.4. [if and to the extent that realisation of the Accrued Rights would count against the Construction Sub-Contractor's Liquidated Damages Cap, the Authority shall only be entitled to make deductions or withholdings pursuant to Clause 10.6.1 which relate to the Construction Sub-Contractor's Liquidated Damages Cap to the extent that such deductions or withholdings do not exceed the Authority Construction Liquidated Damages Cap;⁴⁴]
- 10.6.5. if the Authority and the Facility Agent do not agree the Construction Accrued Rights Value:
- (a) either of the Authority or the Facility Agent may refer the dispute for resolution in accordance with paragraph 20 (Dispute Resolution); and
 - (b) pending agreement or determination of the Construction Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority Construction Collateral Warranty subject always to paragraph 10.4; and
- 10.6.6. unless permitted by paragraph 10.13, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority Construction Collateral Warranty where the event giving rise to termination of the Contract is an event of Construction Sub-Contractor Default.

⁴¹ This should reflect the payment regime under the Construction Sub-Contract.

⁴² See paragraph 10.6.2 above. The same position applies here in relation to the Construction Sub-Contract prior to termination. Liability caps in Construction Sub-Contracts will not usually distinguish between pre- and post-termination liabilities.

⁴³ See paragraph 10.6.3 above. The same position applies here in relation to the Construction Sub-Contract on termination. Liability caps in Construction Sub-Contracts will not usually distinguish between pre and post termination liabilities.

⁴⁴ Construction Sub-Contracts may also contain other caps on liability e.g. a liquidated damages cap. Again, any rights of the Authority to make a claim should be subordinated to Accrued Rights.

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10.7.⁴⁵ In addition to its rights under paragraph 10.1, and subject to paragraphs 10.2 and 10.3, where the Contract 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 [•] Collateral Warranty, provided that:

10.7.1. 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 [•] Collateral Warranty and or [•] Contract other than the making of deductions or withholdings against (and only to the amount of) each [monthly payment and/or final statement] under and in accordance with clause [•] and [•] of the [•] Contract in respect of [Services] carried out following the Termination Date;

10.7.2. if and to the extent that realisation of the Accrued Rights would count against the [•] Contractor's Liability Cap the Authority shall only be entitled to make deductions or withholdings pursuant to paragraph 10.7.1, to the extent that such deductions or withholdings, [when aggregated with any termination compensation claimed pursuant to paragraph 10.7.3] do not exceed the Authority [•] Liability Cap;

10.7.3. if and to the extent that realisation of the Accrued Rights would count against the [•] Contractor's Liability Cap, the Authority shall only be entitled to exercise its rights to terminate the [•] Contract (pursuant to clause [•] thereof) and to claim termination compensation (pursuant to clause [•] thereof), to the extent that such compensation, when aggregated with any deductions or withholdings pursuant to paragraph 10.7.1, does not exceed the Authority [•] Liability Cap;⁴⁶

10.7.4. if the Authority and the Facility Agent do not agree the [•] Accrued Rights Value:

- (a) either of the Authority or the Facility Agent may refer the dispute for resolution in accordance with paragraph 20 (Dispute Resolution); and
- (b) pending agreement or determination of the [•] Accrued Rights Value, the Authority shall be entitled to exercise its rights under the Authority [•] Collateral Warranty subject always to paragraph 10.4; and

10.7.5. unless permitted by paragraph 10.13, the Authority shall not be able to exercise any of its step-in rights or other rights under or in respect of the Authority [•] Collateral Warranty where the event giving rise to termination of the Contract is an event of [•] Contractor Default.

10.8. Notwithstanding the terms of the Collateral Warranties or any other provisions of this paragraph 10, each of the Relevant Sub-Contractors, together with any guarantors thereof, shall remain responsible, and be liable, to the Contractor

⁴⁵ There may be other key sub-contracts in respect of which the Authority has a collateral warranty. The same principles should apply here as they do to the Construction and Operating Sub-Contracts i.e. from the Termination Date the Authority can step-in subject to protection of Accrued Rights.

⁴⁶ The liability cap under the relevant sub-contract should be reviewed to confirm whether there is a pre and post termination liability cap.

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and the Secured Finance Parties in respect of all costs, claims, damages, losses and liabilities which have arisen out of or in connection with the Construction/Operating Sub-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 Secured Finance Parties (and the Facility Agent and/or the Security Trustee acting on behalf of the Contractor and/or the Secured Finance Parties) shall retain the benefit of all their respective rights to all such costs, claims, damages, losses and liabilities (the “Accrued Rights”).

10.9. In addition to its other rights under this paragraph 10, 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 Construction/Operating Sub-Contract, the Authority may pay directly, or undertake to make a payment directly, to the Relevant Sub-Contractor, amounts properly due, payable and undisputed (whether as a result of a counterclaim, set-off or otherwise) under or pursuant to the relevant Construction/Operating Sub-Contract and may set off such sums after they have been paid against any amounts payable by the Authority to the Contractor under the Contract, so as to satisfy them pro tanto, provided that the Authority shall not be able to exercise its rights pursuant to this paragraph 10.9 in circumstances where the Secured Finance Parties:

10.9.1. have stepped-in to, or otherwise, directly or indirectly, taken control over the relevant Construction/Operating Sub-Contract and not stepped out of it or otherwise relinquished control; or

10.9.2. are seeking to preserve continuity of the service or build obligation (as relevant) under the relevant Construction/Operating Sub-Contract or otherwise with reasonable diligence.

10.10. To the extent that the Authority makes a payment under paragraph 10.9 above, the Authority shall not be entitled to make double recovery by making a deduction from the Unitary Charge under the Contract in respect of performance failure by the Relevant Sub-Contractor without making an equivalent deduction against the payment made direct by the Authority to the Relevant Sub-Contractor.

10.11. On early termination of the Contract for any reason the Authority shall be entitled to set-off any payments made to sub-contractors under paragraph 10.9 (to the extent not previously set-off in accordance with that paragraph) against any payments made under the Contract (subject to paragraph 11.7 of this Agreement and paragraph 2 of Part 7 of Schedule 17 (Compensation on Termination) of the Contract).

10.12. Where following the termination date:

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

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10.12.2.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

10.12.3.the Facility Agent fails to comply with paragraph 10.14,

10.12.4.the Authority may exercise its rights under the relevant Collateral Warranty without restriction. The Facility Agent shall notify the Authority as soon reasonably practicable but in any event within 2 Business Days after as claims arising from the Accrued Rights are settled or written off by the Senior Finance Parties, or become exhausted.⁴⁷

10.13. On and after the earlier of:

10.13.1. the Senior Debt Discharge Date; and

10.13.2. the date on which the Facility Agent has given its written consent,

the Authority shall be entitled to exercise its rights under the Collateral Warranties in connection with the Construction Sub-Contract, Operating Sub-Contract, or other Construction/Operating Sub-Contract in accordance with the Collateral Warranties without restriction.

10.14. Following termination of the Contract, the Facility Agent shall, within ten (10) 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 Secured Finance Parties:

10.14.1. that the Contractor may claim against the Relevant Sub-Contractor; and

10.14.2. that any Secured Finance Party may claim against the Relevant Sub-Contractor,

together with an indicative non-binding assessment of the Operating Accrued Rights Value, the Operating Accrued Rights Termination Value, [the Operating Accrued Rights Life Cycle Works Value], the Construction Accrued Rights Value and the [Construction Accrued Rights Liquidated Damages Value].⁴⁸

10.15. Prior to the Senior Debt Discharge Date but following termination of the Contract, where the [Lenders] have enforced their security and a receiver appointed by or on behalf of the [Lenders] 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.

10.16. Notwithstanding the terms of the Contract and Security Documents, the Facility 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)

⁴⁸ To the extent that the Authority has rights in respect of other Collateral Warranties (see paragraph 10.7), the Facility Agent should provide the same information in relation to the corresponding sub-contracts.

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and neither the Facility Agent nor the Security Trustee shall exercise or seek to exercise any enforcement rights and shall, on or before the date any Unrestricted Assets are transferred to the Authority or its nominee, as the case may be, each release its security over them.

- 10.17. Notwithstanding the terms of the Contract, and subject to paragraph 10.18, 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 Construction/Operating Sub-Contract or any Ancillary Document comprised in the Assets to the Authority or its nominee on or following the Termination Date until the Senior Debt Discharge Date.
- 10.18. The Authority may, at its option, and subject to agreement of the value of any such revenues, cash balances, or claims by the Facility Agent in its absolute discretion, and payment of such sum to the Facility Agent, 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 Construction/Operating Sub-Contract comprised in the Assets to the Authority or its nominee on or following the Termination Date.

11. MISCELLANEOUS

Required Drafting

- 11.1. The Authority shall, at the Contractor's expense, take whatever action the Facility Agent, an Appointed Representative or a Representative taking a transfer in accordance with paragraph 8.1 (Novation) may require for perfecting any transfer or release under paragraph 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 Facility Agent, Appointed Representative or Representative reasonably requires.
- 11.2. Subject always to the continuing obligations of the Parties under paragraph 1, paragraph 2.5, paragraph 10, paragraph 11.3.1 and paragraphs 12 to 20, this Agreement shall remain in effect until:
- 11.2.1. the date on which all amounts which may be or become owing by the Authority to the Contractor under Schedule 17 (Compensation on Termination) of the Contract have been irrevocably paid in full; or
- 11.2.2. in the event that 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 paragraph 4 of Part 7 of Schedule 17 (Method of Payment) of the Contract, the date on which such election is made,
- whereupon the Facility Agent or Security Trustee (as relevant) agrees on behalf of itself and the Secured Finance Parties to release any security granted in their favour over the Unrestricted Assets.

11.3.

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- 11.3.1. On the Expiry Date the Facility Agent or Security Trustee (as relevant), acting on behalf of itself and the Secured Finance Parties, shall release any security granted in its favour over any Unrestricted Assets which have not previously been assigned or otherwise transferred to the Authority.
- 11.3.2. On the Senior Debt Discharge Date the Facility Agent or Security Trustee (as relevant), acting on behalf of itself and the Secured Finance Parties, shall release any security granted in its favour over any Assets which have not previously been assigned or otherwise transferred to the Authority and this Agreement shall terminate in full.
- 11.4. The Facility Agent, in respect of paragraphs 11.4.1, 11.4.2 and 11.4.3, and the Contractor in respect of paragraph 11.4.4, shall promptly notify the Authority of:
- 11.4.1. any decisions to accelerate the maturity of any amounts owing by the Contractor to the Lenders under the Senior Financing Agreements and/or demand repayment;
- 11.4.2. the Senior Debt Discharge Date on or before the date falling twenty (20) Business Days after its occurrence;
- 11.4.3. the details and amount of any proposed Additional Permitted Borrowing, including:
- (a) the circumstances giving rise to it and reasons for it; and
 - (b) the terms on which it will be borrowed; and
- 11.4.4. 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):
- (a) the amount of any Distribution made by the Contractor; and
 - (b) the amount of any credit balance on any account of the Contractor.
- 11.5. 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.
- 11.6. For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Contract, the provisions of this Agreement shall prevail.
- 11.7. 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 paragraph 4 of Section VII of Schedule 17 (Method of Payment) of the Contract, 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

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(excluding interest payable pursuant to paragraph 4 of Part 7 of Schedule 17 (Method of Payment) of the Contract) 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.

12. ASSIGNMENT

Required Drafting

- 12.1. No Party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement, save as provided in paragraphs 12.2 to 12.4 (inclusive) below.
- 12.2. Each of the Facility Agent and the Security Trustee may assign or transfer its rights and obligations under this Agreement to a successor facility agent or security trustee (as appropriate) in accordance with the Senior Financing Agreements without the consent of the Authority.
- 12.3. Any Secured Finance Party may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements.
- 12.4. 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 Contract in accordance with Clause 81.1 (Restrictions on Transfer of this Agreement by the Authority) of the Contract.
- 12.5. If paragraph 12.2 applies then the Authority shall enter into a direct agreement with the new facility agent or security trustee (as relevant) on substantially the same terms as this Agreement.

13. 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.

14. 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.

15. COUNTERPARTS

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

16. WAIVER

16.1. 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.

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16.2. Extent of Waiver

No waiver under paragraph 16.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

17. 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.

18. NOTICES**18.1. 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:

Authority

Authority

Facility Agent

Facility Agent

Security Trustee

Security Trustee

Contractor

18.2. Change of Details

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

18.3. 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:

18.3.1. within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

18.3.2. by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

19. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

19.1. 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.

19.2. The Facility 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.

19.3. The Parties acknowledge that failure by the Authority to issue a certificate in accordance with paragraph 19.2 shall, pursuant to Clause 4.3 (Failure to Issue a Certificate) of the Contract, give rise to a right for the Contractor to terminate the Contract and an entitlement for the Contractor to be paid compensation by the Authority. No additional compensation shall be payable by the Authority pursuant to this Agreement in such circumstances.

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19.4. The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1997 are set out in Schedule 28 (Relevant Discharge Terms) of the Contract. Where such terms apply and the Contractor is entitled to compensation pursuant to the Contract, the Parties acknowledge that no additional compensation shall be payable by the Authority pursuant to this Agreement.

20. DISPUTE RESOLUTION

20.1. Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this paragraph 20.

20.2. 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.

20.3. Without prejudice to paragraph 20.2, and subject to paragraph 20.4 either of the Authority or the Facility Agent (or, if relevant, the Security Trustee) may give the other notice of its intention to refer the dispute to an Expert for determination (the "Notice of Expert Determination"). The Notice of Expert Determination shall include a brief statement of the issue to be referred and the redress sought.

20.4. If a dispute arises in relation to determination of any Accrued Rights Value in accordance with paragraph 10.14 (Authority's Rights), either of the Authority or the Facility 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 paragraph 20.

20.5. The Authority and the Facility 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 Facility 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 paragraph 20. The Expert shall (unless otherwise agreed) be an independent individual with knowledge of and experience in Private Finance Initiative waste projects. The Party giving the Notice of Expert Determination (the "Referring Party") shall send a copy of the Notice of Expert Determination to the Expert as soon as he has been appointed.

20.6. 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 (the "Referral Notice") on the Expert and the other party (the "Responding Party"). The Referral Notice shall include a copy of this Agreement, details of the circumstances giving rise to the dispute as set out in the Notice of Expert Determination, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

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- 20.7. The Responding Party shall serve its statement of case (the "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.
- 20.8. 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.
- 20.9. The Expert shall provide to the Authority and the Facility 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.
- 20.10. The Expert's costs shall be borne as the Expert shall specify or, in default, equally by the Authority and the Facility 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.
- 20.11. 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 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.
- 20.12. Either of the Authority or the Facility 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.
- 20.13. 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 paragraph 20 and shall give effect forthwith to every decision of the Expert and the courts delivered under this paragraph 20.

21. GOVERNING LAW

Required Drafting

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to paragraph 20 (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.

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

THE COMMON SEAL of AUTHORITY)
was affixed in the presence of:)
Authorised Signatory

EXECUTED as a Deed by)
[] LIMITED)
acting by two of its directors or a)
director and its secretary:)
.....
Director
.....
Director/Secretary

Executed as a Deed)
by)
acting by its duly authorised)
attorney in the presence of:)
Name of witness: Duly authorised attorney
Address of witness:

Occupation of witness:

Signature of witness

SCHEDULE 25
FORM OF COLLATERAL WARRANTY
PART 1
WARRANTY AND GUARANTEE FROM THE CONTRACTOR'S CONSTRUCTION
SUB-CONTRACTOR

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DATED

20[]

(1) [CONTRACTOR'S CONSTRUCTION SUB-CONTRACTOR]

(2) [AUTHORITY]

(3) [CONTRACTOR]

(4)[GUARANTOR]

DUTY OF CARE DEED

relating to

THIS DEED is made on [] 200[]

BETWEEN:

- (1) **[CONTRACTOR'S CONSTRUCTION SUB-CONTRACTOR]** (Company No. []) whose registered office is at [] (the "Construction Sub-Contractor");
- (2) **[AUTHORITY]** of [] (the "Authority"), which expression includes its permitted successors in title and assigns);
- (3) **CONTRACTOR** (registered in England and Wales under company number []) whose registered office is at [] (the "Contractor"); and
- (4) **[GUARANTOR]** (registered in England and Wales under company number []) whose registered office is at [] (the "Guarantor").

BACKGROUND

- (A) By a contract dated [] (the "Contract") the Authority has appointed the Contractor to carry out, in relation to the Sites, the provision of residual waste treatment to the Authority at each and every Site/Facility as contemplated by the Contract including the carrying out of the design, construction, commissioning and testing of the Works and the provision of the Services.
- (B) The Construction Sub-Contractor has been appointed by the Contractor under a contract dated [] (the "Construction Sub-Contract") to carry out, in relation to the Sites, the design, construction, commissioning and testing of the Works.
- (C) The Construction Sub-Contractor is obliged under the Construction Sub-Contract to give a warranty in this form in favour of the Authority.
- (D) The Guarantor (being a parent company of the Construction Sub-Contractor) has agreed to guarantee the due performance by the Construction Sub-Contractor of its obligations under the Construction Sub-Contract and this Deed, in accordance with the terms of this Deed.

22. DEFINITIONS AND INTERPRETATIONS

22.1. In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:

"Documents" means all and any technical information, documents, reports, drawings, models, specifications, schedules, details, plans, calculations, programmes, software, code, databases, data, materials, works (whether literary, artistic or otherwise), know-how and information which are produced by or on behalf of the Construction Sub-Contractor or any sub-contractor of the Construction Sub-Contractor in connection with the Works and/or the performance of the Construction Sub-Contractor's obligations under the Construction Sub-Contract (including all design rights and copyright in such items), and all amendments and additions thereto;

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"Lender(s)" means any organisation providing funding to the Contractor in connection with the carrying out of the Works;

["Parent Company Guarantee" means the parent company guarantee entered into between the Guarantor and the Contractor.]⁴⁹

22.2. Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Construction Sub-Contract.

23. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authority to the Construction Sub-Contractor and the Guarantor, receipt of which the Construction Sub-Contractor and Guarantor both acknowledge:

24. CONSTRUCTION SUB-CONTRACTOR'S WARRANTY AND LIABILITY

24.1. The Construction Sub-Contractor warrants to the Authority that it has carried out and will continue to carry out its duties under the Construction Sub-Contract in accordance with the Construction Sub-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 Construction Sub-Contractor covenants with the Authority that it has carried out and will carry out and complete the Works in accordance with the Construction Sub-Contract and duly observe and perform all its duties and obligations thereunder;

24.2. The Construction Sub-Contractor shall be entitled in any action or proceedings by the Authority to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Contractor under the Construction Sub-Contract, and shall have no liability under this Deed that is of greater or of longer duration (in each case ignoring set off or counterclaim) than it would have had if the Authority had been a party to the Construction Sub-Contract as joint employer. Upon the expiration of twelve (12) years from the date of completion of the Works in accordance with the Construction Sub-Contract, the liability of the Construction Sub-Contractor under this Deed shall cease and determine, save in relation to any claims made by the Authority against the Construction Sub-Contractor and notified by the Authority to the Construction Sub-Contractor in writing prior thereto.

24.3. The Construction Sub-Contractor shall have no liability to the Authority in respect of any delay in the completion of the Works howsoever caused save to the extent that the liability arises under the Construction Sub-Contract and the Authority shall have exercised its right to step in under clause 10. Any claim in relation to a delay in completion of the Works but not otherwise will be extinguished to the extent that the Construction Sub-Contractor has had deducted liquidated damages under clause [] of the Construction Sub-Contract.

⁴⁹ To be used where the Guarantor is also providing a PCG to the Contractor.

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25. DOCUMENTS

- 25.1. The Construction Sub-Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authority with effect from the date of this Deed or in the case of Documents 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 completion of the Construction Sub-Contractor's obligations under the Construction Sub-Contract or the termination of the Construction Sub-Contract or the determination of the Construction Sub-Contractor's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, maintenance, operation, letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Authority will not hold the Construction Sub-Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it and other than for such other uses as are reasonably foreseeable unless the Construction Sub-Contractor authorises such use and confirms the Documents are suitable for it. The Construction Sub-Contractor will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Construction Sub-Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Construction Sub-Contract.
- 25.2. The Construction Sub-Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Authority or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authority's expense.
- 25.3. The Construction Sub-Contractor warrants to the Authority that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party

26. INSURANCE

- 26.1. The Construction Sub-Contractor hereby covenants with the Authority to:
- 26.1.1. take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) either each and every loss or in the aggregate in relation to the Works (if in the aggregate then in any one (1) year of insurance a minimum of one (1) automatic reinstatement of the aggregate indemnity limit is required) 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 practical completion of the Works, provided that such insurance is generally available in the market to members of the Construction Sub-Contractor's profession at commercially reasonable rates and provided further that payment of any

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increased or additional premiums required by insurers by reason of the Construction Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Construction Sub-Contractor will be deemed to be within the reasonable rates;

26.1.2. provide evidence (as and when reasonably required by the Authority) satisfactory to the Authority of the Professional Indemnity insurance referred to in clause 5.1.1 being in full force and effect from the date of the Construction Sub-Contract (such evidence to include details of the cover);

26.1.3. provide the Authority with notice of:

- (a) any cancellation of the Professional Indemnity insurance referred to in clause 5.1.1 not less than thirty (30) days prior to the relevant cancellation date; and
- (b) any adverse material changes to or suspension of cover relevant to the Works not less than thirty (30) days prior to the relevant change or suspension;

26.1.4. inform the Authority as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 5.1.1 in respect of the Works in excess of one million pounds (£1,000,000) and provide such information to the Authority as the Authority may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy; and

26.1.5. indemnify the Authority in respect of any subrogation claim by the insurers brought in connection with any claim made under the Professional Indemnity insurance referred to in clause 5.1.1.

27. NOTICES

Any notice to be given by any party to this Deed 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 4.45pm on a Business Day and otherwise on the next Business Day.

28. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Construction Sub-Contractor or the Guarantor on two occasions only and the Authority will notify the Construction Sub-Contractor and the Guarantor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Construction Sub-Contractor and the Guarantor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of

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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.

29. AUTHORITY'S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Construction Sub-Contractor and/or the Guarantor including without prejudice to the generality of the foregoing any remedies in negligence.

30. INSPECTION OF DOCUMENTS

The Construction Sub-Contractor's liabilities under this Deed will 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 Authority may make or procure to be made for its benefit or on its behalf.

31. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY

31.1. The Construction 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 Construction Sub-Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than [thirty (30)] days' prior written notice specifying the Construction Sub-Contractor's ground for terminating or treating as terminated or repudiated the Construction Sub-Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Construction Sub-Contract. Within such period of notice:

31.1.1. the Authority may give written notice to the Construction Sub-Contractor that the Authority will thenceforth become the Contractor under the Construction Sub-Contract to the exclusion of the Contractor and thereupon the Construction Sub-Contractor will admit that the Authority is the Contractor under the Construction Sub-Contract and the Construction Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds;

31.1.2. if the Authority has given such notice as aforesaid or under clause 10.3, the Authority shall accept liability for the Contractor's obligations under the Construction Sub-Contract and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Construction Sub-Contractor's specified grounds and which is capable of remedy by the Authority; and

31.1.3. if the Authority has given such notice as aforesaid or under clause 10.3, the Authority will from the service of such notice become responsible for all sums properly payable to the Construction Sub-Contractor under the Construction Sub-Contract accruing due after the service of such notice but the Authority will in paying such sums be

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entitled to the same rights of set-off and deduction as would have applied to the previous client under the Construction Sub-Contract.

- 31.2. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Construction Sub-Contractor, the Authority will not be under any obligation to the Construction Sub-Contractor nor will the Construction Sub-Contractor have any claim or cause of action against the Authority unless and until the Authority has given written notice to the Construction Sub-Contractor pursuant to clause 10.1.1 or clause 10.3.
- 31.3. The Construction Sub-Contractor further covenants with the Authority that if the Contract is terminated by the Authority the Construction Sub-Contractor, if requested by the Authority by notice in writing and subject to clause 10.1.2 and clause 10.1.3, will accept the instructions of the Authority to the exclusion of the Contractor in respect of its duties under the Construction Sub-Contract upon the terms and conditions of the Construction Sub-Contract and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Contractor under the Construction Sub-Contract. [Where the Authority has requested that the Construction Sub-Contractor enter into a novation agreement pursuant to this clause 10.3, the Construction Sub-Contractor shall use all reasonable endeavours to procure the assignment of the Parent Company Guarantee to the Authority.]⁵⁰
- 31.4. If two or more valid notices are received on the same day any notice served by the Lender(s) shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind the Construction Sub-Contractor.
- 31.5. The Contractor acknowledges that the Construction Sub-Contractor will be entitled to rely on a notice given to the Construction Sub-Contractor by the Authority under clause 10.3 as conclusive evidence that the Contract has been terminated by the Authority.
- 31.6. The Authority may by notice in writing to the Construction Sub-Contractor appoint another person to exercise its rights under this clause 10 subject to the Authority remaining liable to the Construction Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 31.7. Upon request by the Authority the Construction Sub-Contractor agrees to co-operate with the Authority in determining the duties performed or to be performed by the Construction Sub-Contractor and to provide a copy of the Construction Sub-Contract and any variations thereto and details of all monies paid and due under the Construction Sub-Contract.

32. SUB-CONTRACTORS

Following a written request from the Authority the Construction Sub-Contractor will (unless it has already done so) and/ or procure that its sub-contractors execute a deed of collateral warranty in the relevant form specified in the Construction Sub-Contract in favour of any person in whose favour the Construction Sub-Contract

⁵⁰ Where relevant.

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obliges the Construction Sub-Contractor to give or procure the giving of such a warranty.

33. 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.

34. 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.

35. GUARANTEE

- 35.1. Subject to the other provisions of this Clause 14, the Guarantor guarantees unconditionally and irrevocably the proper performance and observance by the Construction Sub-Contractor of all its obligations, undertakings, warranties and responsibilities of the Construction Sub-Contractor under this Deed and the Construction Sub-Contract and the Guarantor agrees and undertakes that it shall forthwith make good any default thereunder on the part of the Construction Sub-Contractor and it shall observe and perform the obligations of the Construction Sub-Contractor.
- 35.2. Without prejudice to clause 14.1, if the Construction Sub-Contractor in any respect fails to observe or perform any of its duties or obligations to the Authority under or in connection with this Deed, or if the Construction Sub-Contractor fails to pay any debt, damages, interest or costs due from the Construction Sub-Contractor to the Authority under or in connection with this Deed and/or the Construction Sub-Contract, or if the employment of the Construction Sub-Contractor under the Construction Sub-Contract shall determine by operation of or notice given under Clause [*termination for Construction Sub-Contractor default*] of the Construction Sub-Contract (due to the occurrence of an [[Insolvency Event], as defined in the Construction Sub-Contract] or other event), then the Guarantor shall as a separate and independent obligation indemnify the Authority against all losses, damages, costs and expenses (including any legal expenses) incurred by the Authority by reason of such failure or non-payment or termination (including the unpaid amounts and any costs and expenses incurred by the Authority in connection with the enforcement of or preservation of its rights under this Deed) and shall upon first written demand itself pay to the Authority without any deduction or set-off the amount of such losses, damages, costs and expenses as the case shall require.
- 35.3. If the Guarantor fails to pay any amount due to the Authority pursuant to this clause 14 on receipt of a written demand by the Authority, the Guarantor shall pay to the Authority, in addition to the amount not paid, simple interest thereon for the period until such payment is made. The rate of interest payable shall be 4% above the Bank of England Base Rate calculated on a daily basis and compounded quarterly from the date on which the payment by the Guarantor became overdue.

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- 35.4. The Guarantor agrees that all sums payable by the Guarantor under this clause 14 shall be paid to the Authority in full without set off or counterclaim, free of any present or future taxes, levies, duties, charges, fees, withholdings or deductions (together referred to as "**Deductions**") which would not have been imposed if such payments had been made by the Construction Sub-Contractor, and if the Guarantor is compelled by law to make any Deduction, the Guarantor will gross up the payment so that the net sum received by the Authority is equal to the full amount which the Authority would have received had no such Deduction been made.
- 35.5. This Deed and/or the Construction Sub-Contract may be modified, amended or supplemented in any manner whatsoever without the consent of the Guarantor, and no such modification, amendment or supplement shall release or impair the liability of the Guarantor under this clause 14, which shall extend to the duties, obligations and liabilities of the Construction Sub-Contractor under this Deed and/or the Construction Sub-Contract as so modified, amended or supplemented. No invalidity, illegality, unenforceability, estoppel and/or irregularity in this Deed and/or the Construction Sub-Contract or its avoidance or termination shall affect or impair the liability of the Guarantor under this clause 14. No waiver or concession or allowance of time or compromise or forbearance given to or made with the Construction Sub-Contractor shall release, affect or impair the liability of the Guarantor under this Deed, and the terms of this clause 14 shall apply to the terms of such compromise as they apply to the Construction Sub-Contract.
- 35.6. The Guarantor confirms that it has full power and capacity to enter into this Deed and agrees that the terms of this clause 14 shall be additional to any other guarantee or security from time to time held by the Authority and shall not be affected by any release or waiver of any such guarantee or security and shall remain in full force and effect notwithstanding the winding-up, liquidation, receivership, administration, voluntary arrangement or other composition with creditors (or any event analogous to any of them) of the Construction Sub-Contractor.
- 35.7. The Guarantor agrees that its obligations under this clause 14 are independent and several obligations, and accordingly that the Authority shall not be required to pursue any remedy against the Construction Sub-Contractor before proceeding against the Guarantor under this Deed.
- 35.8. The obligations of the Guarantor under this Deed shall be continuing obligations and shall not be satisfied, discharged or affected by any intermediate payment or settlement of account or other matter whatsoever.
- 35.9. So long as any liability incurred by the Construction Sub-Contractor to the Authority under or in connection with this Deed and/or the Construction Sub-Contract remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising pursuant to this Deed[, the Parent Company Guarantee] and/or the Construction Sub-Contract, effect or seek to effect any recovery from the Construction Sub-Contractor, whether by receipt of money or set-off or proof of debt or enforcement of security or

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otherwise claim rank, prove or vote as a creditor of the Construction Sub-Contractor or its estate in competition with the Authority.

- 35.10. The Authority shall be entitled to recover no more from the Guarantor under this Deed in respect of any matter than the Authority would be entitled to recover from the Construction Sub-Contractor in respect of that matter (other than costs and expenses incurred by the Authority in connection with the enforcement of or preservation of its rights against the Guarantor under this Deed or any interest payable by the Guarantor pursuant to Clause 14.3 that shall not be so restricted), net of any set-off, and the Authority shall not be entitled to commence proceedings against the Guarantor under this Deed in respect of any claim once any proceedings against the Construction Sub-Contractor in respect of such claim would be statute-barred.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Construction Sub-Contractor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Contractor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Authority acting by two authorised signatories:

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Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by the Guarantor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

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SCHEDULE 25
FORM OF COLLATERAL WARRANTY
PART 2
WARRANTY FROM THE CONSTRUCTION SUB-CONTRACTOR'S
SUBCONTRACTOR

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DATED

20[]

(1) [SUBCONTRACTOR]

(2) [AUTHORITY]

(3) [CONTRACTOR'S CONSTRUCTION SUB-CONTRACTOR]

DUTY OF CARE DEED
relating to

THIS DEED is made on [] 200[]

BETWEEN:

- (1) **[SUBCONTRACTOR]** (Company No. []) whose registered office is at [] (the "Subcontractor");
- (2) **[AUTHORITY]** of [] (the "Authority"), which expression includes its permitted successors in title and assigns); and
- (3) **[CONSTRUCTION SUB-CONTRACTOR]** (registered in England and Wales under Company No. []) whose registered office is at [] (the "Construction Sub-Contractor");

BACKGROUND

- (A) By a contract dated [] (the "Contract") the Authority has appointed [] (the "Contractor") to carry out, in relation to the Sites, the provision of residual waste treatment to the Authority at each and every Site/Facility as contemplated by the Contract including the carrying out of the design, construction, commissioning and testing of the Works and the provision of the Services.
- (B) By a design and build contract dated [] (the "Construction Sub-Contract") the Contractor has appointed the Construction Sub-Contractor to carry out in relation to the Sites the design, construction, commissioning and testing of the Works.
- (C) The Subcontractor has been appointed by the Construction Sub-Contractor under a contract dated [] (the "Subcontract") to provide services in relation to the Works.
- (D) The Subcontractor is obliged under the Subcontract to give a warranty in this form in favour of the Authority.

36. DEFINITIONS AND INTERPRETATIONS

36.1. In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:

"Documents" means all and any technical information, documents, reports, drawings, models, specifications, schedules, details, plans, calculations, programmes, software, code, databases, data, materials, works (whether literary, artistic or otherwise), know-how and information which are produced by or on behalf of the Subcontractor or any sub-contractor of the Subcontractor in connection with the Works and/or the performance of the Subcontractor's obligations under the Subcontract (including all design rights and copyright in such items), and all amendments and additions thereto;

"Lender(s)" means any organisation providing funding to the Contractor in connection with the carrying out of the Works.

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36.2. Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the [Construction Sub-Contract/Subcontract]⁵¹.

37. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authority to the Subcontractor, receipt of which the Subcontractor acknowledges:

38. SUBCONTRACTOR'S WARRANTY AND LIABILITY

38.1. The Subcontractor warrants to the Authority that it has carried out and will continue to carry out its duties under the Subcontract in accordance with the Subcontract 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 Subcontractor covenants with the Authority that it has carried out and will carry out and complete the Works in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder;

38.2. The Subcontractor shall be entitled in any action or proceedings by the Authority to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Construction Sub-Contractor under the Subcontract, and shall have no liability under this Deed that is of greater or of longer duration (in each case ignoring set off or counterclaim) than it would have had if the Authority had been a party to the Subcontract as joint employer. Upon the expiration of twelve (12) years from the date of completion of the Works in accordance with the Subcontract, the liability of the Subcontractor under this Deed shall cease and determine, save in relation to any claims made by the Authority against the Subcontractor and notified by the Authority to the Subcontractor in writing prior thereto.

39. DOCUMENTS

39.1. The Subcontractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authority with effect from the date of this Deed or in the case of Documents 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 completion of the Subcontractor's obligations under the Subcontract or the termination of the Subcontract or the determination of the Subcontractor's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, maintenance, operation, letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Authority will not hold the Subcontractor liable for any use it may make of the

⁵¹ To be used as appropriate.

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Documents for any purpose other than that for which they were originally provided by it and other than for such other uses as are reasonably foreseeable unless the Subcontractor authorises such use and confirms the Documents are suitable for it. The Subcontractor will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Subcontract or hereunder or as otherwise required to enable it to fulfil its obligations under the Subcontract.

39.2. The Subcontractor agrees on reasonable request at any time and following reasonable written prior notice to give the Authority or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authority's expense.

39.3. The Subcontractor warrants to the Authority that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

40. INSURANCE

40.1. The Subcontractor hereby covenants with the Authority to:

40.1.1. take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) either each and every loss or in the aggregate in relation to the Works (if in the aggregate then in any one (1) year of insurance a minimum of one (1) automatic reinstatement of the aggregate indemnity limit is required) 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 practical completion of the Works, provided that such insurance is generally available in the market to members of the Subcontractor's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Subcontractor's own claims record or other acts, omissions, matters or things peculiar to the Subcontractor will be deemed to be within the reasonable rates;

40.1.2. provide evidence (as and when reasonably required by the Authority) satisfactory to the Authority of the Professional Indemnity insurance referred to in clause 5.1.1 being in full force and effect from the date of the Subcontract (such evidence to include details of the cover);

40.1.3. provide the Authority with notice of:

- (a) any cancellation of the Professional Indemnity insurance referred to in clause 5.1.1 not less than thirty (30) days prior to the relevant cancellation date; and
- (b) any adverse material changes to or suspension of cover relevant to the Works not less than thirty (30) days prior to the relevant change or suspension;

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40.1.4. inform the Authority as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 5.1.1 in respect of the Works in excess of one million pounds (£1,000,000) and provide such information to the Authority as the Authority may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy; and

40.1.5. indemnify the Authority in respect of any subrogation claim by the insurers brought in connection with any claim made under the Professional Indemnity insurance referred to in clause 5.1.1.

41. NOTICES

Any notice to be given by any party hereunder 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 4.45pm on a Business Day and otherwise on the next Business Day.

42. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Subcontractor on two occasions only and the Authority will notify the Subcontractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Subcontractor 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.

43. AUTHORITY'S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Subcontractor including without prejudice to the generality of the foregoing any remedies in negligence.

44. INSPECTION OF DOCUMENTS

The Subcontractor's liabilities under this Deed will 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 Authority may make or procure to be made for its benefit or on its behalf.

45. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY

45.1. The Subcontractor 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

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Subcontract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than [thirty (30)] days' prior written notice specifying the Subcontractor's ground for terminating or treating as terminated or repudiated the Subcontract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Subcontract. Within such period of notice:

- 45.1.1. the Authority may give written notice to the Subcontractor that the Authority will thenceforth become the Contractor under the Subcontract to the exclusion of the Contractor and thereupon the Subcontractor will admit that the Authority is the Contractor under the Subcontract and the Subcontract will be and remain in full force and effect notwithstanding any of the said grounds;
 - 45.1.2. if the Authority has given such notice as aforesaid or under clause 10.3, the Authority shall accept liability for the Contractor's obligations under the Subcontract and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Subcontractor's specified grounds and which is capable of remedy by the Authority; and
 - 45.1.3. if the Authority has given such notice as aforesaid or under clause 10.3, the Authority will from the service of such notice become responsible for all sums properly payable to the Subcontractor under the Subcontract accruing due after the service of such notice but the Authority 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 Subcontract.
- 45.2. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Subcontractor, the Authority will not be under any obligation to the Subcontractor nor will the Subcontractor have any claim or cause of action against the Authority unless and until the Authority has given written notice to the Subcontractor pursuant to clause 10.1.1 or clause 10.3.
- 45.3. The Subcontractor further covenants with the Authority that if the Contract is terminated by the Authority the Subcontractor, if requested by the Authority by notice in writing and subject to clause 10.1.2 and clause 10.1.3, will accept the instructions of the Authority to the exclusion of the Contractor in respect of its duties under the Subcontract upon the terms and conditions of the Subcontract and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Contractor under the Subcontract.
- 45.4. If two or more valid notices are received on the same day any notice served by the Lender(s) shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind the Subcontractor.
- 45.5. The Contractor acknowledges that the Subcontractor will be entitled to rely on a notice given to the Subcontractor by the Authority under clause 10.3 as conclusive evidence that the Contract has been terminated by the Authority.

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45.6. The Authority may by notice in writing to the Subcontractor appoint another person to exercise its rights under this clause 10 subject to the Authority remaining liable to the Subcontractor as guarantor for its appointee in respect of its obligations under this Deed.

45.7. Upon request by the Authority the Subcontractor agrees to co-operate with the Authority in determining the duties performed or to be performed by the Subcontractor and to provide a copy of the Subcontract and any variations thereto and details of all monies paid and due under the Subcontract.

46. SUB-CONTRACTORS

Following a written request from the Authority the Subcontractor will (unless it has already done so) and/ or procure that its sub-contractors execute a deed of collateral warranty in the relevant form specified in the Subcontract in favour of any person in whose favour the Subcontract obliged the Subcontractor to give or procure the giving of such a warranty.

47. 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.

48. 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.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Construction Sub-Contractor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Subcontractor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

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EXECUTED AS A DEED by the Authority acting by two authorised signatories:

Authorised Signatory

Authorised Signatory

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SCHEDULE 25
FORM OF COLLATERAL WARRANTY
PART 3
WARRANTY FROM THE CONSULTANTS

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DATED

20[]

(1) [CONSULTANT]

(2) [AUTHORITY]

(3) [CONTRACTOR'S CONSTRUCTION SUB-CONTRACTOR]

DUTY OF CARE DEED
relating to

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THIS DEED is made on [] 200[]

BETWEEN:

- (1) **[THE PARTNERS IN [INSERT NAME OF PARTNERSHIP]]** (being the persons listed in the Schedule hereto) whose principal place of business is at [] OR [] LIMITED/PLC (Company No. []) whose registered office is at (the "Consultant");
- (2) **[AUTHORITY]** of [] (the "Authority"), which expression includes its permitted successors in title and assigns); and
- (3) **[CONSTRUCTION SUB-CONTRACTOR]** (registered in England and Wales under Company No. []) whose registered office is at [] (the "Construction Sub-Contractor");

BACKGROUND

- (A) By a contract dated [] (the "Contract") the Authority has appointed [] (the "Contractor") to carry out, in relation to the Sites, the provision of residual waste treatment to the Authority at each and every Site/Facility as contemplated by the Contract including the carrying out of the design, construction, commissioning and testing of the Works and the provision of the Services.
- (B) By a design and build contract dated [] (the "Construction Sub-Contract") the Contractor has appointed the Construction Sub-Contractor to carry out in relation to the Sites the design, construction, commissioning and testing of the Works.
- (C) The Consultant has been appointed by the Construction Sub-Contractor under a [letter/deed] of appointment dated [] (the "Appointment") to provide services in relation to the Works.
- (D) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Authority.

49. DEFINITIONS AND INTERPRETATIONS

49.1. In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:

"Documents" means all and any technical information, documents, reports, drawings, models, specifications, schedules, details, plans, calculations, programmes, software, code, databases, data, materials, works (whether literary, artistic or otherwise), know-how and information which are produced by or on behalf of the Consultant or any sub-contractor of the Consultant in connection with the Works and/or the performance of the Consultant's obligations under the Appointment (including all design rights and copyright in such items), and all amendments and additions thereto;

"Lender(s)" means any organisation providing funding to the Contractor in connection with the carrying out of the Works.

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49.2. Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the [Construction Sub-Contract/Appointment]⁵².

50. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authority to the Consultant, receipt of which the Consultant acknowledges:

51. CONSULTANT'S WARRANTY AND LIABILITY

51.1. The Consultant warrants to the Authority that it has carried out and will continue to carry out its duties under the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the performance of those duties the reasonable skill care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the Appointment in relation to works of similar scope, nature and complexity to the Works.

51.2. The Consultant shall be entitled in any action or proceedings by the Authority to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Construction Sub-Contractor under the Appointment, and shall have no liability under this Deed that is of greater or of longer duration (in each case ignoring set off or counterclaim) than it would have had if the Authority had been a party to the Appointment as joint employer. Upon the expiration of twelve (12) years from the date of completion of the Works in accordance with the Construction Sub-Contract, the liability of the Consultant under this Deed shall cease and determine, save in relation to any claims made by the Authority against the Consultant and notified by the Authority to the Consultant in writing prior thereto.

52. DOCUMENTS

52.1. The Consultant hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authority with effect from the date of this Deed or in the case of Documents 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 completion of the Consultant's obligations under the Appointment or the termination of the Appointment or the determination of the Consultant's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, maintenance, operation, letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Authority will not hold the Consultant liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it and other than for such other uses as are reasonably foreseeable unless the Consultant authorises such use and confirms the Documents are

⁵² To be used as appropriate.

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suitable for it. The Consultant will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Appointment or hereunder or as otherwise required to enable it to fulfil its obligations under the Appointment.

52.2. The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give the Authority or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authority's expense.

52.3. The Consultant warrants to the Authority that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

53. INSURANCE

53.1. The Consultant hereby covenants with the Authority to:

53.1.1. take out and maintain Professional Indemnity insurance cover with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) either each and every loss or in the aggregate in relation to the Works (if in the aggregate then in any one (1) year of insurance a minimum of one (1) automatic reinstatement of the aggregate indemnity limit is required) 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 practical completion of the Works, provided that such insurance is generally available in the market to members of the Consultant's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant will be deemed to be within the reasonable rates;

53.1.2. provide evidence (as and when reasonably required by the Authority) satisfactory to the Authority of the Professional Indemnity insurance referred to in clause 5.1.1 being in full force and effect from the date of the Appointment (such evidence to include details of the cover);

53.1.3. provide the Authority with notice of:

- (a) any cancellation of the Professional Indemnity insurance referred to in clause 5.1.1 not less than thirty (30) days prior to the relevant cancellation date; and
- (b) any adverse material changes to or suspension of cover relevant to the Works not less than thirty (30) days prior to the relevant change or suspension;

53.1.4. inform the Authority as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in clause 5.1.1 in respect of the Works in excess of one million pounds (£1,000,000) and provide such information to the Authority as the Authority may

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reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy; and

- 53.1.5. indemnify the Authority in respect of any subrogation claim by the insurers brought in connection with any claim made under the Professional Indemnity insurance referred to in clause 5.1.1.

54. LIABILITY OF PARTNERS

Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

55. NOTICES

Any notice to be given by any party to this Deed 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 4.45pm on a Business Day and otherwise on the next Business Day.

56. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Consultant on two occasions only and the Authority will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Consultant 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.

57. AUTHORITY'S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence.

58. INSPECTION OF DOCUMENTS

The Consultant's liabilities under this Deed will 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 Authority may make or procure to be made for its benefit or on its behalf.

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59. STANDARDS OF PRODUCTS AND MATERIALS

- 59.1. The Consultant warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified for use and it will not specify for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Consultant's profession within the European Union to be deleterious to health and 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.
- 59.2. If in the performance of its duties under the Appointment the Consultant 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 Consultant will notify the Authority in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

60. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY

- 60.1. The Consultant 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 Appointment or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than [thirty (30)] days' prior written notice specifying the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Appointment. Within such period of notice:
- 60.1.1. the Authority may give written notice to the Consultant that the Authority will thenceforth become the Construction Sub-Contractor under the Appointment to the exclusion of the Construction Sub-Contractor and thereupon the Consultant will admit that the Authority is the Construction Sub-Contractor under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds;
- 60.1.2. if the Authority has given such notice as aforesaid or under clause 12.3, the Authority shall accept liability for the Construction Sub-Contractor's obligations under the Appointment and will as soon as practicable thereafter remedy any outstanding breach by the previous client [which properly has been included in the Consultant's specified grounds and] which is capable of remedy by the Authority; and
- 60.1.3. if the Authority has given such notice as aforesaid or under clause 12.3, the Authority will from the service of such notice become responsible for all sums properly payable to the Consultant under the Appointment accruing due after the service of such notice but the Authority 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 Appointment.

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- 60.2. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Consultant, the Authority will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Authority unless and until the Authority has given written notice to the Consultant pursuant to clause 12.1.1 or clause 12.3.
- 60.3. The Consultant further covenants with the Authority that if the Contract is terminated by the Authority the Consultant, if requested by the Authority by notice in writing and subject to clause 12.1.2 and clause 12.1.3, will accept the instructions of the Authority to the exclusion of the Construction Sub-Contractor in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Construction Sub-Contractor under the Appointment.
- 60.4. If two or more valid notices are received on the same day any notice served by the Lender(s) shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind the Consultant.
- 60.5. The Construction Sub-Contractor acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by the Authority under clause 12.3 as conclusive evidence that the Contract has been terminated by the Authority.
- 60.6. The Authority may by notice in writing to the Consultant appoint another person to exercise its rights under this clause 12 subject to the Authority remaining liable to the Consultant as guarantor for its appointee in respect of its obligations under this Deed.

61. SUB-CONSULTANTS

Following a written request from the Authority the Consultant will (unless it has already done so) and/or procure that its sub-consultants execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

62. 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.

63. 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.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first

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EXECUTED AS A DEED by the Consultant acting by a Director⁵³ and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Construction Sub-Contractor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Authority acting by two authorised signatories:

Authorised Signatory

Authorised Signatory

⁵³ Signing provisions appropriate for a partnership, LLP, etc, to be inserted as necessary.

SCHEDULE 25
FORM OF COLLATERAL WARRANTY
PART 4
WARRANTY FROM THE CONTRACTOR'S OPERATING SUB-CONTRACTOR

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DATED

20[]

(1) [OPERATING SUB-CONTRACTOR]

(2) [AUTHORITY]

(3) [CONTRACTOR]

DUTY OF CARE DEED
relating to

THIS DEED OF WARRANTY is made on [] 200[]

BETWEEN:

- (1) **[OPERATING SUB-CONTRACTOR]** (Company No. []) whose registered office is at [] (the "Operating Sub-Contractor");
- (2) **[AUTHORITY]** of [] (the "Authority"), which expression includes its permitted successors in title and assigns); and
- (3) **CONTRACTOR** ((Company No: []) whose registered office is at [] (the "Contractor").

BACKGROUND

- (A) By a contract dated [] (the "Contract") the Authority has appointed the Contractor to carry out, in relation to the Sites, the provision of residual waste treatment to the Authority at each and every Site/Facility as contemplated by the contract including the carrying out of the design, construction, commissioning and testing of the Works and the provision of the Services.
- (B) The Operating Sub-Contractor has been appointed by the Contractor under a contract dated [] (the "Operating Sub-Contract") to carry out the Services.
- (C) The Operating Sub-Contractor is obliged under the Operating Sub-Contract to give a warranty in this form in favour of the Authority.

64. DEFINITIONS AND INTERPRETATIONS

64.1. In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:

"Lender" means any organisation providing funding to the Contractor in connection with the carrying out of the Works.

64.2. Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Operating Sub-Contract.

65. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authority to the Operating Sub-Contractor, receipt of which the Operating Sub-Contractor acknowledges:

66. WARRANTY

66.1. The Operating Sub-Contractor warrants to the Authority that it has carried out and will continue to carry out all its obligations and duties under the Operating Sub-Contract in accordance with and to the standard required by the Operating Sub-Contract, provided always that the Operating Sub-Contractor has no liability hereunder which is greater or of a longer duration (in each case ignoring set off or counterclaim) than it would have had if the Authority had been a party to the Operating Sub-Contract as joint employer.

66.2. The Operating Sub-Contractor shall be entitled in any proceedings by the Authority to rely on any limitation in the Operating Sub-Contract and to raise

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equivalent rights in defence of liability (except for set off or counterclaim) as it would have had if the Authority had been a party to the Operating Sub-Contract as joint employer.

66.3. Notwithstanding anything in this Deed and notwithstanding any payments which may be made by the Authority to the Operating Sub-Contractor, the Authority and the Operating Sub-Contractor will not be under any obligation to each other nor will any party have any claim or cause of action against the others unless and until the Contract has been terminated and/or the Authority has given written notice to the Operating Sub-Contractor pursuant to clause 7.1.1 or clause 7.3 provided that this clause 3.3 shall not in any way restrict the Authority's rights and/or the Operating Sub-Contractor's obligations under clauses 4, 5, 7, 10 and 15 of this Deed.

67. COPYRIGHT

67.1. The Operating Sub-Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authority with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Project and such other purposes as are reasonably foreseeable. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

67.2. The Authority will not hold the Operating Sub-Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it unless the Operating Sub-Contractor authorise such use and confirms that the Documents are suitable for it.

67.3. The Operating Sub-Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Authority or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authority's expense.

67.4. The Operating Sub-Contractor warrants to the Authority that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Project will not infringe the rights of any third party.

68. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Operating Sub-Contractor on two occasions only and the Authority will notify the Operating Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Operating Sub-Contractor 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

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69. AUTHORITY'S REMEDIES

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Operating Sub-Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

70. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY

70.1. The Operating Sub-Contractor will not exercise or seek to exercise any right which may be or becomes available to it to terminate or treat as terminated or repudiated the Operating Sub-Contract or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) Business Days prior written notice specifying the Operating Sub-Contractor's ground for terminating or treating as terminated or repudiated the Operating Sub-Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Operating Sub-Contract. Within such period of notice:

70.1.1. the Authority may give written notice to the Operating Sub-Contractor that the Authority will thenceforth become the Contractor under the Operating Sub-Contract to the exclusion of the Contractor and thereupon the Operating Sub-Contractor will admit that the Authority is the Contractor under the Operating Sub-Contract and the Operating Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds;

70.1.2. if the Authority has given such notice as aforesaid or under clause 7.3, the Authority shall accept liability for the Contractor's obligations under the Operating Sub-Contract and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including for the avoidance of doubt any non-payment of sums due to the Operating Sub-Contractor which properly has been included in the Operating Sub-Contractor's specified grounds pursuant to clause 7.1 (and which has been notified to the Authority) and which is capable of remedy; and

70.1.3. if the Authority has given such notice as aforesaid or under clause 7.3, the Authority will from the service of such notice become responsible for all sums properly payable to the Operating Sub-Contractor under the Operating Sub-Contract accruing due after the service of the Operating Sub-Contractor's notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Operating Sub-Contract.

70.2. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Operating Sub-Contractor, the Operating Sub-Contractor will not be under any duty to obey any direction or instruction from the Authority unless and until the Authority has given notice under clauses 7.1.1 and 7.3.

70.3. The Operating Sub-Contractor further covenants with the Authority that if the Contract is terminated by the Authority the Operating Sub-Contractor, if requested by the Authority by notice in writing and subject to clause 7.1.2 and

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clause 7.1.3, will accept the instructions of the Authority to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Operating Sub-Contract and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Contractor under the Operating Sub-Contract.

70.4. Where the Operating Sub-Contractor has given rights in relation to the Operating Sub-Contract similar to those contained in this clause to the Lender then if both the Authority and the Lender serve notice under clause 7.1.1 or clause 7.3 or its equivalent the notice served by the Authority will not prevail over any notice served by the Lender but will prevail over any notice served by any other person.

70.5. The Contractor acknowledges that the Operating Sub-Contractor will be entitled to rely on a notice given to the Operating Sub-Contractor by the Authority under clause 7.3 as conclusive evidence that the Contract has been terminated by the Authority.

70.6. The Authority may by notice in writing to the Operating Sub-Contractor appoint another person to exercise its rights under this clause 7 subject to the Authority remaining liable to the Operating Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

71. LIMITATION

Without prejudice to the provisions of clause 7.1, the Authority shall not be entitled to take any action or proceedings against the Operating Sub-Contractor pursuant to this Deed unless and until the Contract has been terminated.

72. INDEPENDENT ENQUIRY

The liability of the Operating Sub-Contractor under this Deed shall not be modified released, diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the Authority nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Authority of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Authority in respect of the Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Authority provided always that nothing in this clause shall modify or affect any rights which the Operating Sub-Contractor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

73. NO VARIATION TO OPERATING SUB-CONTRACT WITHOUT AUTHORITY'S CONSENT

The Contractor and the Operating Sub-Contractor undertake with the Authority not to vary or depart from the terms and conditions of the Operating Sub-Contract without the prior written consent of the Authority (such consent to be sought in accordance with the Review Procedure where that procedure applies to the variation or departure in question), and agree that no such variation or departure made without such consent shall be binding upon the Authority, or affect or prejudice the Authority's rights hereunder, or under the Operating Sub-Contract or in any other way.

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74. THE CONTRACTOR'S INCLUSION AS PARTY

The Contractor has agreed to be a party to this Deed for the purpose of clause 8 and for acknowledging that the Operating Sub-Contractor shall not be in breach of the Operating Sub-Contract by complying with the obligations imposed on it by this Deed.

75. 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.

76. JURISDICTION

The law applicable to this Deed shall be English Law and the English Courts shall have non-exclusive jurisdiction with regard to all matters arising in connection with or under this Deed.

77. THIRD PARTY RIGHTS

It is agreed for the purposes of the Contracts (Right of Third Parties) Act 1999 that this Deed is not intended to and does not give any person who is not a party to this Deed any rights to enforce any provisions contained in this Deed.

78. NOTICES

Any notice to be given by either party hereunder 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 forty-eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

IN WITNESS whereof this document is executed by the parties as a Deed and delivered on the date stated at the beginning of this Deed

EXECUTED as a Deed by the
OPERATING SUB-CONTRACTOR
 acting by two of its directors or a
 director and its secretary:

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.....

Director

.....

Director/Secretary

EXECUTED AS A DEED by the Authority acting by two authorised signatories:

.....

Authorised Signatory

.....

Authorised Signatory

EXECUTED as a Deed by

[CONTRACTOR]

acting by two of its directors or a
director and its secretary:

.....

Director

.....

Director/Secretary

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SCHEDULE 26

PLANNING

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1. DEFINITIONS

In each part of this Schedule 26 (Planning) the following expressions (in addition to those specified in Schedule 1 (Definitions) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings

Appeal Contingency	means [to be settled on a project by project basis];
Architectural Enhancement	means any required enhancement to the Design Proposal in respect of the following: [to be agreed on a project specific basis]
Challenge Period	means the expiry of the later of: <ul style="list-style-type: none"> (a) the period prescribed by statute during which a third party may institute a challenge which could result in the quashing or modification of the relevant decision of the Planning Authority; and (b) where such a challenge is initiated within the period in (a) above the period up to and including the final determination or withdrawal of that challenge plus five (5) Business Days;
Deemed Refusal	means any failure to determine a Planning Application by the Planning Authority within the statutory period which would entitle the Contractor to appeal against the deemed refusal of that Planning Application or any other period which the Contractor and the Planning Authority may agree shall constitute the period for determination of the Planning Application for the purposes of any appeal by the Contractor;
Design Proposal	means in relation to the relevant Facility, the design proposals for the Facility set out in [Schedule 29 (Design Proposal)] and developed pursuant to paragraph 3.9;
Judicial Review Challenge	means proceedings brought under Part 54 of the Civil Procedure Rules or by any party other than the Contractor under Section 288 of the Planning Act in respect of the Planning Permission;
Leading Counsel	means counsel experienced in town and country planning matters and practising at the town and country planning bar who: <ul style="list-style-type: none"> (a) shall be agreed upon by the Parties or, in default of agreement shall be of 15 years' call and identified by the Chairman of the Planning and Environmental Bar

Association or his deputy; and

- (b) accepts instructions to provide an opinion pursuant to paragraph 2 (Planning Consents);

Off Site Expenditure

means any costs or expenses, relating to land outside the [specify relevant facility] incurred in order to comply with or fulfil any requirement or obligation or condition of any Planning Permission, associated Planning Agreement or agreement with any highway authority having a value in excess of [£[]];

Off Site Works

means any works, relating to land outside the [specify relevant facility] in order to comply with or fulfil any requirement or obligation or condition of any Planning Permission, associated Planning Agreement or agreement with any highway authority;

Planning Agreement

means:

- (a) Section 106 of the Town and Country Planning Act 1990;
- (b) Section 38 or 278 Highways Act 1980;
- (c) Section 104 Water Industry Act 1991 or any other provision of a similar intent within the meaning of the Water Act 1989, with an appropriate authority for the supply of water or the drainage of foul water from the Site;

Planning Permission Longstop Date

means in respect of the Facility, the date as set out in Schedule 8 (Key Dates);

Satisfactory Planning Permission

means a Planning Permission with the Challenge Period expired (and with any Proceedings having finally been determined such that the Planning Permission has been upheld and may be implemented) for [specify facility], together with any associated Planning Agreement or agreement with any Relevant Authority which is a permission for the description of the development which is the subject of the agreed Planning Application for the [specify facility] and does not impose on the Contractor by way of condition or other obligation any of the following requirements:

- (a) a requirement to obtain the agreement of a third party other than [to be specified] in respect of land outside the [specify facility] other than:
 - (i) statutory undertakers in respect of any utility; and

- (ii) a highway authority;
- (b) a requirement to carry out Off-Site Works or incur Off-Site Expenditure other than [exclusions to be negotiated on a project specific basis];
- (c) a requirement which renders the Contractor unable to deliver or perform all or any of the Services as are to be provided at the [specify facility] in accordance with the Authority's Requirements or Service Delivery Plan at [facility] but only to the extent it has one or more of the following effects:

[to be agreed on a project specific basis]

- (i) [prevents the [facility] from operating in accordance with the Authority's Requirements and the Service Delivery Plan];
- (ii) restricts the number of waste carrying vehicle movements to and from the Site to less than the minimum inward movements of waste carrying vehicles per day as set out in [] of the Service Delivery Plan or Base Case;
- (iii) restricts access to the public otherwise than as set out in the Service Delivery Plan;
- (iv) requires that any Contract Waste will be delivered otherwise than by [road going vehicles alone];
- (v) restricts the hours of delivery of Contract Waste to the Site otherwise than as set out in the Service Delivery Plan;
- (vi) causes the Contractor to be in breach of the [Environmental Permit];
- (vii) limits the life of the planning permission granted for the [Facility] to less than the period from the date that the planning permission is granted until the original Expiry Date; and
- (viii) [restricts tonnage levels of Contract Waste to be received and/or processed at the Site otherwise than as set out in the Service Delivery Plan or Base Case;]

and an "Unsatisfactory Planning Permission" is one which is not a Satisfactory Planning Permission [provided that where any of the requirements covered by

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limbs (i) to (viii) above can be covered by a Planning Contingency then such requirement or requirements shall not constitute an Unsatisfactory Planning Permission where such requirement has a financial impact only];

[DN(PM): To be developed in dialogue]

2. PLANNING CONSENTS

2.1. Contractor to obtain Planning Permission

- 2.1.1. The Contractor undertakes to the Authority that (subject to the provisions of this paragraph 2 (Planning Consents):
- (a) it shall use All Reasonable Endeavours to obtain a Satisfactory Planning Permission to enable it to undertake the Works and to deliver the Services at the [specify the Facility concerned];
 - (b) the Contractor shall in pursuing any relevant Planning Permission use reasonable endeavours to follow and meet the Key Dates (Schedule 8) in respect of the Site in question.
- 2.1.2. The Contractor shall bear the costs of obtaining and of implementing and complying with the provisions and conditions of all Planning Permissions (other than the Authority's internal costs any costs relating to Proceedings in the name of the Contractor which exceed the Appeal Contingency and in respect of which the Authority has given prior written consent that such costs may be incurred in accordance with paragraph 2.4 (Proceedings) below).
- 2.1.3. The Contractor shall provide to the Authority on a quarterly basis a written summary of:
- (a) the steps taken by the Contractor in the preceding quarter in compliance with its obligations under this paragraph 2.1; and
 - (b) a written summary of those steps which it anticipates taking in the following quarter in order to comply with its obligations under this paragraph 2.1.
- 2.1.4. Without limiting the Contractor's obligations under this paragraph 2.1 the Authority may within five (5) Business Days after receipt of such summary notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under this paragraph 2.1. If the Contractor disagrees, it may refer the matter to the Dispute Resolution Procedure.
- 2.1.5. Upon receipt of a notice issued under paragraph 2.1.4 (or where the matter has been referred to the Dispute Resolution Procedure, on determination or agreement of the dispute) the Contractor shall take the measures set out in the notice given under paragraph 2.1.4 (or, if relevant, the measures that have been determined or agreed under the

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Dispute Resolution Procedure) as soon as reasonably practicable and in any event within ten (10) Business days of receipt of the notice.

2.1.6. Without prejudice to the Contractor's obligations under this paragraph 2 (Planning Consents) the Authority shall at the reasonable written request of the Contractor provide written confirmation (on not more than a quarterly basis) as to whether the Authority believes that, in its opinion the Contractor has up to the date of the Contractor's request fully complied with its obligations in paragraph 2.1.1 or 2.1.5 to use All Reasonable Endeavours to obtain a Satisfactory Planning Permission and to rectify any failures to do so. At the same time as the Contractor makes any such request the Contractor shall provide the Authority with supporting information regarding the steps which it has taken in order to obtain a Satisfactory Planning Permission and the Authority's confirmation shall be solely based on such information.

2.1.7. [Where:

- (a) the Authority confirms in writing that in its opinion the Contractor has fully complied with its obligations in paragraph [2.1.1] (Contractor to obtain Planning Permission) to use All Reasonable Endeavours up to the date of the Contractor's request; or
- (b) the Contractor has taken measures in accordance with paragraph 2.1.5; or
- (c) the Contractor has made a request pursuant to paragraph 2.1.6 and the Authority has failed to respond to such request in accordance with paragraph 2.1.6 within twenty (20) Business Days,

the Contractor shall other than in respect of any prior failure to use All Reasonable Endeavours previously notified by the Authority to the Contractor be considered to have used All Reasonable Endeavours up and until the date of the Contractor's request pursuant to this paragraph 2.1.7 only. In the event that any information subsequently comes to the attention of the Authority which suggests that the Contractor has failed to use All Reasonable Endeavours prior to the date of the Contractor's request pursuant to this paragraph 2.1.7 then any such written confirmation provided by the Authority pursuant to paragraph 2.1.7 (a) or failure to provide written confirmation pursuant to paragraph 2.1.7(b) shall be disregarded.]

2.1.8. The period afforded to the Contractor to remedy a failure to use All Reasonable Endeavours pursuant to paragraphs 2.1.5 shall not entitle the Contractor to an extension to the Planned Readiness Date, Planned Services Commencement Date nor any longstop date and shall not be a Relief Event, Compensation Event nor Excusing Cause.

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2.2. Meaning of All Reasonable Endeavours

For the purposes of paragraph 2.1 (Planning Consents) and paragraph 2.9 (Interim Services), of this Schedule 26 (Planning) “All Reasonable Endeavours” means that the Contractor shall:

- 2.2.1. in relation to the preparation, submission and process of any Planning Application made in the name of the Contractor incur all reasonably necessary expenditure and do all the things reasonably necessary (including the commencement and prosecution or defence of Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of Satisfactory Planning Permission;
- 2.2.2. prepare all documentation and supporting information in accordance with good planning practice;
- 2.2.3. respond to all other queries of the Planning Authority or [] promptly;
- 2.2.4. (subject to paragraph 2.6 (Appeal Contingency)) meet the costs of any Proceedings such costs to include the cost of instructing Leading Counsel (including for the purposes of deciding whether to initiate or pursue Proceedings) and securing the services of any expert witnesses considered necessary for the purpose of such Proceedings;
- 2.2.5. provide forthwith copies to the Authority of all instructions (including enclosures) given to Leading Counsel and opinions received from Leading Counsel relating to such Proceedings in respect of any Planning Permission sought. The Authority’s Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall endeavour when arranging such conference to agree a convenient time for attendance by the Authority’s Representative; and
- 2.2.6. in relation to any Judicial Review Challenge, provide to the Authority all such assistance as it reasonably requires to the extent that the provisions of such reasonable assistance does not cause the Contractor to incur any material expense (on each individual occasion or in the aggregate).

provided always that this paragraph 2.2 shall not require the Contractor to join as interested party in any Judicial Review Challenge

2.3. Obligations of the Contractor

The Contractor shall:

- 2.3.1. not cause or permit any Affiliate, associated or holding company of the Contractor or any entity or any third party over which it has control to object or procure any objection to any Planning Application; and
- 2.3.2. not vary any Planning Application without the prior written consent of the Authority’s Representative (which consent shall not be unreasonably withheld or delayed) and where the Contractor with such consent varies any Planning Application the Contractor shall inform the Authority’s Representative of the variance to the Planning Application and (where

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appropriate and/or applicable) provide to the Authority's Representative any documents or letters relating to such variance.

2.4. Proceedings

2.4.1. If in respect of [specify the Facility], the relevant Planning Authority:

- (a) resolves to or is minded to grant permission for a Planning Application and that Planning Application is called-in by the Secretary of State under section 77 of the Planning Act; or
- (b) refuses to grant planning permission for a Planning Application (including any refusal on any re-determination of a Planning Application following the quashing of a decision to grant permission for such Planning Application) and this shall include the refusal of the Secretary of State to grant permission on appeal under section 77 of the Planning Act or there is a Deemed Refusal; or
- (c) grants permission for a Planning Application which is not a Satisfactory Planning Permission in circumstances where the Authority and the Contractor agree (or are unable to agree and it is determined pursuant to Schedule 22 (Dispute Resolution Procedure)) that Proceedings may secure a Satisfactory Planning Permission; or
- (d) grants permission for a Planning Application in respect of which any condition or requirement is imposed which is unreasonable in the Contractor's reasonable opinion,

the Contractor shall take the opinion of Leading Counsel as to the merits of pursuing any Proceedings.

2.4.2. If Leading Counsel advises the Contractor that there is a reasonable prospect of success in pursuing any Proceedings in order to obtain a Satisfactory Planning Permission (or in order to remove any such unreasonable condition or requirement as referred to in paragraph 2.4.1(d)) the Contractor shall seek the approval of the Authority to institute such Proceedings, which the Authority shall not unreasonably withhold or delay and if such approval is granted the Contractor shall pursue or defend the same until determination of such Proceedings (subject to the [Planned Services Commencement Date for the Facility/Planning Permission Longstop Date]) unless subsequently in accordance with paragraph 2.4.5 the Authority directs that such Proceedings shall cease to be pursued.

2.4.3. At any reasonable time after the commencement of any Proceedings in relation to any Planning Permission, the Authority may require the Contractor to take (or the Contractor may take (subject to notifying the Authority of such intention)) the opinion of Leading Counsel as to the merits of continuing to pursue such Proceedings and to make such opinion available to the Authority.

2.4.4. In the event that Leading Counsel advises under paragraph 2.4.2 or subsequently under paragraph 2.4.3 that there is no reasonable

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prospect of success the Authority shall by serving written notice on the Contractor on or before a date twenty (20) Business Days (or such other period of time as the Authority acting reasonably determines) from the receipt by the Authority of the advice of Leading Counsel either:

- (a) direct that the Contractor shall not pursue or shall cease to pursue the relevant Proceedings (and such direction shall be deemed if the Authority fails to give notice as provided by paragraph 2.4.4) ; or
- (b) direct that the Contractor institutes or continues the relevant Proceedings, and such a direction shall be treated as an approval to those Proceedings given pursuant to paragraph 2.4.2.

2.4.5. If the Authority (acting reasonably in all cases):

- (a) does not give such approval to any Proceedings (or is deemed not to have done so); or
- (b) directs that the Contractor should cease to pursue such Proceedings,

the Contractor may still institute or continue to pursue those Proceedings, subject to service of prior written notice of its intention to do so upon the Authority within twenty (20) Business Days or receipt of the Authority's notice under paragraph 2.4.4 and the Contractor will bear all the costs of instituting or continuing to pursue those Proceedings which it incurs from the point at which the Authority serves notice pursuant to paragraph 2.4.4 and paragraph 2.6 (Appeal Contingency) and paragraph 2.8 (Costs Awarded in Proceedings) will not apply to those costs.

2.4.6. The Contractor shall be entitled, in its absolute discretion, to cease to pursue any Proceedings which it institutes or continues pursuant to paragraph 2.4.5 (approval being withheld or a direction having been given to the contrary) and in respect of which it has undertaken to bear the costs pursuant to paragraph 2.4.5.

2.5. Material Expenditure in Assisting the Authority in the case of Judicial Review Challenge

2.5.1. If a third party makes a Judicial Review Challenge the Authority will (but following consultation with the Contractor and having due regard to any representations of the Contractor) at its sole discretion determine whether to defend any proceedings that result from a Judicial Review Challenge (the "Judicial Review Proceedings") and where the Authority determines that it will defend such Judicial Review Proceedings the Authority will (save as provided for in this paragraph) be responsible for all costs incurred.

2.5.2. Subject to paragraph 2.5.3 the Contractor shall in relation to a Judicial Review Challenge provide to the Authority on written request all such assistance as it reasonably requires and in doing so shall exercise all

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proper care and skill in accordance with its requirements of paragraph 2.2.

2.5.3. Where the provision of assistance pursuant to paragraph 2.5.2 will in the Contractor's opinion require the Contractor to incur material expense (on each individual occasion or in the aggregate) the Contractor shall in any event provide such assistance and the Authority shall reimburse the Contractor in an amount equal to those reasonable and proper expenses incurred in the provision of such assistance provided that:

- (a) the Contractor shall on receipt of each written request from the Authority pursuant to paragraph 2.5.2 and in advance of the provision of assistance (unless otherwise agreed in writing) pursuant to paragraph 2.5.3 notify the Authority that in its opinion paragraph 2.5.3 applies and shall provide to the Authority for its written approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of the assistance including a detailed breakdown of the estimated cost of legal fees and all other professional fees and other disbursements (if any) together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate and each element thereof or employ any additional or alternative legal or professional advisers without the further approval of the Authority (such approval not to be unreasonably withheld or delayed); and
- (b) the Authority may in writing:
 - (i) modify any request for assistance and the Contractor shall on receipt of such modification from the Authority and in advance of the provision of the assistance requested under the modification (unless otherwise agreed in writing) follow the procedure in paragraph 2.5.3(a) in respect of the modified request; or
 - (ii) withdraw or terminate the requirement for reasonable assistance at any time with five (5) Business Days notice but without prejudice to the Authority's obligation under this paragraph 2.5.3 to pay the Contractor's costs incurred up to and including the date of the withdrawal or termination.

2.5.4. Where the Authority is required to reimburse the Contractor pursuant to this paragraph 2.5 for costs incurred pursuant to paragraph 2.5.3 the Authority shall reimburse the Contractor pursuant to paragraph 2.5.3 subject to the Contractor providing satisfactory evidence to the Authority that the costs were reasonably and properly incurred and the Contractor complied with the requirements of this paragraph 2.5.

2.6. Appeal Contingency

The Contractor will bear all costs relating to and arising from any Proceedings (including for the avoidance of doubt the costs of obtaining any Leading Counsel's opinion under paragraph 2.4 (Proceedings) up to the limit of the

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Appeal Contingency (taking account of any such costs of Proceedings previously incurred under this paragraph 2 and paragraph 3) following which the Authority shall indemnify the Contractor for nine-tenths of all amounts reasonably, properly and prudently spent or contracted to be spent by the Contractor in excess of the Appeal Contingency in the proper and diligent conduct of the Proceedings provided that:

- 2.6.1. the Contractor shall within twenty (20) Business Days of the notification of a call-in or the decision to refuse Planning Permission or Deemed Refusal or the grant of a Planning Permission which the Authority or the Contractor reasonably believes may be the subject of Proceedings as the case may be, provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such Proceedings including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate or employ any additional or alternative legal or professional advisers without the further approval of the Authority (such approval not to be withheld or delayed); and
- 2.6.2. the Contractor shall use its reasonable endeavours to ensure that the costs of the Proceedings are kept to the minimum extent prudent and reasonable at all times.

2.7. Excess Costs above the Appeal Contingency

2.7.1. Where the Authority is required to indemnify the Contractor pursuant to paragraph 2.6 (Appeal Contingency) for costs incurred over and above the amount of the Appeal Contingency ("Excess Costs") the Authority shall reimburse the Contractor such Excess Costs together with any reasonable and proper financing costs subject to the Contractor providing satisfactory evidence to the Authority of such Excess Costs reasonably and properly incurred through any one of the following means the choice of such means to be in the Authority's absolute discretion:

- (a) by way of an adjustment to the Unitary Charge for all or some part of the remainder of the Services Period; or
- (b) by way of a lump sum payment made in one or more instalment together with an adjustment to the Unitary Charge; or
- (c) by way of a lump sum payment made in one or more instalments in respect of the whole amount,

such Excess Costs being calculated in accordance with the provisions of Schedule 21 (Change Protocol).

2.7.2. Should the Authority specify the means by which any Excess Costs are to be paid, and so request in writing the Contractor shall provide such breakdown of costs as is reasonably practicable for each of the specified methods of payment.

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2.8. Costs Awarded in Proceedings

If the Authority has indemnified the Contractor for its costs in respect of any Proceedings pursuant to paragraph 2.7 (Excess Costs above the Appeal Contingency) any costs awarded to the Contractor in those Proceedings shall be paid to the Authority in full up to the amount it has paid equal to the Appeal Contingency and where those costs exceed an amount equal to the Appeal Contingency the balance shall be shared between Contractor and the Authority pro rata the expenses they have incurred in respect of the Proceeding in excess of the Appeal Contingency. All payments to the Authority shall be by way of a lump sum payment within twenty (20) Business Days of the Contractor receiving such costs to which they relate.

2.9. [Interim Services]

2.9.1. In the event that as at the Planned Services Commencement Date for the Facility, Service Commencement at that Facility has not been achieved due to a delay in obtaining Planning Permission the Contractor shall at the Authority's request provide an Interim Service in respect of that Facility in accordance with this paragraph 2.9 (Interim Services).

2.9.2. Where the Contractor is required, pursuant to paragraph 2.9.1 to provide an Interim Service then the Contractor shall during the Interim Services Period perform the Interim Service and the Authority shall pay the Interim Service Payment in accordance with the provisions of Schedule 4 (Payment Mechanism) provided that where the Contractor has not used All Reasonable Endeavours to obtain Planning Permission the Authority shall only be obliged to pay such amount as is fair, reasonable and proportionate having regard to the extent to which the need for the Interim service was caused by the Contractor's failure to use All Reasonable Endeavours to obtain Planning Permission and the Parties shall seek to agree such amount and failing such agreement the matter may be referred by the Authority or the Contractor to be determined pursuant to Schedule 22 (Dispute Resolution)].

3. SATISFACTORY PLANNING PERMISSION

3.1. Satisfactory Planning Permission

3.1.1. Where by the Planning Permission Longstop Date for the Facility the Contractor obtains either:

- (a) a Satisfactory Planning Permission; or
- (b) an Unsatisfactory Planning Permission where the Authority has served an Authority Change Notice to enable the Contractor either:
 - (i) to comply with the Unsatisfactory Planning Permission without being in breach of this Contract; and/or
 - (ii) to render compliance with the relevant part of the Unsatisfactory Planning Permission unnecessary; and/or
 - (iii) to render the Unsatisfactory Planning Permission a Satisfactory Planning Permission;

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it shall, subject to Clause 10.2 (Grant of Lease), proceed to or implement the Satisfactory Planning Permission [at the relevant Site] provided that the Authority may by written notice require the Contractor so to proceed without letting the relevant Challenge Period elapse in which case the provisions of paragraph 3.7 (Challenge Period) shall apply.

- 3.1.2. As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of the Planning Permission for the Facility the Contractor shall provide to the Authority a copy of the Planning Permission and will notify the Authority in writing whether or not the Contractor considers the Planning Permission to be a Satisfactory Planning Permission or is an Unsatisfactory Planning Permission.
- 3.1.3. If the Contractor considers that the Planning Permission will be notwithstanding the expiry of the Challenge Period an Unsatisfactory Planning Permission it shall provide within [five (5)] Business Days of the issue of the notice given pursuant to paragraph 3.1.2 to the Authority (or such longer period as the parties may in the circumstances and acting reasonably agree):
- (a) full details of the grounds for such opinion; and/or
 - (b) an indication of what action could be taken (if any) by the Contractor or the Authority to enable the Contractor to comply with the Planning Permission without being in breach of this Contract which would be such as to render it a Satisfactory Planning Permission or render compliance with such Unsatisfactory Planning Permission unnecessary including without limitation:
 - (c) Proceedings; or
 - (d) the issue of an Authority Change Notice to vary the Works and/or Services.
- 3.1.4. If the Contractor fails to provide the notice pursuant to paragraph 3.1.2 within [fifteen (15)] Business Days after issue of the Planning Permission then on the expiry of the Challenge Period, the Planning Permission shall be deemed to be a Satisfactory Planning Permission.
- 3.1.5. If the Contractor notifies the Authority that the Planning Permission is a Satisfactory Planning Permission or such a Planning Permission is deemed to be a Satisfactory Planning Permission in accordance with paragraph 3.1.4 then the provisions of paragraph 3.1.1 apply.
- 3.1.6. If the Contractor notifies the Authority that the Planning Permission will be on expiry of the Challenge Period an Unsatisfactory Planning Permission the Authority shall, within ten (10) Business Days of receipt of the notice given pursuant to paragraph 3.1.2 notify the Contractor in writing whether or not the Authority accepts the Planning Permission is or will be an Unsatisfactory Planning Permission and whether it accepts the action indicated by the Contractor in the notice served pursuant to paragraph 3.1.3 and in particular whether Proceedings will be likely to

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secure a Satisfactory Planning Permission having regard to the grounds given by the Contractor in the notice served pursuant to paragraph 3.1.3.

3.1.7. If the Authority does not accept within the time set out in paragraph 3.1.6 or is deemed to not accept because it has not notified to the Contractor within the time set out in paragraph 3.1.6 that the Planning Permission will be on expiry of the Challenge Period an Unsatisfactory Planning Permission the matter may be referred by either Party for determination by an expert under Schedule 22 (Dispute Resolution) as to whether the Planning Permission is a Satisfactory Planning Permission or an Unsatisfactory Planning Permission.

3.1.8. If the Authority accepts in accordance with paragraph 3.1.6 or it is determined pursuant to paragraph 3.1.7 that the Planning Permission is an Unsatisfactory Planning Permission and the Parties agree that Proceedings will not be likely to secure a Satisfactory Planning Permission the Authority may:

- (a) subject to this paragraph 3.1.8(a) within thirty (30) Business Days after it is accepted by the Authority pursuant to paragraph 3.1.6 or it is determined that a Planning Permission is an Unsatisfactory Planning Permission in accordance with this paragraph 3.1.8 issue an Authority Change Notice in respect of the Works and/or the Services or other actions required to enable the Contractor to comply with the terms of the Planning Permission which render it an Unsatisfactory Planning Permission without being in breach of this Contract or to render it a Satisfactory Planning Permission or render compliance with such Unsatisfactory Planning Permission unnecessary (in each case upon confirmation and final agreement of the consequential Authority Change Notice for the purposes of this paragraph 3 (Satisfactory Planning Permission) the Planning Permission shall be deemed to be a Satisfactory Planning Permission provided the Challenge Period has expired); or
- (b) require the Contractor to prepare a Revised Project Plan in which case the provisions of paragraph 3.3 (Revised Project Plan) shall apply and the provisions of paragraph 3.2 (Failure to Obtain Planning Permission) shall cease to apply.

3.1.9. If the Authority:

- (a) does not issue the Authority Change Notice within the time set out in paragraph 3.1.8(a); or
- (b) withdraws or is deemed to have withdrawn the Authority Change Notice issued pursuant to paragraph 3.1.8(a) in accordance with Schedule 21 (Change Protocol),

then the Contractor shall prepare a Revised Project Plan in which case the provisions of paragraph 3.3 (Revised Project Plan) shall apply and the provisions of paragraph 3.2 (Failure to Obtain Planning Permission) shall cease to apply.

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3.1.10. If the Authority accepts or it is determined pursuant to paragraph 3.1.7 that the Planning Permission is an Unsatisfactory Planning Permission and the Parties agree or if the Parties are unable to agree and either Party wishes to have determined whether Proceedings may secure a Satisfactory Planning Permission the Parties shall seek the opinion of Leading Counsel pursuant to paragraph 2.2 (Meaning of All Reasonable Endeavours) and the provisions of paragraph 2.4 (Proceedings) and paragraph 2.6 (Appeal Contingency) shall apply and if Proceedings are not instituted or if instituted are withdrawn or determined leaving in place an Unsatisfactory Planning Permission the Authority may either issue an Authority Change Notice or require the Contractor to prepare a Revised Project Plan in accordance with the provisions of paragraph 3.1.8.

3.2. Failure to Obtain Planning Permission

At the earlier of:

- 3.2.1. the date when the Parties reasonably conclude and agree that it will not be possible to obtain a Satisfactory Planning Permission for the Facility by the relevant Planning Permission Longstop Date; and
- 3.2.2. the relevant Planning Permission Longstop Date where at such date the Contractor has failed to obtain a Satisfactory Planning Permission; and
- 3.2.3. unless the Parties agree otherwise, the date at which Leading Counsel advises under paragraph 2.2 (Meaning of All Reasonable Endeavours) that there is no reasonable prospect of success in pursuing or continuing to pursue any Proceedings and obtaining a Satisfactory Planning Permission, save where the Authority directs or the Contractor chooses to initiate or continue to pursue those Proceedings under paragraph 2.4 (Proceedings) in which case paragraphs 3.2.1, 3.2.2 or 3.2.4 shall apply; and
- 3.2.4. unless the Parties agree otherwise, the date at which Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory Planning Permission has not been obtained,
then the Authority, at its discretion, shall be obliged by notice in writing to advise the Contractor:
 - (a) that the Authority wishes to terminate the Contract under paragraph 3.5 (Termination as a Result of Planning Failure); or
 - (b) that the Authority wishes the Contractor to propose a Revised Project Plan pursuant to paragraph 3.3 (Revised Project Plan) and paragraph 3.3 (Revised Project Plan) shall apply.

3.3. Revised Project Plan

[DN(PM): To be developed in dialogue to reflect prevailing EU procurement law and the prohibition on any material change]

3.3.1. If pursuant to paragraphs 3.1.8(b) or 3.2 (b)[or 11.1.6 of Schedule 27 (Permitting)] the Contractor is requested to propose a revised Project Plan (the “Revised Project Plan”) then the Contractor shall provide, in

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accordance with the provisions of this paragraph 3.3 (Revised Project Plan) a draft Revised Project Plan in writing to the Authority within three (3) Months of being requested to do so.

3.3.2. In preparing the draft Revised Project Plan the Contractor shall be cognisant of procurement law, act in good faith and comply with Good industry Practice with the objective of ensuring that it obtains best value for money for the Authority (taking into account all relevant circumstances including the requirement that the Contractor should be no worse off as a result of the implementation of the Revised Project Plan and that the Revised Project Plan ought to comply all relevant Legislation) when procuring any works, services, supplies, materials or equipment required in relation to the revised Project (the “Revised Project”).

3.3.3. The draft Revised Project Plan shall set out:

- (a) the proposed technical solution(s) for the Revised Project;
- (b) a project plan for the Revised Project covering the same or similar issues as the Contractor’s Proposals insofar as such issues are relevant to the Revised Project;
- (c) the proposed length of time and programme for obtaining the Consents;
- (d) the Contractor’s opinion regarding the likelihood of being able to obtain the relevant Consents;
- (e) the interest(s) in land required for the Revised Project;
- (f) the revised costs for the delivery of the Revised Project (the “Revised Project Plan Costs”);
- (g) the Contractor’s opinion as to the changes in the risk profile required as a result of the Revised Project;
- (h) details of the relief required by the Contractor from its obligations under the Contract;
- (i) amendments required to the Contract and any Ancillary Documents;
- (j) any impact of the Revised Project on the provisions of the Works and/or Services other than those which are the subject of the Revised Project Plan;
- (k) proposed acceptance tests for certification of completeness for any required works;
- (l) any impact on any dates for the [key works and services commencement dates];
- (m) outline Works Delivery Plan and/or Service Delivery Plan or any amendments to the existing Contractor’s Proposals as the case may be;

- (n) details of the insurance arrangements required to cover any risks associated with the Revised Project;
- (o) the Contractor's opinion as to the compliance with Legislation of the draft Revised Project Plan;
- (p) how value for money will be achieved;
- (q) how the Contractor intends to finance the Revised Project; and
- (r) details of how the Contractor will dispose of the Contract Waste during the carrying out of the Revised Project Plan and the costs of such disposal shall be included in the Revised Project Plan Costs.

3.3.4. The Contractor and the Authority shall during the period of six (6) Months from the receipt by the Authority of the draft Revised Project Plan discuss and seek to agree each and every element of the draft Revised Project Plan including:

- (a) the provision of evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time have been taken account of by the Contractor; and
- (c) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Revised Project Plan, has been taken into account in the amount which in its opinion has resulted or is required under paragraph 3.3.3(f) (Revised Project Plan).

3.3.5. In any discussions which take place pursuant to paragraph 3.3.4 the Authority may:

- (a) suggest modifications to the draft Revised Project Plan provided that the Contractor shall not be obliged to take account of any such suggested modifications; or
- (b) require the Contractor to seek and evaluate competitive tenders for the relevant capital works.

3.3.6. If the Contractor either accepts (such acceptance shall be at the sole discretion of the Contractor) any modifications suggested by the Authority or there are any amendments to the draft Revised Project Plan following any competitive tenders for the relevant capital works in each case as arise pursuant to paragraph 3.3.4 then the Contractor shall, as soon as reasonably practicable following either the acceptance by the Contractor of any modifications or following the completion of any competitive tender, notify the Authority of any consequential changes to the draft Revised Project Plan.

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3.3.7. The Authority shall by notice in writing from the Authority within six (6) Months of receipt of the draft Revised Project Plan pursuant to paragraph 3.3.1 either:

- (a) accept the draft Revised Project Plan and the Parties shall proceed to implement the Revised Project Plan in accordance with paragraph 3.4 (Implementation of Revised Project Plan) and the Parties shall execute such legal documentation as proposed by paragraph 3.3.3(i) to give effect to the Revised Project including the amendments to the Unitary Charge to reflect the Revised Project Plan Costs; or
- (b) reject the Revised Project Plan provided that in the event the Authority does not respond to such notice within the required time then the Authority shall be deemed to have rejected the Revised Project Plan and in the case of rejection or deemed rejection the provisions of paragraph 3.5 (Termination as a Result of Planning Failure) shall apply.

3.4. Implementation of the Revised Project Plan

In the event that the Authority accepts the Revised Project Plan the Contractor shall implement the provisions of such Revised Project Plan in accordance with its terms.

3.5. Termination as a Result of Planning Failure

3.5.1. If:

- (a) the provisions of this paragraph 3.5 (Termination as a Result of Planning Failure) apply pursuant to paragraph 3.2.4(a); or
- (b) the Authority rejects or is deemed to have rejected the Revised Project Plan pursuant to paragraph 3.3.7(b),

then the Contractor, or the Authority may serve written notice on the other Party specifying such Party's wish to terminate the Contract. In the event of such notice of termination served pursuant to this paragraph 3.5 (Termination as a Result of Planning Failure) the Contract Period shall terminate [thirty (30)] Business Days from the date of such notice of termination and (provided that the Contractor has complied with its obligations under paragraph 2.2 (Meaning of All Reasonable Endeavours) to use All Reasonable Endeavours to obtain Satisfactory Planning Permission), the provisions of Clause 70 (Compensation on Termination for Force Majeure) shall apply as if such termination constituted a Force Majeure Event.

If the Contractor has not used All Reasonable Endeavours the provisions of Schedule 17 (Compensation of Termination) shall not apply and the Authority shall not be liable to the Contractor for any compensation on termination.

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3.6. Delays and Extensions of Time

3.6.1. Failure by the Contractor to achieve the Readiness Date and the Planned Works Commencement Date due to:

- (a) the Contractor having not obtained a Satisfactory Planning Permission for the Facility [] having used All Reasonable Endeavours to obtain Planning Permission; or
- (b) the Contractor having obtained a Satisfactory Planning Permission for the Facility but later than the applicable date set out Schedule 8 (Key Dates),

shall be a Relief Event.

3.6.2. Compliance with this paragraph 3 shall be deemed to satisfy the provision of information requirements of Clauses 40.2 and 40.6 (Delays due to a Relief Event) where the Contractor is claiming relief pursuant to limb [] of the definition of a Relief Event and the Contractor shall not additionally be required to comply with Clauses 40.2 and 40.6 (Delays due to a Relief Event) in respect of any such claim.

3.6.3. Notwithstanding paragraph 3.6.1 the Contractor shall continue to comply with its obligations to use All Reasonable Endeavours to obtain the relevant Satisfactory Planning Permission (unless those obligations shall cease to apply in accordance with paragraphs 3.3 (Revised Project Plan) or 3.5 (Termination of Contract as a Result of Planning Failure) and if the Contractor shall have obtained a Satisfactory Planning Permission the Contractor shall promptly so notify the Authority and within ten (10) Business Days:

- (a) demonstrate to the Authority the delay (if any) in mobilisation and commencement of the construction of the Facility by reference to Schedule 8 (Key Dates); and
- (b) propose to the Authority:
 - (i) a revised Planned Works Commencement Date; and
 - (ii) a revised Planned Services Commencement Date, for the Facility (together “Revised Project Dates”).

3.6.4. The Authority and the Contractor shall seek to agree the Revised Project Dates as soon as possible and in doing so shall:

- (a) agree the Revised Project Dates which are fair and reasonable in the circumstances having regard to the extent of the delay;
- (b) disregard any delay caused by a breach, neglect or default of the Contractor; and
- (c) take account of the extent to which the Contractor should be able, by acting in accordance with Good Industry Practice (and without being required to expend any sums), to mitigate the consequences of delay.

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3.6.5. In default of delivery of the Revised Project Dates in accordance with paragraph 3.6.3 or default of agreement of the Revised Project Dates within ten (10) Business Days of delivery of such proposed Revised Project Dates, the Revised Project Dates shall be determined at the instance of either Party in accordance with Schedule 22 (Dispute Resolution).

3.6.6. Once agreed or determined the Construction Programme shall be amended to reflect the Revised Project Dates.

3.7. Challenge Period and Judicial Review

3.7.1. Where the Authority directs the Contractor to proceed to implement a Satisfactory Planning Permission without allowing the Challenge Period to elapse in respect of any relevant decision pursuant to paragraph 3.1 (Satisfactory Planning Permission) and a challenge is instituted within the Challenge Period the Authority shall indemnify and keep indemnified the Contractor for all costs, losses, expenses and liabilities reasonably and properly incurred up to the point at which the challenge is finally determined and the Contractor shall mitigate such costs, losses, expenses and liabilities provided that any indemnification of any costs, losses, expenses or liabilities shall be calculated on the basis that the Contractor should be in no better or no worse position than it would have been in had such costs, losses, expenses or liabilities not arisen.

3.7.2. In the event that a Judicial Review Challenge is instituted in respect of a Planning Permission during the Challenge Period then any Planning Permission which would otherwise be deemed to be a Satisfactory Planning Permission shall be deemed to be and to have always been an Unsatisfactory Planning Permission until such time as the Judicial Review Challenge is dismissed, withdrawn, quashed or defeated.

3.8. Nothing contained or implied in this Contract shall prejudice or affect the Authority's rights, powers, duties and obligations in the exercise of its functions as a Planning Authority.

3.9. Architectural Enhancements

3.9.1. Without having obtained the prior written consent of the Authority and notwithstanding paragraph 3.9.5, the Contractor shall not offer to a Relevant Authority to vary the Design Proposal or add to it in any material way or comply with or acquiesce to the imposition of any Architectural Enhancement or matter which would render a Planning Permission an Unsatisfactory Planning Permission.

3.9.2. If the Contractor becomes aware that an Architectural Enhancement is likely to be imposed upon the Contractor which will cause the Contractor to incur costs ("Architectural Enhancement Costs") at any time before proceeding to submit or re-submit a Planning Application or implement conditions attached to the Planning Permission or obligations contained in a Planning Agreement then the following provisions of this paragraph 3.9 shall apply.

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3.9.3. Without limiting in any way the application of the provisions of paragraph 3.9.4, as soon as reasonably practicable and in any event within ten (10) Business Days of becoming aware that the Architectural Enhancement is likely to be imposed compliance with which would cause the Contractor to incur Architectural Enhancement Costs the Contractor shall notify the Authority in writing giving all details then available of the nature of the Architectural Enhancement and as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt by the Authority of the notice pursuant to this paragraph 3.9.3, the Contractor shall give to the Authority:

- (a) details of the divergence from the Design Proposal for the relevant Facility;
- (b) a provisional (non-binding) estimate of the Architectural Enhancement Costs;
- (c) an indication of the steps which the Contractor proposes to take and has taken pursuant to paragraph 3.9.1 in respect of the Architectural Enhancement;
- (d) a provisional (non-binding) indication as to whether the Contractor is able to fund such Architectural Enhancement Costs itself such that reimbursements under paragraph 3.9 may be by way of adjustment to the Unitary Charge; and
- (e) the Contractor's proposals to mitigate the impact of the Architectural Enhancement.

3.9.4. In the event that (whether or not previously identified by the Contractor pursuant to paragraph 3.9.3 above) an Architectural Enhancement is required or imposed by any Planning Permission (or associated Planning Agreement) after submission of the Planning Application then the Contractor shall:

- (a) within five (5) Business Days of the grant of the Planning Permission concerned (or if appropriate the notification of the Architectural Enhancement by other means) notify the Authority in writing of the nature of the Architectural Enhancement giving full details and as soon as reasonably practicable and in any event within fifteen (15) Business Days of the grant of the Planning Permission concerned (or if appropriate the notification of the Architectural Enhancement by other means) provide to the Authority the information referred to in paragraph 3.9.3 (whether by way of confirmation of previously provided information or otherwise);
- (b) within fifteen (15) Business Days of receipt of the information by the Authority pursuant to paragraph 3.9.4(a) above (or such other longer period as may reasonably having regard to the nature and extent of the Architectural Enhancement proposed) give full details of the Architectural Enhancement Costs (including any costs of financing them) to be claimed by the Contractor;

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- (c) demonstrate in accordance with Part 6 of Schedule 21 (Change Protocol) that that:
- (i) the Architectural Enhancement is a divergence from the Design Proposal for the relevant Facility;
 - (ii) the Design Proposal was of a standard that a reasonably experienced Contractor would have provided for designing a similar facility for construction at the same Site and taking into account all relevant planning policies;
 - (iii) the Architectural Enhancement will cause the Contractor to incur the Architectural Enhancement Costs claimed; and
 - (iv) it has used reasonable endeavours to minimise the Architectural Enhancement Costs and any financing costs; and
 - (v) within five (5) Business Days of a request in writing by the Authority, to provide to the Authority a detailed cost breakdown of the Architectural Enhancement Costs claimed and, where the Authority specifically identifies the need for such information as part of its request under this paragraph 3.9, the Contractor shall provide such breakdown of costs as is reasonably practicable for each of the specified methods of payment set out in paragraph 3.9.6.

3.9.5. In the event that an Architectural Enhancement is required or imposed by any Planning Permission (or associated Planning Agreement) and the Architectural Enhancement Costs are demonstrated by the Contractor, the Authority shall and without unreasonable delay and in any event within fifteen (15) Business Days from receipt of the details provided pursuant to paragraph 3.9.4(c)(iv), select one of the following options by written notice to the Contractor:

- (a) accept the Architectural Enhancement in which event the Architectural Enhancement Costs shall be borne by the Authority in accordance with paragraph 3.9.6 (Reimbursement of Architectural Enhancement Costs); or
- (b) in accordance with paragraph 2.4 (Proceedings) require the Contractor to seek the opinion of Leading Counsel as to the merits of pursuing any Proceedings and the provisions of paragraphs 2.5 and 2.6 shall apply provided that if Leading Counsel advises that there is no reasonable prospect of success in pursuing Proceedings to remove the Architectural Enhancement then the Authority shall as soon as reasonably practicable thereafter and in any event within fifteen (15) Business Days from receipt of Leading Counsel's opinion pursuant to paragraph 3.9.5(b), by notice in writing select one of the options set out in paragraph 3.9.5 (a) or 3.9.5(c).
- (c) refuse the Architectural Enhancement in which event paragraph 3.2 (Failure to obtain Planning Permission) shall apply.

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3.9.6. Reimbursement of Architectural Enhancement Costs

In the event that the Authority has accepted the Architectural Enhancement Costs under paragraph 3.9.5(a) then the Authority shall reimburse the Contractor the Architectural Enhancement Costs demonstrated to its reasonable satisfaction to have been incurred through any one of the following means the choice of such means to be in the Authority's absolute discretion:

- (a) by way of an adjustment to the Unitary Charge for all or part of the remainder of the Contract Period; or
- (b) by way of lump sum payment made in one or more instalments; or
- (c) an adjustment to the Expiry Date to allow the Contractor to recoup the Architectural Enhancement Costs through the Unitary Charge; or
- (d) a combination of one or more of the means set out in paragraphs 3.9.6(a) to (c) above,

such Architectural Enhancement Costs and any costs of financing them (in the event that the Authority does not reimburse them as and when they are incurred) being calculated as if such matter was an Authority Change under Clause 43 (Authority and Contractor Changes) and applied in accordance with the provisions of Schedule 19 (Revision of Base Case and Custody) provided that in the event that the aggregate Architectural Enhancement Costs in respect of a Facility shall exceed ten percent (10%) of the Contractor's overall capital costs for the Project then the Authority shall pay such Architectural Enhancement Costs in accordance with paragraph 3.9.6(c) as and when such Architectural Enhancement Costs are incurred by the Contractor.]

3.9.7. Dispute Resolution

In the event that the Parties fail to agree any matters in relation to this paragraph 3.9 (Architectural Enhancements) the provisions of Schedule 22 (Dispute Resolution) shall apply.

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SCHEDULE 27
APPROACH TO PERMIT RISK

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1. DEFINITIONS

In each part of this Schedule 27 (Approach to Permit Risk) the following expressions (in addition to those specified in Schedule 1 (Definitions) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Appeal Contingency	means [to be settled on a project by project basis];
Challenge Period	<p>means the expiry of the later of:</p> <p>(a) the period prescribed by statute including but not limited to Part 54 of the Civil Procedure Rules during which a third party may institute a challenge which could result in the quashing or modification of the relevant decision of the Permitting Authority; and</p> <p>(b) where such a challenge is initiated within the period in (a) above the period up to and including the final determination or withdrawal of that challenge plus five (5) Business Days;</p>
Judicial Review Challenge	means proceedings brought under Part 54 of the Civil Procedure Rules in respect of the Key Facility Environmental Permit;
Key Facility Environmental Permit	means an Environmental Permit in respect of the [insert reference to the EfW Facility]
Leading Counsel	<p>means counsel experienced in environmental matters and practising at the environmental bar who:</p> <p>(a) shall be agreed upon by the Parties or, in default of agreement shall be a minimum of fifteen (15) years' call and identified by the Chairman of the Planning and Environmental Bar Association or his deputy; and</p> <p>(b) and accepts instructions to provide an opinion pursuant to this Schedule</p>

27 (Approach to Permit Risk);

Permit Deemed Refusal

means any failure by the Permitting Authority or the Secretary of State to determine an application for a Key Facility Environmental Permit within the statutory period which would entitle the Contractor to appeal against the deemed refusal of that application for an Environmental Permit or any other period which the Contractor and the Permitting Authority may agree shall constitute the period for determination of the application for an Environmental Permit for the purposes of any appeal by the Contractor;

Permit Proceedings

means any of the following:

- (a) a direction by the Secretary of State requiring a referral to him for determination or determination by the Secretary of State (or any inspector appointed by him) of any application for a Key Facility Environmental Permit under a direction pursuant to the Environmental Permitting Regulations 2007;
- (b) an appeal to the Secretary of State under the Environmental Permitting Regulations 2007 against refusal (including Permit Deemed Refusal) of any application for a Key Facility Environmental Permit;
- (c) an application seeking to remove or modify any conditions imposed in a Key Facility Environmental Permit; and
- (d) an appeal to or direction by the Secretary of State requiring a referral to him for determination or determination by the Secretary of State under the Environmental Permitting Regulations relating to any application seeking to remove or modify any conditions imposed in a

Key Facility Environmental Permit;

Revised Project Plan

has the meaning given to it in paragraph 3.3.1 of Schedule 26 (Planning);

Satisfactory Permit

means a Key Facility Environmental Permit with the Challenge Period expired (and with any Permit Proceedings having finally been determined such that the Environmental Permit has been upheld and may be implemented) which does not impose on the Contractor by way of condition or other obligation any requirement which renders the Contractor unable to perform all or any of the Works and/or Services as required to be provided at the [] Facility in accordance with the Authority's Requirements, Works Delivery Plan and/or Service Delivery Plan because it:

[to be settled on a project by project basis]

and an "Unsatisfactory Permit" is a Permit which is not a Satisfactory Permit.

2. APPLICATION OF THIS SCHEDULE

This Schedule 27 (Approach to Permit Risk) shall apply only to the Contractor's obligations in respect of a Key Facility Environmental Permit.

3. CONTRACTOR TO OBTAIN A KEY FACILITY ENVIRONMENTAL PERMIT

3.1. The Contractor undertakes to the Authority that (subject to the provisions of this Schedule 27 (Approach to Permit Risk):

3.1.1. it shall use All Reasonable Endeavours to obtain a Satisfactory Permit in the name of the Contractor to enable it to undertake the Works and to deliver the Services at the [specify the Facility(ies) concerned]; and

3.1.2. the Contractor shall in pursuing a Key Facility Environmental Permit use All Reasonable Endeavours to follow and meet the Key Dates (Schedule 8) in respect of the [specify the Facility(ies) concerned].

3.2. The Contractor shall bear the costs of obtaining and of implementing and complying with the provisions and conditions of the Key Facility Environmental Permit (other than the Authority's internal costs and any costs relating to Permit Proceedings in the name of the Contractor which exceed the Appeal Contingency and in respect of which the Authority has given prior written consent that such costs may be incurred in accordance with paragraph 6 (Permit Proceedings) below).

- 3.3. The Contractor shall provide to the Authority on a quarterly basis a written summary of:
- 3.3.1. the steps taken by the Contractor in the preceding quarter in compliance with its obligations under this paragraph 3; and
 - 3.3.2. a written summary of those steps which it anticipates taking in the following quarter in order to comply with its obligations under this paragraph 3.
- 3.4. Without limiting the Contractor's obligations under this paragraph 3 the Authority may within five (5) Business Days after receipt of such summary notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under this paragraph 3. If the Contractor disagrees, it may refer the matter to the Dispute Resolution Procedure.
- 3.5. Upon receipt of a notice issued under paragraph 3.4 (or where the matter has been referred to the Dispute Resolution Procedure, on determination or agreement of the dispute) the Contractor shall take the measures set out in the notice given under paragraph 3.4 (or, if relevant, the measures that have been determined or agreed under the Dispute Resolution Procedure) as soon as reasonably practicable and in any event within ten (10) Business days of receipt of the notice.

4. ALL REASONABLE ENDEAVOURS

- 4.1. For the purposes of paragraph 3 (Contractor to obtain a Key Facility Environmental Permit) of this Schedule 27 (Approach to Permit Risk). "All Reasonable Endeavours" means that:
- 4.1.1. the Contractor shall in relation to any application for an Environmental Permit incur expenditure and do all the things reasonably necessary (including, without limitation, full engagement with the Environment Agency in discussions regarding the proposed application for a Key Facility Environmental Permit at an appropriate time prior to the submission of such application, the commencement of any prosecution or defence of Permit Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of the Satisfactory Permit;
 - 4.1.2. prepare all documentation and supporting information in accordance with good practice for Environmental Permits;
 - 4.1.3. answer queries of the Environment Agency [or tribunal] promptly;
 - 4.1.4. the Contractor shall (subject to the provisions of paragraph 7 (Appeal Contingency) meet the costs of any Permit Proceedings such costs to include the cost of instructing Leading Counsel (including for the purposes of deciding whether or not to initiate or pursue Permit Proceedings) and the costs securing the services of any expert witnesses considered necessary for the purpose of such Permit Proceedings; and

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- 4.1.5. the Contractor shall provide forthwith copies to the Authority of all instructions (including enclosures) given to Leading Counsel and opinions received from Leading Counsel relating to such Permit Proceedings in respect of the Key Facility any Environmental Permit sought. The Authority's Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall endeavour when arranging such conference to agree a convenient time for attendance by the Authority's Representative.

provided always that this paragraph 4.1 shall not require the Contractor to join as interested party in any Judicial Review Challenge

5. OBLIGATIONS OF THE CONTRACTOR

5.1. The Contractor shall:

- 5.1.1. not cause or permit any Affiliate, associated or holding company of the Contractor or any entity or any third party over which it has control to object or procure any objection to any application for a Key Facility Environmental Permit; and
- 5.1.2. not vary any application for a Key Facility Environmental Permit without the prior written consent of the Authority's Representative (which consent shall not be unreasonably withheld or delayed) and where the Contractor with such consent varies any application for a Key Facility Environmental Permit the Contractor shall inform the Authority's Representative of the variance to the application for a Key Facility Environmental Permit and (where appropriate and/or applicable) provide to the Authority's Representative any documents or letters relating to the variance.

6. PERMIT PROCEEDINGS

6.1. If in respect of [specify the EfW Facility]] the relevant Permitting Authority:

- 6.1.1. refuses to grant a Key Facility Environmental Permit or there is a Permit Deemed Refusal; or
- 6.1.2. grants a Key Facility Environmental Permit which is not Satisfactory Permit in circumstances where the Authority and the Contractor agree (or are unable to agree and it is determined pursuant to Clause 60 (Dispute Resolution)) that Permit Proceedings may secure a Satisfactory Permit; or
- 6.1.3. refuses to grant an application to remove, modify or vary any condition imposed in a Key Facility Environmental Permit; or
- 6.1.4. grants a Key Facility Environmental Permit in respect of which any condition is imposed which is unreasonable in the Contractor's reasonable opinion,

the Contractor shall take the opinion of Leading Counsel as to the merits of pursuing any Permit Proceedings.

6.2. If Leading Counsel advises the Contractor that there is a reasonable prospect of success in pursuing any Permit Proceedings in order to obtain a Satisfactory

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Permit (or in order to remove or vary any unreasonable condition referred to in paragraph 6.1.3) the Contractor shall seek the approval of the Authority to institute such Permit Proceedings which the Authority shall not unreasonably withhold or delay and if such approval is granted the Contractor shall pursue or defend the same until determination of such Permit Proceedings (subject to the Planning Permission Longstop Date) unless subsequently in accordance with paragraph 6.4, the Authority directs that such Permit Proceedings shall cease to be pursued.

- 6.3. At any reasonable time after the commencement of any Permit Proceedings in relation to the Key Facility Environmental Permit the Authority may require the Contractor to take (or the Contractor may take (subject to notifying the Authority of such intention)) the opinion of Leading Counsel as to the merits of continuing to pursue such Permit Proceedings and to make such opinion available to the Authority.
- 6.4. In the event that Leading Counsel advises under paragraph 6.2 or subsequently under paragraph 6.3 that there is no reasonable prospect of success the Authority shall by serving written notice on the Contractor on or before a date twenty (20) Business Days (or such additional period of time as the Authority acting reasonably determines) from the receipt by the Authority of the advice of Leading Counsel either:
 - 6.4.1. direct that the Contractor shall not pursue or shall cease to pursue the relevant Permit Proceedings (and such direction shall be deemed if the Authority fails to give notice as provided by paragraph 6.4); or
 - 6.4.2. direct that the Contractor institutes or continues the relevant Permit Proceedings and such direction shall be treated as an approval to those Permit Proceedings given pursuant to paragraph 6.2.
- 6.5. If the Authority (acting reasonably in all cases):
 - 6.5.1. does not give such approval to any Permit Proceedings (or is deemed not to have done so); or
 - 6.5.2. directs that the Contractor should cease to pursue such Permit Proceedings;

the Contractor may still institute or continue to pursue (or procure the pursuit of) those Permit Proceedings, subject to service of prior written notice of its intention to do so upon the Authority within twenty (20) Business Days of receipt of the Authority's notice under paragraph 6.4 and the Contractor will bear all the costs of instituting or continuing to pursue those Permit Proceedings which it incurs from the point at which the Authority serves notice pursuant to paragraph 6.4 and paragraph 7 (Appeal Contingency) and paragraph 9 (Costs Awarded in Permit Proceedings) will not apply to those costs.
- 6.6. The Contractor shall be entitled, in its absolute discretion, to cease to pursue any Permit Proceedings which it institutes or continues pursuant to paragraph 6.5 (approval being withheld or a direction having been given to the contrary) and in respect of which it has undertaken to bear the costs pursuant to paragraph 6.5.

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7. APPEAL CONTINGENCY

7.1. The Contractor will bear all costs relating to and arising from any Permit Proceedings (including for the avoidance of doubt the costs of obtaining any Leading Counsel's opinion under paragraph 6 (Permit Proceedings) up to the limit of the Appeal Contingency (taking into account any such costs of Permit Proceedings and Proceedings previously incurred under Schedule 26 (Planning) or Schedule 27 (Approach to Permit Risk)) following which the Authority shall indemnify the Contractor for nine-tenths of all amounts reasonably, properly and prudently spent or contracted to be spent by the Contractor in excess of the Appeal Contingency in the proper and diligent conduct of the Permit Proceedings provided that:

7.1.1. the Contractor shall within twenty (20) Business Days of receiving:

- (a) the written notification that the application for the Key Facility Environmental Permit is being referred to the Secretary of State, or
- (b) any decision of the Permitting Authority or the Secretary of State to refuse the Key Facility Environmental Permit; or
- (c) a Permit Deemed Refusal; or
- (d) the grant of a Key Facility Environmental Permit which is to be the subject of the Permit Proceedings,

provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such Permit Proceedings including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate or employ any additional or alternative legal or professional advisers without the further approval of the Authority (such approval not to be unreasonably withheld or delayed); and

7.1.2. the Contractor shall use its reasonable endeavours to ensure that the costs of the Permit Proceedings are kept to the minimum extent prudent and reasonable at all times.

8. EXCESS COSTS ABOVE APPEAL CONTINGENCY

8.1. Where the Authority is required to indemnify the Contractor pursuant to paragraph 7 (Appeal Contingency) for [costs incurred over and above the amount of the Appeal Contingency ("Permit Excess Costs")] the Authority shall reimburse the Contractor such Permit Excess Costs together with any reasonable and proper financing costs subject to the Contractor providing satisfactory evidence to the Authority of such Permit Excess Costs reasonably and properly incurred through any one of the following means the choice of such means to be in the Authority's absolute discretion:

8.1.1. by way of an adjustment to the Unitary Charge for all or some part of the remainder of the Services Period; or

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8.1.2. by way of a lump sum payment made in one or more instalment together with an adjustment to the Unitary Charge; or

8.1.3. by way of a lump sum payment made in one or more instalment in respect of the whole amount;

such Permit Excess Costs being calculated in accordance with the provisions of Schedule 21(Change Protocol).

8.2. The Contractor shall provide the Authority with such cost information as the Authority may request in writing (acting reasonably) including any breakdown of costs as is reasonably practicable to allow the Authority to undertake any of the methods of payment set out in paragraphs 8.1.1 to 8.1.3 above and the Contractor shall provide such information promptly and in any event within five (5) Business Days of a written request from the Authority.

9. COSTS AWARDED IN PERMIT PROCEEDINGS

9.1. If the Authority has indemnified the Contractor for its costs in respect of any Permit Proceedings pursuant to paragraph 8 (Excess Costs above the Appeal Contingency) any costs awarded to the Contractor in those Permit Proceedings shall be paid to the Authority in full up to the amount it has paid equal to the Appeal Contingency and where those costs exceed an amount equal to the Appeal Contingency the balance shall be shared between Contractor and the Authority pro rata the expenses they have incurred in respect of the Permit Proceeding in excess of the Appeal Contingency.. All payments to the Authority shall be by way of a lump sum payment within twenty (20) Business Days of the Contractor receiving such costs to which they relate.

10. SATISFACTORY PERMIT

10.1. Where by the Planning Permission Long Stop Date for a Facility the Contractor obtains either:

10.1.1. a Satisfactory Permit; or

10.1.2. an Unsatisfactory Permit where the Authority has served an Authority Notice of Change to enable the Contractor either:

(a) to comply with the Unsatisfactory Permit and its other obligations under this Contract without being in breach of this Contract; and/or

(b) to render compliance with the relevant part of the Unsatisfactory Permit unnecessary; and/or

(c) to render the Unsatisfactory Permit a Satisfactory Permit,

the Contractor shall, subject to the provisions of Clause 10.2 (Grant of Lease/Underlease), after the Challenge Period (if any) relating to the Satisfactory Permit has elapsed, proceed to implement the Satisfactory Permit [at the relevant Facility] provided that the Authority may by written notice require the Contractor so to proceed without letting the relevant Challenge Period elapse in which case the provisions of paragraph 12 (Challenge Period) shall apply.

10.2. As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of a Key Facility Environmental Permit, the Contractor shall

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provide to the Authority a copy of the Key Facility Environmental Permit and will notify the Authority in writing whether or not the Contractor considers the Environmental Permit to be a Satisfactory Permit or an Unsatisfactory Permit.

- 10.3. If the Contractor considers that the Key Facility Environmental Permit will be (notwithstanding the expiry of the Challenge Period) an Unsatisfactory Permit it shall provide to the Authority within five (5) Business Days of the issue of the notice given pursuant to paragraph 10.2 (or such longer period as the parties may in the circumstances and acting reasonably agree):

10.3.1. full details of the grounds for such opinion; and/or

10.3.2. an indication of what action could be taken (if any) by the Contractor or the Authority to:

- (a) enable the Contractor to comply with the Key Facility Environmental Permit without being in breach of this Contract; and/or
- (b) to render it a Satisfactory Permit; or
- (c) to render compliance with such Unsatisfactory Permit unnecessary; including without limitation:
- (d) Permit Proceedings; or
- (e) the issue of an Authority Notice of Change to vary the Works and/or the Services.

- 10.4. If the Contractor fails to provide the notice pursuant to paragraph 10.2 within fifteen (15) Business Days after the issue of the Key Facility Environmental Permit then on expiry of the Challenge Period the Key Facility Environmental Permit shall be deemed to be a Satisfactory Permit.

- 10.5. If the Contractor notifies the Authority that the Key Facility Environmental Permit is a Satisfactory Permit, or such an Environmental Permit is deemed to be a Satisfactory Permit in accordance paragraph 10.3 then the provisions of paragraph 10.1 shall apply.

- 10.6. If the Contractor notifies the Authority that the Key Facility Environmental Permit will, on expiry of the Challenge Period, be an Unsatisfactory Permit the Authority shall, within ten (10) Business Days of receipt of the notice given pursuant to paragraph 10.3 notify the Contractor in writing whether or not the Authority accepts that the Key Facility Environmental Permit is or will be an Unsatisfactory Permit and whether it accepts the action indicated by the Contractor in the notice served pursuant to paragraph 10.3 and in particular whether Permit Proceedings will be likely to secure a Satisfactory Permit having regard to the grounds given by the Contractor in the notice served pursuant to paragraph 10.3.

- 10.7. If the Authority does not accept within the time set out in paragraph 10.6 or is deemed to not accept because it has not notified to the Contractor within the time set out in paragraph 10.6 that the Key Facility Environmental Permit will be on expiry of the Challenge Period an Unsatisfactory Permit the matter may be referred at the instance of either Party for determination by an expert under

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Schedule 22 (Dispute Resolution) as to whether the Key Facility Environmental Permit is a Satisfactory Permit or Unsatisfactory Permit.

10.8. If the Authority accepts in accordance with paragraph 10.6 or it is determined pursuant to paragraph 10.7 and Schedule 22 (Dispute Resolution) that the Key Facility Environmental Permit is an Unsatisfactory Permit and the Parties agree that Permit Proceedings will not be likely to secure a Satisfactory Permit the Authority may:

10.8.1. subject to this paragraph 10.8.1 within thirty (30) Business Days after it is accepted by the Authority pursuant to paragraph 10.6 or it is determined in accordance with paragraph 10.7 and Schedule 22 (Dispute Resolution) that the Key Facility Environmental Permit is an Unsatisfactory Permit issue an Authority Notice of Change in respect of the Works and/or the Services or other actions required to enable the Contractor to comply with the conditions of the Key Facility Environmental Permit which render it an Unsatisfactory Permit without being in breach of this Contract or to render it a Satisfactory Permit or render compliance with such Unsatisfactory Permit unnecessary (in each case upon confirmation and final agreement of the consequential Authority Notice of Change in accordance with Schedule 21 (Change Protocol) for the purposes of this paragraph 10 (Satisfactory Permit) the Key Facility Environmental Permit shall be deemed to be a Satisfactory Permit provided the Challenge Period has expired); or

10.8.2. require the Contractor to prepare a Revised Project Plan in which case the provisions of paragraph 3.3 (Revised Project Plan) of Schedule 26 (Planning) shall apply and the provisions of paragraph 3 shall cease to apply.

10.9. If the Authority:

10.9.1. does not issue the Authority Notice of Change within the time set out in paragraph 10.8; or

10.9.2. withdraws or is deemed to have withdrawn the Authority Notice of Change issued pursuant to paragraph 10.8.1 in accordance with Schedule 21 (Change Protocol);

then the Contractor shall prepare a Revised Project Plan in which case the provisions paragraph 3.3 (Revised Project Plan) of Schedule 26 (Planning) shall apply and the provisions of paragraph 3 shall cease to apply.

10.10. If the Authority accepts pursuant to paragraph 10.6 or it is determined pursuant to Schedule 22 (Dispute Resolution) that the Key Facility Environmental Permit is an Unsatisfactory Permit and the Parties agree or if the Parties are unable to agree and either Party wishes it to be determined whether Permit Proceedings might secure a Satisfactory Permit then the Parties shall seek the opinion of Leading Counsel pursuant to paragraph 6 and the provisions of paragraphs 6 and 7 shall apply and if Permit Proceedings are not instituted or, if instituted, are withdrawn or determined, leaving in place an Unsatisfactory Permit the Authority may either issue an Authority Notice of

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Change or require the Contractor to prepare a Revised Project Plan in accordance with the provisions of paragraph 3.3 (Revised Project Plan) of Schedule 26 (Planning).

11. FAILURE TO OBTAIN AN ENVIRONMENTAL PERMIT

11.1. At the earlier of:

11.1.1. the date when the Parties acting reasonably conclude and agree that it will not be possible to obtain a Satisfactory Permit by the Planning Permission Longstop Date;

11.1.2. the relevant Planning Permission Longstop Date where at such date the Contractor has failed to obtain the Satisfactory Permit for the [the Facility]; and

11.1.3. unless the Parties agree otherwise, the date at which Leading Counsel advises under paragraph 6.4 that there is no reasonable prospect of success in pursuing or continuing to pursue any Permit Proceedings and obtaining a Satisfactory Permit, save where the Authority directs or the Contractor chooses to initiate or continue to pursue those Permit Proceedings under paragraph 6 (Permit Proceedings) in which case paragraphs 11.1.1, 11.1.2 or 11.1.4 shall apply; or

11.1.4. unless the Parties agree otherwise, the date at which Permit Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory Permit has not been obtained;

the Authority shall by notice in writing advise the Contractor that in the Authority's absolute discretion:

11.1.5. the Authority wishes to terminate this Contract; or

11.1.6. the Authority wishes the Contractor to propose a Revised Project Plan in accordance with paragraph 3.3 (Revised Project Plan) of Schedule 26 (Planning).

11.2. In the event of a notice of termination served pursuant to paragraph 11.1 of this Schedule 27 (Approach to Permit Risk), the Contract Period shall terminate [thirty (30)] Business Days from the date of such notice of termination and (provided that the Contractor has complied with its obligations under paragraph 4 (Meaning of All Reasonable Endeavours) to use All Reasonable Endeavours to obtain a Satisfactory Permit, the provisions of Clause 70 (Compensation on Termination for Force Majeure) shall apply as if such termination constituted an event of Force Majeure.

11.3. If the Contractor has not used All Reasonable Endeavours the provisions of Schedule 17 (Compensation of Termination) shall not apply and the Authority shall not be liable to the Contractor for any compensation on termination.

12. CHALLENGE PERIOD AND JUDICIAL REVIEW CHALLENGE

12.1. Where the Authority directs the Contractor to proceed to implement a Satisfactory Permit without allowing the Challenge Period to elapse in respect of any relevant decision pursuant to paragraph 10.1 (Satisfactory Permit) and a challenge is instituted within the Challenge Period the Authority shall indemnify

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and keep indemnified the Contractor for all costs, losses, expenses and liabilities reasonably and properly incurred up to the point at which such challenge is finally determined and the Contractor shall mitigate such costs, losses, expenses and liabilities provided that any indemnification of any costs, losses, expenses or liabilities shall be calculated on the basis that the Contractor should be in no better or no worse position than it would been in had such costs, losses, expenses or liabilities not arisen.

- 12.2. In the event that a Judicial Review Challenge is instituted in respect of a Key Facility Environmental Permit during the Challenge Period then any Key Facility Environmental Permit which would otherwise be deemed a Satisfactory Permit shall be deemed to be and to have always been an Unsatisfactory Permit until such time as the Judicial Review Challenge is dismissed, withdrawn, quashed or defeated.

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SCHEDULE 28
RELEVANT DISCHARGE TERMS

1. The sums referred to in paragraph 2.1 and the adjustment between the Parties of the rights and liabilities relating to the Assets referred to in paragraph 2 shall be the relevant discharge terms in relation to this Contract for the purposes of Section 6 of the Local Government (Contracts) Act 1997.
2. In the event of the making of a determination or court 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 this Contract 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 equivalent of the:
 - 2.1.1. Authority Default Termination Sum where the Authority has initiated proceedings that resulted in the determination or court order referred to in paragraph 2; or otherwise
 - 2.1.2. the Force Majeure Termination Sum;
 - 2.2. the Authority shall have the option to require the Contractor to transfer its rights, title and interest in and to the Assets to the Authority or as directed by the Authority.
3. The Authority shall pay to the Contractor the sums referred to in paragraph 2 above within forty (40) Business Days of determination or order of the court referred to in paragraph 2 above and the provisions of paragraphs 1 to 3 of Part 7 (General) of Schedule 17 (Compensation on Termination) shall apply.

SCHEDULE 29
DESIGN PROPOSAL

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SCHEDULE 30
OUTLINE SUBSTITUTE WASTE PLAN

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SCHEDULE 31
NOT USED

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SCHEDULE 32
PROHIBITED MATERIALS

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Document Control

Title	Prosiect Gwyrdd - Procurement of Waste Treatment Services for Residual Municipal Waste - Invitation to Submit Detailed Solutions
PG Author	(WAG/WIDP Templates utilised and acknowledged)
Owner	Project Board

Distribution

This document has been distributed to:

Name	Title/Area of work	Date of Issue	Version
Joint Committee	Approval	30.11.10	0.28

APPENDIX 8 – DRAFT PAYMENT MECHANISM

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1. Definitions

1.1 The following definitions are used in this Schedule. All other definitions applied in this Schedule 4 are in Schedule 1 (Definitions).

Active Landfill Gate Fee	[bid back item]
Active Landfill Tax Rate	means the rate of Landfill Tax applicable to the disposal of material, other than a Qualifying Material, at the time the disposal is made
Active Contract Waste	means Processable Contract Waste ¹ that is taxed at the Active Landfill Tax Rate
Actual Landfill Tonnage	means the tonnage of Contract Waste sent to Landfill in the relevant Contract Year
Ad-Hoc Waste	means those categories or components of Contract Waste which are either: received separately by the Contractor; or segregated from delivered mixed Loads by the Contractor in accordance with the Waste Acceptance Protocol and require in accordance with all or any of Good Industry Practice, Consents, Guidance, Legislation and the terms of this Contract segregation from and different treatment or landfill from other Contract Waste; ²
Base Date	means the [April 2010] cost base date of the relevant cash flow in the financial model
Base Element of the Unitary Charge	means the amount calculated in accordance with paragraph [5.3]
Base Element Rate	means £[bid back] (Indexed) per tonne
Base Payment Index	means the indexation applicable calculated in accordance with paragraph [19.2]
Band	means each of the tonnage ranges set out in paragraph [5.7]
Commissioning Contract Waste	Contract Waste required during the Commissioning Period to meet the requirements of the Commissioning Plan
Contingency Delivery Point	means the delivery point to which the [Authorities] (or its or their sub-contractors) will deliver Contract Waste as set out in the Contingency Plans
Delivery Point	means the delivery point to which the [Authorities] (or its or their sub-contractors) will deliver Contract Waste as defined within the Contractor's Proposals
Diversion Performance	means the amount calculated in accordance with paragraph [9]

¹ [DRAFTING NOTE - note that Processable Contract Waste excludes Ad-Hoc waste. Payment for Ad-Hoc Waste dealt through separate payment element "AWP"]

² [DRAFTING NOTE - ensure definition is consistent with Schedule 1 Definitions]

Deductions	
Fixed Proportion	means the proportion of the Base Element of the Unitary Charge which is not subject to indexation which shall be [Bid Back] %
Full Indexation Factor	means the factor calculated in accordance with paragraph [19.3]
Guaranteed Third Party Income	means the Third Party Income set out in the Base Case
Index	means any of the Retail Price Index, [Others to be developed as applicable to Bidders] and Indices means all of them
Index Publication Date	means the date on which the Index is published
Indexation Date	means the [April 2010] and every subsequent anniversary of that date
Indexed	means, subject to Indexation, in accordance with paragraph [19]
Landfill Allowance Scheme Targets ("LAS" Targets)	the Biodegradable Waste to Landfill targets per Local Authority as defined in the Landfill Allowance Scheme (LAS) Regulations (Wales) 2004
Marginal Element Rate	means, for each Band, the amount set out in paragraph [5.7] per tonne
Minimum Tonnage	means the Unadjusted Minimum Tonnage of Contract Waste in a Contract Year in accordance with Appendix C less the tonnage of Contract Waste Not Accepted by the Contractor;
Non Acceptance Deduction	means the amount calculated in accordance with paragraph [13]
Partners	Caerphilly County Borough Council ("Caerphilly CBC"), the County Council of the City and County of Cardiff ("Cardiff Council"), Monmouthshire County Council ("Monmouthshire CC"), Newport City Council ("Newport CC") and the Vale of Glamorgan Council (the "Vale of Glamorgan"), each individually a "Partner"
Performance Standards Deductions	means the amount calculated in accordance with paragraph [12]
Performance Standards Deduction Cap	means the amount £[bid back] (Indexed) per Contract Year set out in paragraph [12.7]
Process	the physical, thermal, chemical or biological process including sorting that changes the characteristics of Contract Waste in order to reduce its volume or hazardous nature or biodegradability and facilitate its handling to enhance Recycling or Recovery; "Processed" and "Processable" shall be construed accordingly
Processable Contract Waste	means Contract Waste that is not Ad-Hoc Waste ³

³ [DRAFTING NOTE - ensure definition is consistent with definition in Schedule 2 Authority's Requirements]

Process Residues	Means those process outputs arising from the Processing of Contract Waste excluding any energy outputs
Qualifying Material	means a “qualifying material” as defined in the Landfill Tax (Qualifying Material) Order 1996 as modified or re-enacted from time to time
Target BMW Tonnage	n/a
Target Landfill Tonnage	means the sum of the Target Unprocessed Landfill Tonnage and the Target Processed Landfill Tonnage;
Target Processed Landfill Tonnage	means the amount calculated in accordance with paragraph [10.7]
Target Unprocessed Landfill Tonnage	means the amount calculated in accordance with paragraph [10.5]
Unitary Charge	means the amount calculated in accordance with paragraph [5]
Unitary Payment	means the amount calculated in accordance with section [4]
Unprocessed Waste	Processable Contract Waste that has not been Processed and is disposed of by other means.
Maximum Tonnage	means the tonnage of Contract Waste in a Contract Year in accordance with Appendix C;

2. Introduction and Interpretation

- 2.1 This Schedule 4 (Payment Mechanism) is divided into the following parts:
- Part A - Commissioning Period Payments;
 - Part B - Payments Post Service Commencement;
 - Part C - Reporting for Invoicing Purposes;
 - Part D - Third Party Waste Protocol.
- 2.2 Unless otherwise provided, references in this Schedule to Clauses and Schedules shall be references to the relevant Clauses and Schedules in the Contract.
- 2.3 Unless otherwise provided, references to parts, paragraphs, tables and appendices shall be references to parts, paragraphs, tables and appendices in this Schedule.
- 2.4 The Parties agree that without prejudice to the express provisions of the Contract, this Schedule shall form the sole basis of payment by the Authority to the Contractor.
- 2.5 VAT properly chargeable on any component of the Unitary Charge shall be payable as set out in Clause [49] of the Contract.
- 2.6 Where the symbol Σ is used in formulae it shall have the meaning 'sum of'.
- 2.7 'm' shall relate to Contract Months.
- 2.8 'q' shall relate to Contract Quarters.
- 2.9 'y' shall relate to Contract Years.
- 2.10 This Schedule 4 (Payment Mechanism) shall be read in conjunction with Schedule 2 (Authority's Requirements) and the Contract.

PART A - COMMISSIONING PERIOD PAYMENTS

3. Commissioning Payments

- 3.1 The Authority shall pay the Contractor during the period from the Readiness Date to the Services Commencement Date, the Commissioning Payment as calculated in accordance with section 3 below.
- 3.2 The Commissioning Payment for the Facility(ies) in any Contract Month 'm' shall be calculated as follows:

$$CP_m = \left[CGF_y \times I_2 \times CCW_m \right] - 0.5 * TPI_m - TA_m - CNAD_m - CPSD_m$$

Where:

CP_m	the Commissioning Payment for Contract Month 'm'
CGF_y	the Commissioning Gate Fee [Bid Back] per tonne ⁴ for Contract Year 'y'
CCW_m	the tonnage of Commissioning Contract Waste received in Contract Month 'm'
I_2	Full Indexation for the relevant Contract Year as calculated in paragraph 19 of this Schedule 4
TPI_m	the sum of the Third Party Income generated by the Contractor in Contract Month 'm'
$CNAD_m$	the Commissioning Non-Acceptance Deduction in respect of Commissioning Contract Waste in Contract Month 'm', as defined in paragraph 3.4
TA_m	if applicable, the Transport Adjustment calculated in accordance with paragraph 18.7 for the delivery of Commissioning Contract Waste to a Contingency Delivery Point
$CPSD_m$	The Commissioning Performance Standard Deduction in Contract Month 'm', being the amount calculated as stated in the Performance Measurement Framework

- 3.3 For avoidance of doubt the Contractor shall be responsible for, and will not be recompensed for, any additional costs incurred in the treatment/disposal of the waste.
- 3.4 If the Contractor fails to accept any Commissioning Contract Waste in Contract Month 'm', a Commissioning Non Acceptance deduction will be calculated as follows:

$$CNAD_m = (CNADR \times CCWNA) + TAN$$

⁴ [DRAFTING NOTE - refer to Payment Mechanism Principles for guidance]

Where:

CNADR	the Commissioning Non-Acceptance Deduction Rate per tonne being the greater of 0 (zero) and the difference between the Authority Landfill Gate Fee plus Landfill Tax incurred and the Commissioning Gate Fee (CGF)
CCWNA	the tonnage of Commissioning Contract Waste Not Accepted in Contract Month 'm'
TAn	if applicable, the Transport Adjustment for Non Acceptance calculated in accordance with paragraph 18.4

PART B - PAYMENTS POST SERVICE COMMENCEMENT

4. Unitary Payment (“UP”)

4.1 The Unitary Payment for each Payment Period shall be paid in accordance with Clause 45 (Invoicing and Payment) and calculated in accordance with the following provisions of this Payment Mechanism.

4.2 Monthly Unitary Payment.

4.3 The Monthly Unitary Payment shall be calculated in accordance with the following formula:

$$UP_m = UC_m + LP_m + PTC_m + AOP_m - D_{q-1} - RD_{q-1} - ADRP_{y-1} - NAD_{m-1} - PSD_{m-1} - GS_{y-1} - CIL_{y-1}$$

Where:

UP _m	the monthly Unitary Payment payable in Contract Month ‘m’
UC _m	the monthly Unitary Charge for Contract Month ‘m’ calculated in accordance with paragraph 5
LP _m	the monthly Landfill Payment for Contract Month ‘m’ calculated in accordance with paragraph 6
PTC _m	the Pass Through Costs for Contract Month ‘m’ calculated in accordance with paragraph 7
AOP _m	the Adjustment and Other Payments for Contract Month ‘m’ calculated in accordance with paragraph 15
D _{q-1}	the Diversion Performance Deduction for the previous Contract Quarter ‘q-1’ calculated in accordance with paragraph 9 and payable in Contract Month ‘m’
RD _{q-1}	the Recycling Deduction for the previous Contract Quarter ‘q-1’ calculated in accordance with paragraph 11 and payable in Contract Month ‘m’
ADRP _{y-1}	the Annual Diversion Reconciliation Payment for the previous Contract Year ‘y-1’ calculated in accordance with paragraph 10 and payable in Contract Month ‘m’
NAD _{m-1}	the Non-Acceptance Deduction for the previous Contract Month ‘m-1’ calculated in accordance with paragraph 13 and payable in Contract Month ‘m’
PSD _{m-1}	the Performance Standard Deduction for Contract Month ‘m-1’ calculated in accordance with paragraph 12 and payable in Contract Month ‘m’
GS _{y-1}	the Gain Share for the previous Contract Year ‘y-1’ calculated in accordance with paragraph 8 and payable in Contract Month ‘m’
CLI _{y-1}	The Change in Law amount for the previous Contract Year ‘y-1’ calculated in accordance with paragraph 14 and payable in Contract Month 3

4.4 For the avoidance of doubt, Quarterly and Annual will only apply in the relevant Contract Month.

5. Unitary Charge ("UC")

5.1 Monthly Unitary Charge

The monthly Unitary Charge shall comprise:

- a) the Base Element of the Unitary Charge and;
- b) the Marginal Element of the Unitary Charge.

5.2 The monthly Unitary Charge (UC_m) for any Contract Month 'm' shall be calculated in accordance with the following formula:

$$UC_m = UCBE_m + UCME_m$$

Where:

UCBE _m	the Unitary Charge Base Element for Contract Month 'm', in Contract Year 'y'
UCME _m	The Marginal Element of the Unitary Charge for Contract Month 'm', in Contract Year

Calculation of the Base Element of the Unitary Charge

5.3 The monthly Base Element of the Unitary Charge for any Contract Month 'm' shall be calculated in accordance with the following formula:

$$UCBE_m = (MT \div 12) \times BER_y \times I_1$$

Where:

MT	the Minimum Tonnage
BER _y	the applicable Base Element Rate per tonne, for Contract Year 'y'
I ₁	Base Payment Index for the relevant Contract Year as defined in paragraph 19

5.4 Where the Authority considers Contract Waste in the relevant Contract Year will fall below the Minimum Tonnage for the relevant year, then the provisions of Clause 25 (Substitute Waste) shall apply.

5.5 Where the Contractor has failed to comply with Clause 25 (Substitute Waste), the Minimum Tonnage referred to shall be reduced by the tonnage of waste the Contractor would have secured if it had complied with its obligations under Clause 25 (Substitute Waste).

Calculation of the Marginal Element of the Unitary Charge

- 5.6 The monthly Marginal Element of the Unitary Charge (UCME_m) for Contract Month 'm' shall be calculated in accordance with the following formula:

$$UCME_m = \sum_{Bn}^{B1} (MT_m \times MER_y)$$

Where:

MT _m	The number of tonnes of Contract Waste Accepted in Contract Month 'm' in the relevant Band
MER _y	the applicable Marginal Element Rate per tonne for the relevant Band, for Contract Year 'y'

- 5.7 The Bands, and the relevant Marginal Element Rates are set out in the Table below:

Band ⁵	Contract Waste Tonnage Range per Contract Month	Marginal Element Rate per tonne (£)
1	(Minimum Tonnage ÷ 12) to [Bid back]	[Bid back] (Indexed)
2	[Bid back] to [Bid back]	[Bid back] (Indexed)
n	[Bid back] to (Maximum Tonnage ⁶ ÷ 12)	[Bid back] (Indexed)

[Drafting Note - the need for a periodical or annual tonnage reconciliation will be discussed during Dialogue however the Partnership is seeking for the Bidders to set the tonnage bands]

⁵ Bidders do not have to propose more than one Band

⁶ [DRAFTING NOTE - refer to definition in Schedule 2 (Authority's Requirements)]

6. Landfill Payment (“LP”)

[Drafting Note: The Landfill Payments (LP) (Active Landfill Gate Fee and prevailing Landfill Tax) will be made only up to an agreed maximum level of waste that may be Landfilled (the Target Unprocessed Landfill Tonnage). For the avoidance of doubt the Contractor shall be responsible for, and will not be recompensed for, any additional waste (above the Target Unprocessed Landfill Tonnage) sent to Landfill. This will be achieved through the Diversion Performance Deduction mechanism ("D").]

- 6.1 The Landfill Payment for Contract Month ‘m’ shall be calculated in accordance with the following formula:

$$LP_m = ATLa_m \times (LGa_y + LTa_y)$$

Where:

ATLa _m	Actual Tonnage of Active Contract Waste to Landfill in Contract Month ‘m’
LGa _y	the Active Landfill Gate Fee per tonne for Contract Year ‘y’
LTa _y	the Active Landfill Tax Rate per tonne for Contract Year ‘y’

7. Pass Through Costs ("PTC")

[Drafting Note: Business Rates will be a pass through payment, to the extent that the Facility is sized for and is predominantly for treatment of the Partnership's waste. The Partnership will pro-rata the business rates payment to the extent that the above requirements are not met based.]

- 7.1 National Non-Domestic Rates (NNDR) is the only Pass Through Cost.
- 7.2 Where the Contractor pays NNDR in respect of the Facilities, the Contractor shall be reimbursed for such NNDR paid as part of the monthly Unitary Charge payable by the Authority.
- 7.3 Any reimbursement will be payable in the invoice in the Contract Month following payment by the Contractor of the NNDR.
- 7.4 The Pass Through Cost (PTC) payment for Contract Month 'm' shall be calculated in accordance with the following formula:

$$PTC_m = NNDR_m$$

8. Gain Share mechanism ("GS")⁷

- 8.1 The annual Gain Share (GS_y-1) for Contract Year 'y-1' shall be calculated and applied annually, in Contract Month 'm' of the following Contract Year 'y'.
- 8.2 The Third Party Income Share shall be calculated in accordance with the following:

$$GS_y = \text{The higher of zero and } ([bid\ back\ \%] \times (AP_y - TP_y))$$

Where:

GS _y	the Gain Share in Contract Year 'y'
AP _y	the Net Third Party Income actually received in Contract Year 'y'
TP _y	the Guaranteed Net Third Party Income shown in the Base Case for Contract Year 'y'

- 8.3 Gain share will be calculated after taking into account all the actual costs relating to the income generation.

[Note: Participants should refer to the Payment Mechanism Principles Paper and develop their proposals in line with the Partnership's requirement that gain share mechanisms should be proposed around individual income categories]

⁷ To be developed to reflect individual gain share mechanisms in respect of specific revenue streams agreed with Bidders

9. Diversion Performance Deductions (“D”)

[Drafting Note - the need for a deduction for failing the BMW Landfill Performance Target]

- 9.1 Diversion Performance Deductions will be calculated and applied quarterly, and be subject to an annual reconciliation as set out in paragraph 10.
- 9.3 The Diversion Performance Deductions will be applied in the first Contract Month ‘m’ of the following Contract Quarter. Diversion Performance Deductions in respect of a Contract Quarter shall be calculated by reference to the number of tonnes by which the Contractor has exceeded either the Target Unprocessed Landfill Tonnage or the Target Processed Landfill Tonnage.
- 9.4 The Diversion Failure Deductions will be calculated in accordance with the following formula:-

$$D_{q-1} = Du_{q-1} + Dt_{q-1}$$

Where:

Du_{q-1}	the Unprocessed Diversion Performance Deduction in respect of Contract Waste for Contract Quarter, ‘q-1’, calculated in accordance with paragraph 9.5.1
Dt_{q-1}	the Processed Diversion Performance Deduction for Contract Quarter, ‘q-1’ calculated in accordance with paragraph 9.7.1

9.5 Unprocessed Diversion Performance Deduction

- 9.5.1 The Unprocessed Diversion Performance Deductions (Du_{q-1}) will be calculated in accordance with the following formula:-

$$\text{If: } (ATLa_{q-1} + CWNA_{q-1}) > TULT_{q-1}$$

$$\text{then } Du_{q-1} = ((ATLa_{q-1} + CWNA_{q-1}) - TULT_{q-1}) \times DDRA_y$$

$$\text{else, if } (ATLa_{q-1} + CWNA_{q-1}) \leq TULT_{q-1} \text{ then } Du_{q-1} = 0$$

Where:

$ATLa_{q-1}$	Actual Tonnage of Contract Waste Accepted that is not Processed and is Disposed directly to Landfill in Contract Quarter ‘q-1’
$CWNA_{q-1}$	Tonnage of Contract Waste Not Accepted in Contract Quarter ‘q-1’
$TULT_{q-1}$	Target Unprocessed Landfill Tonnage in Contract Quarter ‘q-1’

	calculated in accordance with paragraph 10.5
$DDRa_y$	Unprocessed Diversion Deduction Rate for Contract Waste in Contract Year 'y'

Where:

$$DDRa_y = LGa_y + LTa_y + ULAR_y$$

Where:

LTa_y	the actual Active Landfill Tax Rate per tonne for Contract Year 'y'
LGa_y	the actual Active Landfill Gate Fee per tonne for Contract Year 'y'
$ULAR_y$	the Unprocessed Landfill Adjustment Rate £200 ⁸ per tonne, [indexed according to the provisions in paragraph 19], for Contract Year 'y'

9.5.2 $ULAR_y$ shall be 0 if each of the Partners have met their [LAS Targets] in the Contract Year.

9.6 Target Unprocessed Landfill Tonnage

9.6.1 The Target Unprocessed Landfill Tonnage is calculated in accordance with the following formula:-

$$TULT_{q-1} = ULPT_y \times PCW_{q-1}$$

Where:

$ULPT_y$	The Unprocessed Landfill Performance Target referred to in Appendix C for Contract Year 'y'
PCW_{q-1}	the Processable Contract Waste in Contract Quarter 'q-1'

9.7 Processed Diversion Performance Deduction

9.7.1 The Processed Diversion Performance Deduction (Dt_{q-1}) will be calculated in accordance with the following formula:-

$$\text{If: } APLT_{q-1} > TPLT_{q-1}$$

$$\text{then } Dt_{q-1} = (APLT_{q-1} - TPLT_{q-1}) \times PLAR_y$$

$$\text{else, if } APLT_{q-1} \leq TPLT_{q-1} \text{ then } Dt_{q-1} = 0$$

⁸ Bidders to refer to Payment Mechanism Principles paper on LAS risk

Where:

APLT _{q-1}	Actual Processed Landfill Tonnage in Contract Quarter 'q-1'
TPLT _{q-1}	Target Processed Landfill Tonnage in Contract Quarter 'q-1', calculated in accordance with paragraph 10.7
PLAR _y	Processed Landfill Adjustment Rate [] ⁹ per tonne, indexed according to the provisions of paragraph 19, for Contract Year 'y'

9.8 Target Processed Landfill Tonnage

9.8.1 The Target Processed Landfill Tonnage (TPLT_{q-1}) is calculated in accordance with the following formula:-

$$TPLT_{q-1} = PLPT_y \times PR_{q-1}$$

Where:

PLPT _y	the Processed Landfill Performance Target referred to in Appendix C for Contract Year y
PR _{q-1}	the Process Residues resulting from the Processing of Contract Waste that is Accepted by the Contractor in Contract Quarter 'q-1'

⁹ Unprocessed Landfill Adjustment Rate to be bid back by bidders - refer to Payment Mechanism Principles paper - Partnership needs to understand how biodegradable the Processed material is likely to be.

10. Annual Diversion Reconciliation Payment to Contractor (“ADRP”)

10.1 Annual Diversion Reconciliation Payment to Contractor (“ADRP”)

10.2 The Annual Diversion Reconciliation Payment (ADRP_{y-1}) for Contract Year ‘y-1’ shall be calculated in Contract Month [x]¹⁰ of the following Contract Year ‘y’, in accordance with the following formula:

$$ADRP_{y-1} = ADuRP_{y-1} + ADtRP_{y-1}$$

Where:

ADuRP _{y-1}	the Annual Unprocessed Diversion Performance Deduction Reconciliation Payment in Contract Year ‘y-1’, calculated in accordance with paragraph 10.3
ADtRP _{y-1}	the Annual Processed Diversion Performance Deduction Reconciliation Payment for Contract Year ‘y-1’ calculated in accordance with paragraph [10.6]

10.3 Annual Unprocessed Diversion Performance Deduction Reconciliation Payment (“ADuRP_{y-1}”)

$$ADuRP_{y-1} = AADu_{y-1} - \sum_{q-x} Du_{q-x}$$

Where:

ADuRP _{y-1}	Annual Unprocessed Diversion Performance Deduction Reconciliation Payment in Contract Year (y-1)
AADu _{y-1}	Actual Annual Unprocessed Diversion Performance Deductions in Contract Year (y-1)
Du _{q-x}	the Unprocessed Diversion Performance Deductions in respect of Contract Waste for Contract Quarter, ‘q-x’, calculated in accordance with paragraph [10.4]
q-x	each of the Contract Quarters in Contract Year y-1

10.4 The Actual Annual Unprocessed Diversion Performance Deductions (AADu_{y-1}) will be calculated in accordance with the following formula:-

$$\text{If: } (ATLa_{y-1} + CWNA_{y-1}) > TULT_{y-1}$$

$$\text{then: } AADu_{y-1} = ((ATLa_{y-1} + CWNA_{y-1}) - TULT_{y-1}) \times DDRa_{y-1}$$

$$\text{else, if } (ATLa_{y-1} + CWNA_{y-1}) \leq TULT_{y-1} \text{ then } AADu_{y-1} = 0$$

¹⁰ To be agreed during dialogue

Where:

$ATLa_{y-1}$	Actual Tonnage of Contract Waste Accepted for Processing that is not Processed and is Disposed directly to Landfill in Contract Year 'y-1'
$CWNA_{y-1}$	Tonnage of Contract Waste Not Accepted in Contract Year 'y-1'
$TULT_{y-1}$	Target Unprocessed Landfill Tonnage in Contract Year 'y-1' calculated in accordance with paragraph 10.5
$DDRa_{y-1}$	Unprocessed Diversion Deduction Rate for Contract Waste in Contract Year 'y-1'

Where:

$$DDRa_{y-1} = LGa_{y-1} + LTa_{y-1} + ULAR_{y-1}$$

Where:

LTa_{y-1}	the actual Active Landfill Tax Rate per tonne for Contract Year 'y-1'
LGa_{y-1}	the actual Active Landfill Gate Fee per tonne for Contract Year 'y-1'
$ULAR_{y-1}$	the Unprocessed Landfill Adjustment Rate [] ¹¹ per tonne, indexed according to the provisions in paragraph 19, for Contract Year 'y-1'

10.5 Target Unprocessed Landfill Tonnage

10.5.1 The Target Unprocessed Landfill Tonnage is calculated in accordance with the following formula:-

$$TULT_{y-1} = ULPT_{y-1} \times PCW_{y-1}$$

Where:

$ULPT_{y-1}$	The Unprocessed Landfill Performance Target referred to in Appendix C for Contract Year 'y-1'
PCW_{y-1}	the actual Processable Contract Waste in Contract Year 'y-1'

¹¹ Unprocessed Landfill Adjustment Rate to be bid back by bidders - refer to Payment Mechanism Principles paper

10.6 Annual Processed Diversion Performance Deduction Reconciliation Payment (“ADtRP_{y-1}”)

$$ADtRP_{y-1} = AADt_{y-1} - \sum_{q-x} Dt_{q-x}$$

Where:

ADtRP _{y-1}	Annual Processed Diversion Performance Deduction Reconciliation Payment in Contract Year (y-1)
AADt _{y-1}	Actual Annual Processed Diversion Performance Deductions in Contract Year (y-1)
Dt _{q-x}	the Processed Diversion Performance Deductions in respect of Contract Waste for Contract Quarter, 'q-x', calculated in accordance with paragraph [9.7]
q-x	each of the Contract Quarters in Contract Year y-1

10.6.1 The Actual Annual Processed Diversion Performance Deduction (AADt_{q-1}) will be calculated in accordance with the following formula:-

If: $APLT_{y-1} > TPLT_{y-1}$

then $AADt_{y-1} = (APLT_{y-1} - TPLT_{y-1}) \times PLAR_{y-1}$

else, if $APLT_{y-1} \leq TPLT_{y-1}$ then $AADt_{y-1} = 0$

Where:

APLT _{y-1}	Actual Processed Landfill Tonnage in Contract Year 'y-1'
TPLT _{y-1}	Target Processed Landfill Tonnage in Contract Year 'y-1', calculated in accordance with paragraph 10.7.1
PLAR _{y-1}	Processed Landfill Adjustment Rate [] ¹² per tonne, indexed according to the provisions of paragraph 19, for Contract Year 'y-1'

10.7 Target Processed Landfill Tonnage

10.7.1 The Target Processed Landfill Tonnage (TPLT_{y-1}) is calculated in accordance with the following formula:-

$$TPLT_{y-1} = PLPT_{y-1} \times PR_{y-1}$$

¹² Unprocessed Landfill Adjustment Rate to be bid back by bidders - refer to Payment Mechanism Principles paper

Where:

PLPT _{y-1}	the Processed Landfill Performance Target referred to in Appendix C for Contract Year y-1
PR _{y-1}	the Process Residues resulting from the Treatment of Contract Waste that is Accepted by the Contractor in Contract Year 'y-1'

11. Recycling Deduction

[To be developed - awaiting confirmation of definition of Recycling from WAG - There will be no double deductions if the same event leads to a failure of the Recycling Target and Processed Landfill Performance Target.]

- 11.1 The Recycling Targets will be set as guaranteed percentage levels of Contract Waste to be recycled per Contract Year as set out in Appendix C.
- 11.2 The Recycling Deduction amount will be set at the bid back amount per tonne.
- 11.3 The Recycling Deduction will reflect the variance between the tonnage of Contract Waste Recycled and the Target Recycling Rate multiplied by the tonne of Contract Waste in the relevant Contract Year.
- 11.4 In the event that in any Contract Month the aggregate of the Recycling Deductions are greater than the amount of the monthly Unitary Payment, then the excess will be carried forward and set off against any subsequent monthly payments until the outstanding Recycling Deductions is reduced to nil. The Recycling Deductions in respect of a Contract Year will be subject to an annual overall cap as detailed in section 20 below.

12. Performance Standard Deduction ("PSD")

- 12.1 The Performance Standard Deductions PSD_{m-1} in respect of Contract Month 'm-1' shall be calculated with reference to the Performance Measurement Framework in accordance with the following formula:-

$$PSD_{m-1} = MPD_{m-1} + APD_y$$

Where:

MPD_{m-1}	Monthly Performance Standard Deductions (MPD_{m-1}) calculated in accordance with paragraph 12.4
APD_y	Annual Performance Standard Deduction (APD_y) calculated in accordance with paragraph 12.6

- 12.2 Provided that the Performance Standard Deductions shall not exceed the Performance Standard Deduction Cap in any one Contract Year set out in [12.8] below;

[Drafting Note: to be update as per requirements of Performance Framework once calibration is completed including any drafting for Ratchets]

12.3 Monthly Performance Standard Deductions

- 12.4 Monthly Performance Standard Deductions (MPD_{m-1}) in respect of each Payment Period shall be calculated using the following formula:-

$$MPD_{m-1} = \sum (PSF_n * PDF_n \cdot I_2)$$

Where:

MPD_{m-1} = Monthly Performance Standard Deductions applicable in respect of the relevant Payment Period

PSF_n The number of Performance Standard Failures in Performance Deduction Category 'n'

PDF_n The Performance Deduction per Performance Standard Failure in Performance Deduction Category 'n' in accordance with [Appendix D]

I_2 = the Full Indexation Factor for the relevant Contract Year calculated in accordance with paragraph 19

12.5 Annual Performance Standard Deduction

12.6 An Annual Performance Standard Deduction (APD_y) in respect of each Contract Year shall be calculated using the following formula:-

$$APD_y = \sum (PSF_n * PDF_n I_2)$$

Where:

APD_y = Annual Performance Standard Deduction applicable in respect of the relevant Contract Year

PSF_n The number of Performance Standard Failures in Performance Deduction Category 'n'

PDF_n The Performance Deduction per Performance Standard Failure in Performance Deduction Category 'n' in accordance with [Appendix D]

I₂ = the Full Indexation Factor for the relevant Contract Year calculated in accordance with paragraph 19

12.7 Performance Standard Deductions Cap

12.8 In any Contract Year, the sum of the Performance Standard Deductions (PSD_m) and Commissioning Performance Deduction (CPD_y) in that Contract Year shall not exceed £[bid back] Indexed.

13. Non Acceptance Deduction ("NAD")

[Drafting Note: The level of the Non Acceptance Deduction set out below takes into account the impact of non-acceptance on the following other aspects of the Payment Mechanism:

- a) the Marginal Element of the Unitary Charge is not paid as it is only paid for Contract waste that is Accepted (see 5.6) and,
- b) the Unprocessed Diversion Performance Deduction (see 10.4) is calculated by reference to all Processable Contract Waste regardless of whether it was accepted by the Contractor or not.

As under a "non acceptance" scenario the Partnership is relieved from any obligation to pay the Unitary Charge (both the Base and Marginal elements), the drafting below deducts the Base Element of the Unitary Charge through the Non-Acceptance Base Element Deduction which is the Base Element Rate per tonne multiplied by the Contract Waste tonnage not Accepted.

The drafting also seeks to recover the Partnership's reasonably and properly incurred costs in handling, treating or otherwise disposing of the tonnage of Contract Waste Not Accepted over and above the Unitary Charge which it would have paid had the Contractor accepted the tonnage of Contract Waste Not Accepted].

- 13.1 In the event that Contract Waste is not Accepted by the Contractor the Non Acceptance Deduction will apply.
- 13.2 The Non Acceptance Deduction shall be calculated in accordance with the following formula:-

$$NAD_m = NABED_m + TAn_m + (NADR_y \times CWNA_m)$$

Where:

NAD _m	the Non-Acceptance Deduction in respect of Contract Waste for Contract Month 'm'
NABED _m	The Non-Acceptance Base Element Deduction for Contract Month 'm'
TAn _m	if applicable, the Transport Adjustment for Non Acceptance calculated in accordance with paragraph 18, in Contract Month 'm'
NADR _y	the Non-Acceptance Deduction Rate per tonne calculated in accordance with paragraph 13.4 below

CWNA _m	the Contract Waste tonnage not Accepted in Contract Month 'm'
-------------------	---

Where:

$$\text{NABED}_m = \text{BER}_y \times \text{CWNA}_m$$

BER _y	the applicable Base Element Rate per tonne, for Contract Year 'y'
CWNA _m	the Contract Waste tonnage not Accepted in Contract Month 'm'

Non Acceptance Deduction Rate

13.4 The Non Acceptance Deduction Rate shall be the Authority's (pro rated on a per tonne basis) reasonably and properly incurred costs in handling, treating or otherwise disposing of the tonnage of Contract Waste Not Accepted and shall include (without limitation) the following costs to the extent such costs arise directly as a result of such non-acceptance by the Contractor:

13.4.1 any landfill gate fees (excluding Landfill Tax) paid for the disposal of Contract Waste Not Accepted to landfill;

13.4.2 any diversion costs paid for the diversion of Contract Waste Not Accepted away from landfill;

13.4.3 any Landfill Tax incurred;

13.4.4 any amount paid by the Authority to the Partners;

13.4.5 any reasonable administration costs; and

13.4.6 an amount equal to any Landfill Allowance penalties incurred by the Authority as a result of non-acceptance of Contract Waste by the Contractor where the Authority or any of its Partners incur [Landfill Allowances penalties], the value shall be equal to the cost incurred and paid by the Authority and its Partners divided by the total tonnage on which such cost is incurred, times the number of tonnes of Contract Waste not Accepted by the Contractor];

13.4.7 less the withheld Marginal Element of the Unitary Charge plus Unitary Charge Base Element for Contract Month 'm', in Contract Year 'y' calculated in accordance with paragraph 5.3.

14. Change in Law payment ("CIL")

14.1 In any Contract Year following a Qualifying Change in Law, a calculation to determine the proportion of the additional costs that should be attributed to Third Party Waste needs to be calculated. The payment will be calculated and applied annually, in Contract Month 3 of the following Contract Year 'y'.

14.2 In accordance with [Schedule 19 of the Contract], the Base Case will be adjusted to reflect any additional capital and operating costs and loss of revenue resulting from the Qualifying Change in Law. The Base Element Rate will be adjusted to reflect the full amount of these additional costs, ignoring any Capital Contribution from the Authority, relating to the Qualifying Change in Law.

14.3 The Change in Law (CIL_y) amount payable in Contract Year 'y' to the Authority shall be calculated as follows:

If: $(CLM_y + BCLM_{y-1}) > TWI_y$

then: $CIL_y = TWI_y$ and $BCLM_y = CLM_y + BCLM_{y-1} - TWI_y$

else: $CIL_y = CLM_y + BCLM_{y-1}$ and $BCLM_y = 0$

Where:

CIL _y	the Change in Law amount in Contract Year 'y'
CLM _y	The amount of the Qualifying Change in Law that relates to Third Party Waste in Contract Year 'y'
BCLM _{y-1}	the Change in Law amounts due to the Authority but not paid in Contract Year 'y-1'
TWI _y	the amount of income generated from sourcing Third Party Waste, over and above that included in the Base Case, relating to Contract Year 'y'

Where:

$$CLM_y = TPW_y \times CLR \times I_2$$

TPW _y	the actual tonnage of Third Party Waste treated at the Facility in Contract Year 'y'
CLR	the Change in Law Rate, being the £ per tonne at the Base Date calculated below,
I ₂	Full Indexation for the relevant Contract Year

Where:

$$CLR = IR \div MT$$

IR	the incremental revenue required, relating to the Qualifying Change in Law, for the first full Contract Year impacted, as calculated in accordance with paragraph [14.2] above and deflated at the Full Indexation Rate to April 2010.
XT	being the [Maximum Tonnage - note: if applicable].

Where:

$$TWI_y = (Wla_y - (Wlg_y \times I_2)) \times (1 - SP_{NCW})$$

Where:

Wla _y	the actual amount of income generated by the Contractor from Third Party Waste, as defined in [insert reference], relating to Contract Year 'y'
Wlg _y	the amount of real (unindexed) income guaranteed to be generated in the Base Case by the Contractor from Third Party Waste and the Marginal Tonnage of Processable Contract Waste, as defined in [insert reference], relating to Contract Year 'y'
SP _{NCW}	Share Percentage for Third Party Waste being [per bid back]

- 14.4 To the extent that the provisions of Clause [51.3.1] of the Contract apply, the Authority will receive this amount in full through the Change in Law payment, even if there is a restriction on payments due to the level of TWI_y.
- 14.5 To the extent that a Qualifying Change in Law impacted upon electricity generation revenues or costs then the provisions of this paragraph in [update reference] would apply save that the calculations would apply to excess electricity income and not the sourcing of Third Party Waste.

15. Adjustment and Other Payments (“AOP”)

15.1 Adjustments and Other Payments shall be calculated in accordance with the following formula:

$$AOP_m = AWP_m + TAc_m + SWA_m + [other - tbc]$$

Where:

AWP _m	the Ad-Hoc Waste Payment as calculated in paragraph 16.1, for Contract Month ‘m’
TAc _m	the Transport Adjustment as calculated in paragraph 18, for Contract Month ‘m’
SWA _m	The Substitute Waste Adjustment, as calculated in paragraph [17], for Contract Month ‘m’
LRP	The Land Rental Payment (including stamp duty land tax) as calculated [Drafting Note - to be completed as appropriate]
IP	Changes in Insurance Premia calculated in accordance with Clause [refer to relevant clause in Project Agreement]
EPS	Excess Profit Share ¹³
CP	Change Protocol Abatement [Drafting Note - drafting to be developed]

15.2 **[Drafting Note - The WIDP Change Protocol provides for an “Agreed Abatement” to be applied to the Unitary Charge if the Contractor is late in responding to a Change Notice or in implementing a Change. Therefore the Payment Mechanism should include the necessary provisions for adjusting the Unitary Charge]**

¹³ [DRAFTING NOTE - requirement for Excess Profit Share provisions will depend upon Authority's view of Bidders' Gain Share Mechanism proposals]

16. Ad-Hoc Waste Payment (“AWP”)

16.1 To be developed during dialogue but will be on the basis of:

$$AWP_m = (AWP1_m + AWP2_m + \dots + AWPn_m) + AAWL_m + IAWL_m$$

Where:

AWP_m	Ad-Hoc Waste payment in Contract Month ‘m’
$AWP1_m$	The number of tonnes of Ad-Hoc Waste type 1 in Contract Month, ‘m’, multiplied by the AD-Hoc Waste Rate per tonne for Ad-Hoc Waste type 1
$AWP2_m$	The number of tonnes of Ad-Hoc Waste type 2 in Contract Month, ‘m’, multiplied by the AD-Hoc Waste Rate per tonne for Ad-Hoc Waste type 2
$AWPn_m$	The number of tonnes of Ad-Hoc Waste type n in Contract Month, ‘m’, multiplied by the AD-Hoc Waste Rate per tonne for Ad-Hoc Waste type n
$AAWL_m$	The number of tonnes of Active Ad-Hoc Waste sent to Landfill in Contract Month, ‘m’, multiplied by the cost of Landfill disposal for active waste
$IAWL_m$	The number of tonnes of Inactive Ad-Hoc Waste sent to Landfill in Contract Month, ‘m’, multiplied by the cost of Landfill disposal for Qualifying Materials

17. Substitute Waste Adjustment (“SWA”)

17.1 To be developed during dialogue, but on the basis set out in clause 25 of the Project Agreement.

17.2 Drafting will reflect following key principles:

17.2.1 "Substitute Waste Claw Back": if the Contractor complies with the Substitute Waste provisions and the Substitute Waste Amount payment is not sufficient to leave the Partnership in a "no better no worse" position than it would have been if Contract Waste tonnages had been equal to the "Minimum Tonnage" then, if the Contractor's Third Party Income is above its guaranteed level, the gain share provisions will only apply once the Partnership has been given the benefit of any excess Third Party Income in order to put in a "no better no worse" position.

18. Transport Adjustments (“TA”)

18.1 Entitlement to a Transport Adjustment

18.2 Where Contract Waste is delivered by the Authority¹⁴ to a location other than the Facility, which results in additional costs being incurred by the Authority¹⁵ then the Transport Adjustment (TA) shall apply.

18.3 The Journey Rates will be calculated in advance of each Contract Year, when the locations of the Contingency Delivery Points are known. Where this is not possible the Journey Rates will be calculate as soon as reasonably possible after the Contingency Delivery Points become known.

18.4 Monthly Transport Adjustment for Non-Acceptance of Contract Waste.

18.5 The Transport Adjustment for Non-Acceptance of Contract Waste (TAn) will be the costs associated with dealing with the Non-Acceptance of Contract Waste. When the cost has been determined the Authority shall provide evidence in support of the costs incurred to the Contractor on an open book basis. The Authority shall provide additional information in response to reasonable requests from the Contractor.

18.6 The total Transport Adjustment relating to the Non-Acceptance of Contract Waste (TAn_m) for Contract Month, ‘m’, shall be the aggregate of the total adjustments for journeys that could not be delivered to the Facility or Contingency Delivery Point due to Non-Acceptance.

Where:

$$TAn_m = \sum_j TAn_j$$

Where:

TAn _m	the sum of the Transport Adjustments for Non-Accepted deliveries, as calculated for month ‘m’ and applied as part of the Non Acceptance Deduction calculated in paragraph 13 and paragraph 3 for the Commissioning Period
TAn _j	the Transport Adjustment cost for Non-Acceptance of Contract Waste for journey ‘j’

¹⁴ Authority in this instance includes the Partners and RHWS operators

¹⁵ Authority in this instance includes the Partners and RHWS operators

18.7 Monthly Transport Adjustment for Deliveries of Contract Waste to a Contingency Delivery Point.

18.8 The total Transport Adjustment (TAc_m) for Contract Month, 'm', shall be the aggregate of the total Transport Adjustments for journeys to designated Delivery Point(s) outside the Agreed Limit.

Where:

$$TAc_m = \sum_j TAc_j$$

Where:

TAc _m	the sum of the Transport Adjustments for journeys to designated Contingency Delivery Points as calculated for Month 'm' and applied as part of the "Adjustments and Other Payments" calculated in paragraph 15
TAc _j	the Transport Adjustment cost for the delivery of Contract Waste to a Contingency Delivery Point for journey 'j', calculated using the journey costs in the table below [to be inserted below]

18.9 [Drafting Note: the Partnership will set and agree Journey Costs when the locations of the Contingency Delivery Points are known.]

19. Indexation provisions¹⁶

19.1 Components of the Unitary Payment shall be subject to indexation, as follows:

Component of the Unitary Payment	Index to be used
Commissioning Gate Fee (CGF)	Indexation as appropriate
Base Element Rate (BER)	Base Payment Index
Marginal Element Rate (MER)	Full Indexation
Active Landfill Gate Fee (LGa)	Full Indexation
Performance Standard Deduction (PSD)	Full Indexation
Performance Standard Deduction Cap	Full Indexation
Mileage Adjustment Rate (MAR)	Full Indexation

19.2 Base Payment Index

19.2.1 The Base Payment Index shall be calculated in accordance with the following formula:

$$I_1 = I_2 \times (1 - FP)$$

Where:

I1	Base Payment Index for the relevant Contract Year
I2	Full Indexation for the relevant Contract Year
FP	Fixed Proportion of the Base Payment which shall be [x]%

19.3 Full Indexation Factor

19.4 Where a single index is used

19.4.1 The Full Indexation Factor for Contract Year 'y' represents the increase or decrease in RPIx over the period since the Base Date and shall be calculated as follows:

$$I_2 = \frac{RPIx_{y-1}}{RPIx_{base}}$$

¹⁶ To be developed to reflect Bidder proposals

Where:

I_2	The Full Indexation Factor for the relevant Contract Year
$RPI_{x,y-1}$	The value published for RPI_x ¹⁷ for the [February] immediately preceding Contract Year 'y'
$RPI_{x,base}$	The value published for RPI_x at [date] which shall be the cost base date of the revenues in the Base Date

19.5 The Full Indexation Factor should be applied from the relevant Indexation Date.

19.6 Where more than one index is to be used the Full Indexation factor is calculated based on a weighted average for Contract Year 'y' to represents the increase or decrease in the basket of indices since the Base Date and shall be calculated as follows:

$$I_2 = \frac{BI1_{y-1}}{BI1_{base}} * P1 + \frac{BI2_{y-1}}{BI2_{base}} * P2 + \frac{BI3_{y-1}}{BI3_{base}} * P3$$

Where:

I_2	The Full Indexation Factor for the relevant Contract Year
$BI1_{y-1}$	The value published for [Index 1] for the [February] immediately preceding Contract Year 'y'
$BI1_{base}$	The value published for [Index 1] at [date] which shall be the cost base date of the revenues in the Base Date
$P1$	The proportion of costs subject to [Index 1], which shall be []%
$BI2_{y-1}$	The value published for [Index 2] for the [February] immediately preceding Contract Year 'y'
$BI2_{base}$	The value published for [Index 2] at [date] which shall be Base Date
$P2$	The proportion of costs subject to Index 2, which shall be []%
$BI3_{y-1}$	The value published for [Index 3] for the [February] immediately preceding Contract Year 'y'
$BI3_{base}$	The value published for [Index 3] at [date] which shall be the Base Date
$P3$	The proportion of costs subject to Index 3, which shall be []%

19.7 The Full Indexation Factor should be applied from the relevant Indexation Date.

¹⁷ This may be any other index which the Authority agrees to be a suitable index.

19.8 Forecast Index

19.9 For the purposes of calculating indexation pursuant to this paragraph where the relevant Index has not been published by the February preceding the relevant Indexation Date then:

19.9.1A forecast of the relevant Index shall be used in replacement for the relevant Index;

19.9.2Within [20] Business Days of the Index Publication Date, the Full Indexation Factor for the relevant Contract Year shall be recalculated, using the published index rather than the Forecast Index, and the relevant Indexable Items shall be adjusted for the period from the relevant Indexation Date to the Index Publication Date; and

19.9.3If the amount of the Monthly Payment paid by the Authority in respect of the relevant period is either in excess of or less than the amount which would have been paid had RPIx or the relevant specific Index for the month of [February] in the relevant Review Period been published, an amount equal to the shortfall or excess shall be added to or deducted from the first or succeeding Monthly Payment which follows the recalculation pursuant to this paragraph.

19.10 Changes to Indices Affecting any Indexation Factor

19.11 If there is a material change in the nature or basis of any Index, or if any Index is discontinued, the Parties shall seek to agree upon an alternative to that Index which as closely replicates the relevant Index as is possible, and such consequential changes shall be made to the calculations provided for in this paragraph as are necessary to ensure that all payments to be made pursuant to this Contract shall be the same as if such change had not occurred. Any dispute regarding changes to the Index and/or calculations may be referred by either Party to the Disputes Resolution Procedure.

19.12 If any error or mistake shall occur in the publication for the figures for the relevant Index which have been used at any time in any calculation pursuant to this Schedule which is subsequently duly acknowledged and corrected by the Office of National Statistics or the relevant body with responsibility for the publication of such Index, the calculations in which the incorrect figures were used for the adjustments of any part of the Monthly Unitary Charge shall be recalculated using the correct figures. Any dispute regarding the recalculations pursuant to this paragraph may be referred at the request by either Party to the Disputes Resolution Procedure. Any overpayment or underpayment by either Party to the



other which has occurred as a result of the incorrect figures shall be paid or repaid by the Party to the other within [7] Business Days of the recalculation being agreed or determined (as the case may be).

20. Overall Deduction Cap

- 20.1 There will be an overall annual cap on all deductions in each Contract Year, y
- 20.2 The cap will be equal to the total notional value of the sum of the Monthly Unitary Charges for Contract Year, y, assuming that all Contract Waste is received, including any tonnage that has not been Accepted by the Contractor. For the avoidance of doubt, the annual cap will not include Landfill Payments and/or Adjustment and Other Payments ("AOP"s) such as Transport Adjustments.
- 20.3 In the event that in any Contract Month the aggregate of the Deductions are greater than the amount of the monthly Unitary Charge, then the excess will be carried forward and set off against any subsequent monthly payments until the outstanding Deductions are reduced to nil.

PART C - REPORTING

21. Report and Invoice

21.1 The Authority requires Bidders to develop this Part C during ISDS Dialogue to ensure that the reporting requirements and invoicing requirements are sufficiently detailed to allow the Authority to determine the following:

21.1.1 The Contractor is minimising its requirements for working capital;

21.1.2 The time required to be able to process and have reliable information for both payments and deductions is allowed for, and

21.1.3 The Reporting and Invoicing process is not over complex and burdensome in terms of reconciliations.

21.2 The best solution regarding timing of payments will reflect a balanced structure which takes into account the table below, which gives an indication of the timings of payments.

Payment/Deduction	Payment/Deduction Frequency	Issues
Unitary Charge Base Element	Monthly	Payment known and 1/12th of annual - subject only to adjustments under the Contract (i.e. Indexation).
Unitary Charge Marginal Element	Monthly	Payment only on the basis of actual tonnes of Contract Waste [accepted] by the Contractor above the Minimum Tonnage.
Landfill Payments	Monthly (payment to reflect nature of Landfill contract invoicing arrangements)	In addition to monthly payments there will be quarterly reconciliations to reflect performance against targets.
Transport Adjustment	Monthly ([1 months] in arrears)	Verified contract monitoring information would need to be available, hence the time lag.

Diversion Performance Deductions	[Quarterly with annual reconciliation in arrears] to be discussed with Bidders	Based on annual targets - quarterly estimated payments to ensure there are no significant cash flow implications built up subject only to adjustments under the Contract (i.e. Indexation).
Non Acceptance Deductions	[Monthly with annual reconciliation in arrears] to	Verified contract monitoring information would need to be

	be discussed with Bidders	available, hence the time lag.
Performance Failure Deductions	Monthly ([1 months] in arrears)	Verified Contract monitoring information would need to be available, hence the time lag subject only to adjustments under the Contract (i.e. Indexation).
Third Party Income gain share	Annually in arrears	Although the sharing levels could be significant they will, by definition, be in excess of base case assumptions and therefore will not impact on normal operating cash flows.
Pass Through Costs	To be agreed on basis of frequency of invoices	Currently limited to NNDR only.

[Drafting Note: this is a guidance note and will be removed as it is non-contractual]

PART D - Third Party Waste Protocol

22. Third Party Waste Protocol¹⁸

¹⁸ To reflect agreed positions from Authority's Requirements/ Method Statements

Guaranteed Income

[illegible]

[note: to be completed on a Solution basis]

Appendix B

Calculation of Indexation Base Amount

[Drafting Note: Set out workings for indexation calculations on a Solution specific basis. Extract from Office for National Statistics website, with historic data removed from the dataset.]

Appendix C- Targets

[Drafting Note: Set out bid back guaranteed Targets per Contract Year. Awaiting confirmation of WAG's definition for Recycling to define Recycling Target - requirement for BMW target to be discussed during dialogue]

Tonnage (t) of Contract Waste per Contract Year

Column A	Column B	Column C	Column D	Column E	Column F	Column G
Year	Processed Landfill Performance Target	Unprocessed Landfill Performance Target	BMW Landfill Performance Target	Recycling Target	Unadjusted Minimum Tonnage ¹⁹	Maximum Tonnage ²⁰
	%	%	%	%	Tonnes	Tonnes
1 ²¹	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
2	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
3	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
4	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
5	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
6	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
7	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
8	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
9	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
10	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
11	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
12	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
13	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
14	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
15	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
16	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
17	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
18	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
19	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
20	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
21	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
22	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
23	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
24	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]
25 ²²	[bid back]	[bid back]	[bid back]	[bid back]	[]	[]

Worked Example - **[Drafting Note: to be set out]**

¹⁹ The tonnage figure will be agreed in the Competitive Dialogue)

²⁰ The tonnage figure will be agreed in the Competitive Dialogue

²¹ The first Contract Year may only be part of a year covering the period from the actual Service Commencement Date until the end of that Contract Year.

²² The last Contract Year may only be part of a year covering the period from the start of that Contract Year to the Expiry Date.

Appendix D

Performance Deduction Category

[Note: Set out bid back guaranteed Targets per Contract Year]

Performance Deduction per Performance Standard Failure

Performance Deduction Category	Performance Deduction Per Performance Standard Failure (£)
A	[]
B	[]
C	[]
D	[]
E	[]

[Drafting Note: update to ensure consistency with Performance Framework when calibration completed]

APPENDIX 9 – ISDS FINANCIAL MODELLING INSTRUCTIONS AND ASSUMPTIONS

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1. FINANCIAL MODELLING INSTRUCTIONS AND ASSUMPTIONS

1.1 Introduction

- 1.1.1 To ensure comparability between Detailed Solutions, all Detailed Solutions must be supported by a Financial Model and must be priced on the basis of the assumptions set out in this ISDS. A Detailed Solution that does not include such a Financial Model may not be considered.
- 1.1.2 The information set out in this section is provided to Participants in order to ensure consistency of approach by Participants and to allow the Partnership to evaluate on a like for like basis either where the Partnership would end up with price risk or it is considered that Participants' prices are unlikely to be sufficiently firm.
- 1.1.3 Whilst the Partnership has endeavoured to set the Financial Assumptions on a reasonable basis it is possible that these assumptions could change during the procurement process, not only due to the general passage of time and/or the general economic climate, but also due to a variety of other factors such as (without limitation) UK Government policy, Welsh Assembly Government policy or DEFRA guidance. The Financial Assumptions will be reviewed at each stage of the procurement and Participants will be advised in advance of any change to the Financial Assumptions. Any such changes will be subject always to the principles of transparency, equal treatment and non-discrimination.
- 1.1.4 Participants can request to use a different assumption where they believe a favourable position can be obtained. However this is only permissible with prior agreement of the Partnership and will require the Participant to guarantee the assumption and hence take the associated price risk.
- 1.1.5 Participants will be required to present working drafts of their Financial Models to the Partnership approximately one month prior to the date of submission of Detailed Solutions. The Partnership has decided at this stage to keep the number of financial Bid Forms to a minimum. However, following consideration of the Financial Model working drafts, the Partnership will consider whether it will have comparability and transparency of financial information and reserves the right to request financial information in specific formats as part

of Detailed Solutions. The key aspects of this information, to be provided for each facility separately, are a:

- a) Capital expenditure data sheet which is sufficiently detailed to understand the core components of the cost including any cost headings which are potentially subject to change. For those costs that are quoted in foreign currencies a conversion mechanism which allows the Partnership and its advisers to easily ascertain the impact of changes on relevant exchange rates.
- b) Detailed breakdown of operating costs, overheads, lifecycle and maintenance costs.
- c) Breakdown of transport costs, clearly differentiating between costs of waste deliveries and removal of process outputs.
- d) Waste tonnage/composition input sheet which should be able to be easily cross referenced to the outputs from the Participant's Waste Flow Model, covering both Contract and Third Party Waste.
- e) Costs or guaranteed income for each process product shown separately, with a clear link to the quantities involved.
- f) Commissioning Period spreadsheet which shows on a monthly basis:
 - i the proposed Commissioning Period;
 - ii the tonnage requirements;
 - iii the estimated costs of processing;
 - iv the income assumed
- g) The Financial Model(s) submitted as part of the Detailed Solutions, and updated for the Final Tender, will for the successful Participant, become the Base Case (as defined in the draft Contract). The electronic versions of all Financial Models submitted must be free of error (including circular references and cell errors) and in a state that identically matches the printed versions submitted. The model must be capable of allowing the Partnership the ability to perform sensitivities on the input data. It must also allow the Partnership to use investigative tools within Excel (in particular the auditing functions).

1.1.6 The Financial Model should allow the Partnership to investigate/drill down to:

- a) fully understand the build-up of the costs for each of the service/priced activities which drive the prices as set out in the Payment Mechanism Pro-forma in Appendix 5 Financial Bid Forms;
- b) be able to easily reconcile unit prices and activity (per the Payment Mechanism Pro-forma in Appendix 5 Financial Bid Forms. including indexation back to total cost to the Partnership.

1.1.7 All cash flow, income and expenditure and balance sheet projections should be shown on a semi-annual basis except for during capital works phases, where cash flows should be shown monthly. Participants or Participants' financial advisers must certify that the Participant's Financial Model is arithmetically and mathematically correct and operates in accordance with the stated assumptions.

1.2 Structure and Inputs

1.2.1. The Financial Model should be transparent in all respects. All output data should be traceable with relative ease and all data must be visible on the face of spreadsheets within the Financial Model. Whilst Participants are free to design their own Financial Model, the Partnership will expect to see the following basic structure.

- a) Be compatible with Microsoft Excel 2003;
- b) Data inputs, data outputs and workings areas completely separate;
- c) Hard-coded data found only in the data input areas;
- d) Data output and workings areas are driven entirely by formulae;
- e) Not incorporate a password protection (or the password must be disclosed);
- f) Not contain protected macros;
- g) Be expressed in pounds sterling (thousands) and be able to be presented in both real terms and nominal terms;

- h) Include an assumptions input schedule;
- i) Include clear inputs for both the construction costs and all costs during the Service Period;
- j) Include a clear waste tonnage model identifying the waste flows (which should be the same one, or demonstrably showing the same information, as that requested in waste flow and cost model template provided);
- k) No electronic links to other spreadsheet, except where they have been included as part of Detailed Solutions; and
- l) Any departure from the basic structure should be explicitly identified.

1.3 Output Schedule

1.3.1 The Financial Model must at a minimum produce the following outputs:

- a) A summary showing each different element of the Unitary Payment to be charged each year for the provision of the Services cross referenced to the Payment Mechanism/Bid Form Payment Mechanism Pro-forma headings, as well as a summary of the guaranteed Third Party Income to be earned and off-set against the Unitary Payment;
- b) Net Present Value of the Project Unitary Charge payments including Commissioning Payments, Landfill Payments, Pass Through payments and Interim Services payments (if applicable). Participants should discount on an annual basis using a discount rate of 6.0875% nominal to the month of April 2015. Please refer to the Bid Form - Price Pro-forma Appendix 5 which incorporates the detailed basis for this calculation and which should be incorporated in the Financial Model;
- c) Project/Investment IRR information which should as a minimum incorporate the basis on which the Financial Model will be optimised;
- d) Where appropriate, total construction analysed into internal and external costs, including bid costs and planning costs as separate headings;
- e) Where appropriate, return on equity and subordinated debt, in both real terms and nominal terms;

- f) Where appropriate, debt to equity ratio at the time of Financial Close, at the end of construction and at project completion, defined as total financial debt divided by total shareholders funds;
- g) Where appropriate, Weighted Average Cost of Capital (WACC);
- h) Where appropriate, Annual Debt Service Cover Ratio (ADSCR), Loan Life Cover Ratio (LLCR) and Project Life Cover Ratio (PLCR) for each Contract Year, with minimum and average ratios;
- i) Any other ratios that are considered relevant to the proposed financial structure;
- j) The precise timing of any equity injections and equity bridging loan/Letters of Credit and details of the phasing, if appropriate;
- k) Summary sources and uses of funds for period of construction;
- l) Cash flow projections (6 monthly figures);
- m) Projected profit and loss accounts in accordance with group accounting policies (6 monthly figures);
- n) Balance sheet projections (to included tax, deferred tax and capital allowances using most recent budgetary assumptions (differentiating between up-front capital and life-cycle capital) categorised according to the various types of allowance) (6 monthly projections);
- o) Fixed asset projections where appropriate (to include depreciation split between the various categories of fixed assets);
- p) Cash cascade in order of seniority (which is consistent with any funding term sheets);
- q) Provide a summary financial statements for each year of the Contract Period up to the end of the Contract Period, in accordance with UK Generally Accepted Accounting Principles (UK GAAP) and the International Financial Reporting Standards (IFRS) where applicable;

- r) Graphical analysis where appropriate;
- s) During the evaluation of Detailed Solutions, the Partnership may request Participants to run key sensitivities and provide the results of these sensitivity analyses to the Partnership..

1.4 Financial Model Specification & Assumptions Book

1.4.1 A full description of the assumptions underlying the financial projections must be submitted with the Financial Models and, as a minimum, must address the following:

- a) Instructions to use the Financial Model, including
 - i How to load the model to make it to work correctly and optimised appropriately and free from errors (this includes stating any 'add-ins' and options that must be activated prior to use of the model);
 - ii How changes to the input variables should be entered;
 - iii How to run the model following changes to the input;
 - iv Details of all macros contained in the model;
 - v How to print key reports and the entire model; and
 - vi How the model is optimised, preferably on a keystroke basis.
- b) Applicable milestone dates including, but not limited to the dates of issue of the Readiness Test Certificate and the Acceptance Test Certificate;
- c) Any foreign exchange rates if applicable;
- d) Proportion of the Unitary Charge subject to indexation in each contract year;
- e) Accounting policies including, as a minimum; depreciation by asset type;
- f) Tax assumptions including assumptions relating to:
 - i corporation tax and tax deductible expenditure;

- ii deferred tax;
 - iii capital allowances categorised according to the various types of allowance;
 - iv details of the extent to which group or consortium relief has been reflected in the reduction of the Unitary Charge; and
 - v the assumptions made in relation to VAT liabilities and recoverability.
- g) Working capital requirements;
- h) For each source of finance detailed funding assumptions cross referenced to term sheets supplied or any alternate source of those assumptions including:
- i the drawdown timetable;
 - ii grace period;
 - iii repayment schedules;
 - iv debt maturity profile; and
 - v costs of finance including margins and fees and all success fees; any variations to margins or fees over the life of the loans.
- i) Details of the optimisation criteria used in setting the Unitary Charge (for example target nominal blended equity IRR or Project IRR).

1.5 Key Assumptions/requirements to be used in the Financial Model

1.5.1 Participants should apply the following assumptions in their Financial Model

- a) Price base date should be assumed to be 1 April 2010;
- b) The Financial Model should be in financial years from 1 April to 31 March;
- c) Financial Close is 1st of September 2012;
- d) The Partnership has set out in cell F21 of the Price Proforma the projected waste tonnages that it could make

available for commissioning purposes for the 7 month period between 1st September 2015 and 31st of March 2016. The Commissioning Period Payments modelled should reflect the Bidder's Commissioning Plan (i.e. the modelling of the timing of when Hot Commissioning starts and the amount of tonnes of waste required for Hot Commissioning should be based on the Bidder's Commissioning Plan). The Commissioning Gate Fee should be less than the sum of the Partnership's Landfill Gate Fee and Landfill Tax rate per tonne in 2015/2016;

- e) Planned Service Commencement Date is assumed to be 1st of April 2016 - if the Solution's Planned Service Commencement Date is after 1st of April 2016, then the Participant should model the cost of their Interim Services to the Partnership (if applicable) or, the Partnership shall add its alternative disposal costs and liabilities, for the period up until the Participant's Planned Service Commencement Date;
- f) Service period shall be 25 years from the Participant's Planned Service Commencement Date (whether 1 April 2016 or such later date proposed by the Participant);
- g) The currency in which all prices and rates must be tendered and in which payments under the Contract will be made, shall be pounds sterling;
- h) All prices quoted should be exclusive of VAT;
- i) Participants shall assume a rate of Active Landfill Tax as set out in the table below:

Financial Year	Active Landfill Tax Rate (£)	Financial Year	Active Landfill Tax Rate (£)	Financial Year	Active Landfill Tax Rate (£)
2010/11	48.00	2019/20	90.96	2028/29	114.59
2011/12	56.00	2020/21	93.32	2029/30	117.57
2012/13	64.00	2021/22	95.75	2030/31	120.63
2013/14	72.00	2022/23	98.24	2031/32	123.76
2014/15	80.00	2023/24	100.79	2032/33	126.98
2015/16	82.08	2024/25	103.41	2033/34	130.28
2016/17	84.21	2025/26	106.10	2034/35	133.67
2017/18	86.40	2026/27	108.86	2035/36	137.15
2018/19	88.65	2027/28	111.69		

- j). Participants should assume that the proposed changes to Landfill Tax legislation announced with the April 2010 Budget are adopted.
- k) Inert Landfill Tax should be assumed at £2.50 per tonne as at April 2010 prices and increase at RPIx annually thereafter.
- l) Participants should assume a £200 per tonne fine over each Partner's LAS allowance, during the Contract Period. Participants should assume that LAS targets and policy continue in definitely beyond 2020, with each Partner's LAS allowances remaining at their 2020 level.
- l) Participants should assume that the Project Gwyrdd Partners will be incurring a £200 per tonne fine if they fail the new Local Authority statutory recycling targets in Wales during the Contract Period.

1.6 Wasteflows and Minimum Tonnage

- 1.6.1 For the purposes of developing their Financial Model, Participants should base their proposals around the Partnership's latest forecasts of Contract Waste arisings as provided in this ISDS and a 150,000 tonnes per annum Minimum Tonnage figure which remains fixed in tonnage terms throughout the Contract Period. The Partnership anticipates value for money discussions on its Minimum Tonnage commitment and reserves the right to amend the Minimum Tonnage level during dialogue at its ultimate discretion.

1.7 Currency

- 1.7.1 Where Participants are proposing to source equipment in non-sterling denominations, the assumptions in terms of exchange rate used should be clearly stated in the Financial Model and should match the assumptions provided by the Partnership.
- 1.7.2 Participants should advise the Partnership of any foreign exchange rates upon which its costs are dependent by 1 month prior to ISDS submission. The Partnership will then advise Participants by 1 week later on a consistent basis the appropriate rate to use in Detailed Solutions, which will be based on prevailing rates.

1.8 Tax and VAT

- 1.8.1 All assumptions in respect of taxation should be clearly set out in the Financial Model. A corporation tax rate of 27% (tapering down to 24% in 2014 calendar year) is to be assumed in the Participants' Financial Models. Participants should not assume any changes to the rates of corporation tax, the marginal relief banding and other statutory parameters except in so far as these have been incorporated into the currently applicable Finance Act. Tax losses should either be carried forward and used against future year's profits or be applied as a credit in the year in which they are generated. This latter treatment may be appropriate if the Participant expects to be able to use losses elsewhere within the group.
- 1.8.2 The Partnership assumes that VAT will be charged on the Unitary Charge, and that the Partnership can recover this in the normal way. Accordingly, the Unitary Charge should be shown net of VAT in the Financial Model.
- 1.8.3 The Partnership assumes that the Participant can recover VAT suffered on its cost inputs and that the costs included within the Financial Model should be shown net of VAT.
- 1.8.4 If the timing effect of the VAT process is significant then it should be included within the 'Working Capital Changes' line of the Financial Model. If the Participant does not expect to be able to recover some, or all, of the VAT involved then these specific costs should be shown inclusive of VAT in the Financial Model.

1.9 National Non Domestic Rates NNDR

- 1.9.1 The Payment Mechanism is drafted on the assumption that the NNDR costs are treated as a pass through and to the extent that the Facility is sized for and is predominantly for treatment of the Partnership's waste. The Partnership will pro-rata the business rates payment to the extent that the above requirements are not met however for modelling purposes the full NNDR cost for the Facility should be modelled. Participants should provide an assumed rateable value at April 2010 and the basis of calculation, including the name and address of any reference facility(ies).
- 1.9.2 The expected NNDR cost to the Partnership will then be calculated using a forecasted Uniform Business Rate or multiplier for 2015/16 of 50.1p (based on the 2010/11

multiplier for Wales of 40.9p plus a 25% uplift to 2015/16) , inflating by 2.50% per annum thereafter.

- 1.9.3 Where the Partnership considers that the rateable value supplied is understated, this will be discussed with the Participant, and the Partnership reserves the right to provide alternate assumptions on which the Participant should price.

1.10 Grid Connection

- 1.10.1 Participants should provide their own assessment of grid connection costs and the basis of estimation, including details of work required to be undertaken before costs can be finalised.
- 1.10.2 Where the Partnership considers that the cost supplied is understated, this will be discussed with the Participant, and the Partnership reserves the right to provide alternate assumptions on which the Participant should price.

1.11 Ground Conditions

- 1.11.1 Participants should provide their own assessment of the ground conditions of sites and cost accordingly. Participants should provide an assessment of the worst case cost scenario based upon information that they currently have and identify the work required before costs can be finalised.

1.12 Site Rental Cost for Partnership Sites

- 1.12.1 Participants using the Partnership's Optional Site can assume that they will be provided for at a peppercorn rent.

1.13 Site cost for Participant Sites

- 1.13.1 Participants providing their own or third party sites (whether for the main treatment Facility or for any Transfer Station) should include all costs relating to the rental or purchase of those Sites in their Financial Model where these are cost that will ultimately fall to the Partnership.

1.14 Transfer of Buildings at the end of the Contract Period

- 1.14.1 Any assets that are assumed to transfer to the Partnership at the Expiry Date shall be assumed to have £ nil or nominal residual value.

1.15 Third Party Waste

- 1.15.1 Participants should make their own assumptions regarding any Third Party Waste that it anticipates will be received and provide sufficient information (including any commentary or workings-up) to allow the Partnership to test the robustness of the assumptions made.

1.16 Income Forecasts

- 1.16.1 Participants must provide income projections on a semi-annual basis, in both real and nominal terms (for each period ending 31 March and 30 September), from the Service Commencement Date until the Expiry Date. These should include separately income from the Partnership and from third parties, and should be linked to volume inputs (income from the sale of Recyclable Materials should be separately identified within the models). In addition, the cost of sales of Recyclable Materials, heat and electricity should be separately identified within the models. If the Participant is guaranteeing income arising from the processing of any Third Party Waste, this should be netted off against the Unitary Charge. Where the Participant is not offering a guarantee over income from the processing of Third Party Waste, this should be disclosed separately in the Participants financial submissions and not included within the Unitary Charge.
- 1.16.2 With regards to any Third Party Income included in the Financial Model the following information should be set out in the Financial Model:
- a) the amount of Third Party Income guaranteed;
 - b) the underlying assumptions as regards price and tonnages/unit.
- 1.16.3 If any Third Party Income is subject to any fluctuation or carve out, for example market tested, then the Partnership does not consider this Third Party Income to be guaranteed and the Participant should not include this income in the Financial Model. If Participants do incorporate Third Party Income in the Financial Model that the Partnership considers is not guaranteed it will make a whole system cost adjustment as set out in the Financial Evaluation Methodology.

1.17 Bank Funding Terms

- 1.17.1 The Partnership is aware of the difficulties facing Participants, who are intending to use bank sourced senior debt, to gain commitment and certainty, particularly surrounding detailed terms and conditions of that finance. However, given that

funding, and the terms of that funding, for residual waste treatment facilities can be significantly influenced by the technology, the nature of the proposals and who the Contractors are, the Partnership is still requiring that Participants provide as much certainty as they are able regarding the financing plan, the terms and conditions of that finance and the level of involvement and commitment of funders.

- 1.17.2 In this regard, the Partnership is not proposing standardised terms for Participants to use, but rather requires Participants and their funders to price their Detailed Solutions on funding terms and conditions which they consider they would be able to successfully submit for credit committee approval at the time of submission of Detailed Solutions. Participants/funders should support this with as much evidence and comfort as to the derivation of those terms as possible.
- 1.17.3 Participants should also note that the Partnership reserves the right to require a funding competition to be carried out at Preferred Bidder stage and that the Participant is expected to maintain a competitive process through management of the banking club or other group as appropriate during the ISDS and subsequent stages.

1.18 Funding Schedule & Interest Rates

- 1.18.1 The funding schedule in the Financial Model should detail the proposed funding structure, the expected debt repayment dates (where applicable) and the amount of debt service, in nominal terms only, to be repaid. Draw-down amounts and dates, and (where appropriate) grace periods, repayment schedules and maturities, interest rates and margins, bank arrangement fees and other fees (all of which must be referenced to the term sheets) should also be included (where appropriate).
- 1.18.2 Participants should set out in their Detailed Solutions the interest rate to which their debt funding costs are linked (and will be fixed). The underlying reference swap rate for the Detailed Solutions submission is 4.27% (which includes a 50 basis point buffer).
- 1.18.3 Where the Partnership considers that any aspect of the funding terms or interest rates applied are off market or otherwise understated, these will be discussed with the Participant, and the Partnership reserves the right to provide alternate assumptions on which the Participant should price.

1.19 Indexation

- 1.19.1 Charges shall be indexed on 1st April in each Contract Year by reference to the relevant published index's value in the previous month of February or for the most recent value published preceding the Indexation Date.
- 1.19.2 RPIx should be modelled assuming 2.5% p.a for the whole of the Contract Period.
- 1.19.3 The relevant elements of payments and deductions indexed elements shall be indexed on 1st April in each year of the Contract (the Review Date) by reference to the relevant published index or determined with respect to the month of February most recently preceding the Review Date. For the purposes of the ISDS modelling Indexation should be applied in the following way to reflect the price Base Date assumption of 1 April 2010.
 - a) The period from 1 April 2010 ending 31 March 2011 is to have an inflation factor of 1.000 applied to it.
 - b) The period from 1 April 2011 ending 31 March 2012 is to have an inflation factor of 1.025 applied to it.
 - c) The period from 1 April 2012 ending 31 March 2013 is to have an inflation factor of 1.0506 (1.025^2) applied to it. This sequence is continued for the whole of the Contract Period.
- 1.19.4 Where Participants are proposing other indices these should be discussed with the Partnership as part of the dialogue. The Participant should then confirm to the Partnership any indices it would wish to apply in its Detailed Solution by 1 month prior to submission of Detailed Solutions. The Partnership will then advise Participants by 1 week later on a consistent basis the appropriate rate to use in Detailed Solutions.

1.20 Liquidated Damages

- 1.20.1 In order to allow Participants to calculate the Liquidated Damages £ per week figure for their Solution, the Partnership is providing a spread sheet in Appendix 5 Financial Bid Forms called ""RevContCalc"" which will calculate the annual WAG revenue support grant for their solution based on a Planned Service Commencement Date of 1st April 2016. Participants should divide this figure by 52 to arrive at a £ weekly figure.



1.21 Whole System Cost Transportation Cost Adjustement

- 1.20.1 In order to allow Participants to see how the "Transportation Cost Adjustment" Whole System Cost adjustment is calculated, the Partnership is providing a spread sheet in Appendix 5 Financial Bid Forms called "Transportation Cost Adjustment" which shows the workings behind this calculation.

APPENDIX 10 - ISDS TECHNICAL ASSUMPTIONS

This appendix sets out the key technical assumptions.

1 Basis of Technical Assumptions

- 1.1 The Planned Service Commencement Date is 1st April 2016.
- 1.2 The purpose of the procurement is for the provision of Design, Build, Finance, Operate and Maintain (DBFOM) facility(ies) and/or a merchant waste treatment facility(ies).
- 1.3 The Contractor shall provide a Solution that will comply with all legislation, guidance, policies and good industry practice and pay particular regard to both the Partnership's and the Welsh Assembly Government's Sustainability Policies and targets.
- 1.4 Following their appointment, the Preferred Bidder shall procure full planning permission for its Solution on either the Optional Site and/or its own site. The Preferred Bidder's responsibility shall include (but is not limited to) the cost and time of preparing an EIA and complying with any planning conditions/environmental permits.
- 1.5 Dependant on the Solution proffered some ancillary waste management services such as (but not limited to) transfer stations and bulking and haulage operations may be required.
- 1.6 A WRATE model is required at the ISDS stage to assess the environmental impact of the Participant's solution. Appendix 14 sets out the data and assumptions to be used as the basis for the WRATE model. Participants are required to comply with the instructions in the appendix to ensure that the models are able to be compared and evaluated.

Please note that all information is provided by way of guidance only and without warranty as to future projections. It is for the Participant to satisfy itself on to the level of waste arising and waste composition in the Partnership's Administrative Area.

2 Baseline Waste Arisings

- 2.1 Current waste arisings and recycling/composting performance have been taken from data provided by all five authorities. Data has been provided for the baseline year of 2009/10.
- 2.2 Only municipal waste streams have been included; those streams not considered municipal have not been taken into account and will not form part of the waste arisings for Prosiect Gwyrdd.
- 2.3 The 2009/10 waste arisings for each authority are presented below. These figures have been used as the baseline for the waste modelling.

Caerphilly County Borough Council		Household				Non-household	
Tonnes		Bring banks	Kerbside	Other hhld	CA	Trade	Other non-hhld
Glass		185	3,927			397	
Paper/Card recycling	for	270	8,471	106	1,236	377	72
Paper/Card composting	for						
Cans/metals			908	35	1,097	17	70
Plastics			1,881	106	694		69
Textiles		133					
Green waste			3,616	968	2,630		115
Other org (inc kitchen)			4,111			21	
Timber/wood				317	8,059		297
WEEE					961		
Potentially haz					29		
Misc comb							
Misc non-comb				141	6,570		1,105
Residual							
Residual waste			33,184	4,787	5,438	9,012	904
Total		588	56,638	6,460	26,714	9,824	2,632
Total MSW		102,586t including inerts					
		96,016t excluding CA inerts					

Cardiff County Council	Household				Non-household	
Tonnes	Bring banks	Kerbside	Other hhld	CA	Trade	Other non-hhld
Glass	118	6,971		361	755	
Paper/Card for recycling	230	14,170		1,150	2,697	
Paper/Card for composting						
Cans/metals	14	1,743		1,153		
Plastics	45	3,769		326		
Textiles	292	6		198		
Green waste			315	1,790		2,742
Other org (inc kitchen)		25,532			418	
Timber/wood				3,047		
WEEE				1,335		
Potentially haz				5		
Misc comb			54	0		
Misc non-comb				272		
Residual						
Residual waste		66,958	10,666	19,744	12,860	1,265
Total	699	119,149	11,035	29,381	16,788	4,007
Total MSW	181,059t including inerts					
	180,787t excluding CA inerts					

Monmouthshire County Council	Household				Non-household	
Tonnes	Bring banks	Kerbside	Other hhld	CA	Trade	Other non- hhld
Glass	375	1,735		248	20	
Paper/Card for recycling	246	3,141		592		
Paper/Card for composting						
Cans/metals	42	332		479		
Plastics	129	297		32		
Textiles	106	29		78		
Green waste		8,886		1,650		152
Other org (inc kitchen)						
Timber/wood				0		
WEEE				833		
Potentially haz				91		
Misc comb			63	8		
Misc non-comb				0		
Residual						
Residual waste		17,256	2,031	5,924	2,616	392
Total	899	31,676	2,094	9,934	2,636	543
Total MSW	47,781 t					

Newport City Council	Household				Non-household	
Tonnes	Bring banks	Kerbside	Other hhld	CA	Trade	Other non-hhld
Glass	120	3,540		145	260	
Paper/Card for recycling	125	4,655		300	600	
Paper/Card for composting						
Cans/metals		900		600		
Plastics		1,430		22		
Textiles	80	235		100		
Green waste		7,210		920	1,430	
Other org (inc kitchen)		860				
Timber/wood				1,730		
WEEE				860		
Potentially haz				110		
Misc comb				10		
Misc non-comb				2,200		
Residual						
Residual waste		29,810	4,140	3,360	3,620	700
Total	325	48,640	4,140	10,357	5,910	700
Total MSW	70,072t including inerts 67,872t excluding inerts					

Vale of Glamorgan County Borough Council	Household				Non-household	
Tonnes	Bring banks	Kerbside	Other hhld	CA	Trade	Other non-hhld
Glass	723	1,620		111	405	
Paper/Card for recycling	623	3,657		435	914	
Paper/Card for composting						
Cans/metals	62	363		514	91	
Plastics	221	996		26	249	
Textiles	127			43		
Green waste		4,243		2,155		
Other org (inc kitchen)		780				596
Timber/wood				2,341		
WEEE				1,095		
Potentially haz				70		56
Misc comb						
Misc non-comb	7			3,605		21
Residual						
Residual waste		25,292		5,543	6,323	673
Total	1,763	36,951	0	15,938	7,982	673
Total MSW	63,307t including inerts 59,674t excluding CA inerts					

3 Waste Growth

- 3.1 Waste growth assumptions have been made through consideration of historical waste arisings and future household and population projections for each Partner, as set out below.

The growth rates used in the forecasting are:

Caerphilly	<i>0.5% MSW growth per year up to 2013/14, reducing to 0.25% per year up to 2019/20, 0% thereafter</i>
Cardiff	<i>1.2% MSW growth per year to 2019/20, reducing to 1% per year up to 2024/25, 0% thereafter</i>
Monmouthshire	<i>0.5% MSW growth per year up to 2013/14, increasing 1% to 2016/17, reducing to 0.5% in 2024/25 0% thereafter</i>
Newport	<i>0.5% MSW growth per year to 2012/13, increasing to 1% to 2020/21, 0.5% to 2025 and 0% thereafter</i>
Vale of Glamorgan	<i>0.35% MSW growth per year up to 2014/15, increasing to 0.75% thereafter</i>

- 3.2 Applying these MSW growth rates to each Partner gives a waste growth rate for the Partnership of 0.6% per year in the years following the Planned Service Commencement Date, falling to 0.1% per year towards the Contract Expiry Date.
- 3.3 The total MSW arisings will increase from around 465,000 tpa currently to around 472,000 tpa by 2011, 521,000 tpa in 2025 and 530,000 tpa in 2040.
- 3.4 From the modelling, by 2025 it is estimated that the residual household waste per person will be around 154kg if the Partnership achieve 70% MSW recycling and composting. It is recognised that this does not meet the WAG maximum residual household waste figure of 150kg/person. However, it must be noted that these are forecast estimates based on modelling assumptions and therefore, all key targets should be discussed with WAG, given that it is a requirement of the funding Terms & Conditions.
- 3.5 The projected number of households used in the waste flow modelling has been taken from the Welsh Assembly Government's 'Household Projections for Wales (2006-based): Summary Report', published by Statistics for Wales in 2009.

4 Waste Composition: Data Sources and Assumptions

4.1 To develop the waste flow models each council was sent a questionnaire requesting the following information:

- a) Tonnage data for 2007/08 and 2008/09 and 2009/10;
- b) Information on service enhancements made since 2004;
- c) Proposed service and infrastructure developments;
- d) Waste minimisation campaigns;
- e) How the Partners expect to achieve WAG targets; and
- f) Population growth.

4.2 For the purposes of the waste flow models tonnage data from 2009/10 was used as the baseline. The tonnage data was split into the following categories.

<u>Household Waste</u>		<u>Non-Household Waste</u>	
1)	<i>Bring bank recyclates</i>	1)	<i>Trade recyclates and residual waste</i>
2)	<i>Kerbside recyclates, organics and residual waste</i>	2)	<i>Other non-household waste, including fly-tipping, abandoned vehicles, asbestos and grounds waste</i>
3)	<i>HWRC recyclates, organics and residual waste</i>		
4)	<i>Other household waste, including bulky waste, street cleansing & gully waste</i>		

4.3 To project waste arisings and the potential availability of recyclable material into future years, an understanding of the waste composition is required. Previous work on the waste flows for the Outline Business Case was carried out using compositional data from 2003. This work is now being updated to reflect the latest available waste composition data. Further updates on the composition and waste flows are anticipated as the procurement progresses.

4.4 Waste Works has been commissioned to carry out waste compositional analysis over a 12 month period so as to have a composition for each Partner that reflects seasonal variations in waste production. The ISOS Waste Flow model used only the summer study issued in July 2009.

However, at the time of developing this ISDS waste flow model data reports were available for both the summer (July 2009) and winter (December 2009) studies, as issued in May 2010.

- 4.5 The waste from kerbside collections, CA sites (HWRCs)], trade customers and schools was assessed. For the purposes of the waste flow models schools waste has been classified as non-household and combined the data with the trade waste. CA site loose waste and CA site black bag waste were considered separately in the waste composition analysis; for the purpose of the waste flow model the information was combined.
- 4.6 Utilising the Acorn demographic classification household waste was assessed from different social areas across the five local authorities. Then, to reflect the housing stock in each authority Waste Works developed composition profiles.
- 4.7 There was no compositional data provided for collections relating to “other household waste” and “other non-household waste”. In these cases waste compositional data from the AEA Technology 2003 study was used.

5 Waste Composition Adjustments

- 5.1 The waste composition is an estimate and it should be realised that the assumptions made for future years may not be a true reflection of the composition. Details on the adjustments to the waste composition are contained below.

5.2 Household Waste

- 5.3 Compositional analysis studies were carried out in July and December 2009, the Waste Work report issued in May 2010 presents an average of these two studies. This composition has been amended to reflect tonnage data received from the Partners.

5.4 Other Household Waste

- 5.5 It is assumed that “Other household waste” will include waste streams such as bulk collections and litter. The compositions provided by Waste Works on bulky and litter tonnages have been used to provide an average composition for “Other household waste”. This composition has been amended to reflect tonnage data received from the Partners.

5.6 Civic Amenity Waste

- 5.7 Compositional analysis studies were carried out in July and December 2009, the Waste Work report issued in May 2010 presents an average of these two studies. This composition has been amended to reflect tonnage data received from the Partners.

5.8 Trade Waste

- 5.9 A composition analysis of trade waste was carried out by Waste Works in July 2009 and December 2009, the Waste Work report issued in May 2010 presents an average of these two studies. This composition has been amended to reflect tonnage data received from the Partners.

5.10 Other Non-household Waste

- 5.11 The composition analysis of primary and secondary school waste was carried out by Waste Works in July 2009 and December 2009. For the purposes of the waste flow modelling exercise the two compositions were merged together and considered as "Other Non-household waste". This composition has been amended to reflect tonnage data received from the Partners.

6 Waste Compositions used in Modelling

Caerphilly	% bio-degradable	Household collected	Other household	CA waste (household)	Trade	Other non-household
		Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009
Glass	0%	8.67%	2.78%	0.92%	8.54%	0.27%
Paper/Card	100%	25.75%	10.31%	6.34%	38.33%	14.07%
Cans/metal	0%	3.67%	3.88%	4.80%	4.21%	3.86%
Plastics	0%	11.99%	9.46%	4.61%	14.13%	8.91%
Textiles	50%	2.00%	1.15%	1.00%	1.65%	0.62%
Green Waste	100%	6.53%	17.13%	9.99%	0.83%	4.87%
Kitchen waste	100%	31.49%	9.23%	1.00%	23.97%	11.40%
Timber	100%	0.29%	5.09%	30.70%	1.19%	11.73%
WEEE	0%	0.65%	15.12%	3.70%	0.73%	0.36%
Potentially haz	0%	0.24%	0.07%	1.02%	0.73%	0.09%
Misc comb	50%	6.18%	22.01%	9.40%	3.67%	0.69%
Misc non-comb	0%	1.30%	3.29%	26.41%	1.47%	42.24%
Haz waste						
Fines	50%	1.24%	0.48%	0.12%	0.55%	0.89%
		100.00%	100.00%	100.00%	100.00%	100.00%

Cardiff	% bio-degradable	Household collected	Other household	CA waste (household)	Trade
		Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009
Glass	0%	8.21%	3.62%	4.52%	8.25%
Paper/Card	100%	22.18%	11.31%	8.89%	45.21%
Cans/metal	0%	3.32%	4.35%	6.34%	3.37%
Plastics	0%	11.54%	10.20%	8.37%	11.80%
Textiles	50%	2.59%	1.50%	5.58%	1.38%
Green Waste	100%	15.90%	5.66%	7.97%	0.69%
Kitchen waste	100%	26.26%	12.03%	4.30%	22.33%
Timber	100%	0.96%	0.24%	16.75%	1.00%
WEEE	0%	0.45%	19.72%	6.83%	0.61%
Potentially haz	0%	0.62%	0.10%	0.29%	0.61%
Misc comb	50%	5.56%	29.20%	24.12%	3.06%
Misc non-comb	0%	0.62%	1.45%	4.89%	1.23%

Haz waste					
Fines	50%	1.80%	0.63%	1.14%	0.46%
		100.00%	100.00%	100.00%	100.00%

Monmouthshire	% bio-degradable	Household collected	Other household	CA waste (household)	Trade	Other non-household
		Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009
Glass	0%	7.88%	3.64%	4.64%	5.62%	0.58%
Paper/Card	100%	19.45%	11.35%	17.71%	37.31%	23.79%
Cans/metal	0%	3.77%	4.37%	6.25%	4.37%	2.52%
Plastics	0%	8.62%	10.23%	6.64%	15.28%	13.19%
Textiles	50%	2.16%	1.50%	1.92%	1.79%	1.30%
Green Waste	100%	26.73%	2.81%	17.80%	0.89%	28.97%
Kitchen waste	100%	18.10%	12.08%	11.87%	25.70%	23.93%
Timber	100%	0.27%	0.24%	4.59%	1.29%	0.94%
WEEE	0%	1.14%	19.79%	9.34%	0.79%	0.76%
Potentially haz	0%	0.65%	0.10%	0.97%	0.79%	0.18%
Misc comb	50%	3.87%	31.81%	14.57%	3.97%	1.44%
Misc non-comb	0%	2.51%	1.46%	1.67%	1.59%	0.54%
Haz waste						
Fines	50%	4.85%	0.63%	2.03%	0.60%	1.87%
		100.00%	100.00%	100.00%	100.00%	100.00%

Newport	% bio-degradable	Household collected	Other household	CA waste (household)	Trade	Other non-household
		Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009
Glass	0%	8.69%	3.75%	5.68%	7.40%	0.80%
Paper/Card	100%	21.77%	11.70%	5.85%	33.18%	33.00%
Cans/metal	0%	3.93%	4.50%	7.97%	2.70%	3.50%
Plastics	0%	11.28%	10.55%	7.45%	9.43%	18.30%
Textiles	50%	2.75%	1.55%	3.14%	1.10%	1.80%
Green Waste	100%	15.50%	2.90%	9.24%	24.75%	1.45%
Kitchen waste	100%	23.10%	12.45%	1.36%	15.86%	33.20%
Timber	100%	1.35%	0.25%	22.12%	0.80%	1.30%
WEEE	0%	0.74%	20.40%	8.86%	0.49%	1.05%

Potentially haz	0%	0.55%	0.10%	1.35%	0.49%	0.25%
Misc comb	50%	5.76%	29.70%	4.74%	2.45%	2.00%
Misc non-comb	0%	3.13%	1.50%	22.15%	0.98%	0.75%
Haz waste	0%					
Fines	50%	1.47%	0.65%	0.10%	0.37%	2.60%
		100.00%	100.00%	100.00%	100.00%	100.00%

Vale of Glamorgan	% bio-degradable	Household collected	Other household	CA waste (household)	Trade	Other non-household
		Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009	Waste Works 2009
Glass	0%	8.08%		2.05%	8.96%	0.00%
Paper/Card	100%	22.15%		6.87%	41.24%	0.00%
Cans/metal	0%	3.79%		3.61%	4.63%	0.00%
Plastics	0%	11.05%		6.21%	15.32%	0.00%
Textiles	50%	3.35%		1.70%	1.43%	0.00%
Green Waste	100%	14.02%		14.95%	0.71%	0.00%
Kitchen waste	100%	28.39%		2.57%	20.52%	88.56%
Timber	100%	0.55%		18.90%	1.03%	0.00%
WEEE	0%	0.48%		7.36%	0.63%	0.00%
Potentially haz	0%	0.21%		1.03%	0.63%	8.32%
Misc comb	50%	5.95%		10.47%	3.17%	0.00%
Misc non-comb	0%	0.62%		24.15%	1.27%	3.12%
Haz waste						
Fines	50%	1.37%		0.14%	0.48%	0.00%
		100.00%	0%	100.00%	100.00%	100.00%

7 Existing and Planned Council Services

- 7.1 Consideration has been given to current and future services and campaigns that may increase recycling or cause a reduction in overall waste arisings. New recycling collection services will divert more waste away from landfill and this must be factored into the model. The success of a door knocking campaign is less predictable, but consideration in the waste flow model has also been provided. Future schemes from each Partner are as follows:

Caerphilly Council

Caerphilly Council currently provides:

- *Weekly dry recyclable collection;*
- *A weekly food and green waste collection (implemented October 2009, i.e. following the composition surveys);*
- *Six Household Waste Recycling Centres;*
- *Twenty-five Bring Sites;*
- *Four Waste Advisory Wardens to assist residents in all aspects of waste disposal/minimisation; and*
- *Fortnightly residual waste collection (implemented October 2009, i.e. following the composition surveys).*

With a view to achieving the latter targets Caerphilly Council intends to:

- *Carry out a door stepping campaign; and*
- *Introduce a commercial food waste collection service.*

The assumptions made in the waste flow modelling on the changes to Caerphilly Council's services required to achieve the WAG targets are:

2012-13	<p>Increasing capture rates of recyclable material from kerbside collections.</p> <p>Increasing capture rate of kerbside food waste to approximately 63% participation.</p> <p>Improving captures rates at CA sites to approximately 80%.</p> <p>Improving capture rate of material from trade waste collections to approximately 60%.</p> <p>Introducing food waste scheme for trade waste.</p> <p>Maintaining current recycling schemes for non-household waste.</p>
2015-16	<p>Capturing in excess of 70% of recyclable material from kerbside collections.</p> <p>Maintaining high levels of segregation at CA site.</p> <p>Maintaining recycling schemes for non-household waste.</p>
2019-20	<p>Capturing in excess of 80% of recyclable material from kerbside collections.</p> <p>Improving segregation of waste at CA sites to in excess of 80%.</p> <p>Capturing between 60 to 80% of recyclable material in trade waste collections.</p>

2024-25	Maintaining previous target level of recycling performance and counting IBA towards overall recycling rate.
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Cardiff Council

Cardiff City Council currently provides:

- *Weekly residual waste collection;*
- *A Fortnightly mixed dry recycling collection;*
- *A weekly food and green waste collection;*
- *Twenty-two bring sites; and*
- *Four Household Waste Recycling Centres.*

With a view to achieving the latter targets Cardiff City Council intends to:

- *Add a fifth HWRC;*
- *Maximise participation levels;*
- *Increase segregation at HWRCs;*
- *Implement targets to commercial customers;*
- *Introduce fortnightly residual waste collections; and*
- *Continued monitoring, education and increased enforcement.*

The assumptions made in the waste flow modelling on the changes to Cardiff Council's services required to achieve the WAG targets are:

2012-13	Capturing in excess of 75% of a wide range of recyclable material from kerbside collections. Increasing capture rate of food waste kerbside scheme to approximately 65%. Maintain captures rates at CA sites of approximately 80%. Increase capture rate of material from trade waste collections to 60-80%. Maintaining current recycling schemes for other waste streams.
2015-16	Capturing in excess of 75% of recyclable material from kerbside collections. Increasing capture rates at CA sites to approximately 85%. Further increase in capture rates of materials from trade collections. Maintaining current recycling schemes for other waste streams.
2019-20	Capturing in excess of 80% of recyclable material from kerbside collections. Improving segregation of waste at CA sites to in excess of 85%. Capturing between 80 and 90% of recyclable material in trade waste collections.

	Expand food waste service for trade waste.
2024-25	Maintaining previous target level of recycling performance and counting IBA towards overall recycling rate.

Monmouthshire Council

Monmouthshire Council currently provides:

- *A weekly residual waste collection;*
- *A weekly dry recycling bag collection;*
- *A weekly organics collection;*
- *Twenty-eight Bring sites;*
- *Four Household Waste Recycling Centres and*
- *Recycling of material from bulk collections by means on a Community Partnership.*

With a view achieving the latter targets Monmouthshire Council intends to:

- *Implement a fortnightly residual waste collection;*
- *Expand recycling collection schemes to all households; and*
- *Enhance HWRCs.*

The assumptions made in the waste flow modelling on the changes to Monmouthshire Council's services required to achieve the WAG targets are:

2012-13	Capturing around 70% of a wide range of recyclable material from kerbside collections. Increase captures rates at CA sites to approximately 80%.
2015-16	Capturing in excess of 70% of recyclable material from kerbside collections. Maintain high capture rates at CA sites.
2019-20	Capturing in excess of 90% of recyclable material from kerbside collections. Develop a trade food waste collection service.
2024-25	Maintaining previous target level of recycling performance and counting IBA towards overall recycling rate.

Newport Council

Newport Council currently provides:

- *A weekly recycling collection service;*
- *A fortnightly residual waste collection; and a fortnightly green waste and cardboard collection;*
- *A weekly kitchen waste collection;*
- *Thirteen Bring Sites;*
- *One Household Waste Recycling Centre.*

With a view to achieving the latter targets Newport intends to:

- *Expand food waste collection to 94% of households during 2010;*
- *Improve and expand HWRC; and*
- *Limit bin capacity.*

The assumptions made in the waste flow modelling on the changes to Newport Council's services required to achieve the WAG targets are:

2012-13	Capturing in excess of 60-70% of a wide range of recyclable material from kerbside collections. Increase capture rate of food waste from the kerbside to over 80%. Increase captures rates at CA sites to approximately 80%.
2015-16	Capturing in 70-80% of recyclable material from kerbside collections. Improving material capture rates in trade service to approximately 80%.
2019-20	Capturing in excess of 80% of recyclable material from kerbside collections.
2024-25	Maintaining previous target level of recycling performance and counting IBA towards overall recycling rate.

Vale of Glamorgan Council

- *Vale of Glamorgan Council currently provides: A kerbside sort dry recycling collection;*
- *A weekly food waste collection (to 19,000 households);*
- *A garden waste collection;*
- *Two Household Waste Recycling Centres; and*
- *Forty-six bring sites.*

With a view to achieving the latter targets Vale of Glamorgan intends to:

- *A weekly food waste collection (to be expanded by 20,000 households 2010, remaining households to be included in March 2011);*
- *Develop a new HWRC (by December 2010);*
- *Consider introducing co-mingled kerbside dry recycling collection to increase capture and participation rates;*
- *Provide bins for the recycling of household batteries; and*
- *Increase the size of a HWRC.*

The assumptions made in the waste flow modelling on the changes to the Vale of Glamorgan Council's services required to achieve the WAG targets are:

2012-13	Increasing kerbside capture rates to around 60%. Implementation of kerbside food waste recycling scheme with a capture rate of approximately 70%.
2015-16	Increasing capture rate of kerbside food waste to 80%.
2019-20	Capturing around 60-70% of recyclable material from kerbside collections. Increase capture rate of kerbside food waste to 90%.
2024-25	Maintaining previous target level of recycling performance and counting IBA towards overall recycling rate.

Question Pro-Forma Instructions

PROSIECT GWRYDD RESIDUAL WASTE TREATMENT PROJECT (THE "PROJECT")

All questions relating to completion of the ISDS (ITT) should be submitted in writing using the pro-forma below and sent by email to:

www.etenderwales.bravosolution.co.uk

All clarifications should be clearly marked and include the name, contact details and position of the person making the communication. All requests should be raised through a single point of contact appointed by the Participant.

The Partnership also reserve the right to disseminate information that is materially relevant to all Participants, even if the information has only been requested by one Participant, subject to the duty to protect any Participant's commercial confidence in its Solutions. Should Participants wish to avoid such disclosure (for example, on the basis that the request contains, or the likely response will contain, commercially confidential information or may give another Participant a commercial advantage) the request must be clearly marked "commercially confidential". The Participant must set out the reason or reasons for the request for non-disclosure to other Participants.

If the Partnership considers that (in its absolute discretion), in the interests of open and fair competition, it is unable to respond to the question or request for clarification or further information on a confidential basis, it will inform the Participant who has submitted it. The Participant must as soon as practicable thereafter respond in writing requesting that either the query be withdrawn or treated as not confidential. The Partnership will deem that the question or request for clarification or further information has been withdrawn if the Partnership is not contacted in writing within five (5) Business Days following informing the Participant as referred to above.

The closing date for receipt by the Project Team of questions is **12:00:00 on Wednesday 4th May 2011**.

APPENDIX 11 – ISDS FORMS

[Form 2 Cross Reference Supporting Information]

Participants are reminded that they should **not** refer the Partnership to company literature, brochures or any marketing or promotional material as answers to any of the questions. Such responses will be deemed inadequate and shall not be considered by the partnership.

SOLUTION [1] or [2] delete as appropriate	
Question Reference	Cross Reference
CP 1.1	
CP 1.2	
CP 1.3	
CP 1.4	
CP 1.5	
CP 1.6	
CP 1.7	
CP 1.8	
CP 1.9	
CP 1.10	
CP 1.11	
CP 1.12	
CP 2.1	
CP 2.1 (Cont)	
CP 2.2	
CP 2.3	
CP 2.4	
CP 2.5	
CP 3.1	
CP 3. 2	
CP 3. 3	
CP 3. 4	
CP 3. 5	
CP 3.6	
CP 3.7	
CP 4.1	
CP 4.2	
CP 4.3	
CP 4.4	
CP 4.5	
CP 4.6	
CP 4.7	
CP 4.8	

CP 4.9	
CP 4.10	
CP 4.11	
CP 5.1	
CP 5.2	
CP 5.3	
CP 5.4	
CP 5.5	
CP 5.6	
CP 5.7	
CP 5.8	
CP 5.9	
CP 5.10	
CP 6.1	
CP 7.1	
CP 7.2	
CP 7.3	
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F38	
F39	
7.1.1 (a)	
7.1.1 (b)	
7.1.1 (c)	

Appendix 11 – ISDS FORMS

[Form 3 ISDS Covering Letter]

Note: Participants are to provide a signed ISDS Covering Letter for each Detailed Solution

ISDS COVERING LETTER [HEADED PAPER]

[INSERT DATE]

Dear [Insert]

Detailed Solution Submission – Prosiect Gwyrdd's Waste Treatment Solution for Municipal Waste

Please find enclosed our Detailed Solution submission [1]/[2] for evaluation.

Having examined the Invitation to Submit Detailed Solutions ("ISDS") and the Associated Documents, (including but not limited to any information made available via the Data Room/Portal), we confirm that we have satisfied ourselves as to the accuracy, completeness and suitability of all information required for the purposes of our Detailed Solution submission.

We also confirm that:-

1. the Detailed Solution represents the view of all of the members of the Participant's Team (as defined in the ISDS and the Associated Documents);
2. we have read and understood all the documentation issued by or on behalf of the Partnership including, for the avoidance of doubt, the Important Notices and we confirm that we accept the conditions and undertakings set out therein;
3. all dialogue held during the ISDS stage remains "Subject to Contract" and that the Partnership's selection of Participants to progress to the next stage of the Competitive Dialogue Procedure or any subsequent appointment of us as Preferred Bidder will not constitute a binding agreement or contract until a formal written agreement or agreements have been executed. We agree that the formal agreement shall comprise the finalisation and completion of the Project Agreement in the form to be agreed during the Competitive Dialogue Procedure together with the completion of other requisite documentation. In the event of our selection as Preferred Bidder, we agree to complete all necessary steps and execute all documentation that is agreed as part of the fine-tuning or clarification following submission of our Solution(s); and

4. by submitting our Detailed Solution, we have satisfied ourselves as to the accuracy and completeness of the information we require in order to do so (including that contained within the ISDS and the Associated Documents).

Without limitation to our confirmation above, we undertake to treat the ISDS and all Associated Documents as strictly confidential and agree not to disclose, copy, reproduce or distribute any information contained herein to any other person at any time except for the purpose of preparing, submitting, clarifying our Detailed Solution submission in connection with this Project.

Signatures: The ISDS Covering Letter should be signed by the Participant as set out in sections 3.6.1(a) and (d) (Signature of Documents) of the ISDS Documents and by the Participant's guarantor in accordance with the above two sections.

Signed as a deed: for and on behalf of the Participant: Dated: Position at Participant organisation:	Signed as a deed: for and on behalf of the Participant: Dated: Position at Participant organisation:
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Signed as a deed: for and on behalf of the Participant: Dated: Position at Participant organisation:	Signed as a deed: for and on behalf of the Participant: Dated: Position at Participant organisation:
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Signed as a deed: for and on behalf of the Participant: Dated: Position at Participant organisation:	Signed as a deed: for and on behalf of the Participant: Dated: Position at Participant organisation:
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Guarantor's signature: we confirm that we have reviewed the proposed transaction and are pleased to confirm our support in connection with the Detailed Solution submission and our willingness to provide a guarantee of the Contractor's obligations in connection with this Project.



<p>Signed as a deed: for and on behalf of the Participant: Dated: Position at Participant organisation:</p>	<p>Signed as a deed: for and on behalf of the Participant: Dated: Position at Participant organisation:</p>
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Appendix 11 – ISDS FORMS

[Form 4 Conflict Of Interest Declaration]

Declaration of Conflict of Interest

Please identify any potential conflicts of interest that could arise as a result of your involvement in the procurement for the award of the Contract.

Examples of circumstances in which potential conflicts could arise include (but are not limited to) where:

- any member of the Participant's Team or any person employed or engaged by or otherwise connected with any member of the Participant's Team is carrying out any work for any of the Partners (or the Partnership) or has carried out work for any of the Partners (or the Partnership) in the last six months;
- any member of the Participant's Team is providing works or services for more than one potential Participant in respect of this procurement process.

If no potential conflict of interest is identified, please circle NO.

Where a potential conflict of interest exists it must be declared and details, including your proposed approach to dealing with the conflict of interest, must be provided in the box below.

YES/NO

Signed (1) + _____

Position in Organisation: _____

Signed + _____

Status _____



(for and on behalf of _____)

Date _____

+ A director or the company secretary in the case of a company
A partner in the case of a partnership

Please see section 3.6 of this ISDS for further information in relation to the signature requirements of this form.

APPENDIX 12 – PAYMENT MECHANISM PRINCIPLES PAPER

1. STATUS OF THIS DRAFT

- 1.1 This Payment Mechanism Principles Paper has been developed by the Partnership to provide Participants with an understanding of the principles that the Partnership is proposing for the Payment Mechanism (“PM”).
- 1.2 The Partnership intends to follow the WIDP Residual Waste Procurement Pack guidance as well as SoPC4 principles, as amended by WAG/WPPO, in developing the Payment Mechanism. The Payment Mechanism will be structured to take account of project specifics and will evolve through the dialogue process to take account of the technological solution(s) put forward by each Participant.
- 1.3 Whilst the Partnership will agree the final form of the Payment Mechanism during dialogue with the Participants it does not intend without good reason, to move from the principles set out in this Paper.
- 1.4 This paper is intended to be read in conjunction with the draft Authority’s Requirements (included as Appendix 6 Authority Requirements of the ISDS document) and the Performance Management Framework.
- 1.5 It has been developed on the basis that the Solution delivers a Residual Waste treatment Solution on a design, build, finance, operate and maintain (DBFOM) basis and would need to be reviewed if there were any change to the scope of the Services required.
- 1.6 The principles have been developed assuming that the Partnership's (or their contractor) waste collection vehicles under the Partnership's direction are responsible for transporting Contract Waste to the Delivery Points.

2. STRUCTURE OF THE DOCUMENT

- 2.1 The document has been structured on the basis of:
 - a) setting out core principles of the PM (paragraph 3); then
 - b) setting out key aspects of the PM in more detail (paragraph 4 onwards).

3. PAYMENT MECHANISM PRINCIPLES

3.1 The PM will be developed in accordance with the following principles:

Payments from the Partnership to the Contractor

3.1.1 The Partnership will make payments during the Commissioning Period and Service Period on the following basis:

- a) During the ¹Commissioning Period - Payments will be based on pre-agreed operating costs, capped at the partnership's current landfill disposal costs, to which a partial deduction regime will apply²; and
- b) During the Services Period - Payments will primarily be based on unitary charge principles to which a gain share and full deduction regime will apply.

Basis of Payments during the Commissioning Period

3.1.2 The Commissioning Period is defined as the period between the Readiness Date (i.e. following the issue of the Readiness Test Certificate) and the Service Commencement Date (i.e. following the issue of the Acceptance Test Certificate), during which Contract Waste is required for testing.

3.1.3 During this period the Partnership will:

- a) provide Contract Waste for processing pursuant to the Commissioning Plan; and
- b) pay the Contractor its predefined operating costs for treating the Contract Waste (for the avoidance of doubt this will be a finite period up to the Acceptance Longstop Date after which no further commissioning payments will be made and other contractual provisions will apply).
- c) Non-Acceptance Deductions will be incurred if the Contractor fails to accept any of the Contract Waste delivered by the Partnership during the Commissioning Period.
- d) Mileage Deductions will apply during the Commissioning Period if the Contractor does not

¹ Note to Participants: this means the 'hot' commissioning period during which waste will be delivered for testing and commissioning

² the payment will be no higher than the avoided cost of landfill ; Performance Failure Deductions where applicable will form the basis of the partial deduction regime.



accept Contract Waste at the Delivery Point but at the Contingency Delivery Point.

Basis of Payments during the Service Period

3.1.4 During the Service Period the full PM will apply (i.e. payments and deductions).

3.1.5 Upon commencement of the Service Period the Partnership will pay:

- a) a fixed Unitary Charge Base Element (UCBE) on a "take or pay" basis relating to a stated tonnage of Contract Waste, the "Minimum Tonnage". The Minimum Tonnage is 80% of the projected Contract Waste in the first full Contract Year and remains fixed in tonnage terms throughout the Contract Period.

Note 1: The Partnership is not making any contracted commitment to deliver any minimum level of Contract Waste.

Note 2: The Minimum Tonnage will be reduced by the tonnage of Contract Waste not accepted by the Contractor in the relevant Contract Year.

Note 3: Where the Authority considers Contract Waste in the relevant Contract Year will fall below the Minimum Tonnage for the relevant Contract Year, then the provisions of Clause 25 (Substitute Waste) of the Contract shall apply.

Note 4: Where the Contractor has failed to comply with Clause 25 (Substitute Waste), the Minimum Tonnage referred to shall be reduced by the tonnage of waste the Contractor would have secured if it had complied with its obligations under Clause 25 (Substitute Waste).

- b) a Unitary Charge Marginal Element (UCME).
- c) the Landfill Payments (LP) (tendered landfill gate fee and prevailing landfill tax only up to an agreed maximum level of Contract Waste that may be landfilled (the "Target Unprocessed Landfill Tonnage"). For avoidance of doubt the Contractor shall be responsible for, and will not be recompensed for, any additional Contract Waste (above the Target

Landfill Tonnage) sent to landfill (this will be achieved through the Diversion Performance Deduction mechanism as the landfill payments will be paid as incurred, and it will only be at the year end that it will be known if Actual Landfill Tonnage is greater than Target Landfill Tonnage).

- 3.1.6 The components which make up the Unitary Charge Base Element and Unitary Charge Marginal Element are set out in sections 7 and 8 of this document respectively.

Transport & Mileage Deductions

- 3.1.7 The assumption is that the transport included in the Contract is likely to cover any transport requirements between the Delivery Points and the treatment Facility (where the Delivery Point and treatment Facility are not co-located) and between the treatment Facility and landfill, if relevant, and/or any transport of recyclable materials, process outputs/residues etc from the treatment Facility to end market(s).
- 3.1.8 To ensure value for money the transport cost associated with the disposal of non processed Contract Waste is proposed to be a value tested service (through benchmarking/market testing), and is likely, in the case of transport of unprocessed Contract Waste to landfill be dealt with as part of a package with landfill to ensure maximum value for money. The drafting for Market Testing is dealt with in the Project Agreement.
- 3.1.9 It is also assumed that payment for transport cost will be built into the Base and Marginal Element of the Unitary Charge. The bid and Base Case financial models should reflect the assumed landfill site(s) ("Final Disposal Points"), distance(s) and £/tonne/mile per vehicle type assumptions as appropriate.
- 3.1.10 Where the Contractor does not accept Contract Waste at the Delivery Point but at the Contingency Delivery Point then the Mileage Deduction shall apply.

Contract Targets

Contract Target Regime (Landfill Diversion, Recycling & [Recovery])

- 3.1.11 The Contract Targets relate to the Contractor meeting the Landfill diversion (incorporating BMW diversion), Recycling

and/or, if applicable, recovery Targets. In order to ensure that these requirements are reflected in the PM, the principles set out below will apply.

3.1.12 The Partnership will make:

- (a) Unprocessed Diversion Performance Deductions where the Contractor exceeds the maximum tonnage of unprocessed Contract Waste allowed to be sent to Landfill (the Target Unprocessed Landfill Tonnage) by failing the Unprocessed Landfill Performance Target;
- (b) Processed Diversion Performance Deductions where the Contractor exceeds the maximum tonnage of processed Contract Waste allowed to be sent to Landfill (the Target Processed Landfill Tonnage) by failing the Processed Landfill Performance Target;
- (c) Recycling Failure Deductions where the Contractor fails to meet its guaranteed level of Recycling (Recycling Target).

There will be no double deductions if the same event leads to a failure of the Recycling Target and Processed Landfill Performance Target.

3.1.13 The Unprocessed Diversion Performance Deductions and Processed Diversion Performance Deductions are together know as "Diversion Performance Deductions".

3.1.14 Further detail on Diversion Performance Deductions and Recycling Failure Deductions (collectively, "Contract Target Deductions") are set out in section 12 and section 13 of this PM paper.

3.1.15 Contract Targets will be set out in the Authority's Requirements and are a bid-back item at ISDS.

3.1.16 Recovery (heat and/or electricity) specific performance targets and deductions are not addressed within the PM. However, should a Bidder's Solution result in recovery (heat and/or electricity) deliverables, these will need to be addressed with the Partnership and the principles for recovery (heat and/or electricity) will need to be set out within the PM.

- 3.1.17 There will be an overall cap per Contract Year on Contract Target Deductions equal to the total Unitary Charge payments made by the Partnership to the Contractor in respect of the relevant Contract Year.

Landfill Allowances ("LAS")

- 3.1.18 Under the Landfill Allowance Scheme in Wales ("LAS Wales"), local authorities face a £200 per tonne fine if they fail to meet their BMW diversion targets. Trading is not allowed in Wales. Under the Payment Mechanism's Diversion Performance Deductions, the contractor will incur a LAS related £200 per tonne deduction element if both:

- (a) the Contractor fails its BMW diversion target, and;
- (b) any of the Project Gwyrdd partners incur a LAS fine.

Reward Mechanisms

- 3.1.19 The Partnership is not setting out any specific reward mechanisms at this stage. However, depending on the Participant's approaches to Contract Targets, the Partnership would be happy to discuss possible mechanisms, where it is felt there is strong value for money argument for doing so.

Non Acceptance post Service Commencement

- 3.1.20 [In the event that Contract Waste is not accepted by the Contractor due to Facility Unavailability (i.e. there is no Delivery Point or Contingent Delivery Point) the Partnership will not pay the Unitary Charge Base Element or the Unitary Charge Marginal Element to the Contractor in respect of such Contract Waste and will also apply the Non Acceptance Deduction.]
- 3.1.21 Contract Waste not accepted by the Contractor will be deemed to have been accepted by the Contractor for the purpose of calculating compliance with Contract Targets.
- 3.1.22 The Non Acceptance Deduction will cover additional mileage incurred by the Partnership and Landfill Costs (landfill gate fee, landfill tax) incurred by the Partnership in excess of the withheld Unitary Charge Base Element and Unitary Charge Marginal Element.

- 3.1.23 If the alternative delivery point employed by the Partnership is closer for the collection vehicles than the Delivery Point there shall be no transport mileage adjustment payable by to the Contractor.
- 3.1.24 The Partnership will be entitled to terminate the Project Agreement on the basis of Contractor Default Termination if there is prolonged Non-Acceptance or excessive failure to process waste at the Facility.

Waste Composition

- 3.1.25 The Partnership shall be entitled to deliver Contract Waste to the Contractor notwithstanding its composition.

Minimum Tonnages

- 3.1.26 The Partnership is not making any contracted commitment to deliver any minimum level of Contract Waste, but rather deliver on a take or pay basis, with the assumption that the Unitary Charge Base Element will cover costs and offset guaranteed income.

Maximum Tonnages

- 3.1.27 The Partnership's requirement as set out in the Authority's Requirements is that the Contractor will accept and handle all Contract Waste. However it is recognised that not all Contract Waste may be capable of being processed through a Facility. The issue of maximum tonnage will be dealt with through the dialogue process, and will be a bid back position at the ISDS stage, reflecting matters including the planned size of the Facility and the level of Ad Hoc Waste.

Third Party Income and Gain Share mechanism

- 3.1.28 There are likely to be four categories of activity generating additional revenue which will either be guaranteed and therefore incorporated within the Unitary Charge in the Base Case, or not guaranteed but shared with the Partnership as it arises (and offset against the Unitary Charge by applying the sharing mechanism in the PM)].
- 3.1.29 The categories are as follows:

- a) guaranteed Third Party Waste (it is assumed by the Partnership that such income will be incorporated within the Unitary Charge in the Base Case);

- b) non-guaranteed Third Party Waste (it is assumed by the Partnership that such income will be subject to a gain share mechanism and be offset against the Unitary Charge by applying the sharing mechanism);
- c) guaranteed process products income including heat, recycling and electricity (it is assumed by the Partnership that such income will be included within the Unitary Charge in the Base Case); and
- d) non-guaranteed process products income including heat and electricity (it is assumed by the Partnership that such income will also be subject to gain share and be offset against the Unitary Charge by applying the sharing mechanism).

3.1.30 The Partnership welcomes any proposals from Participants involving specific gain share mechanism to cover both increases in tonnage of process products and increase in unit rate. Key elements of any approach include:

- a) Sharing bands based on performance over guaranteed levels; and
- b) Sharing to be net of additional costs;

Levels of additional income and additional costs need to be derived from verifiable/auditable sources.

3.1.31 Participants should not include any non-guaranteed aspects of Third Party Income in their financial model (for example, if prices are to be benchmarked, then income is not certain and should not be included).

3.1.32 The gain share mechanism will be drafted to allow the Partnership to benefit from the following:

- a) Substitute Waste: if the Contractor complies with the Substitute Waste provisions and the Substitute Waste Amount payment is not sufficient to leave the Partnership in a "no better no worse" position than it would have been if Contract Waste tonnages had been equal to the "Minimum Tonnage" then, if the Contractor's Third Party Income is above its guaranteed level, the gain share provisions will only apply once the Partnership has been given the

benefit of any excess Third Party Income in order to put in a "no better no worse" position.

- b) Qualifying Change in Law "clawback": in any Contract Year following a Qualifying Change In Law, the gain sharing mechanism with the Partnership in relation to Third Party Wastes will need to be adjusted to reflect the proportion of the additional costs which should be attributed to Third Party Wastes.

4. PAYMENT FORMULA

- 4.1 The Unitary Payment will be paid monthly, although not all payments will be relevant in any given month.
- 4.2 The following sets out the proposed payments and deductions which will form the overall Unitary Payment, following full service commencement.

Payments by the Partnership to Contractor

- Base Element of the Unitary Charge.
- Marginal Element of the Unitary Charge.
- Landfill Payment.
- Pass Through payments (NNDR only at this stage - see section 11).

Deductions from the Unitary Charge

- Unprocessed Diversion Performance Deductions;
- Processed Diversion Performance Deductions;
- Recycling Failure Deductions;
- Recovery Failure Deductions (if applicable).
- Performance Failure Deductions (as described in the Performance Framework - see section 14).
- Non Acceptance Deductions.
- Mileage Deductions.

Other payments/adjustments

- Others if relevant around Ad Hoc Waste and transport adjustments.
- Partnership share of any relevant Third Party Income.

5. COMMISSIONING PAYMENTS

- 5.1 The Commissioning Payments will reflect the requirements for Contract Waste up to the Minimum Tonnage to be delivered by the Partnership to allow the Facility to achieve Service Commencement.

5.2 Commissioning Payments will be the net operating costs of the Contractor in this period, as set out in the PM. These will be made up as follows:

- a) Agreed fixed costs of commissioning;
- b) Variable costs of handling Contract Waste (to be applied to the Contract Waste actually received during commissioning) including transport if relevant; and
- c) Landfill costs, if relevant.

5.3 Commissioning Payments will also have the following characteristics:

- a) No element of profit to be built in;
- b) The PM will only apply Performance Deductions relating to those Performance Standards stated in the draft Authority's Requirement to apply during the Commissioning Period and Non Acceptance Deductions and Mileage Deductions - (i.e. it will not apply Contract Target Deductions);
- c) The Deductions during this period will be subject to a separate cap set out in the Contract;
- d) Commissioning Payments should be no greater than the avoided cost to the Partnership of alternative landfill.

6. TIMING OF PAYMENTS

6.1 The best solution regarding timing of payments will reflect a balanced structure which takes into account:

- a) The Contractor minimising its requirements for working capital;
- b) The time required to be able to process and have reliable information for both payments and deductions, and

- c) The complexity of the payment system; i.e. it should not be over complex and burdensome in terms of reconciliations

6.2 The following table gives an indication of the timings of payments:

Payment/Deduction	Payment/Deduction Frequency	Issues
Unitary Charge Base Element	Monthly (paid in the month for that month)	Payment known and 1/12th of annual - subject only to adjustments under the Contract (i.e. Indexation).
Unitary Charge Marginal Element	Monthly (one month in arrears)	Payment only on the basis of actual tonnes of Contract Waste delivered by the Partnership above the Minimum Tonnage.
Landfill Payments	[Monthly] (subject to the terms of the landfill contract invoicing arrangements)	In addition to monthly payments there may be quarterly reconciliations to reflect performance against targets (to be discussed during dialogue).
Mileage Deductions	Monthly ([2 months] in arrears)	Verified contract monitoring information would need to be available, hence the time lag.

Contract Target Deductions	[Quarterly with annual reconciliation in arrears] to be discussed with Participants	Based on annual targets - quarterly estimated payments to ensure there are no significant cashflow implications built up subject only to adjustments under the Contract (i.e. Indexation).
Non Acceptance Deductions	[Monthly with annual reconciliation in arrears] to be discussed with Participants	Verified contract monitoring information would need to be available, hence the time lag.
Performance Failure Deductions	Monthly ([2 months] in arrears)	Verified Contract monitoring information would need to be available, hence the time lag subject only to adjustments under the Contract (i.e. Indexation).
Third Party Income gain share	Annually in arrears	Although the sharing levels could be significant they will, by definition, be in excess of Base Case assumptions and therefore will not impact on normal

		operating cashflows.
Pass Throughs	To be agreed on basis of frequency of invoices	Currently limited to Business Rates only.

7. UNITARY CHARGE BASE ELEMENT (UCBE)

7.1 This will be a figure stated as a lump sum per annum.

7.2 The UCBE is intended to cover:

- a) Agreed debt servicing costs;
- b) Planned "fixed" maintenance costs of the facilities i.e. costs which are incurred regardless of whether or not the plant is operational;
- c) Demonstrable fixed costs of ensuring 'availability' of the Facilities including any fixed transport costs (such as vehicle leases) and fixed costs relating to end markets, if applicable (such as (where agreed by the Partnership) any "take or pay" Off-Take Contracts);
- d) A proportion of the overall blended return calculated in the Financial Model return for the Contractor's shareholders (equity and subordinated debt);
- e) the variable operating costs of the Project for the assumed 'take or pay' tonnage threshold; but
- f) minus guaranteed income from Third Party Waste and process product income.

8. UNITARY CHARGE MARGINAL ELEMENT (UCME)

8.1 To be calculated on a £/tonne basis, but with the potential for different rates to apply to different tonnage bands.

8.2 The UCME will be payable on every tonne of Contract Waste delivered for processing in excess of the Minimum Tonnage. Contract Waste which is not processed and is sent to Landfill is paid for via the Landfill Payment (see section 9 below).

8.3 The Unitary Charge Marginal Element is to cover:

- a) The additional marginal costs of receiving, handling and processing each tonne of Contract Waste above the assumed Minimum Tonnage. This will apply to all tonnages of Contract Waste above the Minimum Tonnage (excluding Contract Waste which is not processed and Ad Hoc Waste) delivered;
- b) Any transport costs not built into the Base Element (adjustments to be dealt with separately); and
- c) The balancing proportion of the overall blended equity investment return not modelled to be received through UCBE;
- d) The net effect of any Third Party Income related to the marginal tonnage

9. LANDFILL PAYMENTS

9.1 The Landfill Payments will comprise:

- a) landfill disposal costs (which will be bid by the Contractor at the ISDS Stage and will be subject only to indexation and/or benchmarking and market testing regime as agreed); and
- b) landfill tax at the prevailing rate,

up to the Target Unprocessed Landfill Tonnage only.

9.2 As the Partnership will reimburse landfill costs through the Monthly payments under the PM as incurred, the Landfill Payments will be made on all unprocessed tonnage verified as landfilled, and then be recovered through the Diversion Deduction mechanism if appropriate.

9.3 If applicable, these landfill payments will not incorporate the disposal of hazardous fly-ash from EfW or similar processes, as this should be incorporated into the Contractor's costs recovered through the Unitary Charge Base Element and/or Unitary Charge Marginal Element.

10. AD HOC WASTE PAYMENTS

- 10.1 In the event that the Contractor is required to handle of an item of Ad Hoc Waste, Contractor will be reimbursed for the costs relating to such handling according to a pre-agreed schedule of rates.
- 10.2 At ISDS, Participants will be asked to price a schedule of rates (or similar 'cost plus' arrangement), transparently showing the direct costs associated with handling of Ad Hoc Waste and any overhead costs/profit element. The Contractor will be required to market test the schedule of rates periodically to ensure that value for money is demonstrated.

11. BUSINESS RATES

- 11.1 Business Rates will be a pass through payment, to the extent that the Facility is sized for and is predominantly for treatment of the Partnership's waste. The Partnership will pro-rata the business rates payment to the extent that the above requirements are not met.

12. DIVERSION PERFORMANCE DEDUCTIONS

- 12.1 The Unprocessed Landfill Performance Target and Processed Landfill Performance Target will be set as guaranteed percentage levels of Contract Waste to be diverted from landfill, and hence a maximum amount of unprocessed and processed Contract Waste to be landfilled in a Contract Year.
- 12.2 The Unprocessed Diversion Performance Deductions and Processed Diversion Performance Deductions are together know as "Diversion Performance Deductions".
- 12.3 The Unprocessed and Processed Diversion Performance Deductions will apply independently on a 'per tonne' basis for each tonne of waste landfilled above the guaranteed level.
- 12.4 The Unprocessed Diversion Performance Deductions will comprise the prevailing landfill gate fee, landfill tax at the prevailing rate and LAS costs (in line with the approach set out in 3.1.17).
- 12.5 In the event that in any Contract Month the aggregate of the Diversion Performance Deductions are greater than the amount of the monthly Unitary Payment, then the excess will be carried forward and set off against any subsequent monthly payments until the outstanding Diversion Performance Deductions is reduced

to nil. The Diversion Performance Deductions in respect of a Contract Year will be subject to an annual overall cap as detailed in section 15 below.

13. RECYCLING FAILURE DEDUCTIONS

- 13.1 The Recycling targets will be set as guaranteed percentage levels of Contract Waste to be recycled.
- 13.2 The deduction amount will be set at the bid back amount per tonne.
- 13.3 In the event that in any Contract Month the aggregate of the Recycling Failure Deductions are greater than the amount of the monthly Unitary Payment, then the excess will be carried forward and set off against any subsequent monthly payments until the outstanding Recycling Failure Deductions is reduced to nil. The Recycling Failure Deductions in respect of a Contract Year will be subject to an annual overall cap as detailed in section 15 below.

14. PERFORMANCE FAILURE DEDUCTIONS

- 14.1 These will reflect performance against Performance Standards set out in the Performance Framework.
- 14.2 The number of Performance Standard Failures is established in the Performance Framework and the Performance Failure Deductions is calculated using the £ Performance Deduction per Performance Deduction Category as set out in the Appendix to the Payment Mechanism indexed over time.
- 14.3 Performance Failure Deductions will be subject to an annual capset at the value of the annual operating element of the Contractor's costs. It is, for the avoidance of doubt, not intended to include the debt service costs and lifecycle costs.

15. OVERALL ANNUAL DEDUCTIONS CAP

- 15.1 In addition to the specific monthly cashflow caps relating to Contract Target Deductions, Non Acceptance Deductions and Performance Failure Deductions, there will be an overall annual cap on all deductions.
- 15.2 The cap will be equal to the value of the sum of the annual Unitary Charge UCBE + UCME in respect of a Contract Year. For the

avoidance of doubt, the annual cap will not include landfill payments and/or transport costs adjustments.

16. INDEXATION

16.1 The indexation of costs is principally an issue for the Contractor.

16.2 In respect of the payments and deductions these principally should be based around RPIx. However, it needs to reflect value for money of incorporating alternate 'basket of indices' for labour, fuel etc..

16.3 Due to the differing nature of the payments and rewards a variety of indexation provisions will need to be applied.

16.4 The table below sets out the Partnership's expectations with respect to the indexation structure:

Payment/Deduction	Indexation Mechanism
Unitary Charge Base Element	Partial RPIx to reflect the split of fixed debt related costs. Should be no other indices applying.
Unitary Charge Marginal Element	Basket of Indices, to be agreed. Unlikely to be any element of 'non-indexation' as debt costs covered in fixed element of the Unitary Charge.
Landfill Payment	To reflect landfill contract indexation provisions. Landfill tax will be at the relevant prevailing rate.
NNDR	n/a as Pass Through.
Contract Targets Deductions	N/A - discuss with bidders during dialogue idea of £200 per tonne LAS related deduction being indexed by RPIx beyond 2020.
Non Acceptance Deductions	N/A as will be based on actual costs incurred over and above Unitary Charge at the time.
Mileage Deductions	Linked to indexation of Partnership's transportation costs.
Performance Failure Deductions	Likely to be linked to UCME indexation.
Ad Hoc Waste payments	To reflect the agreed basis for determining the payment.

Prosiect Gwyrdd ISDS Technical Solution Bid Pro-forma

The purpose of this Schedule is to provide a standard format for bidders to provide details of the technical aspects of the proposed solution. This is intended to provide key information to Prosiect Gwyrdd on the performance of the waste treatment technology, energy generation and efficiency of the solution and allow comparisons between each of the proposed solutions. Bidders shall complete all tables listed in the following worksheets:

- 1) Treatment Technology and Site
- 2) Energy Outputs
- 3a) WFD Annex 2 Gross
- 3b) WFD Annex 2 Net
- 4a) Efficiency Calculation Gross
- 4b) Efficiency Calculation Net

atment Facilities

											Net MWh/yr per annum	Gross MWh/yr per annum	Net MWh/yr	Gross MWh/yr	Design Thermal Capacity MWh/yr	Range CV MJ/Kg	Design CV MJ/Kg	Plant Availability Nominal %	Number of Treatment Lines	Working Capacity (tpa)	Design Capacity (tpa)	Technology Supplier	Site Location
(please specify type)																							

reatment Facilities

											Net MWe	Gross MWe per annum	Net Plant Efficiency %
	Site Location	Technology Supplier	Design Capacity (tpa)	Working Capacity (tpa)	Number of Treatment Lines	Plant Availability Nominal %	Annual Biogas generation (m³)	Gross MWe	Net MWe	Gross MWe per annum			
(please specify type)													

Treatment Facilities

	Site Location	Technology Supplier	Design Capacity (tpa)	Working Capacity (tpa)	Number of Treatment Lines	Plant Availability Nominal %	Recyclate Materials Captured	Capture efficiency per material %	Capture efficiency per material (tonnes of contract waste)	Guaranteed capture efficiency per material %	Guaranteed capture efficiency per material (tonnes of contract waste)
(please specify type)											

to Bidders

a required to complete Yellow shaded cells
Facilities Bidders shall complete as many tables as appropriate to their solution.

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orted (MWh per annum)	0	0	0	0	0
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icity that qualify for ROC					
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(MJ/Kg) of SRF					
or 3rd Party Facility (Tpa)					
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only from Anaerobic Digestion					
(MJ/m³) of Gas					
on AD Facility (m²)					
Energy Gas (MJ)					
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ality for ROC, RHI					

adders
 used to complete Yellow shaded cells
 used to complete the above table individually for each relevant facility.
 used, depending on their solution, to complete the appropriate energy generation section i.e electricity only, CHP, SRF and/or AD. For each element of the technology that produces electricity only, CHP or fuel only, used to provide supporting evidence / calculations to demonstrate / support eligibility for ROC.

The Waste Framework Directive Annex 2 requires that for Thermal Treatment Facilities to be classified as Recovery Operation they must meet energy efficiency criteria. The calculation below is based on the Formula provided in Annex 2 and will be applied to determine if a EFW facility can be classed as a Recovery Operation.

INPUT DATA	UNITS	VARIABLE
Plant Throughput	Te/annum	180,000
Calorific Value (Net)	MJ/Kg	9.00
Gross Efficiency	%	25.0%
Plant Availability	%	85.0%
No of Starts per Annum	-	5
Calorific Value of Start-up Fuel	MJ/kg	53.75
Average Load During Start-up (% of MCR)	%	30%
Duration of Start-up	Hours	5
Parasitic Load (as % of Gross Electrical Output)	%	4%
Heat / Electricity Offset ("Z" factor)	-	5.0
Estimated Heat Offtake	MWth	0.0

OUTPUT DATA	UNITS	VALUE
Gross Thermal Output	MWth	60.44
Gross Electrical Output	MW	15.11
Running Hours per Annum	hrs	7446
Energy Imported from Grid (Start-up)	MJ	54,392
Process / District Heating Offtake	MWth	0.0

EU RECOVERY CRITERION

ENERGY EFFICIENCY	UNITS	VALUE
Annual Energy Produced (Ep)	GJ/annum	1,053,000
Annual Energy Input (Ef)	GJ/annum	1,632
Annual Energy in Treated Waste (Ew)	GJ/annum	1,620,000
Annual Energy Imported excl Ew and Ef (Ei)	GJ/annum	54

$$\text{Energy Efficiency} = (Ep - (Ef+Ei)) / (0.97 \times (Ew + Ef))$$

$$= \underline{\underline{0.668}}$$

Note: (EP) Electricity * 2.6 and Heat * 1.1 as per WDF Annexe 2 Recovery Operations
Facility Classed as Recovery if Energy Efficiency is equal to or above 0.65

Assumed Start-up Fuels with Properties as Follows:	Gross CV	Density	Gross CV
	(kJ/litre)	(kg/m3)	(MJ/kg)
Diesel / Gas Oil	38,000	834	45.56
	(kJ/m3)	(kg/m3)	(MJ/kg)
Natural Gas	43,000	0.8	53.75

Instructions to Bidders

- Bidders are requested to insert thermal treatment facility performance data in the yellow shaded cells above

The Waste Framework Directive Annex 2 requires that for Thermal Treatment Facilities to be classified as Recovery Operation they must meet energy efficiency criteria. The calculation below is based on the Formula provided in Annex 2 and will be applied to determine if an EfW facility can be classed as a Recovery Operation.

INPUT DATA	UNITS	VARIABLE
Plant Throughput	Te/annum	180,000
Calorific Value (Net)	MJ/Kg	9.00
Net Efficiency	%	20.0%
Plant Availability	%	85.0%
No of Starts per Annum	-	5
Calorific Value of Start-up Fuel	MJ/kg	53.75
Average Load During Start-up (% of MCR)	%	30%
Duration of Start-up	Hours	5
Parasitic Load (as % of Gross Electrical Output)	%	4%
Heat / Electricity Offset ("Z" factor)	-	5.0
Estimated Heat Offtake	MWth	0.0

OUTPUT DATA	UNITS	VALUE
Gross Thermal Output	MWth	60.44
Gross Electrical Output	MW	12.09
Running Hours per Annum	hrs	7446
Energy Imported from Grid (Start-up)	MJ	43,513
Process / District Heating Offtake	MWth	0.0

EU RECOVERY CRITERION

ENERGY EFFICIENCY	UNITS	VALUE
Annual Energy Produced (Ep)	GJ/annum	842,400
Annual Energy Input (Ef)	GJ/annum	1,632
Annual Energy in Treated Waste (Ew)	GJ/annum	1,620,000
Annual Energy Imported excl Ew and Ef (Ei)	GJ/annum	44

$$\text{Energy Efficiency} = (E_p - (E_f + E_i)) / (0.97 \times (E_w + E_f))$$

$$= \underline{\underline{0.534}}$$

Note: (EP) Electricity * 2.6 and Heat * 1.1 as per WDF Annexe 2 Recovery Operations
Facility Classed as Recovery if Energy Efficiency is equal to or above 0.65

Assumed Start-up Fuels with Properties as Follows:	Gross CV	Density	Gross CV
	(kJ/litre)	(kg/m3)	(MJ/kg)
Diesel / Gas Oil	38,000	834	45.56
	(kJ/m3)	(kg/m3)	(MJ/kg)
Natural Gas	43,000	0.8	53.75

Instructions to Bidders

- Bidders are requested to insert thermal treatment facility performance data in the yellow shaded cells above

The purpose of this calculation is to provide a measure of the Gross energy efficiency of any proposed energy recovery technology

Gross Energy Recovery Efficiency =

(Electricity Produced + Heat Produced)

Energy in Waste

INPUT DATA	GJ/annum
Electricity Produced	
Heat Produced	
Energy in Waste	

Gross Energy Recovery Efficiency =

#DIV/0!

Instructions to Bidders

1. Bidders are requested to insert energy import and export data in the yellow shaded cells above
2. Bidders are requested to use Net CV data for all calculations
3. Bidders are requested to complete an individual calculation for each treatment facility that will recovery energy

ISDS Technical Pro-forma

5b) NET ENERGY EFFICIENCY CALCULATION

Bidder Name #REF!

The purpose of this calculation is to provide a measure of the Net energy efficiency of any proposed energy recovery technology

Net Energy Recovery Efficiency =

(Energy in Waste + Energy in Support Fuel + Energy in Heat imported + Energy in Electricity imported)

(Electricity Exported + Heat Exported)

INPUT DATA		GJ/annum
Electricity Exported		0
Heat Exported		0
Energy in Waste		0
Energy in Support Fuel		0
Energy in Heat imported		0
Energy in Electricity imported		0

Net Energy Recovery Efficiency =

#DIV/0!

Instructions to Bidders

1. Bidders are requested to insert energy import and export data in the yellow shaded cells above
2. Bidders are requested to use Net CV data for all calculations
3. Bidders are requested to complete an individual calculation for each treatment facility that will recovery energy



APPENDIX 14 – INSTRUCTIONS TO PARTICIPANTS: WRATE MODEL

Prosiect Gwyrdd

Procurement of:
A Waste Treatment Solution for Municipal Waste

ISDS – Instructions to Bidders for WRATE Modelling

v 2.0

5th July 2011



DOCUMENT HISTORY

Document Control

Title	Prosiect Gwyrdd - Procurement of Waste Treatment Services for Residual Municipal Waste - ISDS - Instructions to Bidders for WRATE Modelling
PG Author	Jacobs
Owner	Project Board



1. INTRODUCTION

1.1 Introduction

- 1.1.1 This document presents instructions to enable Bidders to complete a sustainability assessment using the Environment Agency's Waste and Resources Assessment Tool for the Environment (WRATE) for their Detailed Solution relating to the ISDS stage of Prosiect Gwyrdd procurement contract for Municipal Waster.
- 1.1.2 Bidders are required to comply with all of the instructions contained in this document.
- 1.1.3 Output from the Bidder's WRATE models will be used as part of the ISDS bid evaluation process.
- 1.1.4 It is the Bidder's responsibility to ensure that their WRATE model fairly and accurately represents their solution, for example treatment technology performance, energy balance, recycling performance and recycling and disposal markets. The Partnership will review submissions to ensure that data and assumptions are reasonable and consistent with the information provided elsewhere in the ISDS submission.

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- 1.2.1 The Environment Agency released an updated version of WRATE (version 2) on the 14th April 2010, and all completed scenarios shall be submitted as project files exported from WRATE version 2. Any scenarios exported from version 1 will not be accepted. This approach ensures that WRATE assessments are undertaken and evaluated on as equal a basis as possible.
- 1.2.2 WRATE version 2 includes amendments to background data and the user interface. The updated model also includes new processes, most notably a 'flexible' EfW process that incorporates pre-defined assumptions such as metals recovery rates and ash production, and a new ability for users to specify gross efficiency within a pre-defined range. Please note that use of this process will require robust justification and peer review.
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2.1 Instruction for bidders

2.1.1 Bidders are required to provide a WRATE model for their proposed waste management solution in order that the environmental impact of the solution relative to The Partnerships defined baseline can be assessed.

2.2 Baseline

2.2.1 A baseline scenario of the situation for The Partnership area for the year 2019/20 has been developed in WRATE v2. This model has been exported from the software and is provided along with this instruction.

2.2.2 In the baseline model it is assumed that each of the five authorities delivers to a delivery point within their boundaries, which for the purpose of the baseline model is assumed to be the point for onward delivery to landfill. These will also be the points of delivery for waste to the bidder. The table below identifies the delivery/acceptance points for the 5 Authorities waste:

Authority	Tonnage	Delivery/Acceptance Point Location
Caerphilly	32,984	Full Moon Civic Amenity/Waste Transfer Station, NP11 7BD
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2.2.3 In the baseline model waste is assumed to be transported from the delivery/acceptance points identified in the table in Section 2.2.2, via RCV, to landfill. The table below identifies the location of the landfill used by each authority which has been assumed in the baseline model:

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- 2.2.4 The waste stream is made up of 100% MSW from the five Authority areas. The combined composition of the overall waste stream has been calculated using a Waste Flow Model developed by Jacobs.
- 2.2.5 The collection and transportation of MSW to the delivery/acceptance points are not relevant for the purposes of ISDS submissions and have not been modelled.
- 2.2.6 Figure 1 shows the baseline scenario. This is the scenario against which all proposed solutions will be compared and is for reference purposes.

**Project Gwyrdd - ISDS - Baseline
Landfill**

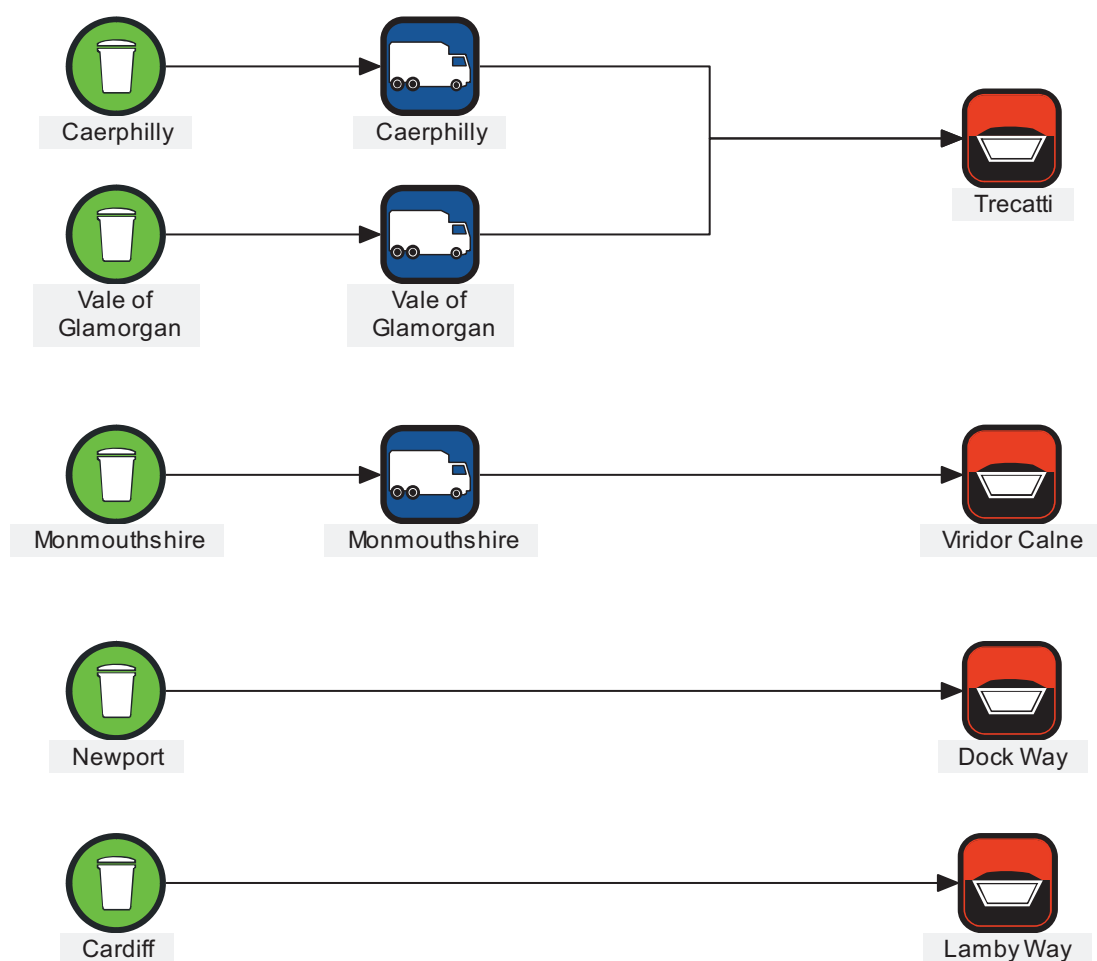


Figure 1: Baseline Scenario – Landfill

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2.3.1 All pre-defined assumptions outlined in this section are fixed and shall not be changed. In order that the assumptions remain consistent, Bidders shall duplicate the baseline scenario provided and use this as the basis for a WRATE assessment to represent their solution.

- 2.3.2 The transport and landfill processes included in the baseline scenario are not fixed and should be amended to reflect the bidders proposals.

Waste Tonnage

- 2.3.3 Waste tonnage information has already been entered into the WRATE model. This is derived from the waste flow modelling and is based upon the predicted waste arising for the project year 2019/20. Where bidders are proposing to include non contract waste then this must not be included in the WRATE model.

Waste Composition

- 2.3.4 The waste composition entered within the baseline WRATE scenario is derived from the compositional analyses provided by the 5 Authorities. The composition can be seen in WRATE and is reproduced in the table below, this detail is fixed. As described above, the composition used in WRATE is a combined composition.

Material	%
Paper and Card	19.83
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Dense Plastic	8.05
Textiles	4.14
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- 2.3.5 The baseline scenario in the WRATE model assumes that the waste arises at the Project Green delivery/acceptance points (see section 2.2.2) and has a final destination of landfill. This sets the boundaries to be considered for this model. The bidder's waste treatment solution proposed shall assume that waste arises at the delivery/acceptance points (i.e. collection and transport to the delivery/acceptance points should not form part of the



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- 2.3.8 Bidders should provide distances and road type mixes for all journeys within their proposed solution.

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- 2.4.1 Bidders must ensure that data and assumptions on which the WRATE scenario and any user-defined or bespoke processes applied within the scenario are based are appropriate and most accurately reflect the anticipated performance of their proposal. All assumptions should be consistent with the relevant completed ISDS method statements. Further guidance on the scope of the WRATE assessment required is provided throughout this section.

Proposed Solutions

- 2.4.2 The proposed solution submitted by the bidder shall be modelled as a single scenario in WRATE. The scenario shall use the supplied export file as a baseline in order that the waste tonnage, composition, year and electricity mix are consistent with the requirements of The



Partnership and can be compared across bids. The bidder must also ensure that the scenario name is prefixed with the bidder's name, for ease of identification.

- 2.4.3 Output from the bidders' WRATE models will be used as part of the bid evaluation process. It is the bidders' responsibility to ensure that the model fairly represents their proposed technology solution.

Proposed technologies

- 2.4.4 The bidder is at liberty to use either the standard available technology solutions within WRATE, or to create a 'user defined' technology or a bespoke technology within the Expert version of WRATE.

3. OUTPUTS REQUIRED

3.1 WRATE Model

- 3.1.1 The submission shall include a WRATE export file. (file extension .lca)

3.2 Supporting information

General Model Information

- 3.2.1 The bidder shall also submit a written description of their proposed solution(s) within Tables 3.1 to 3.5 as appropriate. This includes, but is not necessarily limited to:

- Justification of the selection of technology (e.g. best fit within WRATE to their own technology, bespoke system);
- Justification of the destinations of waste (e.g. recovery, reprocessor, landfill etc.);
- Justification of the selection of transport;
- Justification of the selection of any intermediate facilities (as defined by the WRATE software – includes Waste Transfer Stations and Materials Recovery Facilities); and
- Discussion of any assumptions. (e.g. selection of road type mix, distances travelled etc).

- 3.2.2 If a WRATE model proposes use of a Combined Heat and Power (CHP) facility, the bidder must provide evidence and justification of the end user for any exported heat and detail the end users expected heat and electrical demand in units of both MJ and MW. Failure to provide

satisfactory evidence will result in either a clarification request to remove the CHP element from the WRATE model.

- 3.2.3 Detail must also be provided of any differences between the WRATE model and the mass balance/waste flow diagrams submitted as part of the rest of the bid. It is appreciated that some minor deviation from the full proposal may be required in order to develop a representative model in WRATE, however, any differences must be catalogued in full with an explanation.
- 3.2.4 For the various aspects of the WRATE model, Tables 3.1 – 3.3 must be completed as appropriate to provide a complete data set for all transport, intermediate facilities, treatment facilities, recycling/recovery facilities and landfills that are used in the WRATE model. Insert rows into these tables as required.

User Defined/Bespoke Technologies

- 3.2.5 Where the bidder amends allocation rules, the original allocation rules and the revised allocation rules must be provided in Table 3.4, must be accompanied by a separate detailed explanation of what data has been changed (where an adjustment has been made to an existing technology in WRATE), or which data have been used to develop the process. This data should be entered into Table 3.4 and also indicated in the comments box provided for each data set in the Allocation tables within WRATE. The amended allocation text should be preceded with *****Amended Allocation Rule*****.
- 3.2.6 The bidder shall also include the following in their supporting information:
- Reason for use of non-standard processes;
 - Discussion of the relative reliability of the data/option;
 - Details of the source and reliability of the data that user defined and/or bespoke solutions are based on (where applicable);
 - Detail of the alterations from the WRATE Standard Process (Table 3.4);
 - Details of whether the user defined process/ bespoke process has been independently verified, proof of

verification, name of verifier, how to contact them and when the verification was undertaken¹.

- 3.2.7 For the various aspects of user defined WRATE processes, Table 3.4 should be completed as appropriate to provide a complete data set for all transport, intermediate facilities, treatment facilities, recycling/recovery facilities and landfills that are used in the WRATE model. Insert rows into these tables as required.
- 3.2.8 Where variations to standard WRATE processes are being made, care should be taken to ensure that all data is correct for the plant capacity assumed. If plant capacities are increased compared to the standard WRATE process, all variables should be scaled accordingly. Note this comment only applies where processes are being user defined.
- 3.2.9 The requirement to demonstrate all user defined and bespoke processes are proven. Any change made must be backed up with comprehensive justification or examples of an operating plant incorporating those changes. Bidders are reminded that The Partnership reserves the right to disregard any assumption or process that is not backed up with suitable justification.
- 3.2.10 Where bidders have elected to develop a completely bespoke process, the bidder shall complete Table 3.5 together with details of where the described technologies or processes have been proven and supported by energy balances, mass balances and details of where the described technology or process has been proven.
- 3.2.11 Changes should also be made in the free text section of the WRATE allocation table. If more than one bespoke process is included in the scenario Table 3.5 shall be duplicated as required.
- 3.2.12 For bespoke processes that represent treatment facilities, energy, mass and carbon balances and input waste CV on which energy calculations are based shall be provided to allow verification of the processes.
- 3.2.13 For each bespoke process Bidders shall identify the default WRATE process on which it is based and justify its

¹ Independent verification can be undertaken by any competent body which is independent from the bidder's project team. Details of any verifiers shall be provided as part of this submission.



selection. If any data values are not replaced from those in the default process Bidders shall justify why they consider these values are appropriate for their process.

- 3.2.14 For each user defined process or bespoke process bidders shall provide a peer review report and provide the name, organisation and contact details of the peer reviewer and the date the review was completed and the model reviewed. A statement shall be provided confirming the competence of the reviewer.
- 3.2.15 The peer review report shall clearly identify the provenance and reliability of amended data, including appending copies of monitoring data from operational facilities for sensitive parameters where appropriate. Where data are not based on operational facilities a full justification shall be provided. Failure to provide sufficient justification may result in the Authority disregarding any assumption or process.
- 3.2.16 Bidders are expected to develop a WRATE model that is consistent with other areas of their proposal, for example recycling performance, or energy balance. Where models are found to be inconsistent with other areas of the bid, the Council reserves the right to either disregard the WRATE model, or ask the bidder to resubmit a revised model.

Table 3.1 – Treatment Facility Assumptions Table

Facility	WRATE Technology	Capacity	Distribution of Outputs from Facility	Justification
<i>Reference within WRATE Scenario and location (Post Code)</i>	<i>WRATE Technology Description and Number</i>	<i>Entered Capacity (Tonnes)</i>	<i>Distribution of output materials from facility</i>	<i>Justification for selection</i>

Table 3.2: Intermediate Facilities Information

Facility	WRATE Technology	Capacity	Distribution from Facility	Justification
<i>Reference within WRATE Scenario and location (Post Code)</i>	<i>WRATE Technology Description and Number</i>	<i>Entered Capacity (Tonnes)</i>	<i>Distribution of material from facility</i>	<i>Justification for selection</i>

Table 3.3: Transport Assumptions Table

Vehicle Movement	WRATE Technology	Post Codes		A-B Mileage	Mileage Composition		
		Start	End		Rural	Urban	M'Way
<i>Reference within WRATE Scenario</i>	<i>WRATE Technology Description and Number</i>	<i>Location of start facility</i>	<i>Location of end facility</i>	<i>Entered A-B Mileage</i>	<i>Entered %</i>	<i>Entered %</i>	<i>Entered %</i>

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Table 3.4: WRATE User Defined Process Technology Amendments (one for each user defined process, transport or facility)

Facility	WRATE Standard Technology	Justification	Reason For Amending
<i>Reference within WRATE Scenario and location (Post Code)</i>	<i>WRATE Technology Description and Number upon which the UDP is based</i>	<i>Justification for selecting WRATE Standard Technology for amendment</i>	<i>Justification for amending WRATE standard Technology</i>
Alteration	Original Value	Amended Value	Data Source and Justification
<i>Allocation Table Item to be amended</i>	<i>Value within WRATE standard technology</i>	<i>Value with UDP</i>	<i>Source of the Updated Data and justification for using it</i>
Peer Reviewed	Date	Reviewer	Contact Details
<i>Yes / No</i>	<i>Dd/mm/yyyy</i>	<i>Name</i>	<i>Address and Phone Number</i>

Table 3.5: Bespoke Data Table

Data Type	Parameter	Unit	Value	Notes
Process information:	Process name	Text		
	Company name	Text		
	Contact name	Text		
	Telephone	Numbe		

Data Type	Parameter	Unit	Value	Notes
		r		
	E-mail Address	Text		
	Operational life span of plant	Years		
	Operational status of process	Text	Operational/ in- commissioning/ pilot/in design	
	Process annual capacity (annual)	t		
	Maximum process capacity (annual)	t		
MSW waste composition :	Paper and card	t		
	Plastic film	t		
	Dense plastic	t		
	Textiles	t		
	Absorbent hygiene products	t		
	Wood	t		
	Combustibles	t		
	Non-combustibles	t		
	Glass	t		
	Organic - Food waste	t		
	Organic - Garden waste	t		
	Ferrous metal	t		
	Non-ferrous metal	t		
	Fine material <10mm	t		
	Waste Electrical and Electronic Equipment	t		
	Specific Hazardous Household	t		
Non MSW waste composition :	Paper and card	t		
	Plastic film	t		

Data Type	Parameter	Unit	Value	Notes
	Dense plastic	t		
	Textiles	t		
	Absorbent products hygiene	t		
	Wood	t		
	Combustibles	t		
	Non-combustibles	t		
	Glass	t		
	Organic - Food waste	t		
	Organic - Garden waste	t		
	Ferrous metal	t		
	Non-ferrous metal	t		
	Fine material <10mm	t		
	Waste Electrical and Electronic Equipment	t		
	Specific Hazardous Household	t		
Other feedstock:	Other feedstock 1 (please describe)	t		
	Other feedstock 2 (please describe)	t		
	Other feedstock 3 (please describe)	t		
Site inputs:	Electricity purchased for site	KWh		
	Heat purchased for site	KWh		
	Natural gas used as fuel	M3		
	Diesel oil as fuel	Litres		
	Other fuel 1 (please specify)	Litres		
	Other fuel 2 (please specify)	Litres		
	Mains water use	M3		
	Other water use	M3		
	Activated carbon	t		
	Urea	t		
	Ammonia	t		
	Lime	t		

Data Type	Parameter	Unit	Value	Notes
	Wood for biofilter	t		
	Other pollution abatement material 1 (please describe)	t		
	Other pollution abatement material 2 (please describe)	t		
	Sodium hydroxide	t		
	Hydrochloric acid	t		
	Other water treatment chemicals 1 (please describe)	t		
	Other water treatment chemicals 2 (please describe)	t		
Materials recycling:	Non ferrous metal	t		
	Ferrous metal	t		
	Mixed glass	t		
	Plastic film	t		
	Mixed dense plastic	t		
	RDF	t		
	Autoclave fibre	t		
	Standard grade compost or digestate)	t		
	Non-standard grade compost or digestate)	t		
	Incinerator bottom ash for recycling	t		
	Other recovered material 1 (please describe)	t		
	Other recovered material 2 (please describe)	t		
Energy recovery:	Electricity sold to grid	KWh		
	Heat exported for sale	KWh		
Process wastes:	Incinerator bottom ash for Landfill disposal	t		
	APC residues	t		

Data Type	Parameter	Unit	Value	Notes
	Other inert waste (please describe)			
	Other biodegradable waste (please describe)			
	Other mixed waste (please describe)			
Emissions to air:	Total CO ₂ total, of which:	kg		
	CO ₂ fossil	kg		
	CO ₂ biogenic	kg		
	Water vapour	kg		
	Total CO, of which:	kg		
	CO ₂ fossil	kg		
	CO ₂ biogenic	kg		
	SO _x	kg		
	NO _x	kg		
	N ₂ O	kg		
	NH ₃	kg		
	HCL	kg		
	CH ₄	kg		
	Dioxins, Furans - ITEQ	ng		
	Cadmium	kg		
	Chromium VI	kg		
	Mercury	kg		
	Thallium	kg		
	Benzo[a]pyrene	kg		
	PCBs	kg		
	PM10	kg		
Emissions to water:	Water discharge (please specify)	M3		open water/ sewer/ ground-water
	Phosphate	kg		
	Nitrogen	kg		
	NH ₃	kg		
	Barium	kg		

Data Type	Parameter	Unit	Value	Notes
	Cadmium	kg		
	Copper	kg		
	Molybdenum	kg		
	Other emission to water 1 (please specify)	kg		
	Other emission to water 2 (please specify)	kg		

Recycling processes

3.2.17 For each recycling process the Bidder shall confirm site operator name and location (postcode) and justify selection of the process. This includes justifying the type of recycling process where more than one is available for a material (e.g. glass recycling as aggregate or glass recycling as container glass). Bidders shall confirm assumptions are consistent with other relevant ISDS sections.

Landfill processes

3.2.18 For each landfill process the Bidder shall confirm site operator name and location (postcode) and justify selection of the process. Bidders shall confirm that assumptions are consistent with other relevant ISDS sections. Bidders shall also identify waste sent direct to landfill as a result of waste acceptance criteria or annual maintenance shut downs.



APPENDIX 14 – INSTRUCTIONS TO PARTICIPANTS: WRATE MODEL

Prosiect Gwyrdd

Procurement of:
A Waste Treatment Solution for Municipal Waste

ISDS – Instructions to Bidders for WRATE Modelling

v 2.0

5th July 2011



DOCUMENT HISTORY

Document Control

Title	Prosiect Gwyrdd - Procurement of Waste Treatment Services for Residual Municipal Waste - ISDS - Instructions to Bidders for WRATE Modelling
PG Author	Jacobs
Owner	Project Board



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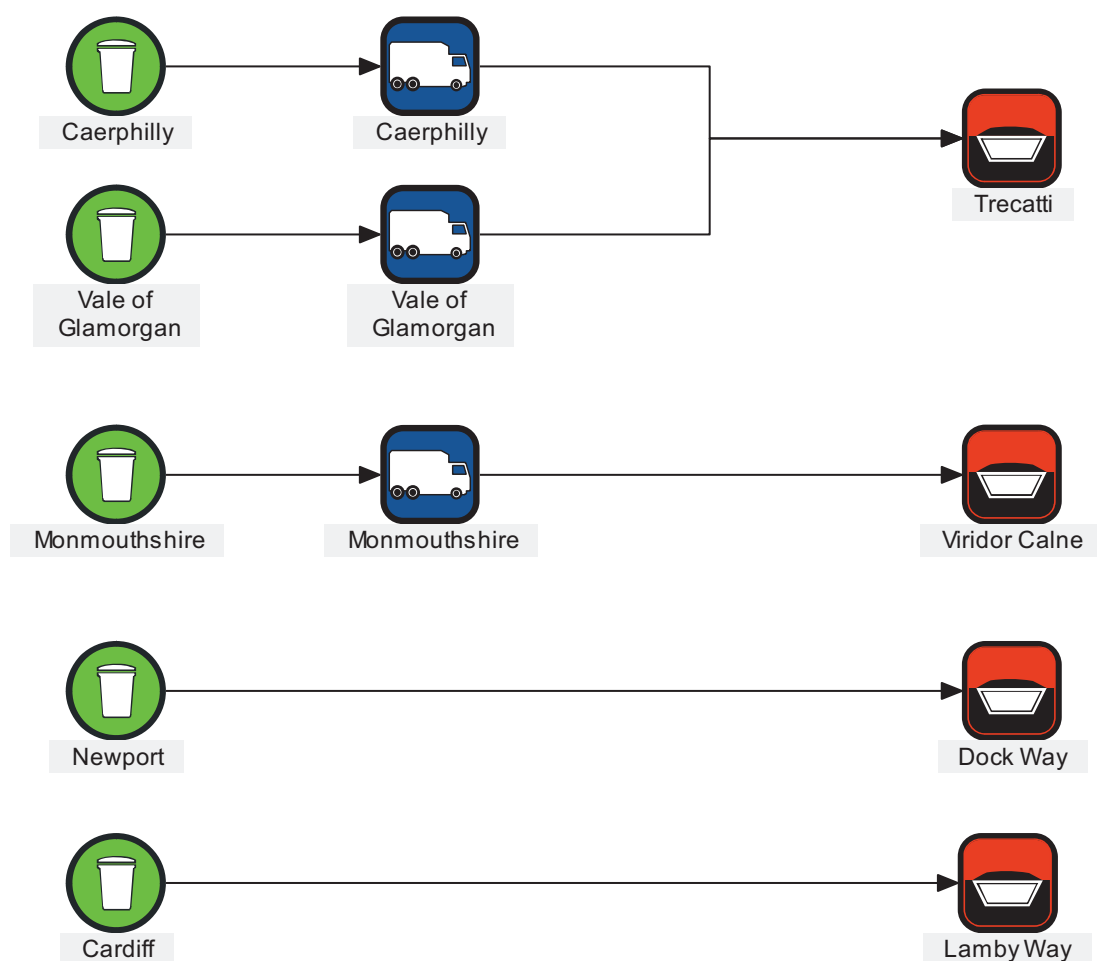


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- 2.4.2 The proposed solution submitted by the bidder shall be modelled as a single scenario in WRATE. The scenario shall use the supplied export file as a baseline in order that the waste tonnage, composition, year and electricity mix are consistent with the requirements of The



Partnership and can be compared across bids. The bidder must also ensure that the scenario name is prefixed with the bidder's name, for ease of identification.

- 2.4.3 Output from the bidders' WRATE models will be used as part of the bid evaluation process. It is the bidders' responsibility to ensure that the model fairly represents their proposed technology solution.

Proposed technologies

- 2.4.4 The bidder is at liberty to use either the standard available technology solutions within WRATE, or to create a 'user defined' technology or a bespoke technology within the Expert version of WRATE.

3. OUTPUTS REQUIRED

3.1 WRATE Model

- 3.1.1 The submission shall include a WRATE export file. (file extension .lca)

3.2 Supporting information

General Model Information

- 3.2.1 The bidder shall also submit a written description of their proposed solution(s) within Tables 3.1 to 3.5 as appropriate. This includes, but is not necessarily limited to:

- Justification of the selection of technology (e.g. best fit within WRATE to their own technology, bespoke system);
- Justification of the destinations of waste (e.g. recovery, reprocessor, landfill etc.);
- Justification of the selection of transport;
- Justification of the selection of any intermediate facilities (as defined by the WRATE software – includes Waste Transfer Stations and Materials Recovery Facilities); and
- Discussion of any assumptions. (e.g. selection of road type mix, distances travelled etc).

- 3.2.2 If a WRATE model proposes use of a Combined Heat and Power (CHP) facility, the bidder must provide evidence and justification of the end user for any exported heat and detail the end users expected heat and electrical demand in units of both MJ and MW. Failure to provide

satisfactory evidence will result in either a clarification request to remove the CHP element from the WRATE model.

- 3.2.3 Detail must also be provided of any differences between the WRATE model and the mass balance/waste flow diagrams submitted as part of the rest of the bid. It is appreciated that some minor deviation from the full proposal may be required in order to develop a representative model in WRATE, however, any differences must be catalogued in full with an explanation.
- 3.2.4 For the various aspects of the WRATE model, Tables 3.1 – 3.3 must be completed as appropriate to provide a complete data set for all transport, intermediate facilities, treatment facilities, recycling/recovery facilities and landfills that are used in the WRATE model. Insert rows into these tables as required.

User Defined/Bespoke Technologies

- 3.2.5 Where the bidder amends allocation rules, the original allocation rules and the revised allocation rules must be provided in Table 3.4, must be accompanied by a separate detailed explanation of what data has been changed (where an adjustment has been made to an existing technology in WRATE), or which data have been used to develop the process. This data should be entered into Table 3.4 and also indicated in the comments box provided for each data set in the Allocation tables within WRATE. The amended allocation text should be preceded with *****Amended Allocation Rule*****.
- 3.2.6 The bidder shall also include the following in their supporting information:
- Reason for use of non-standard processes;
 - Discussion of the relative reliability of the data/option;
 - Details of the source and reliability of the data that user defined and/or bespoke solutions are based on (where applicable);
 - Detail of the alterations from the WRATE Standard Process (Table 3.4);
 - Details of whether the user defined process/ bespoke process has been independently verified, proof of

verification, name of verifier, how to contact them and when the verification was undertaken¹.

- 3.2.7 For the various aspects of user defined WRATE processes, Table 3.4 should be completed as appropriate to provide a complete data set for all transport, intermediate facilities, treatment facilities, recycling/recovery facilities and landfills that are used in the WRATE model. Insert rows into these tables as required.
- 3.2.8 Where variations to standard WRATE processes are being made, care should be taken to ensure that all data is correct for the plant capacity assumed. If plant capacities are increased compared to the standard WRATE process, all variables should be scaled accordingly. Note this comment only applies where processes are being user defined.
- 3.2.9 The requirement to demonstrate all user defined and bespoke processes are proven. Any change made must be backed up with comprehensive justification or examples of an operating plant incorporating those changes. Bidders are reminded that The Partnership reserves the right to disregard any assumption or process that is not backed up with suitable justification.
- 3.2.10 Where bidders have elected to develop a completely bespoke process, the bidder shall complete Table 3.5 together with details of where the described technologies or processes have been proven and supported by energy balances, mass balances and details of where the described technology or process has been proven.
- 3.2.11 Changes should also be made in the free text section of the WRATE allocation table. If more than one bespoke process is included in the scenario Table 3.5 shall be duplicated as required.
- 3.2.12 For bespoke processes that represent treatment facilities, energy, mass and carbon balances and input waste CV on which energy calculations are based shall be provided to allow verification of the processes.
- 3.2.13 For each bespoke process Bidders shall identify the default WRATE process on which it is based and justify its

¹ Independent verification can be undertaken by any competent body which is independent from the bidder's project team. Details of any verifiers shall be provided as part of this submission.



selection. If any data values are not replaced from those in the default process Bidders shall justify why they consider these values are appropriate for their process.

- 3.2.14 For each user defined process or bespoke process bidders shall provide a peer review report and provide the name, organisation and contact details of the peer reviewer and the date the review was completed and the model reviewed. A statement shall be provided confirming the competence of the reviewer.
- 3.2.15 The peer review report shall clearly identify the provenance and reliability of amended data, including appending copies of monitoring data from operational facilities for sensitive parameters where appropriate. Where data are not based on operational facilities a full justification shall be provided. Failure to provide sufficient justification may result in the Authority disregarding any assumption or process.
- 3.2.16 Bidders are expected to develop a WRATE model that is consistent with other areas of their proposal, for example recycling performance, or energy balance. Where models are found to be inconsistent with other areas of the bid, the Council reserves the right to either disregard the WRATE model, or ask the bidder to resubmit a revised model.

Table 3.1 – Treatment Facility Assumptions Table

Facility	WRATE Technology	Capacity	Distribution of Outputs from Facility	Justification
<i>Reference within WRATE Scenario and location (Post Code)</i>	<i>WRATE Technology Description and Number</i>	<i>Entered Capacity (Tonnes)</i>	<i>Distribution of output materials from facility</i>	<i>Justification for selection</i>

Table 3.2: Intermediate Facilities Information

Facility	WRATE Technology	Capacity	Distribution from Facility	Justification
<i>Reference within WRATE Scenario and location (Post Code)</i>	<i>WRATE Technology Description and Number</i>	<i>Entered Capacity (Tonnes)</i>	<i>Distribution of material from facility</i>	<i>Justification for selection</i>

Table 3.3: Transport Assumptions Table

Vehicle Movement	WRATE Technology	Post Codes		A-B Mileage	Mileage Composition		
		Start	End		Rural	Urban	M'Way
<i>Reference within WRATE Scenario</i>	<i>WRATE Technology Description and Number</i>	<i>Location of start facility</i>	<i>Location of end facility</i>	<i>Entered A-B Mileage</i>	<i>Entered %</i>	<i>Entered %</i>	<i>Entered %</i>

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Table 3.4: WRATE User Defined Process Technology Amendments (one for each user defined process, transport or facility)

Facility	WRATE Standard Technology	Justification	Reason For Amending
<i>Reference within WRATE Scenario and location (Post Code)</i>	<i>WRATE Technology Description and Number upon which the UDP is based</i>	<i>Justification for selecting WRATE Standard Technology for amendment</i>	<i>Justification for amending WRATE standard Technology</i>
Alteration	Original Value	Amended Value	Data Source and Justification
<i>Allocation Table Item to be amended</i>	<i>Value within WRATE standard technology</i>	<i>Value with UDP</i>	<i>Source of the Updated Data and justification for using it</i>
Peer Reviewed	Date	Reviewer	Contact Details
<i>Yes / No</i>	<i>Dd/mm/yyyy</i>	<i>Name</i>	<i>Address and Phone Number</i>

Table 3.5: Bespoke Data Table

Data Type	Parameter	Unit	Value	Notes
Process information:	Process name	Text		
	Company name	Text		
	Contact name	Text		
	Telephone	Numbe		

Data Type	Parameter	Unit	Value	Notes
		r		
	E-mail Address	Text		
	Operational life span of plant	Years		
	Operational status of process	Text	Operational/ in- commissionin g/ pilot/in design	
	Process annual capacity (annual)	t		
	Maximum process capacity (annual)	t		
MSW waste composition :	Paper and card	t		
	Plastic film	t		
	Dense plastic	t		
	Textiles	t		
	Absorbent hygiene products	t		
	Wood	t		
	Combustibles	t		
	Non-combustibles	t		
	Glass	t		
	Organic - Food waste	t		
	Organic - Garden waste	t		
	Ferrous metal	t		
	Non-ferrous metal	t		
	Fine material <10mm	t		
Non MSW waste composition :	Waste Electrical and Electronic Equipment	t		
	Specific Hazardous Household	t		
	Paper and card	t		
	Plastic film	t		

Data Type	Parameter	Unit	Value	Notes
	Dense plastic	t		
	Textiles	t		
	Absorbent products hygiene	t		
	Wood	t		
	Combustibles	t		
	Non-combustibles	t		
	Glass	t		
	Organic - Food waste	t		
	Organic - Garden waste	t		
	Ferrous metal	t		
	Non-ferrous metal	t		
	Fine material <10mm	t		
	Waste Electrical and Electronic Equipment	t		
	Specific Hazardous Household	t		
Other feedstock:	Other feedstock 1 (please describe)	t		
	Other feedstock 2 (please describe)	t		
	Other feedstock 3 (please describe)	t		
Site inputs:	Electricity purchased for site	KWh		
	Heat purchased for site	KWh		
	Natural gas used as fuel	M3		
	Diesel oil as fuel	Litres		
	Other fuel 1 (please specify)	Litres		
	Other fuel 2 (please specify)	Litres		
	Mains water use	M3		
	Other water use	M3		
	Activated carbon	t		
	Urea	t		
	Ammonia	t		
	Lime	t		

Data Type	Parameter	Unit	Value	Notes
	Wood for biofilter	t		
	Other pollution abatement material 1 (please describe)	t		
	Other pollution abatement material 2 (please describe)	t		
	Sodium hydroxide	t		
	Hydrochloric acid	t		
	Other water treatment chemicals 1 (please describe)	t		
	Other water treatment chemicals 2 (please describe)	t		
Materials recycling:	Non ferrous metal	t		
	Ferrous metal	t		
	Mixed glass	t		
	Plastic film	t		
	Mixed dense plastic	t		
	RDF	t		
	Autoclave fibre	t		
	Standard grade compost or digestate)	t		
	Non-standard grade compost or digestate)	t		
	Incinerator bottom ash for recycling	t		
	Other recovered material 1 (please describe)	t		
	Other recovered material 2 (please describe)	t		
Energy recovery:	Electricity sold to grid	KWh		
	Heat exported for sale	KWh		
Process wastes:	Incinerator bottom ash for Landfill disposal	t		
	APC residues	t		

Data Type	Parameter	Unit	Value	Notes
	Other inert waste (please describe)			
	Other biodegradable waste (please describe)			
	Other mixed waste (please describe)			
Emissions to air:	Total CO ₂ total, of which:	kg		
	CO ₂ fossil	kg		
	CO ₂ biogenic	kg		
	Water vapour	kg		
	Total CO, of which:	kg		
	CO ₂ fossil	kg		
	CO ₂ biogenic	kg		
	SO _x	kg		
	NO _x	kg		
	N ₂ O	kg		
	NH ₃	kg		
	HCL	kg		
	CH ₄	kg		
	Dioxins, Furans - ITEQ	ng		
	Cadmium	kg		
	Chromium VI	kg		
	Mercury	kg		
	Thallium	kg		
	Benzo[a]pyrene	kg		
	PCBs	kg		
	PM10	kg		
Emissions to water:	Water discharge (please specify)	M3		open water/ sewer/ ground-water
	Phosphate	kg		
	Nitrogen	kg		
	NH ₃	kg		
	Barium	kg		

Data Type	Parameter	Unit	Value	Notes
	Cadmium	kg		
	Copper	kg		
	Molybdenum	kg		
	Other emission to water 1 (please specify)	kg		
	Other emission to water 2 (please specify)	kg		

Recycling processes

3.2.17 For each recycling process the Bidder shall confirm site operator name and location (postcode) and justify selection of the process. This includes justifying the type of recycling process where more than one is available for a material (e.g. glass recycling as aggregate or glass recycling as container glass). Bidders shall confirm assumptions are consistent with other relevant ISDS sections.

Landfill processes

3.2.18 For each landfill process the Bidder shall confirm site operator name and location (postcode) and justify selection of the process. Bidders shall confirm that assumptions are consistent with other relevant ISDS sections. Bidders shall also identify waste sent direct to landfill as a result of waste acceptance criteria or annual maintenance shut downs.

APPENDIX 15 – BIDDER INSURANCE RESPONSE MATRICES

Part 1 - Insurance Costs Matrix

A. Premium Calculation - Schedule 10 Part 1 (including Part 3 elements during the construction phase)

Class of Required Insurance	Cover Period	Sum Insured/Rateable Factor	Premium Rate	Premium excluding IPT	Insurance Premium Tax (IPT)	Brokers remuneration (specify type and amount)
1. Contractors "All Risks" Insurance						
2. Contractors "All Risks" Terrorism Insurance						
3. Delay in Start Up Insurance						
4. Delay in Start Up Terrorism Insurance						
5. Construction Third Party Liability Insurance						
6. [Marine Cargo Insurance]						

Class of Required Insurance	Cover Period	Sum Insured/Rateable Factor	Premium Rate	Premium excluding IPT	Insurance Premium Tax (IPT)	Brokers remuneration (specify type and amount)
7. [Marine Cargo Delay in Start Up Insurance]						
8. [Contractors Pollution Liability Insurance]						
9. Insurances required by law						

B. Premium Calculation - Schedule 10 Part 2 (including Part 3 elements during the operational phase)

Class of Required Insurance	Cover Period	Sum Insured/Ratable Factor	Current Insurance Market Premium Rate	Base Cost Median Level Premium Rate Adjustment	Base Cost Median Level Premium Rate	Base Cost Premium	Insurance Premium Tax (IPT)	Brokers remuneration (specify type and amount)
1. Property Damage "All Risks" Insurance								
2. Property Damage "All Risks" Terrorism Insurance								
3. Business Interruption Insurance								
4. Business Interruption Terrorism Insurance								
5. Third Party								

Class of Required Insurance	Cover Period	Sum Insured/Ratable Factor	Current Insurance Market Premium Rate	Base Cost Median Level Premium Rate Adjustment	Base Cost Median Level Premium Rate	Base Cost Premium	Insurance Premium Tax (IPT)	Brokers remuneration (specify type and amount)
Public Products Liability Insurance &								
6. [Contractors Pollution Liability Insurance]								
7. Insurances required by law								
Bidder Base Cost proposal for Part 6 of Schedule 10								

Part 2 - Associated Insurance Costs and Base Costs

- Participants are required to detail all "insurance risk contingencies" or costs associated with the provision of the Required Insurances including but not limited to costs associated with:

- (1) Project Agreement Part X (Insurance)
- (2) Deductible risk
- (3) Fixing of insurance premiums for the Project
- (4) Schedule 10, Part 6 Insurance Premium Risk Sharing Schedule (IPRSS)

The Participant should provide these in a table format as below:

"Contingency" Description	"Contingency" Amount	Operation of "Contingency" during Procurement or Project Term

- Participants are required to provide their proposed Insurance Base Costs in accordance with the requirements of Project Agreement Part X (Insurance) and Schedule 10, Part 6 Insurance Premium Risk Sharing Schedule (IPRSS). The Base Cost should be set at the long run median level, such that the probabilities of the outcome costs being higher or lower in the future (after adjusting for inflation) are the same.
Participant Response =
- Participants are required to provide their proposed weighting relative to the definition of Relevant Insurance Market in Part 6 of Schedule 10 (Required Insurances).
Participant Response =
- Participants are required to confirm agreement to the fixing of Base costs and other Insurance Costs

Participant Response =

Part 3 - Insurance Technical Matrix**A. Schedule 10 Part I**

Class of Insurance	Insurer(s) Identity (N.B. Including any co-insurers or excess layer insurers)	Deductible each and every claim (N.B. Confirm any aggregate Deductible if applicable)	Agreement to the requirements of Part X (Insurance) (If not please identify areas of variation, alternative proposals or points of clarification)	Agreement to the requirements of Schedule 10 (Required Insurances) (If not please identify areas of variation, alternative proposals or points of clarification)
1. Contractors "All Risks" Insurance				
2. Contractors "All Risks" Terrorism Insurance				
3. Delay in Start Up Insurance				
4. Delay in Start Up Terrorism Insurance				

Class of Insurance	Insurer(s) Identity (N.B. Including any co-insurers or excess layer insurers)	Deductible each and every claim (N.B. Confirm any aggregate Deductible if applicable)	Agreement to the requirements of Part X (Insurance) (If not please identify areas of variation, alternative proposals or points of clarification)	Agreement to the requirements of Schedule 10 (Required Insurances) (If not please identify areas of variation, alternative proposals or points of clarification)
5. Construction Third Party Liability Insurance				
6. [Marine Cargo Insurance]				
7. [Marine Cargo Delay in Start Up Insurance]				
8. Insurances required by law				

B. Schedule 10 Part 2

Class of Insurance	Insurer(s) Identity (N.B. Including any co-insurers or excess layer insurers)	Deductible each and every claim (N.B. Confirm any aggregate Deductible if applicable)	Agreement to the requirements of Part X (Insurance) (If not please identify areas of variation, alternative proposals or points of clarification)	Agreement to the requirements of Schedule 10 (Required Insurances) (If not please identify areas of variation, alternative proposals or points of clarification)	Agreement to the requirements of Schedule 10 (Required Insurances) Part 6 (IPRSS) (If not please identify areas of variation, alternative proposals or points of clarification)
1. Property Damage Risks" Insurance					
2. Property Damage Risks" Terrorism Insurance					
3. Third Party Public Products Liability Insurance					

Class of Insurance	Insurer(s) Identity (N.B. Including any co-insurers or excess layer insurers)	Deductible each and every claim (N.B. Confirm any aggregate Deductible if applicable)	Agreement to the requirements of Part X (Insurance) (If not please identify areas of variation, alternative proposals or points of clarification)	Agreement to the requirements of Schedule 10 (Required Insurances) (If not please identify areas of variation, alternative proposals or points of clarification)	Agreement to the requirements of Schedule 10 (Required Insurances) (If not (IPRSS) (If not please identify areas of variation, alternative proposals or points of clarification)
4. Business Interruption Insurance					
5. Business Interruption Terrorism Insurance					
6. Insurances required by law					

C. Schedule 10 Part 3

Class of Insurance	Insurer(s) Identity (N.B. Including any co-insurers or excess layer insurers)	Deductible each and every claim (N.B. Confirm any aggregate Deductible if applicable)	Agreement to the requirements of Part X (Insurance) (If not please identify areas of variation, alternative proposals or points of clarification)	Agreement to the requirements of Schedule 10 (Required Insurances) (If not please identify areas of variation, alternative proposals or points of clarification)	Agreement to the requirements of Schedule 10, Part 6 (IPRSS) (If not please identify areas of variation, alternative proposals or points of clarification)
1. Contractors Pollution Liability Insurance]					

[Appendix 16 - DESCRIPTIVE DOCUMENT]

Prosiect Gwyrdd

Procurement of Waste Treatment Services for
Residual Municipal Waste

Contract Notice Reference 2009/S 227 - 326432

DESCRIPTIVE DOCUMENT

December 2011

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Document Control

Title	Prosiect Gwyrdd - UDD
Author	A Williamson / H Singh
Drafting	Technical Sub Group Project Team Project Board Advisors
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Approvals

This document requires the following approvals.

Name	Signature	Title/Role
H Singh		Interim Project Manager
S Davison		Senior Responsible Officer
Cllr M Stephens		Chair Joint Committee

Distribution

This document has been distributed to:

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Joint Committee	Final for Decision		
Project Board, Project Team	Final for uploading		
Participants	n/a	9.12.10	V1.0

DISCLAIMER

1.1 Introduction

The Important Notices section below shall, for the avoidance of doubt, apply to all further information and documentation provided or made available as part of this Competitive Dialogue Procedure. Participants shall be responsible for ensuring that their Solutions comply with the requirements set out in the PQQ, ITPD, ISOS, ISDS and all the Associated Documents.

1.2 Participant's Warranties

- 1.2.1 In submitting its Solutions, the Participant warrants, represents and undertakes to the Partnership that:-
- (a) all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Partnership by the Participant, its staff, agents or advisors in connection with or arising out of the ISDS and/or the Associated Documents are true, complete and accurate in all respects, both as at the date communicated and as at the date of submission of the Solution(s);
 - (b) it has made its own investigations and undertaken its own research and due diligence and has satisfied itself in respect of all matters (whether actual or contingent) relating to the ISDS and the Associated Documents and that it has not submitted its Solution(s) in reliance upon any information, representation or assumption which may have been made by or on behalf of the Partnership (save in respect of any information which is expressly warranted by the Partnership under the terms of the Project Agreement); and
 - (c) it has full power and authority to respond to the ISDS and the Associated Documents and to perform the obligations in relation to this Project and will, if requested, produce evidence of such to the Partnership's reasonable satisfaction.
- 1.2.2 Participant's acknowledge that the confirmation provided in the Executive Summary for each Solution that any statement made in the PQQ and the ISOS submission remains true and accurate in all material respect save to the extent specifically disclosed in the Detailed Solution and highlighted in the Executive Summary. Please see section 4.5.4 for further information.
- 1.2.3 Where there is a change to the information provided to the Partnership at any time the Participant must advise the Partnership as soon as practicable, even if this is after the date of

submitting the Solutions, and disclose such changes in full. Please see sections 1.10 and 1.13 for further information.

1.3 Confidentiality

- 1.3.1 Subject to the exceptions referred to in section 1.3.3 below, the ISDS and the Associated Documents are being made available by the Partnership on condition that:-
- (a) Participants shall at all times treat the ISDS and the Associated Documents as confidential;
 - (b) Participants shall not disclose, copy, reproduce, distribute or pass the ISDS and the Associated Documents to any other person at any time or permit the occurrence of any of the foregoing;
 - (c) Participants shall not use the ISDS and the Associated Documents for any purpose other than for the purposes of preparing (or deciding whether to prepare) a Solution for participating in the Competitive Dialogue Procedure; and
 - (d) Participants shall comply with the provisions of section 1.9 (which contains restrictions on publicity activity within any section of the media or similar).
- 1.3.2 Participants shall ensure that each member of the Participant's Team who receives any of the ISDS information and the Associated Documents is made aware of, and complies with, the provisions of section 1.3 as if they were a Participant.
- 1.3.3 Participants may disclose, distribute or pass the ISDS and the Associated Documents to another person (including, but not limited to, for example, employees, consultants, subcontractors or advisors to the Participant, the Participant's insurers or the Participant's funders) if either:-
- (a) this is done for the sole purpose of enabling a Solution to be prepared and the person receiving the ISDS and the Associated Documents undertakes in writing to keep the ISDS and the Associated Documents confidential on the same terms as set out in the ISDS and the Associated Documents; or
 - (b) the Participant obtains the prior written consent of the Partnership in relation to such disclosure, distribution or passing of the ISDS and the Associated Documents.
- 1.3.4 The Partnership may disclose detailed information relating to the Solutions to the Partnership's Councillors, directors, officers,

employees, agents or advisors (which shall include, for the avoidance of doubt, WAG, DESH, Local Partnerships, or any Gateway Review Team) and they may make the key documents relating to the Solutions available for private inspection by the Partnership's Councillors, directors, officers, employees, agents or advisors (which shall include, for the avoidance of doubt, WAG, DESH, Local Partnerships or any Gateway Review Team).

1.3.5 The Partnership also reserve the right to disseminate information that is materially relevant to all Participants, even if the information has only been requested by one Participant, subject to the duty to protect any Participant's commercial confidence in its Solutions. Should Participants wish to avoid such disclosure (for example, on the basis that the request contains, or the likely response will contain, commercially confidential information or may give another Participant a commercial advantage) the request must be clearly marked "In confidence - not to be circulated to other Participants" (on the front page of the document) (and by also marking each relevant page of the document "commercially confidential"). The Participant must set out the reason or reasons for the request for non-disclosure to other Participants.

1.3.6 The Partnership will act reasonably as regards the protection of commercially sensitive information relating to the Participant, subject to the Partnership's duties under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

1.4 **Accuracy of the ISDS and the Associated Documents and Liability of the Partnership and their Advisors**

1.4.1 The ISDS and the Associated Documents have been prepared by the Partnership in good faith but do not purport to be comprehensive or to have been independently verified. Participants should not rely on the detailed information contained in the ITPD and the Associated Documents and should carry out their own due diligence checks and verify the accuracy of the detailed information contained in the ISDS and the Associated Documents. Nothing in the ISDS and the Associated Documents is, or should be construed as, a promise or representation as to the future.

1.4.2 Participants considering entering into a contractual relationship with the Partnership should make their own enquiries and investigations of the Partnership's requirements beforehand. The subject matter of the ISDS and the Associated Documents shall only have contractual effect when it is contained in the express terms of the executed Project Agreement.

- 1.4.3 None of the Partners, the Partner's Councillors, directors, officers, employees, agents or advisors (which shall include, for the avoidance of doubt, WAG, DESH and Local Partnerships or any Gateway Review Team) make any representation or warranty as to, or (save in the case of fraudulent misrepresentation) accept any liability or responsibility in relation to, the adequacy, accuracy, reasonableness or completeness of the ISDS and the Associated Documents or any part of it (including but not limited to loss or damage arising as a result of reliance by the Participant on the ISDS and the Associated Documents or any part of it).
- 1.4.4 The invitation to submit detailed submissions by the Partnership does not imply that the Participant has satisfied the Partnership regarding any matter raised during any previous stages, and the Partnership makes no representations or warranties regarding the Participant's financial status, technical competence or ability in any way to carry out the contract.
- 1.4.5 No offer or Final Tender is deemed accepted until the relevant contractual documents have been duly signed on behalf of the Partnership, the Preferred Bidder and all other relevant parties and declared unconditional. No dialogue or communication with the Partnership whether prior to, during or subsequent to the Competitive Dialogue Procedure (including any notification of Preferred Bidder status) will imply acceptance of any offer or constitute an indication that the Participant will be awarded the contract. Only the express terms of the Project Agreement which is finally agreed and signed for and on behalf of the relevant parties and which is duly declared unconditional shall have any contractual effect.
- 1.4.6 If there is any inconsistency between this Descriptive Document and the ISDS documentation, the ISDS documentation shall take precedence.

1.5 Conflicts of Interest

- 1.5.1 The Partnership requires all actual or potential conflicts of interest to be resolved to the Partnership's satisfaction prior to the submission of a Solution in response to the ISDS and the Associated Documents. Failure to declare such conflicts and/or failure to address such conflicts to the reasonable satisfaction of the Partnership may result in a Participant being disqualified.

1.6 Canvassing

- 1.6.1 The Partnership reserves the right to disqualify (without prejudice to any other civil remedies available to the Partnership and

without prejudice to any criminal liability which such conduct by a Participant or a member of the Participant's Team may attract) any Participant or member of the Participant's Team who, in connection with the ISDS or any Associated Documents:-

- (a) offers any inducement, fee or reward to any Councillor, officer or other employee of the Partnership or any person acting as an advisor for the Partnership in connection with the ISDS or any Associated Documents;
- (b) does anything which would constitute a breach of the Prevention of Corruption Acts 1889 to 1916 or Section 117 of the Local Government Act 1972 (as amended).
- (c) canvasses any Councillor, officer or other employee of the Partnership or any person acting as an advisor for the Partnership in connection with the ISDS or any Associated Documents; or
- (d) contacts any Councillor, officer or other employee of the Partnership prior to financial close about any aspect of the ISDS or any Associated Documents in a manner not permitted by the ISDS (including without limitation contact for the purposes of discussing the possible transfer to the employment of the Participant of such Councillor, officer or other employee) or any Associated Documents.

1.7 Non-Collusion

1.7.1 The Partnership reserves the right to disqualify (without prejudice to any other civil remedies available to the Partnership and without prejudice to any criminal liability which such conduct by a Participant may attract) any Participant who, in connection with the ISDS or any Associated Documents:-

- (a) fixes or adjusts the amount of its Solution by or in accordance with any agreement or arrangement with any other Participant or member of the Participant's Team (other than a member of its own consortium or supply chain);
- (b) enters into any agreement or arrangement with any other Participant or member of the Participant's Team to the effect that he shall refrain from submitting a Solution or as to the amount of any Solution to be submitted;
- (c) causes or induces any person to enter such agreement as is mentioned in either section 1.7.1(a) or 1.7.1(b) or to inform the Participant or member of the Participant's Team of the amount or approximate amount of any rival Solution;

- (d) offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Solution or proposed Solution for the works and/or services or any act or omission; or
- (e) communicates to any person other than the Partnership the amount or approximate amount of his proposed Solution (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of a Solution).

1.7.2 Participants and each member of the Participant's Team are required to return the Anti-Collusion Certificates set out in Appendix 2 of the ISDS when submitting their Solutions.

1.8 Intellectual Property

- 1.8.1 The copyright in the ISDS and the Associated Documents is vested in the Partnership. The ISDS and the Associated Documents may not be reproduced, copied or stored in any medium without the prior written consent of the Partnership except in relation to the preparation of a Solution. All documentation supplied by the Partnership in relation to the ISDS and the Associated Documents is and shall remain the property of the Partnership and must be returned on demand, without any copies being retained.
- 1.8.2 The Partnership reserves the right to require the assignment or grant of a royalty free non-exclusive licence of all intellectual property relating to or in connection with any Solution resulting in the award of contracts.

1.9 Publicity

- 1.9.1 Participants shall not undertake (or permit to be undertaken) at any time, whether at this stage or after financial close, any publicity activity with any section of the media in relation to the Project other than with the prior written agreement of Partnership. Such agreement shall extend to the content of any publicity. In this section the word "media" includes (but without limitation) radio, television, newspapers, trade and specialist press, the internet and email accessible by the public at large and the representatives of such media.

1.10 The Partnership's Right to Reject Solutions

- 1.10.1 The Partnership reserve the right to require a Participant and/or the members of the Participant's Team to clarify their submission

in writing and/or provide additional information (failure to respond adequately may result in a Participant being rejected); and/or

1.10.2 The Partnership reserve the right to reject or disqualify a Participant and/or the members of the Participant's Team where:-

- (a) a Solution is submitted late, is completed incorrectly, is materially incomplete, is submitted in any other format other than via the Portal or fails to meet the Partnership's submission requirements which have been notified to Participants;
- (b) the Participant and/or the members of the Participant's Team are unable to satisfy the terms of Article 45 of Directive 2004/18/EC and/or Regulation 23 of the Public Contracts Regulations 2006 at any stage during the Competitive Dialogue Procedure;
- (c) the Participant and/or the members of the Participant's Team are guilty of material misrepresentation or false statement in relation to its application and/or the process;
- (d) the Participant and/or the members of the Participant's Team contravene any of the terms and conditions of the ISDS and/or any Associated Documents;
- (e) there is a change in identity, control, financial standing, structure or other factor impacting on the selection and/or evaluation process affecting the Participant and/or the members of the Participant's Team (including but not limited to a change in the Participants' Team from the members who completed the PQQ and/or ISOS);
- (f) the Participant introduced a material change to any commitment or statement contained in any previous submission at any stage of the Competitive Dialogue Procedure (including but not limited to the PQQ and/or the ISOS submission); or
- (g) the Participant breaches the terms and conditions of use for the Data Room.

1.10.3 The disqualification of a Participant will not prejudice any other civil remedy available to the Partnership and will not prejudice any criminal liability that such conduct by a Participant may attract.

1.11 **Provision of Further Information by Participants after Submitting a Solution**

The Partnership is relying on the information provided by Participants during the PQQ and ISOS stage (including but not limited to information concerning the Participant's Team and consortium structure). If, at any

time during the Competitive Dialogue Procedure there are any material changes to the same, the Participant must advise the Partnership as soon as practicable (even if this is after the submission of a Solution). Upon receipt of such information, the Partnership shall be entitled to revisit the selection and/or evaluation of the Participant and exclude the Participant, if necessary, as a result of that process.

1.12 Freedom of Information

- 1.12.1 The Partnership is subject to the provisions of the Freedom of Information Act 2000 (FOIA). FOIA provides a general right of access to information held by public authorities and the Partnership may be required to disclose any or all information submitted to the Partnership in response to a request made pursuant to FOIA.
- 1.12.2 FOIA provides for information to be exempt from the general right of access in certain circumstances, for example where the information has been provided in confidence, is a trade secret, or where release would or would be likely to prejudice commercial interests. Because the Partnership has to comply with its statutory duties, if information is requested the Partnership may be forced to disclose such documentation, irrespective of a Participant's wishes, if it is not covered by an exemption under FOIA. Please also note that the availability of some exemptions is subject to a test of whether the public interest lies in disclosing the information or keeping it confidential.
- 1.12.3 Participants are required to identify any information contained in your Solution(s) which you would prefer not to be released if a request under FOIA is received. Requests for information to be treated as commercially confidential should accompany your response and must include a clear and substantive justification (which the Partnership is able to disclose) together with a time limit after which any such information may be disclosed. You should make sure any information that you consider commercially confidential is clearly marked as such. Please clearly mark the front page of the document with "In confidence – not to be circulated" (and by also marking each relevant page of the document "commercially confidential"). You should be aware that a Solution that indicates that all of the information you provide in a Solution is confidential, without a clear and substantive justification, is unlikely to be acceptable to the Partnership. You should also be aware that even where information is identified as confidential and/or commercially sensitive the Partnership may be required to disclose such information in accordance with FOIA.

- 1.12.4 If the Partnership receives a request under FOIA for the release of information which has been provided by a Participant, the Partnership will use reasonable endeavours to consult with the relevant Participant as soon as practicable where it considers that the requested information may include exempt information relating to that Participant. Where the Partnership consults with the Participant, the Participant must respond to the Partnership's requests within 48 hours (unless otherwise agreed by the Partnership), so that the Partnership can comply with its obligation to answer a FOIA request within the relevant time limit.
- 1.12.5 The decision on what is, or is not, exempt information shall be determined by the Partnership having considered the representations of Participants. The Partnership shall not be liable for any loss, damage, harm or other detriment however caused arising from any disclosure of information under FOIA, Environmental Information Regulations 2004 or other legislation governing access to information including but not limited to Guidance Notes and Codes of Practice issued by the Information Commissioner.

1.13 The Participant's Team

- 1.13.1 The members of the Participant's Team, and the principal relationships between the team members, may be changed in relation to this procurement process only with the prior consent of the Partnership, and subject to any replacement team member being satisfactorily pre-qualified by the Partnership (in accordance with the requirements of the PQQ). The Partnership reserves the right to take this into account when determining whether or not to continue with the evaluation of a Solution, and whether or not to enter into a contract with a Participant, where there has been a change in the ownership of the Participant or any members of the Participant's Team (direct or indirect) or a change in the principal relationships between the team members.
- 1.13.2 All other Participants shall be deemed to have consented to any changes in other Participant's Teams.

1.14 Bidding Process and Costs

- 1.14.1 The Partnership reserves the right at any time:-
- (a) not to consider Solutions other than those submitted in accordance with the terms of the ISDS and/or the Associated Documents;

- (b) to negotiate with one or more of the Participants during the Competitive Dialogue Procedure to obtain arrangements which best meet its requirements to the extent permitted pursuant to the procurement regulations;
- (c) to issue amendments or modifications to the ISDS and/or the Associated Documents during the Competitive Dialogue Procedure;
- (d) to require a Participant and/or the members of the Participant's Team to clarify their submission in writing and/or provide additional information (failure to respond adequately may result in a Participant being rejected);
- (e) to alter the timetable of any aspect of the procurement including (but not limited to) the anticipated date of financial close;
- (f) not to award a contract; and/or
- (g) to cancel or withdraw from the Competitive Dialogue Procedure at any stage.

1.14.2 Any costs or expenses incurred by any Participant or the Participant's Team or any other person will not be reimbursed by the Partnership and neither the Partnership nor any of their representatives or advisers (which shall include for the avoidance of doubt WAG, DESH, Local Partnerships or any Gateway Review Team) will be liable in any way to any Participant or the Participant's Team or any other person for any costs, expenses or losses incurred by any Participant or the Participant's Team or any other person in connection with this Competitive Dialogue Procedure.

1.15 Governing Law

1.15.1 All negotiations will be conducted, and all documents and Solutions will be prepared, in the English language. The negotiations and all subsequent contracts negotiated and any non-contractual obligations arising out of or in connection with such contracts will be subject to the laws of England and Wales and the exclusive jurisdiction of the English and Welsh courts.

DEFINITIONS/GLOSSARY

Term or Abbreviation	Definition
Anti-Collusion Certificate	the anti-collusion certificate to be completed and submitted by Participants when submitting a Solution
Associated Documents	all associated tender documentation, guidance, clarifications and project documentation issued by the Partnership and its advisors and any further information received via communication with the Partnership and its advisors and/or all information available on the Portal and the Data Room during the Competitive Dialogue Procedure
ATT	Advanced Thermal Treatment
Authority	the Lead Contracting Authority acting on behalf of itself and all the Partners
Authority's Requirements	The Authority's (acting on behalf of itself and all the Partnership) description of the Partnership's minimum requirements for the Project and is also referred to as the Authority's Output Specification
AWC	Alternate Weekly Collection
Base Payment	the base payment is a payment calculated on a rate per tonne which is applied to the total tonnage of waste accepted by the Contractor in a contract year as more particularly defined in the Payment Mechanism
BMW	Biodegradable Municipal Waste
Bottom Ash	The residual material in the combustion chamber and consists of the non-combustible constituents of the waste.
BPEO	Best Practicable Environmental Option
BRE	Building Research Establishment
BREEAM	Building Research Establishment Environmental Assessment Method
Business Day	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London
BVPI	Best Value Performance Indicator
CABE	Commission for Architecture and the Built Environment
CapEx	Capital Expenditure
CEEQUAL	Civil Engineering Environmental Quality
CFT	the Call for Final Tenders to be issued by the Partnership to the Participants in accordance with the Competitive Dialogue Procedure

Checklist	the checklist to be completed and submitted by Participants when submitting a Solution
CHP	Combined Heat and Power
CIRIA	Construction Industry Research and Information Association
Competitive Dialogue	the dialogue phase of the Competitive Dialogue Procedure from distribution of the ISDS documentation until the Partnership closes the dialogue on or before submission of the Final Tenders
Competitive Dialogue Procedure	the procedure to be used by the Partnership to procure this Project as set out in Regulation 18 of the Public Contract Regulations 2006
Consortium Member	where the Participant is a consortium, any individual economic operator forming part of that consortium
Contract Notice	the contract notice published in the Official Journal of the European Union (reference number 2009/S 227-326432)
Contract Waste	all municipal waste arising from time to time in the Partnership's Administrative Area and delivered to the Contractor by or on behalf of the Authority. Contract Waste does not include for the avoidance of doubt Third Party Waste and Substitute Waste
Contractor	the contractor who enters into the Project Agreement with the Lead Contracting Authority pursuant to this Project
CIWM	the Chartered Institution of Wastes Management
Data Room	the data room managed by the Partnership by which the Participants may access documents relevant to this Project
DCfW	Design Commission for Wales
Defra	Department for Environment, Food and Rural Affairs
Descriptive Document	an updated copy of the IDD attached to the ITPD
DESH	Department for the Environment, Sustainability and Housing
Detailed Solutions	the Solutions to be submitted in response to the ISDS
DE&T	Department of Economy and Transport
EA	Environment Agency
EAW	Environment Agency Wales
EfW	Energy from Waste
EIA	Environmental Impact Assessment
EIB	European Investment Bank

EIR	Environmental Information Regulations
EMS	Environmental Management System
EPA	Environmental Protection Act 1990
EU	European Union
Evaluation Methodology	the methodology to be followed by the Partnership when evaluating the Solutions as set out in the tender documents distributed at each stage of the Competitive Dialogue Procedure
E.W.C. Codes	European Waste Catalogue Codes as described by the List of Wastes (Wales) Regulations 2005
Executive Summary	the executive summary to be submitted by Participants when submitting a Solution (further details of which are found in section 4 of this ISDS)
Facility	the facility(ies) to be procured pursuant to the Project
FBC	Final Business Case
Final Tenders	the Solutions to be submitted in response to the CFT
Financial Bid Forms	the forms required to be completed by the Participants and submitted as part of their Solutions
Financial Close	the anticipated date of the Project Agreement
FOIA	Freedom of Information Act 2000
FRS5	Financial Reporting Standard 5
Gateway Review Team	Assigned group of sufficiently experienced personnel to conduct Gateway reviews as per the OGC guidance and best practice
HM Guidance	HM Treasury Value for Money Assessment Guidance
HMSO Publication Centre	please see details as set out in section 3.1.3 of this ISDS
HM Treasury	Her Majesty's Treasury
HWRC	Household Waste Recycling Centre
IDD	Initial Descriptive Document
IFRS	International Financing Reporting Standards
IRR	Internal Rate of Return
ISDS	Invitation to Submit Detailed Solutions
ISOS	Invitation to Submit Outline Solutions (which forms part of the ITPD)
ISRS	Invitation to Submit Refined Solutions
ITPD	Invitation to Participate in the Dialogue
JWA1	the joint working agreement that the Partnership has

	entered into to formalise their respective roles and responsibilities in relation to the joint working arrangements for the procurement of the Project
JWA2	a second joint working agreement (to be negotiated in parallel with the Project Agreement) that will regulate the relationship between the Partners during the Works and the Services Period of the Project
IVC	In-vessel Composting
Landfill Directive	European Union Landfill Directive 1999
LAS	Landfill Allowance Scheme (LAS) Regulations (Wales) 2004
Lead Contracting Authority	the Partner who will enter into the Project Agreement with the Contractor on behalf of the Partnership (to be confirmed later in the Competitive Dialogue Procedure)
Lead Procurement Authority	Cardiff Council will act as the lead authority for the procurement process and shall be responsible for the negotiation of the Project Agreement with the Participants
Lead Participant	the lead organisation co-ordinating a Participant's Solution
Level 1, 2 and 3 Criteria	The Primary, Sub and Sub-Sub Evaluation Criteria set out in the Evaluation Methodology
LFT	Landfill Tax
Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003	The Local Government Act 2003 sets out the framework for the current regime for local authority capital finance. The Act is underpinned by the Local Authority (Capital Finance and Accounting) (Wales) Regulations 2003 which provide more detail and specific requirements
M-BEAM	a modelling instrument developed by Defra for use to calculate mass balance waste flow
MBT	Mechanical Biological Treatment
MEAT	Most Economically Advantageous Tender
MRF	Materials Recovery/Recycling facility
MSW	Municipal Solid Waste
NPV	Net Present Value
OBC	Final form of the Outline Business Case prepared by the Partnership in October 2008 and updated by the 'Outline Business Case Health-Check Addendum' in May 2009
OGC	Office of Government Commerce
OpEx	Operating expenditure
Optional Site	the site (Tatton Road, Newport) within the Partnership's control offered to Participants for consideration for use

	within their proposed Solutions
Outline Solutions	the Solutions submitted in response to the ISOS
Output Specification	The Authority's (acting on behalf of itself and all the Partnership) description of the Partnership's minimum requirements for the Project and is also referred to as the Authority's Requirements
Participant/ Participants	the organisations that were selected at the PQQ stage and invited to participate in the Competitive Dialogue Procedure
Participant's Team	<p>the team bidding for the Project, including but not limited to, where the Participant is:-</p> <ul style="list-style-type: none"> (i) a sole organisation (or a sole organisation supported by subcontractors that are not Significant Subcontractors) that sole organisation (ii) a consortium, each Consortium Member (iii) a prime contractor, the prime contractor and each Significant Subcontractor (iv) a partnership, each member of the partnership (v) an incorporated company, the incorporated company (vi) a co-operative, the co-operative
Partnership	Caerphilly County Borough Council ("Caerphilly CBC"), the County Council of the City and County of Cardiff ("Cardiff Council"), Monmouthshire County Council ("Monmouthshire CC"), Newport City Council ("Newport CC") and the Vale of Glamorgan Council (the "Vale of Glamorgan") (and each individually a "Partner")
Payment Mechanism	the draft payment mechanism, sets out the basis for calculating payments from the Partnership to the Contractor for delivering the Services in accordance with its obligations under the Project Agreement
PB	Prudential Borrowing
Performance Standards	the standards set out in the Authority's Requirements for the delivery of the Service
Planned Services Commencement Date	1st April 2016
Portal	the portal at www.etenderwales.bravosolution.co.uk which Participants must use to upload their Solutions and access the Data Room
PPP	Public Private Partnerships

PQQ	Pre-Qualification Questionnaire
PQQ Methodology	Pre-Qualification Methodology as set out within the PQQ
Preferred Bidder	the Participant whose Solution is chosen as the MEAT following submission of Final Tenders
Project	the procurement of the Facility pursuant to the terms of the Project Agreement
Project Agreement	the project agreement for the residual treatment of MSW to be awarded by the Partnership pursuant to the Project, a draft copy of which will be provided later in the Competitive Dialogue Procedure
Project Board	the organisation within the Partnership established to oversee the procurement process, more specifically described in the tender documentation
Project Manager	The Officer that is employed by Cardiff Council to act on behalf of the Partnership or such other person notified by the Partnership to Participants from time to time
Project Team	the Partnership's team which is responsible for the day-to-day management of this Project on behalf of the Partnership including the Project Manager
Reference Project	the Partnership's reference project as set out in the OBC
Refined Solutions	the Solutions to be submitted in response to the ISRS
Residual Waste	the elements of the waste stream that remains after recycling or compostable materials have been separated or removed
Response Document	the form of response document completed by Participants when submitting their Outline Solutions
Risk Allocation Matrix	the Partnership's allocation of risk as set out in the ITPD
ROC	Renewables Obligation Certificate
RPI	Retail Price Index
SDLT	Stamp Duty Land Tax
SDP	Service Delivery Plans
Services	the services to be provided in accordance with the Project Agreement
Significant Subcontractor	the proposed subcontractors which will be contributing significantly (either in terms of value or importance) to the Project as defined in the PQQ (only relevant where a subcontracting arrangement has been proposed by a Participant)
Site	the site(s) to be used by the Participant to undertake the Works and/or the Services as detailed in their Solution for the Project
Site Report	establishing the baseline condition of the Site(s) before commencement of construction for the purposes of

	permit application(s)
Solution	the solution(s) submitted by Participants throughout the Competitive Dialogue Procedure in response to the procurement documentation
SoPC4	Standardisation of PFI Contracts Version 4 as updated or amended by HM Treasury
SPV	Special Purpose Vehicle
SRF	Solid Recovered Fuel
TAN 12	Technical Advice Note (Wales) 12 Design
TAN 21	(Planning Policy Wales) Technical Advice Note (Wales) 21
TIFU	Treasury Infrastructure Fund Unit
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
UC	Unitary Charge
VAT	Value Added Tax
VfM	Value for Money
WAG	Welsh Assembly Government
WAG Funding Criteria	the WAG Funding Criteria which prescribes certain conditions that the Partnership must comply with during the procurement of the Project (Please see Appendix E of the Descriptive Document for an extract of the criteria)
WCA	Waste Collection Authority
WDA	Waste Disposal Authority
WEEE	Waste Electrical and Electronic Equipment
WET Act 2003	Waste Emissions and Trading Act 2003
WID	Waste Incineration Directive (2000/76/EC)
WIDP	Waste Infrastructure Delivery Programme
WPA	Waste Planning Authority
WPPO	Waste Procurement Programme Office
WRATE	Waste and Resources Assessment Tool for the Environment

FOREWARD

A Contract Notice (reference 2009/S 227 - 326432) has been published in the Official Journal of the European Union on 24 November 2009 inviting expressions of interest from organisations wishing to enter into a contract with the Lead Contracting Authority on behalf of itself and the remaining Partners in the Prosiect Gwyrdd Partnership for the provision of a waste treatment solution (the "Project").

This Descriptive Document accompanies the Invitation to Submit Detailed solutions This Descriptive Document is an updated version of the Descriptive Document which was distributed to Participants at the ITPD stage. The document is being issued to Participants who responded to the Partnership's Invitation to Participate in Dialogue and whom have been selected to participate in the next stage of the Competitive Dialogue Procedure. The Partnership proposes to carry out this procurement under the Competitive Dialogue Procedure in accordance with the requirements of the Public Contracts Regulations 2006. This Descriptive Document provides further information to Participants in relation to the Project.

This Project forms part of the Partnership's overall programme for the delivery of infrastructure to support its LAS obligations, environmental sustainability, carbon management programmes and anticipated statutory targets. The programme seeks to ensure the provision of both the short and long term needs for the treatment of residual municipal waste.

The Partnership has a statutory duty to make arrangements for the disposal of municipal waste arising in its administrative area. However, the delivery of waste management services presents a major challenge, not only due to new legislation that is fundamentally changing the current landfill-based means of dealing with waste in the UK, but also more stringent regulatory standards. Public awareness and expectations in relation to improved environmental standards are rising. These factors, coupled with reducing landfill void capacity, mean that the Partnership cannot continue to rely on landfill disposal for its residual waste remaining after minimisation, reuse and recycling.

The purpose of this Descriptive Document is to outline:

- (a) The challenges facing the Partnership;
- (b) The Partnership's strategy for meeting these challenges; and
- (c) Main principles of the Project for the provision of a residual waste treatment solution.

This Descriptive Document is to be used as a general reference document for Participants who are interested in bidding for the Project. Further detail, scope and definition of the Project is provided in the ISDS and Appendices including, but not limited to, the Authority's Requirements (which also contains the Performance Management Framework) at Appendix 6.

This Descriptive Document comprises of 7 sections:

- (a) Section 1 provides a brief introduction to the Prosiect Gwyrdd Partnership and a brief profile of the Partners involved;
- (b) Section 2 outlines the strategic context for the Partnership's management of waste and the drivers for change;
- (c) Section 3 outlines the existing service provision and performance including waste profiles and composition;
- (d) Section 4 provides an overview of the contract objectives and the service requirements;
- (e) Section 5 provides a summary of the Partnership's affordability assessment for the Project;
- (f) Section 6 outlines the required approach regarding sites for the facility(ies) and planning permission; and
- (g) Section 7 provides a summary of the Partnership's procurement strategy and gives instructions to Participants on their engagement with the process.

For further general Project information, including a copy of the Outline Business case 2008 and Outline Business case addendum, please go to: www.etenderwales.bravosolution.co.uk or the published Project website <http://www.prosiectgwyrdd.co.uk>

Please note that all dates, time periods and figures in relation to values and volumes specified in this Descriptive Document are approximate only and the Partnership reserves the right to change any or all of them.

In the event of any inconsistency or conflict between the contents of the IDD and this Descriptive Document, Participants shall promptly, and in any event within two days of becoming aware, notify the Partnership in writing. The Partnership shall, as soon as reasonably practicable, issue a clarification to confirm how such conflict has been resolved.

EXECUTIVE SUMMARY

The Prosiect Gwyrdd Partnership arose from the joint need of Caerphilly County Borough Council, the County Council of the City and County of Cardiff, Monmouthshire County Council, Newport City Council and the Vale of Glamorgan (together the "Partnership") to procure waste treatment facilities for their residual municipal waste. Concerns about the production of large quantities of municipal waste and the resulting negative impact on the environment as a result of its continued disposal to landfill further motivated the five Partners to seek a solution to their mutual problems.

The arguments for change are compelling from an environmental and sustainability perspective; there are also potentially significant economic benefits. Disposal to landfill is considered to be the least favourable waste management option and is at the bottom of the hierarchy of waste solutions. Consequently, disposal to landfill is no longer considered a medium to long term option by the Partnership.

The Welsh Assembly Government ("WAG") has made it clear that future strategic direction and resources will be directed towards local authority policies which are based on very high levels of recycling and composting. Nevertheless, and even with these challenging targets achieved, there will remain significant levels of residual waste which must be treated through techniques offering the best balance of environmental and economical benefits.

Each of the five Partners will deliver their own solutions to achieve the source segregated recycling and composting levels required by WAG, and some have already invested considerable funds to deliver the infrastructure necessary to develop services further.

The Partnership has entered into a Joint Working Agreement ("JWA1") to formalise their respective roles and responsibilities in relation to the joint working arrangements for the procurement of the Project. The Partnership has adopted a Lead Authority Model supported by a Project Team, Project Board, a Joint Committee and the members of each Partner. The Project Board and the Joint Committee will oversee the progress and implementation of the Project, to give the Project strategic direction and to be responsible for certain key reserved decisions. There are also a number of key decisions that will need to be referred to each council for decision. The Project Team will manage the day to day running of the Project and will be responsible for implementing decisions of the Project Board, the Joint Committee and the authorities. The structure will ensure an efficient decision making process during the period of the procurement up until contract close.

Public scrutiny is an essential part of ensuring that Prosiect Gwyrdd remains effective and accountable.

Arrangements have therefore been introduced to provide an opportunity for non executive (or "back bench") members to review key decisions taken by the Joint



Committee and Project Board, and make appropriate recommendations which will assist the project going forward.

The Panel is made up of scrutiny members from the five authorities who form Prosiect Gwyrdd and is supported by scrutiny officers from each authority. Officers from Prosiect Gwyrdd also assist the Panel by offering technical advice and responding to members' questions about the project.

These arrangements commenced in December 2009, when councillors from the five authorities met with representatives of Prosiect Gwyrdd to share views on the evaluation criteria which would be used in the procurement process.

The Scrutiny Panel is currently chaired by Councillor Chris Williams from the Vale of Glamorgan.

The Partnership aims to meet the national targets for maximising waste as resource through the MSW recycling and composting targets, and procuring a waste treatment solution, to minimise the MSW that is sent to landfill to a maximum of 5% of the Partnership's MSW arising in 2024/25. In achieving this aim, the Partnership wishes to minimise the environmental impact of that service provision and to establish a sustainable, cost effective regional solution for the management of waste for the Partnership within the legislative frameworks.

The key driver for the Partnership is to secure a sustainable solution that achieves the necessary diversion of municipal waste from landfill and the diversion of biodegradable municipal waste to achieve its LAS targets. Total municipal waste arising in the administrative areas of the Partnership in 2009/10 was 447,991 tonnes of which 180,579 tonnes was recycled or composted and 271,043 tonnes was consigned to landfill. By way of guidance only but without warranty as to future projections, current projections (allowing for growth, waste minimisation and improved recycling) are that approximately 30% to 35% (which equates to approximately 156,073 to 182,085 tonnes in year 2024/25) of the total municipal waste arising in the administrative areas of the Partnership will need to be treated pursuant to the Project.

A Reference Project has been developed by the Partnership assessing a number of key parameters including (but not limited to) waste arisings, site availability, location, technology options, compliance with local and national targets/strategy and cost. The Reference Project has been proposed for the purposes of the Partnership's Outline Business Case ("OBC") only and the Partnership does not anticipate requesting Participants to submit a mandatory solution based on the Reference Project. However, the Partnership reserves the right to require Participants to provide solutions based on key sensitivities such as (but not limited to) different funding structures. Further details will be provided at each stage of the Competitive Dialogue Procedure.

The Prosiect Gwyrdd Partnership does not intend to specify a particular technology solution for the Project and will, therefore, consider any technology solution that meets the Partnership's requirements which will be assessed in accordance with the evaluation methodology for the Project. The Partnership also intends to make a site available for the purposes of the Project (the "Optional Site") although Participants may, if they prefer, put forward their own site(s).

It is envisaged that the contract be procured as a Public Private Partnership for the treatment and disposal of the Partnership's municipal residual waste with revenue support being provided by WAG. The Project may include (without limitation) provision for the design, build, finance and operation of a residual waste treatment facility(ies) and/or a merchant waste treatment facility(ies).

Dependant on the solution proffered, the expectation is that financing for the Project will be predominantly, if not wholly, procured from private finance. However, the Partnership reserves the right to provide or procure capital contributions and/or finance for the Project from other sources including (but not limited to) prudential borrowing and/or the European Investment Bank.

While the Partnership envisages a contract period of approximately 25 (twenty five) years with an option to extend by a further 5 (five) years, the actual contract period will be determined by best value considerations during the Competitive Dialogue Procedure and may also be dependent on financial market conditions. For the avoidance of doubt, a 25 (twenty five) plus 5 (five) years duration is indicative only and is not intended to specify the maximum or minimum length of the contract.

The Solution must meet the Partnership's output requirements which are currently anticipated to include all treatment output, rejects and residues from the facility(ies) including (but not limited to) the marketing and sale of recyclable materials, compostable materials, other materials recovered, loading and onward transport to final destinations including the provision of landfill for residues to the extent necessary. The Partnership reserves the right to explore with the Participants during the Competitive Dialogue Procedure the provision of information and visitor facilities and the potential for marketing any energy (heat and/or power and/or electricity) produced by the solution to neighbouring users and/or the Partnership and/or to the National Grid and/or to other users.

The procurement is not intended to include any of the collection functions of the Partnership. Dependant on the solution proffered some ancillary waste management services such as (but not limited to) transfer stations, bulking and haulage operations may be required. This will be the subject of dialogue. The potential for the facility(ies) to cater for commercial and industrial waste and waste from other public sector organisations may also be explored during the dialogue.

In summary, it is envisaged that Prosiect Gwyrdd may become the most significant waste management collaboration between local authorities in Welsh history with funding support from WAG, and that the Project will become a substantial partnership between the public and private sectors.

SECTION 1

1 Introduction to Prosiect Gwyrdd

1.1 The Prosiect Gwyrdd Waste Partnership

1.1.1 Prosiect Gwyrdd is a partnership of five local authorities in South East Wales comprising Caerphilly County Borough Council ("Caerphilly CBC"), the County Council of the City and County of Cardiff ("Cardiff Council"), Monmouthshire County Council ("Monmouthshire CC"), Newport City Council ("Newport CC") and the Vale of Glamorgan Council (the "Vale of Glamorgan") (together the "Partnership" and each individually a "Partner"). The Partnership is working collaboratively at both Elected Member and Officer levels, with a Joint Scrutiny Committee, a Joint Committee and a Project Board.

1.1.2 The Partnership's objective is to provide a sustainable, cost effective, long term residual waste treatment solution to minimise the use of landfill and the environmental impacts from waste disposal in accordance with all legislation, guidance and policies including (but not limited to) the principles of the Regional Waste Plan.

1.2 Overview of Geography

1.2.1 The South East Wales Region comprising 10 local authorities, is home to just under half the population of Wales: 1,350,000 people in 545,000 households. There are three distinct parts to the region, each presenting different challenges for waste management:

- (a) The cities of Cardiff and Newport with a population of some 460,000 in an area of 80 sq miles at high densities and with pressure for development.
- (b) The 'valleys' areas with about 615,000 people in about 400 sq miles broadly characterised by linear urban communities with a long experience of population loss away from the recent growth points where the valleys meet the M4 corridor.
- (c) The rural areas of south Powys, Monmouthshire and the coastal plain spread over 1,700 sq miles, about 77% of the region, with a population of some 275,000 at low densities and with significant areas of strong pressures for growth.

1.2.2 The Project brings together 5 of the 10 local authorities that make up the South East Wales Region that are a diverse group of authorities from the valleys, border and coastal plain of South

East Wales with a collective population of 863,968 and 365,305 households. The Partners face common challenges in developing waste management practices, along with individual challenges such as remoteness and high levels of multiple deprivations.

1.2.3 The geography, economic and demographic make up of each of the Partners' areas varies significantly. The data below gives some indication as to the broad range within the Partnership:

- (a) Caerphilly County Borough Council covers approximately 28,000 hectares including the communities of Rhymney, Markham, Hollybush, Ystrad Mynach, Caerphilly, Blackwood, Machen, Risca, Nelson, Crosskeys, Crumlin and Hafodryns, etc. The authority is located north of Cardiff and is the fourth largest unitary authority in Wales. There are good transportation links, the M4 motorway being easily accessible to the South, the Heads of Valleys Road to the North, and train links to Cardiff from Rhymney, Caerphilly and Risca. The population currently stands at approximately 170,000 with 75,000 properties;
- (b) Cardiff Council encompasses a vibrant historic capital city which is currently undergoing significant modernisation, extending the already successful development of Cardiff Bay. It has excellent transport links, with the M4 motorway running through the authority and rail links to South West Wales, the Valleys to the North, Mid Wales and South West England. The population is currently estimated at 318,000 with 131,000 households. 50,000 of these residents are rated as being in the worst 10% of multiple deprivation levels in Wales: more people living in multiple deprivation than any other unitary authority in Wales;
- (c) Monmouthshire County Council is the largest of the Partners, covering an area of 88,000 hectares but with a population of approximately 87,000 is also the least densely populated. The 39,000 households are spread throughout a predominantly rural area with key population centres in the market towns of Abergavenny, Chepstow and Monmouth. The authority is home to the Wye Valley Area of Outstanding Natural Beauty and the Brecon Beacons National Park on its northern boundary. As a result the local economy is partially reliant on tourism, this accounting for 25% of employment in the area;
- (d) Newport City Council has a multi-cultural population of 139,000 living in approximately 59,000 households, set to

grow to 60,000 properties. It is an authority with strong industrial heritage that is expanding its electronics and financial sectors. Covering approximately 19,000 hectares, the City is well linked to Southern Wales and South West England via the M4 motorway and rail links;

- (e) Vale of Glamorgan Council bounded to the North by the M4 motorway, with coastline making up its southern boundary covers approximately 33,000 hectares. The authority has excellent rail and road links as well as being home to Cardiff International Airport. The population of approximately 123,000 and 54,000 households covers the communities of Barry, Rhose, Penarth, Penmark, Llantwit Major, Cowbridge and Dinas Powys.

1.2.4 As unitary authorities, the Prosiect Gwyrdd Partners are responsible for the collection (as Waste Collection Authorities ("WCAs")) and disposal (as Waste Disposal Authorities ("WDAs")) of municipal waste and recycle from the kerbside, bring banks and the provision of Household Waste Recycling Centres ("HWRCs"), as well as for disposal and treatment services.

1.2.5 Appendix 1 to this Descriptive Document shows the Partnership's administrative area, along with sites receiving or intending to receive waste for landfill.

1.3 Project Aims

1.3.1 The Prosiect Gwyrdd Partnership has the following aims for the Project:

- (a) A commitment to meet WAG's targets for Municipal Waste as set out in Towards Zero Waste an overarching strategy Municipal Waste Management in Wales June 2010;
- (b) To minimise the environmental impacts of the Partners' residual waste management operations;
- (c) To maximise economies of scale by working in partnership;
- (d) To provide best value for the Partners' tax payers;
- (e) To establish a sustainable, cost effective regional solution for the treatment of waste for the Partnership;

- (f) To comply with the necessary terms and conditions associated with the approved WAG funding.

1.4 Governance - Joint Working Agreement and the Joint Committee

- 1.4.1 The Partnership has entered into a Joint Working Agreement ("JWA1") to formalise their respective roles and responsibilities in relation to the joint working arrangements for the procurement of the Project. The Partnership has adopted a Lead Authority Model supported by a Project Team, Project Board, a Joint Committee and the members of each Partner. There are also a number of key decisions that will need to be referred to each council for decision. The JWA1 sets out that the Project Board and the Joint Committee will oversee the progress and implementation of the Project, to give the Project strategic direction and to be responsible for certain key reserved decisions. The Project Team will manage the day to day running of the Project and will be responsible for implementing decisions of the Project Board, the Joint Committee and the authorities.
- 1.4.2 The Partnership is very keen to work together to manage their waste treatment services and this Project, supported by the agreed and signed JWA1, is the first step in achieving this joint aim.
- 1.4.3 Cardiff Council will act as the lead authority for the procurement process (the "Lead Procurement Authority"). The Lead Procurement Authority shall be responsible for the negotiation of the Project Agreement with the Participants and shall, in consultation with the other Partners, endeavour to achieve the Most Economically Advantageous Tender for the Partnership.
- 1.4.4 It is anticipated that the authority that host the final solution will act as the lead authority (the "Lead Contracting Authority") on behalf of the Partners and enter into the Project Agreement with the Contractor. However, the Partnership reserves the right to change this and will confirm who will act as the Lead Contracting Authority during the Competitive Dialogue Procedure.
- 1.4.5 A second Joint Working Agreement ("JWA2") (to be negotiated in parallel with the Project Agreement) will regulate the relationship between the Partners during the works and the services period of the Project.
- 1.4.6 With reference to the Joint Committee, the JWA1 sets out the committee's terms of reference in further detail. Each Partner has appointed two representatives to the Joint Committee and these

are empowered to agree matters on behalf of their Partner. Please see Table 1a below for further details of the members of the Joint Committee. All the other individuals in Table 1a are required to attend the meeting but will not vote.

Table 1a Joint Committee Membership

Joint Committee Membership Name	Partner	Portfolio
Cllr Mark Stephens (Chair)	Cardiff Council	Finance
Cllr Margaret Jones	Cardiff Council	Environment
Cllr Collin Mann	Caerphilly CBC	Finance
Cllr Lyn Ackerman	Caerphilly CBC	Environment
Cllr Peter Murphy	Monmouthshire CC	Finance
Cllr Bryan Jones	Monmouthshire CC	Environment
Cllr David Fouweather	Newport CC	Highways
Cllr William Routley	Newport CC	Environment
Cllr Gordon C. Kemp	Vale of Glamorgan	Finance
Cllr Geoff Cox	Vale of Glamorgan	Environment
Non Voting Attendees:		
Christine Salter	Cardiff Council	s151 Officer to Joint Committee
Kate Berry	Cardiff Council	Monitoring Officer to Joint Committee
Stephen Davison	Newport CC	Senior

		Responsible Officer
Committee Clerk	Newport CC.	Alison Brown Julie Eales

1.5 Project Board and the Project Team

1.5.1 A Project Board has been established by the Partnership to oversee the delivery of this procurement process and to ensure key decisions are taken at the appropriate time and adequate resources are made available to support the process.

1.5.2 The Project Board is chaired by Stephen Davison, as the Senior Responsible Officer, who also represents Newport CC as the Head of Public Protection and Environmental Services. The four other Partners are represented by the Executive Officers for Caerphilly CBC, Cardiff Council, Monmouth CC, and Vale of Glamorgan. Please see table 1b for further details.

1.5.3 All other individuals in table 1b including the Project Manager, the legal, procurement and technical officers for each Partner shall also be entitled to attend the meetings of the Project Board but not vote.

Table 1.b Project Board Membership

Project Board Name	Role	Partner
Anthony O' Sullivan	Project Champion	Caerphilly CBC
Senior Responsible Officer Stephen Davison	Chair & Business Advisor	Newport CC
<u>Project Executives</u>		
Mark Williams	Business Advisor	Caerphilly CBC
Tara King	Business Advisor	Cardiff Council

Dave Harris	Business Advisor	Monmouthshire CC
Cliff Parish	Business Advisor	Vale of Glamorgan
Non Voting Attendees		
Howel Jones	Transactor	Local Partnerships
Internal Advisors (non-voting attendees)		
Hrjinder Singh	Interim Project Manager	Project Team
Elizabeth Weale	Project Assurance	Lead Legal Officer Cardiff CC
Elizabeth Lucas	Project Assurance	Head of Procurement Caerphilly CBC
Chris Barton	Project Assurance	Head of Finance Newport CC
Marcia Sinfield	Project Assurance	Project Accountancy Manager, Cardiff CC
Jason Conibeer	Project Administrator	Project Team

1.5.4 A Project Team has also been set up to manage the day to day running of the Project and to be responsible for implementing decisions of the Project Board, the Joint Committee and the authorities. The Project Team and external advisors are described in section 1.7 of the ISDS is made up of the Partnership's employees, a Partnerships UK Transactor and the Partnership's external advisors who have specialist financial, technical, insurance and legal skills. The core team responsible for undertaking the work necessary to deliver this Project are provided in Table 1.1 of section 1.7 of the ISDS.

1.5.5 In addition, specialist support will be sought as necessary throughout the Project (e.g. risk management and communications).

1.5.6 Please note that the individuals listed in tables 1.1, 1.2 and the Project Team (Tables 1.1 and 1.2 of section 1.7 of the ISDS) may

change at any time throughout the Competitive Dialogue Procedure.

1.6 Business Decisions

1.6.1 The Partnership has concluded a detailed analysis of the requirements for managing the Partnership's residual waste. This detail and the recommendation to conduct an EU procurement following the Competitive Dialogue Procedure is contained in the Partnership's OBC. Please see the foreword to this Descriptive Document for further details on how to obtain a copy of the OBC.

1.6.2 A report common to all authorities, "Municipal Residual Waste Treatment – Procurement", which was developed using information from the OBC, has been presented to the Executive/Cabinet Members of each of the Partners. The final OBC agreement and authority to proceed was ratified by each Partner as follows:

Table 1c The Partnership's Decisions

Partner	Approval Of OBC	Approval To Proceed To Procurement Cabinet/ Executive	Full Council Decision
Caerphilly CBC	04 December 2008	21 July 2009	28 July 2009
Cardiff Council	09 December 2008	11 June 2009	25 June 2009
Monmouth	07 January 2009	03 June 2009	30 July 2009
Newport CC	17 December 2008	26 May 2009	29 June 2009
Vale Of Glamorgan	17 December 2008	03 June 2009	30 June 2009

1.6.3 Specifically, the Partners each agreed:

- (a) the text of the updated OBC (OBC Health-Check Addendum May 2009);
- (b) to follow a strategic approach to the development of the evaluation criteria;
- (c) that the site at Tatton Road, Newport would be made available to Participants as the Partnership's Optional Site but the Partnership would not preclude Participants bringing forward proposals based on other sites;

- (d) budgets to meet the Projected Project Costs to Financial Close;
- (e) the affordability position of each Partner in relation to the Project;
- (f) to enter into a Joint Working Agreement together (i.e. the JWA1);
- (g) that Cardiff Council would act as the Lead Procurement Authority on behalf of the Partnership throughout the Competitive Dialogue Procedure;
- (h) that a stakeholder consultation would be carried out;
- (i) that the Contract Notice should be published; and
- (j) that any recommendation to appoint the Preferred Bidder and award the contract is a matter reserved to the council of each Partner at the appropriate time.

SECTION 2

2 Strategic Context

2.1 Purpose

- 2.1.1 This section sets out the strategic context shaping the future procurement of the Partnership's residual waste management services.
- 2.1.2 The changes in the Partnership's approach to waste management are being driven by changes in attitudes towards waste disposal. This drive stems from EU legislation which has been transposed into UK legislation. The result has been the introduction of targets to reduce BMW waste being sent to landfill and to increase alternative waste management solutions.
- 2.1.3 A number of waste legislation, guidance and policies are relevant to the procurement of the Project such as (but not limited to):
 - (a) European Union Landfill Directive 1999;
 - (b) Waste and Emissions Trading Act 2003;
 - (c) Landfill Allowance Scheme (Wales) Regulations 2004;
 - (d) Landfill Tax;
 - (e) National Waste Strategy;
 - (f) The Partners' Individual Municipal Waste Strategies;
 - (g) National Planning Policy;
 - (h) Regional Waste Plan; and
 - (i) Local Planning Policies.

2.2 European Union Landfill Directive 1999

2.2.1 The European Union Landfill Directive 1999 set challenging targets aimed at reducing the amount of biodegradable municipal waste ("BMW") that can be sent to landfill in all member states. These targets are as follows:

- (a) By 2010*, to reduce BMW landfill to 75% of that produced in 1995;
- (b) By 2013*, to reduce BMW landfill to 50% of that produced in 1995; and
- (c) By 2020, to reduce BMW landfill to 33% of that produced in 1995

(* Includes a 4-year extension for the UK).

2.2.2 These targets have been cascaded down to local authorities through the allocation of landfill allowances as set out below.

2.3 Waste and Emissions Trading Act/Landfill Allowance Scheme (Wales) WAG Regulations 2004

2.3.1 In 2003, the UK Government enacted the Waste and Emissions Trading Act (the "WET Act"), which is now viewed as one of the key drivers for change in waste management. In Wales, under powers conferred by the WET Act the Landfill Allowance Scheme (Wales) Regulations 2004 ("LAS Wales") were made by WAG on 8 June 2004. The scheme has cascaded targets down to the individual local authorities through the allocation of landfill allowances on the tonnage of BMW that can be disposed to landfill in any given year up to 2020. Penalties for sending more tonnes of BMW to landfill than the level of allowances held will result in fines of £200 per tonne of BMW, plus potentially any infraction fines from the EU in the event that Wales as a whole does not meet its targets.

2.4 Current LAS Targets for Each Partner¹

Table 2a LAS Allowances

	2009/10	2012/13	2015/16	2019/20
Caerphilly CBC	45,213	27,862	24,305	19,563
Cardiff Council	71,575	47,797	41,692	33,557
Monmouthshire CC	20,434	13,712	11,962	9,628
Newport CC	30,693	19,192	16,742	13,475
Vale of Glamorgan	25,063	17,570	15,327	12,336

¹ As at March 2009 "Revision of the Landfill Allowance Scheme"

2.5 Other Fiscal Measures

- 2.5.1 The introduction of Landfill Tax in 1996 has significantly increased the Partnership's waste management costs by levying an additional charge on every tonne of waste that is disposed of in a landfill site. The current rate of landfill tax for active wastes is £48 per tonne. The UK Government has confirmed that it will rise at a rate of £8 per tonne until at least 2014/15.

2.6 Welsh Waste Strategy

- 2.6.1 WAG published 'Wise about Waste: the National Waste Strategy for Wales' in June 2002. The primary objectives of the strategy are two-fold:

- (a) To make Wales a model for sustainable waste management; and
- (b) To comply with the requirements of relevant EU and UK legislation.

- 2.6.2 The strategy sets out a number of targets for municipal waste arising, waste reduction and recycling/composting in Wales, as follows:

- (a) By 2010, achieve a reduction in waste produced to an equivalent of at least 10% of the 1998 arising figure;
- (b) By 2009/10 (and to apply beyond), waste arising per household should be no greater than those (for Wales) in 1997/98;
- (c) By 2020, waste arising per person should be less than 300kg per annum; and
- (d) By 2009/10 and beyond, at least 40% recycling/composting with a minimum of 15% composting (from source segregated materials only) and a minimum of 15% recycling.

- 2.6.3 The Wise about Waste strategy has been revised to reflect the progress that has been made since its initial publication. The Department of Environment, Sustainability and Housing in Wales has recently made a series of policy statements and released a revised strategy in June 2010 'Towards Zero Waste'. This paper sets out the new targets (as set out below in Table 2.b) for waste



recycling and composting, landfill and residual waste treatment. Currently the Municipal Waste Sector Plans are out to consultation.

Table 2.b Waste Recycling, Composting & Waste Treatment Targets²

	2009/10	2012/13	2015/16	2019/20	2024/25
Minimum levels of recycling/composting	40%	52%	58%	64%	70%
Minimum proportion of reuse/recycling/composting that must come from source separation (kerbside, bring and/or civic amenity (CA site)	80%	80%	80%	80%	80%
Minimum levels of composting (or AD) of source separated food waste from kitchens as part of the combined recycling/composting target above		12%	14%	16%	16%
Maximum level of landfill				10%	5%
Maximum level of energy from waste ³			42%	36%	30%

2.6.4 In order for the Partnership to guarantee that they will make the LAS targets up until 2019/20 it is necessary for the Partnership to both itself obtain high recycling and composting rates and to procure a waste treatment solution (the latter of which makes up this Project).

2.6.5 However, please note that any waste treatment solution which proposes EfW technology will also be subject to WAG's targets (as agreed and/or amended in the OBC). The reason for this cap is to ensure that local authorities continue to strive to meet their source segregated recycling and composting targets. As set out in the Contract Notice, the Partnership's approach to this procurement was technology neutral and any Solutions containing EfW by technology must comply with these targets.

2.7 The Partners' Individual Waste Management Strategies

2.7.1 The Partners have each produced a waste strategy. However, due to the speed of change and the variation in targets and

² Towards Zero Waste – One Wales: One Planet Consultation April 2009 Draft Strategy for Wales 2010-2050

³ The WAG limit as set out in Towards Zero Waste – One Wales: One Planet Consultation April 2009 Draft Strategy for Wales 2010-2050 is net of bottom ash recycling

preferred solutions required by WAG, these strategies are not an accurate reflection of current collection, recycling and disposal requirements. For instance, a number of the Partners' implemented services go beyond those described in their current waste strategies in order to further increase recycling and composting rates. As these strategies have been superseded, the Partnership does not anticipate distributing copies, but copies can be available on request.

- 2.7.2 However, the Partnership has agreed a set of technical assumptions and service delivery aspects such that there is clear understanding of the waste types and flows that will comprise the waste flows in the Project. This shall include reference to the Partnership's sustainability policies. Details of the technical assumptions and service delivery aspects are set out in section 4 of this Descriptive Document and will be updated during the Competitive Dialogue Procedure.

2.8 National Planning Policy

- 2.8.1 *The Planning Policy Wales* sets out WAG's planning policies for Wales. Specifically, that local authorities must ensure that any policies in development plans facilitate the delivery of the waste management objectives in the Wales Waste Strategy (as set out in section 2.6 above) and meet the obligations required by EU and national legislation.
- 2.8.2 *The Technical Advice Note (Wales) 21* on waste provides more detailed guidance, stating that development plans should facilitate the delivery of the Wales Waste Strategy on the ground by adopting a sustainable approach to waste management. In particular it states that policies should provide clear guidance for new waste infrastructure indicating suitable locations or types of locations that may be acceptable.

2.9 Regional Waste Plan

- 2.9.1 The *South East Wales Regional Waste Plan* provides a land use framework to facilitate the development of an integrated network of facilities to treat and dispose of waste in South East Wales in such a way that has regard for the Wales Waste Strategy, satisfies modern environmental standards and meets targets set by EU and national legislation.
- 2.9.2 The document was originally agreed in March 2004 and a first review of the plan was approved by the constituent authorities of South East Wales in July 2008. The review sets out a Regional Waste Plan indicating the preferred mix of waste management

and resource recovery technologies (and associated capacities) for managing the forecast waste arising of all controlled waste streams, together with a spatial element to guide the location of new facilities.

2.10 Local Planning Policies

2.10.1 The approved and emerging waste specific planning policies for the five Partners are set out in Appendix C.

SECTION 3

3 Existing Service Provision and Projected Performance

3.1 Introduction

- 3.1.1 The Partnership's MSW arising is currently managed by a total of 212 "Bring Sites", 15 HWRC sites, 9 composting facilities, 6 waste transfer stations, 4 MRFs and a number of landfill facilities. In summary, the Partners are recycling and composting on average 41% of their total Municipal Solid Waste ("MSW") arising and depending heavily on landfill sites to dispose of their residual waste.

3.2 Existing Waste Management Arrangements

- 3.2.1 Please see Appendix B of this Descriptive Document which sets out the existing waste management arrangements (including the current contractual arrangements and contract interfaces) of each of the Partners.

3.3 Performance of Existing Arrangements

- 3.3.1 The Partnership's performance in terms of recycling and composting is shown in the tables at Appendix B of this Descriptive Document. The actual rates for 2009/10 are given. In addition, the Partnership has declared a commitment to work towards the higher recycling and composting rates set out by WAG (as set out in WAG's paper - Towards Zero Waste – One Wales: One Planet June 2010 Strategy for Wales 2010-2050).
- 3.3.2 As set out in section 2 of this Descriptive Document, in order for the Partnership to guarantee that they will make the LAS targets up until 2019/20 it is necessary for the Partnership to itself obtain high recycling and composting rates and to procure a waste treatment solution (the latter of which makes up this Project). The Partnership is also committed to controlling waste growth and has agreed to work towards a combined growth rate reducing to 0.15% per annum.
- 3.3.3 However, increased investment will be needed to further develop the recycling and composting schemes for the Partners beyond current plans in order to meet all of WAG's proposed targets. Whilst the scope of this Project does not include the following the operation of or the provision of new:

- (a) Source segregated recycling and composting schemes (for the avoidance of doubt, Participants may submit Solutions based on recycling and/or composting (except for source segregated recycling and composting schemes) at any site proposed by the Participant or on the Optional Site in its Solution);
- Kerbside collection;
 - HWRCs; and
 - Bring banks,

3.3.4 It is recognised that these services play a core role in determining the composition of the residual waste to be managed through the Project. It is therefore important for Participants to consider these services in parallel with the requirements of this Project.

3.4 Waste Arisings

- 3.4.1 As set out in the Contract Notice by way of guidance only but without warranty as to future projects, current projects (allowing for growth, waste minimisation and improved recycling) are that approximately 30% to 35% of the total municipal waste arising in the administrative areas of the Partnership will need to be treated pursuant to the Project.
- 3.4.2 Please see Section 3.13 of the Output Specification which sets out the approximate forecast of Contract Waste arising for the Partnership until 2040, based on the waste flow modelling that has been undertaken.
- 3.4.3 The forecast amount of Contract Waste to be treated pursuant to this Project will be based on waste flows for each Partner working towards achieving the recycling and composting targets (including food waste) implemented by WAG in the overarching waste strategy document 'Towards Zero Waste' issued in June 2010. The waste flow modelling is discussed in further detail in section 3.6 below. The only exception is that the final proposed target in 2024/25 will be replaced by 65% source-segregated recycling and composting. These figures have been incorporated within the OBC which has been approved by the Partnership and WAG. The waste flow modelling will be based on assumptions on the type and quantity of each material to be diverted through recycling and composting to determine the composition of residual waste requiring treatment.

3.4.4 As set out in section 2.6.6 above, any Solution which proposes EfW technology will also be subject to WAG's additional targets (as agreed and/or amended in the OBC). In relation to any Solution proposing EfW technology, it is therefore recognised that there may be surplus residual MSW above WAG's caps as agreed and/or amended in the OBC and the Partnership anticipates this surplus may require disposal to landfill.

3.4.5 The potential for the facility(ies) to cater for commercial and industrial waste and waste from other public sector organisations may also be explored during the Competitive Dialogue.

3.5 Waste Composition

3.5.1 Table 3.b below sets out the indicative waste composition of Contract Waste which has been projected from waste flow modelling undertaken by the Partnership and is largely based on a composition surveys undertaken in 2009.

Table 3.a Indicative Contract Waste Composition

Material	2015/16	2019/20	2024/25
Glass	4.3%	3.3%	3.2%
Paper/Card	18.7%	17.5%	17.5%
Cans/Metals	3.7%	3.9%	3.9%
Plastics	11.9%	8.4%	8.3%
Textiles	3.6%	3.3%	3.3%
Green waste	2.1%	2.7%	2.7%
Kitchen waste	20.9%	20.7%	20.8%
Timber	2.9%	3.4%	3.4%
WEEE	4.0%	4.6%	4.6%
Potentially hazardous	1.1%	1.2%	1.2%
Miscellaneous combustibles	20.1%	23.2%	23.2%
Miscellaneous non-combustibles	3.3%	3.9%	3.8%
Fines	3.4%	4.0%	3.9%

3.6 Waste Flow Modelling

3.6.1 Data and Assumptions

3.6.2 The data and assumptions used in the waste flow modelling on baseline waste arisings, waste composition, waste growth rates, and the Partner Authorities service improvements required to meet the WAG targets are summarised in Appendix 10 Technical Assumptions of the ISDS.

3.6.3 The waste flow models were created to show the performance required to achieve the targets set by WAG wherever possible. It has been assumed that the differential in target between 65% (to be met by each local authority through source segregated recycling and composting,) and final target of 70% recycling and composting Target to be achieved in 2024/25 will be met within the Solution through the treatment of the Contract Waste that will produce reusable process products and/or residues that will be diverted from landfill. This is the basis for the Recycling target specified in the Partnership's Requirements.

3.6.4 The models take into account the services that the Partners propose to implement in the coming years. To meet the early targets 2012/2013 the expansion of existing services and the introduction of food waste recycling collection services is considered sufficient. For the later targets 2019/2020 and 2024/25, it will be necessary for the Partners to maximise the materials recovered for recycling and to achieve high participation rates in all their services.

3.6.5 It should be noted that the waste flow models reflect the information provided by the Partners and are based on reasonable assumptions. The waste flows may change as external parameters such as consumer habits change in future years.

3.6.6 Performance against Targets

3.6.7 The performance of each Partner against the WAG targets is summarised below. The waste flows have been based up on assumptions such that the Partner's Landfill Allowances may be met through source segregated recycling and composting (or Anaerobic Digestion) prior to service commencement of the Prosiect Gwyrdd Solution.

3.6.9 It should be noted that the waste flows are theoretical; actual recycling and composting levels will depend on each Partner securing appropriate participation levels, the level of

contamination, the actual schemes implemented and the availability of funding. The actual waste composition may depend upon a number of factors including but not limited to future manufacturing trends and purchasing behaviour.

Table 3.b: Performance Against Targets

	Year commencing April				
	2009	2012	2015	2019	2024
Recycling/composting (exc IBA)					
Caerphilly	41.7%	52.6%	58.5%	63.9%	63.9%
Cardiff	38.3%	52.1%	58.5%	64.4%	64.4%
Monmouthshire	41.0%	58.8%	62.9%	66.5%	66.5%
Newport	37.5%	54.8%	60.7%	65.0%	65.0%
Vale of Glamorgan	35.7%	52.6%	60.9%	64.9%	64.9%
Recycling/composting (inc treatment product recycling)					
Caerphilly	48.0%	58.8%	64.7%	76.4%	76.4%
Cardiff	38.4%	52.8%	59.1%	72.5%	72.5%
Monmouthshire	40.9%	58.7%	62.7%	73.4%	73.4%
Newport	40.6%	57.8%	63.7%	74.6%	74.6%
Vale of Glamorgan	41.3%	58.1%	66.4%	76.7%	76.7%
<i>WAG target</i>	<i>40%</i>	<i>52%</i>	<i>58%</i>	<i>64%</i>	<i>70%</i>
Food waste					
Caerphilly		12.3%	13.5%	15.7%	15.7%
Cardiff		10.6%	12.0%	12.0%	12.0%
Monmouthshire		8.4%	9.6%	11.5%	11.5%
Newport		9.6%	11.2%	12.8%	12.8%
Vale of Glamorgan		12.5%	14.2%	15.9%	15.9%
<i>WAG target</i>		<i>12%</i>	<i>14%</i>	<i>16%</i>	<i>16%</i>
⁴Residual household waste per person per year (kg)					
Caerphilly		208	173	148	146
Cardiff		235	212	182	182
Monmouthshire		186	166	150	150
Newport		178	158	139	138
Vale of Glamorgan		164	127	117	118

- (a) Please note that all dates, time periods and figures in relation to values and volumes specified in this Descriptive Document are approximate only and the Partnership reserves the right to change any or all of them. The

⁴ Based upon current waste growth assumptions that will be updated as annual actual data becomes available during the Competitive Dialogue Procedure.



information is provided by guidance only and without warranty as to future projections.

SECTION 4

4 Overview of Service Requirements

4.1 Project Scope

4.1.1 The scope of the Project includes (but is not limited to):

- (a) Detailed design of the facility(ies);
- (b) Provision of finance to build, operate and maintain the facility(ies);
- (c) Application for planning permission, environmental permits and all necessary consents required for the construction and operation of the facility(ies);
- (d) Construction and commissioning of the facility(ies);
- (e) Acceptance of residual MSW at the facility(ies);
- (f) Operation and maintenance of the facility(ies) for the period of the Project Agreement which shall include the reception, treatment and/or recovery of contract waste in accordance with the targets and standards set out in the draft Output Specification;
- (g) The management of storage, treatment, sale, removal and transportation of all products and disposal of all process residues and rejects from the facility(ies);
- (h) The production and management of strategies to maintain the service in the event of the non-availability of any key aspect of the Solution;
- (i) The responsibility for all employment and staffing matters relating to the delivery of the Solution;

- (j) Hand-back or decommissioning of the facility(ies) at the end of the contract period; and
- (k) Any other ancillary services agreed as part of the Competitive Dialogue Procedure in accordance with the Partnership's Contract Notice.

4.1.2 For further details, please see Appendix 6 of this ISDS (Authority's Requirements). Part 1 of Appendix 6 contains the Authority's Performance Requirements and Part 2 sets out the Authority's Performance Management Framework.

4.2 Project Objectives and Targets

4.2.1 The overall objective of the Project is the provision of a waste treatment facility(ies) to divert contract waste from landfill and treat waste in an environmentally and economically sustainable and safe manner.

4.2.2 The Solution shall meet the Partnership's output requirements which are currently anticipated to include:

- (a) All treatment output, rejects and residues from the facility(ies) including (but not limited to);
- (b) the marketing and sale of recyclable materials;
- (c) compostable materials;
- (d) other materials recovered;
- (e) loading and onward transport to final destinations including the provision of landfill for residues to the extent necessary.

4.2.3 The Partnership reserves the right to explore with the Participants during the Competitive Dialogue Procedure the potential for marketing any energy (heat and/or power and/or electricity) produced by the Solution to:

- (a) neighbouring users and/or

(b) the Partnership and/or

(c) the National Grid and/or

(d) to other users.

4.2.4 The procurement does not intend to include any of the collection functions of the Partnership.

4.2.5 Dependant on the Solution proffered some ancillary waste management services such as (but not limited to) transfer stations and bulking and haulage operations may be required. This will be the subject of dialogue.

4.2.6 The potential for the facility(ies) to cater for commercial and industrial waste and waste from other public sector organisations may also be explored during the dialogue.

4.2.7 The Partnership reserves the right to explore with the Participants during the Competitive Dialogue Procedure the provision of information and visitor facility(ies).

4.2.8 The Partnership intends to make a site available for the purposes of the Project, the Optional Site, to Participants although Participants may, if they prefer, put forward their own site(s).

4.2.9 Objectives

Objective 1

4.2.9.1 The Contractor shall provide a Solution that will comply with all legislation, guidance, policies and good industry practice including but not limited to:

(a) WAG targets for waste management;

(b) all relevant environmental legislation;

(c) the Landfill Allowance Scheme (LAS) Regulations (Wales) 2004 which includes (but is not limited to) the diversion of waste and biodegradable fraction from landfill; and

(d) the Government Sustainability Agenda.

Objective 2

- 4.2.9.2 The Contractor shall provide a Solution that minimises, where practicable, the exportation of recyclable and recoverable materials outside the Partnership's administrative area.
- 4.2.9.3 The Solution shall meet the Partnership's output requirements set out in paragraphs 4.2.2 and 4.2.3 above.

Objective 3

- 4.2.9.4 The Contractor shall deliver a Value for Money Solution to support the Partnership in discharging its statutory duty in relation to the management and disposal of MSW, within the budgets and constraints identified in the OBC.

Objective 4

- 4.2.9.5 The Contractor shall provide a Solution which enables innovation, continuous improvement of service and technology and provide a flexible, modern, long term, environmentally and economically sustainable solution that will meet the Partnership's and WAG's requirements for the management of residual waste as detailed in the OBC and documentation to be issued during the Competitive Dialogue Procedure.

Objective 5

- 4.2.9.6 The Contractor shall deliver a Solution that reflects an acceptable allocation of risk between the parties and an appropriate profit share mechanism that is developed to ensure that any benefits are shared in an equitable and transparent way.

4.2.10 Relationship with Other Services

- 4.2.10.1 A Participant's Solution shall be structured so as to ensure a smooth interface between the Solution and the other various processes/contracts used by the Partnership to manage its waste. The interface between the Participant's Solution and

the Partnership's current waste management services shall be agreed in the dialogue.

4.2.11 Exclusions from the Service

4.2.11.1 The procurement will not include any of the collection functions of the Waste Collection Authorities of the Partnership. In addition, as set out in section 3.3, a Participant's Solution shall not include the operation of source recycling and composting schemes, kerbside collection, HWRCs and existing disposal services or the development of any new facilities for these services. However, as a matter of flexibility, the Partnership may wish to include some ancillary waste management services such as (but not limited to) transfer stations and bulking and haulage operations. For the avoidance of doubt, the exclusion of source recycling and composting schemes from the scope of the Project does not preclude Participant's submitting Solutions based on recycling and/or composting at the Optional Site or on any site proposed by the Participant in its Solution.

4.2.12 Contract Period

4.2.12.1 In accordance with the Partnership's Contract Notice, whilst the Partnership envisages a contract period of approximately 25 (twenty five) years with an option to extend by a further 5 (five) years, the actual contract period will be determined by best value considerations during the Competitive Dialogue Procedure and may also be dependent on financial market conditions. For the avoidance of doubt, a 25 (twenty five) plus 5 (five) years duration is indicative only and is not intended to specify the maximum or minimum length of the Project Agreement.

4.2.13 Waste Tonnages and Composition

4.2.13.1 Further details of the waste tonnages and waste composition are located in section 3 of this Descriptive Document. However, in recognition of potential future waste analysis results and the re-evaluation of growth, the Partnership anticipates that adjustments to the tonnage projections and waste composition will be necessary. For the avoidance of doubt, all dates, time periods and figures in relation to values and volumes specified in this Descriptive Document are approximate only and the Partnership reserves the right to change any or all of them. Participants should therefore

regard any current data as being only indicative tonnage estimates.

4.2.14 **Approach to Risk**

The Partnership is looking to maximise value for money through the procurement by ensuring that risks are allocated to the party best placed to manage the risks. The contract is based on WAG's new standard form Residual Waste Treatment contract which is based on the standard design, build, finance and operate draft form of contract developed for waste procurements by Waste Infrastructure Delivery Programme (which has been developed in consultation with the market) and amended to incorporate any project specific and/or comments from WAG.

The Project Agreement is included within Appendix 7 of this ISDS, Participants will be requested to mark up the Project Agreement (including the Schedule to that agreement).

Commercial Terms/Contract Structure

- 4.2.14.1 The Project Agreement will follow WAG's updated standard form Residual Waste Treatment Contract, amended to incorporate any project specific issues and/or comments from WAG.

4.2.15 **Staffing Issues**

- 4.2.15.1 As set out in the Contract Notice, there may be TUPE requirements associated with this contract. Further details will be provided during dialogue of this Competitive Dialogue Procedure.

4.2.16 **Authority's Requirements: The Output Specification and Performance Management Framework**

- 4.2.16.1 The Authority's Requirements is attached to the ISDS at Appendix 6 Part 1 of the Authority's Requirements and defines the Performance Requirements of the contract. In addition, the contract management of performance is described by the Performance Management Framework attached to the ISDS at Appendix 6 Authority's Requirements Part 2.

4.2.17 **Social and Corporate Responsibility**

- 4.2.17.1 Corporate Social Responsibility is an integral part of both WAG's and the Partnerships' agenda.
- 4.2.17.2 The Contractor may be required to actively participate in the achievement of social and/or environmental objectives. Accordingly, contract performance conditions may relate in particular to social, environmental or other conditions. Further details are set out in the ISDS documentation.
- 4.2.17.3 Participants have been asked to provide details of their approach to Social and Corporate Responsibility in their Detailed Solutions. Please see the ISDS for more details including but not limited to the Evaluation Methodology (section 5 of the main body of the ISDS).

SECTION 5

5. Affordability and Payment

5.1 Affordability Assessment

5.1.1 The Partnership has undertaken a detailed financial assessment as part of the process of securing funding from WAG. In doing so the Partnership has established a prudent estimated cost of its Reference Project (developed to support the OBC finalised in summer of 2009) which encompasses all aspects of managing the Partnership's MSW including the receipt, transfer, recycling, composting, treatment of contract waste and landfill disposal of any residues more particularly described in the Output Specification. The Partnership's financial assessment (for the purposes of the OBC) estimated a cost based on a period of just under 32 years, which represents an assumed time required to procure the Project, obtain planning consent, build, finance, operate and maintain a residual waste treatment facility(ies) (for an anticipated 25 year operational period). However, please note that, as stated in the Contract Notice, the term of the Project (and an option to extend) will be determined during the Competitive Dialogue Procedure.

5.1.2 As part of this financial assessment, the Partnership also calculated:

- (a) Its 'Affordability Gap', the difference between the Partnership's combined current budgets and the projected cost of the Reference Project; and
- (b) Its required 'Affordability Envelope', the estimated range for the total cost of the Reference Project, defined by the estimated highest and lowest possible cost to the Partnership of the Project, taking into account the results of adverse sensitivity testing.

5.1.3 The upper threshold of the Affordability Envelope contains an element of potential contingency over and above the Partnership's prudent 'base case' estimate for the cost of the Reference Project. However, the Partnership expects to deliver the Project within the 'base case' figure and invites competitive prices and value for money proposals from Participants during the dialogue stages.

5.2 Welsh Assembly Funding and Support for the Project

- 5.2.1 The Project is identified as part of the Waste Procurement Programme Office for food and residual municipal waste management for Wales. Following submission of the Partnership's OBC to WAG in January 2009 and a subsequent final approval of the OBC Health-check Addendum by WAG in May 2009, the Project has been awarded a maximum revenue grant of £9.124 million per annum over the life of the contract.
- 5.2.2 WAG's continued financial support for the Project depends upon the satisfaction of its Funding Criteria, as set out in Appendix E (Extract of WAG Funding Criteria) of this Descriptive Document. Satisfaction of the WAG Funding Criteria must be demonstrated and evidenced by the Partnership in the Final Business Case which will be submitted to WAG. If the Solution, which has been selected by the Partnership as the Most Economically Advantageous Tender, fails to a material extent, to meet any of these terms, WAG funding for the Project will be withdrawn.
- 5.2.3 WAG is also providing the Project with support through:
- (a) Grant funding towards procurement costs;
 - (b) Funding Transactor support from Local Partnerships; and,
 - (c) Assistance with the Gateway Review process.

5.3 **Funding Strategy**

- 5.3.1 As set out in the Contract Notice, it is envisaged that the contract be procured as a PPP for the treatment and disposal of the Partnership's municipal waste with revenue support being provided by WAG. Depending on the Solution proffered, the expectation is that financing for the Project will be predominantly, if not wholly, procured from private finance. However, the Partnership reserves the right to provide or procure capital contributions and/or finance for the Project from other sources including (but not limited to) prudential borrowing and/or the European Investment Bank.
- 5.3.2 In response to the rise in bank funding costs, the Partnership has also developed a funding strategy aimed at mitigating the risks and issues associated with reduced bank funding availability which is currently affecting infrastructure projects around the UK. The strategy is currently based on developing the following potential alternative sources of funding for the Project (although

the Partnership reserves the right to consider other sources of funding):

- (a) European Investment Bank ("EIB");
- (b) Treasury Infrastructure Fund Unit ("TIFU"); and
- (c) Capital Contributions.

5.3.3 Early preliminary discussions have been held with representatives of the EIB for scoping the potential for funding arrangements. The Partnership anticipates that further understanding of this option will be obtained during the Competitive Dialogue Procedure.

5.3.4 TIFU has been set up to provide funding to projects that cannot be funded by the private sector banks and/or the EIB. The Partnership has registered the Project with TIFU prior to issuing its Contract Notice as a precautionary measure.

5.3.5 Following its assessment of Capital Contributions, the Partnership may seek to explore through dialogue the value for money benefit of making a Capital Contribution (which shall include but is not limited to funding by way of Prudential Borrowing). It is anticipated that any contribution shall be made in line with the WIDP guidance on Prudential Borrowing and the anticipated further guidance from HM Treasury. It is anticipated that the key principles that the Partnership will be following when exploring the value for money benefits of a Capital Contribution are:

- a) ensuring that there is sufficient private sector capital at risk when the Partnership makes its contribution, aligning both parties' interests; and
- b) ensuring that payment will only be made once works have been certified (i.e. following service commencement). However, the Partnership reserves the right to consider making a Capital Contribution at any stage during the term of the Project.

5.3.6 The Partnership is also keen to explore any other alternative funding/contractual arrangements where these assist affordability and offer value for money.

5.4 **Draft Payment Mechanism Principles Paper**

- 5.4.1 The Partnership anticipates following the WIDP Residual Waste Procurement Pack guidance as well as SoPC4 principles. Please see Appendix 12 of this ISDS, which sets out the Partnership's Payment Mechanism Principles paper. The Payment Mechanism will be structured to take account of Project-specific priorities and circumstances and will evolve through the Competitive Dialogue Procedure to take account of the technological solution(s) put forward. The draft Payment Mechanism is included as Appendix 8 of the ISDS.

SECTION 6

6 Sites and Planning

6.1 Approach to Sites

- 6.1.1 The Partnership understands the importance of sites to Participants with regards to the ultimate deliverability of their Solution. In accordance with best practice OGC guidelines, the Partnership has identified a site within the control of the Partnership which can be considered by Participants to be utilised for all or as part of their overall Solution (ancillary use subject to approval by WAG) (the "Optional Site"). However, as set out in the Contract Notice, Participants may, if they prefer, put forward alternative or other sites as part of their Solution. It is anticipated that any site will be located within the administrative area of the Partnership, but the Partnership will consider sites located outside of its administrative area. Any site shall comply with national, regional and local planning policies.
- 6.1.2 The Optional Site is located off Tatton Road, Queensway Meadows, in Newport, being 4km from the M4 Junction 24. The land adjacent to the site is business, industrial and warehousing, with agricultural land to south. Further information can be found in Appendix D of this Descriptive Document and in the Data Room. Further information will also be provided during the Competitive Dialogue Procedure.
- 6.1.3 The Optional Site was selected following detailed analysis of the Partnership's administrative area. A Regional Waste Plan ("RWP") has been developed to provide direction to local authorities when developing their waste management infrastructure. 'Areas of Search' within the RWP were identified following a Strategic Environmental Assessment ("SEA") and a Sustainability Appraisal process using the Sustainability Appraisal objectives, criteria and weightings and as such, any significant negative effects have been minimised. These have formed the basis for any local planning partnerships to identify further sites and to subject them to more local level assessments for inclusion in individual development plans. To assist local authorities, example local level assessment criteria have also been provided in the RWP.
- a) The criteria used from RWP and SEA for the selection of the Optional Site includes but is not limited to: Planning status of the land/site, site area, proximity to centres of population/sources of waste, access potential, proximity to housing, consideration of local setting and land use, proximity

to national, local landscape, heritage and nature site designations, compliance with planning policy, proximity to electrical grid connection, potential for Combined Heat and Power (CHP), site ownership, potential for expansion and potential for rail link.

- b) The administrative area of the Partners encompasses a total of 468 developable hectares suitable for waste management facilities identified in the RWP. The Partnership then identified and secured the Optional Site as set out above. The site selection process is described in the following documents entitled *Prosiect Gwyrdd – Potential Site Assessment October 2008* and *Prosiect Gwyrdd Evaluation of Short-listed Sites February 2009*, which are available in the Data Room. The information is also summarised in Appendix D to this Descriptive Document.
 - c) The evaluation criteria, distributed as part of the ISDS stage of the Competitive Dialogue Procedure, is developed to evaluate any site proposed by Participants including considering aspects such as (but not limited to) location, suitability, sustainability and deliverability.
- 6.1.6 By offering the Optional Site, the Partnership aims to maximise the competitive potential of the Project by providing interested parties with a potentially suitable location upon which to base their Solutions. However, as stressed above, this approach does not prevent Participants putting forward other sites under their ownership as part of their Solution. The Partnership will consider all sites put forward by Participants.
- 6.1.7 See Appendix D of this Descriptive Document; Site Information Summary Pack and the Data Room for full reports on all current Site information.

6.2 Approach to Planning

- 6.2.1 It is recognised that data gathering for the Environmental Impact Assessment ("EIA") can take up to a year or more, the Partnership anticipates commencing elements of the EIA (where practicable) in order to mitigate the risk of delay to the procurement programme and to optimise the delivery timescales for the Optional Site. If a Participant proposes to use the Optional Site, it shall be assumed that the Participant has satisfied itself that the information contained in and the scope of the EIA procured by the Partnership (to the extent relied upon by the Participant) is sufficient to support its

Solution and that any variation and/or correction and/or new EIA shall be the Participant's risk.

- 6.2.2 It is therefore anticipated that, following appointment of the Preferred Bidder, the Preferred Bidder shall procure full planning permission for its Solution on either the Contractor's site and/or the Optional Site. The Preferred Bidder's responsibility shall include (but is not limited to) the cost and time of preparing an EIA and any other assessments or studies that may be required and complying with any planning conditions/environmental permits.
- 6.2.3 Participants must build in sufficient time for the development of an EIA in their Solution and any requirement for an EIA will then be completed by the Preferred Bidder to reflect its Solution.
- 6.2.4 It is also envisaged that the Contractor shall be responsible for maintaining any necessary permits, approvals, consents, licences and the like lawfully and necessarily required in connection with the carrying out of the works and the provision of the services for its Solution.
- 6.2.5 Further details in relation to the planning requirements will be set out in later stages of the Competitive Dialogue Procedure.

6.23 Design Considerations

- 6.3.1 Participants shall be responsible for the design of the facility(ies) for their Solutions. Participants shall be required to provide completed design proposals for any proposed facility(ies) during the Competitive Dialogue Procedure and to meet design evaluation criteria. Flexibility of design will be essential to ensure planning permission is secured within a reasonable timeframe. Key to this will be to ensure a positive attitude towards public perception taking into account street-scene views, rural or urban settings, architectural expression, orientation, boundary treatment, landscape and sustainability. Relevant local policy and guidance including (but not limited to) the Regional Waste Plan and Local Development Plans, which provides a great deal of background work, shall be followed by Participants when preparing their designs.
- 6.3.2 The Partnership is familiar with the use of Design Quality Indicators in assessing the design quality of Solutions and it wishes to utilise the most up to date design specification for the building and anticipates consulting with the Commission for Architecture and the Built Environment ("CABE") and/or the Design Commission for Wales ("DCfW") to ensure this. On this Project a number of critical

indicators such as site layout, built form, boundaries and site access are expected to be used as the basis of the design evaluation. In addition it is anticipated that the evaluation criteria (which will be distributed with the ISDS document) will include factors to ensure that the most efficient and sustainable construction techniques are employed and that the Contractor's supply chain is appropriately managed. The Partnership also want to incorporate environmental good practice such as the Environmental Management System and Building Research Establishment Environmental Appraisal Methodology ("BREEAM"), where it is appropriate to the Solution proposed by the Participant. Further required design assessment standards are provided in the draft Output Specification.

6.4 Transport Considerations

- 6.4.1 Participants shall consider the impact of transport on the existing road/rail networks and on local communities and work with the Partnership to mitigate any unacceptable impacts identified during the planning application process. The facility(ies) shall also be designed so an appropriate size, layout, and level service area for parking, unloading and turning of large vehicles with minimal reversing and a parking area for staff and visitors is provided.

6.5 Transportation Costs

- 6.5.1 Each Partner will be responsible for the transfer of Contract Waste to the Delivery Point(s).
- 6.5.2 The cost of transporting Contract Waste has been based on a haulage rate of £0.30/tonne-mile, at 2008/09 prices. This figure is based on current council contract costs.
- 6.5.3 While waste transfer directly from each Partner to the Delivery Point(s) lies outside of the Project (and the Solutions to be provided by the Participants), assumptions must be made on the transfer distances for the purpose of the WRATE assessment to determine the carbon footprint of each Solution. These distance assumptions are assessed as follows:

<i>Authority</i>	<i>Transfer distance to Delivery Point to be measured:</i>
<i>Caerphilly</i>	<i>From Llanbradach WTS (CF83 3RP)</i>
<i>Cardiff</i>	<i>From Lamby Way WTS, Cardiff (CF3 2HP)</i>
<i>Monmouthshire</i>	<i>From Centre of Usk (NP15 1AB)</i>

Newport	From Docks Way WTS, Newport (NP20 2NS)
Vale of Glamorgan	From Centre of Barry

6.6 Other Considerations

- 6.6.1 Participants shall ensure that dust, birds and vermin, odour, noise, and litter production is minimised through the use of appropriate and well-maintained equipment and careful design of the facility(ies). Participants will also need to consider the impact of the facility(ies) on sites of nature and archaeological importance and the quality and quantity of surface and groundwater resources. A full list of specific planning considerations relating to waste management applications is set out in Annex C of Planning Policy Wales, Technical Advice Note (Wales) 21 Waste. In addition the Contractor shall ensure that all planning conditions and obligations attached to a successful full planning application are complied with during the construction and operation of the facility(ies).

SECTION 7

7 Procurement Arrangements

7.1 Procurement Process

7.1.1 The Partnership is following the Competitive Dialogue Procedure for the procurement of the Project in accordance with the requirements of the Public Contracts Regulations 2006 and the Partnership's procurement regulations. The purpose of the Competitive Dialogue Procedure is to initiate and develop dialogue with the Participants with a view to identifying the Most Economically Advantageous Tender which best meets the Partnerships' requirements for the Project.

7.2 Pre-Qualification

7.2.1 A pre-qualification questionnaire ("PQQ") was issued to all interested Participants who responded to the Contract Notice within the specified deadline. The PQQ was accompanied by an IDD which provided further details on the Project. This Descriptive Document is an updated version of the Initial Descriptive Document provided at the PQQ stage. The PQQ requested "backward looking" information focusing on the Participant's economic standing, financial and technical ability and past performance. Information relating to Regulation 23 of the Public Contract Regulations 2006 was requested to gain assurance of a Participant's good standing.

7.2.2 Eight (8) Participants were selected following the PQQ stage and invited to progress to the Invitation to Submit Outline Solutions ("ISOS") stage of the Competitive Dialogue Procedure.

7.3 Commencing Competitive Dialogue

7.3.1 The Eight (8) successful Participants were invited to take part in the dialogue, which is described below, and submit Outline Solutions. Participants Solutions will be subject to evaluation and a process of de-selection at each stage of the Competitive Dialogue Procedure.

7.3.2 It is expected that this approach will deliver the most economically advantageous Solution for the management of residual waste across the Partnership and benefit from the expertise of Participants that will be short-listed through the evaluation process. This approach is advocated by DEFRA who have supported similar complex waste infrastructure projects in England. The Competitive Dialogue Procedure's approach to procurement is recognised as being appropriate when managing complex solutions and requires a high



level of commitment from sponsors and stakeholders in terms of resources, expertise and time.

7.3.3 As stated above, the Competitive Dialogue Procedure is delivered through a number of stages. The Partnership proposes to have the following stages before appointment of Preferred Bidder and Contract Close:-

- (a) PQQ stage;
- (b) Invitation to Submit Outline Solutions ("ISOS") stage;
- (c) Invitation to Submit Detailed Solutions ("ISDS") stage; and

(d) Call for Final Tender ("CFT") stage.

- 7.3.4 However, the Partnership reserves the right to Issue Invitation to Submit Refined Solutions ("ISRS") and undertake an ISRS stage if considered necessary. The Partnership will update the Participants later in the Competitive Dialogue Procedure.
- 7.3.5 Participants were requested to submit up to two (2) Solutions at the ISOS stage and that the four (4) highest scoring Solutions will be invited to proceed to the ISDS stage of the Competitive Dialogue Procedure. However, in order to preserve a competitive environment, the Partnership reserved the right to invite the next highest scoring Solution(s) if the Four (4) highest scoring Solutions had been submitted by Two (2) Participants providing that the total number of Solutions invited to proceed to the next stage of the Competitive Dialogue Procedure will not exceed Five (5) and the total number of Participants will not exceed Three (3).
- 7.3.6 The Partnership intends to fully embrace the opportunities that the Competitive Dialogue Procedure provides to all parties and will engage in open and constructive discussions with all Participants regarding the development of their Solutions. However, the Partnership recognises that to enable this to effectively take place a clear and precise protocol needs has been established. The dialogue will take place in a structured way and respect commercial confidentiality at every stage. Please note that the ISDS will contain detailed information in relation to Partnership's management of the Competitive Dialogue Procedure. The input needed during these stages is not underestimated and the requirement for a well managed dialogue process is understood and will be provided to assure Participants that the process has been conducted appropriately.

7.4 Evaluation Methodology and Criteria for Bids

- 7.4.1 The Partnership has developed the Evaluation Criteria which will be used to evaluate the Participant's Solutions at the previous ISOS stage and moving forward throughout the ISDS, CFT (and if required the ISRS) stages and this is contained within section eight (8) to the ISDS. Further detailed guidance will also be given at each of the later stages of the Competitive Dialogue Procedure to ensure clarity of the submission requirements.

However, given the complexity of a procurement on this scale, within the ITPD the partnership reserved the right to a) introduce further more detailed level of criteria at any stage of the competitive dialogue procedure and b) refine and/or adjust the detailed methodology to be applied to the evaluation of the Criteria at any subsequent stage



provided such refinement and/or adjustment is within the parameters of the Level 1, Level 2 and Level 3 criteria. This, in part, was intended to reflect the differing scale and level of detail of information provided at different stages of the procurement (e.g. high-level at ISOS stage and very detailed at ISDS).

7.5 E-Tendering & Document Control

- 7.5.1 Throughout the Competitive Dialogue Procedure, Participants must upload all documentation (including their ISOS responses and their Solutions for the Project) and access the Data Room via the Portal at www.etenderwales.bravosolution.co.uk. This allows a full and complete audit trail of the evaluation that will satisfy all audit requirements and maintain probity during the evaluation of the Participant's Solutions. The system is also sustainable and provides excellent communications tools for the Partnership and Participants.
- 7.5.2 Instructions in relation to the use of the Portal are provided with the ISDS and in subsequent procurement documents. However, it is anticipated that the ISDS provides all necessary instructions to Participants with regards to use of the Portal, the Data Room and submission of the ISDS responses.
- 7.5.3 Please note that all Detailed Solution responses must be submitted via the Portal. As set out in the ISDS, hard copy responses of the Detailed Solutions will not be considered by the Partnership.
- 7.5.4 Please note, it is the Participant's responsibility to ensure that they have all the information required to submit their ISDS response.

7.6 Industry/Participants' Day

- 7.6.1 An Industry/Participants' Day was held on 07 December 2009 during which the Project Team, advisors and key representatives provided information on the background and objectives of the Project, the procurement and evaluation process to be followed, and the key provisions of the contract documentation. There was also an opportunity for Participants to raise queries on the process.

7.7 Procurement Timetable

- 7.7.1 It is anticipated that the procurement phase is just over 24 months from the publication of the Contract Notice to the selection of the Preferred Bidder. The indicative timetable is provided in Table 1.3 (section 1) of the ISDS.
- 7.7.2 The Partnership reserves the right to amend the timetable, introduce additional stages and/or extend any time period as it sees fit.

7.8 Media and Information Protocol

- 7.8.1 Please refer to paragraph 8 of the Disclaimer Section in this Descriptive Document and paragraph 2.9 of the ISDS for further information.



7.9 Contract Queries

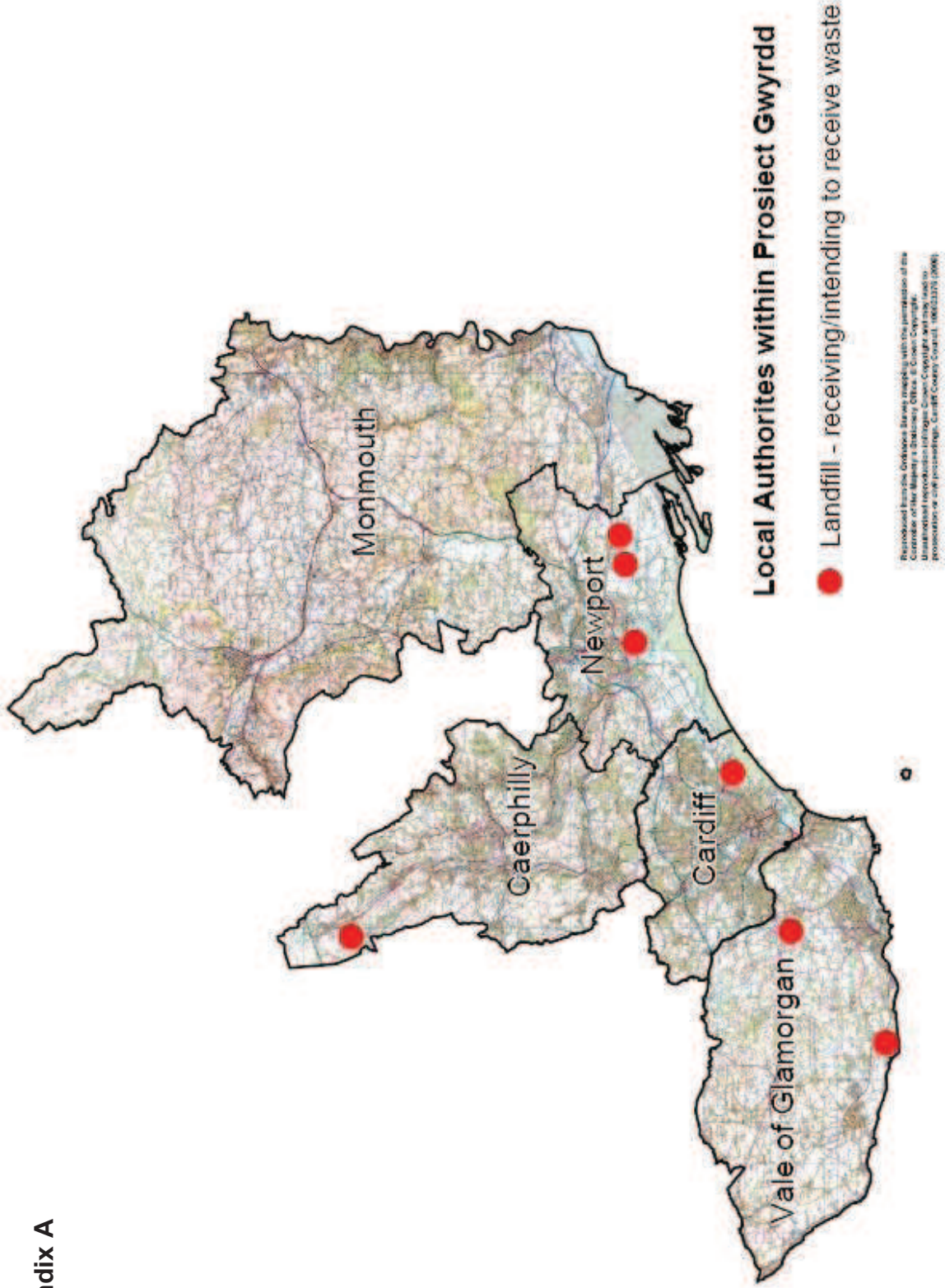
7.9.1 Instructions regarding requests for information and contact points are provided in the ISDS.

APPENDICES

Appendix A	Partnership Geographical Area
Appendix B	Existing Performance, Service Provision & Contracts
Appendix C	Approved and Emerging Waste-specific Planning Policies
Appendix D	Option Site Information Pack
Appendix E	Extract of WAG Funding Criteria

Appendix A – Partnership Geographical Area

Appendix A



Appendix B

1. Existing Performance

The table below describes the 2009/10 tonnage actual audited recorded⁵ data in the national Waste Dataflow for the Partnership.

<i>Tonnes not including rubble</i>	<i>Total Tonnage</i>	<i>Landfill (Tonnes)</i>	<i>Total Recycling +Composting (Tonnes)</i>	<i>Recycling (Tonnes)</i>	<i>Composting (Tonnes)</i>
Caerphilly	95,759	53,595	42,167	30,716	11,451
Cardiff	176,961	110,605	69,749	39,859	29,890
Monmouthshire	47,355	28,024	19,563	8,875	10,688
Newport	68,039	41,614	26,426	16,004	10,422
Vale of Glamorgan	59,877	37,205	22,674	14,900.66	7,774
Partnership Totals	447,991	271,043	180,579	110,355	70,225

⁵ The total tonnage recorded for MSW and recycled figure exclude rubble (waste dataflow reference WMT/001a) managed and recycled.

Appendix B – Existing Performance, Service Provision & Contracts

2. Current Contract and Service Provision

<i>Current Contractual Arrangements up to 28.02.10</i>					
	Caerphilly CBC	Cardiff Council	Monmouthshire CC	Newport CC	Vale of Glamorgan
Household Collections	In House	In House	In House	In House	In House
Residual	Fortnightly - Residual 99% on 240 litre wheeled bin supplied by CCBC.	Weekly - Residual black wheeled bin/bag supplied by CCC Bulky Item calls by request.	Weekly - Residual black bag supplied by the householder.	Fortnightly collection - Residual green wheeled bin supplied by NCC.	Weekly - Residual black bag. 7,500 on alternate weekly, this will increase in a phased approach to 100% of properties by the end of 2011/12.
Organic	Weekly Garden/Food collections/ Bulky calls by request.	Weekly Food and Garden waste wheeled bin/bio bag supplied by CCC.	87% of properties on Weekly - Garden waste bio bag for food waste supplied by MCC or reusable canvas bags bought by householder. Looking to move to free reusable canvas bag. Cease bio bags issue.	94% of properties on fortnightly collection, wheeled bin supplied by NCC.	Garden Waste collection service using either 55l bio bags or 90l reusable bags bought by householders. The service offered a fortnightly collection between April to November on the same day as the plastic and

Appendix B – Existing Performance, Service Provision & Contracts

Current Contractual Arrangements up to 28.02.10					
	Caerphilly CBC	Cardiff Council	Monmouthshire CC	Newport CC	Vale of Glamorgan
					cardboard dry recycling. In the winter period December to march the householders has to ring and request a scheduled collection service.
Dry Recycling	Weekly green box/bag/brown 240 ltr bin. For all properties. 240 ltr wheel bin for approximately 50,000 properties and box/bag collections for the remaining 25,000 properties.	Fortnightly - mixed recycling Green bag.	Weekly 2 bag commingled sack collections 1 x bag for Paper and Card 1 x bag for mixed dry recycling.	98% of properties on blue & green plastic boxes for dry recyclables. Kerbside sort by Newport Wastesavers.	Weekly collection of alternate materials using a kerbside dry recycling collection service using non returnable container or a 44l/55l returnable plastic box. Week 1 - glass, paper & cans and Week 2 - cardboard & plastic.
Commercial Collection	In house. Charged Residual Wheeled	In house. Charged Residual Wheeled	In house. Charged Residual Wheeled	In house. Charged	In house with charges set for

Appendix B – Existing Performance, Service Provision & Contracts

Current Contractual Arrangements up to 28.02.10					
	Caerphilly CBC	Cardiff Council	Monmouthshire CC	Newport CC	Vale of Glamorgan
	bin/bag.	bin/bag.	bin/bag.	Residual Wheeled bin/bag.	residual waste using wheeled bins contracted agreements or officially purchased plastic sacks.
Commercial Recycling	Charged Recycling bag.	Charged Mixed Recycling bag. Charged food waste collection.	Charged Recycling bag.	Charged Recycling bag.	In house with charges set for recyclable materials using officially purchased plastic sacks or contracted agreements for/44l/55l recycling boxes.
No of HWRCs Currently Operated	6 in total with 4 Operated in House by Caerphilly CBC and the remaining 2 operated by Silent Valley Waste Services.	4 in house.	4 sites operational Joint Venture with Viridor.	1 in house.	2 HWRC sites operated by Biffa Waste Services under contract until 31.03.2011 with the potential option to extend the contract for a further five years to 2016.

Appendix B – Existing Performance, Service Provision & Contracts

Current Contractual Arrangements up to 28.02.10					
	Caerphilly CBC	Cardiff Council	Monmouthshire CC	Newport CC	Vale of Glamorgan
No of Bring Sites Currently Operated.	25 Sites.	22 Sites.	28 sites.	13 Sites.	46 and 9 individual private sites managed by Biffa Waste Services using an annual contract agreement.
Open Windrow Composting	Bryn Quarry composting and wood recycling.	In house 1 site - 25,000 tonnes capacity.	Wormtech for IVC processing.	In House 1 Site. 10,500 tonnes 2008/09 processed.	Annual contract agreement with Cowbridge Composting for treating green waste.
In Vessel Composting	Garden and food waste treated by Bryn Compost from October 2009.	Interim IVC Processing contract with New Earth Solutions, 100% properties on weekly food waste collection service.	32000 properties on food & kitchen waste collection, collection in house delivering to Wormtech IVC.	1,250 properties on food waste trial, Newport Wastesavers collecting.	Started weekly food waste collections in Feb 2009 with 5000 properties. This was extended to 7500 properties in June 2009. The service will phase out to 100% of all domestic properties by the end of 2011/12. IVC at Cowbridge

Appendix B – Existing Performance, Service Provision & Contracts

Current Contractual Arrangements up to 28.02.10					
	Caerphilly CBC	Cardiff Council	Monmouthshire CC	Newport CC	Vale of Glamorgan
					Composting will revert to contracting options for South West Consortium contract.
Materials Recycling Facilities	Amber Services CA recycling Cardiff Council MRF used to sort the majority of materials from Kerbside collections (plus Bryn Pica and The Recycling Group sorting any additional material).	In House 1 site - 45,000 tonnes capacity.	N/A	N/A	MRF at Viking Way Provided by Biffa Waste Services under contract until 31.03.2011 with the potential option to extend the contract for a further five years to 2016.
Waste Transfer Stations	1 site operated by Silent Valley Waste Services located at Cross Keys. In the process of planning and developing a new WTS at Trehir	In House 1 site operated in house. Located at Lamby Way, Rumney.	2 sites operational Joint Venture with Viridor. Located at Llanfoist, Abergavenny & Caerwent.	1 site operated in house based at the landfill site at Docks Way.	Provided by Biffa Waste Services under contract until 31.03.2011 with the potential option to extend the contract each year until

Appendix B – Existing Performance, Service Provision & Contracts

Current Contractual Arrangements up to 28.02.10					
	Caerphilly CBC	Cardiff Council	Monmouthshire CC	Newport CC	Vale of Glamorgan
	Landfill Site, Llanbradach.				2018. Located at Bessemer Close, Cardiff.
Current Landfill Arrangements	Silent Valley Waste Services & Biffa Waste Services, Trecatti.	Combination of own site (18 months capacity) and Interim Disposal contract with Biffa April 2009 – 2018.	Viridor.	Own site - 15 yr capacity.	Provided by Biffa Waste Services under contract until 31.03.2011 with the potential option to extend the contract each year until 2018.

Appendix C

Approved and Emerging Waste-specific Planning Policies

Caerphilly County Borough Council

(1) Approved Unitary Development Plan – April 2003

W1 The development of sites for waste management facilities will be permitted unless their location will have a detrimental effect on:

Sites or areas designated for protection for nature conservation reasons;

Special landscapes areas or green wedges;

Areas of archaeological or historic interest;

Sensitive uses such as housing, recreational and tourist attractions.

W4 Development of facilities for the re-use or recovery of waste materials will be permitted where:

The adjoining road network is or can be made suitable for heavy lorries without prejudicing highway safety, or having a harmful impact on rural roads;

The site can be screened and landscaped to reduce adverse visual impact;

Adequate provision is made for restoration of the site to a beneficial after use in the event of the facility(ies) being no longer required.

No specific site allocations for landfill are made in the Plan.

(2) Emerging Local Development Plan – deposited October 2008, Submitted to Welsh Assembly Government for Examination October 2009, due adoption late 2010.

Policy SP 11 The Partnership will implement a sustainable, integrated approach to waste management, which minimises the production of waste and its impact on the environment, and maximises the use of unavoidable waste as a resource. To assist in this aim the following land-use commitments are made:

All allocated and protected class B2 industrial sites are designated as potentially suitable locations for new waste management facilities, which provides substantial choice in meeting the estimated land requirement of up to 10.4 ha;

The Area of Search maps identified in the RWP are adopted as appropriate advice as to where developers should first seek sites for in building and open air facilities.

WM1 A site has been identified as suitable for the location of waste management facilities to serve more than one local authority area, as follows:

WM1.1 Cwmbargoed Washery Site, north west of Fochriw

Cardiff County Council

(1) Approved City of Cardiff Local Plan - January 1996

Policy 51 Land for Waste Disposal Purposes;

Land is allocated for waste disposal purposes at Rumney Moors as defined on the Proposals Map.

Policy 52 Further Landfill Waste Disposal Sites;

Proposals for further landfill waste disposal sites will be assessed against the following:

Considerations of scale, location, amenity, public safety and transportation;

Considerations of landscape character, visual amenity, nature conservation and environmental impact (including water quality);

The need for such proposals assessed against city and regional requirements;

The type, quantity and source of waste and the proposed duration of development;

Restoration, aftercare and after-use proposals;

Aviation safety.

Policy 53 Neighbourhood Facilities for Recycling Purposes

Proposals for the development of neighbourhood facilities for the reception of household waste for recycling purposes will be favoured, subject to considerations of scale, location, design, amenity and transportation.

Policy 54 Recycling of Chlorofluoro-Carbons

Proposals for the development of facilities for the recovery and recycling of chlorofluorocarbons (CFC's) and their derivatives will be favoured subject to:

Consideration of scale, location, amenity and transportation;

Considerations of visual amenity, nature conservation and environmental impact.

Policy 55 Other Waste Disposal Facilities

Proposals for the development of waste disposal facilities including those for the disposal (excluding landfill), processing, recycling and transfer of waste will be carefully assessed against the following:

considerations of scale, location, amenity, public safety and transportation;

considerations of visual amenity, nature conservation and environmental;

impact (including water quality);

the need for such proposals assessed against city and regional requirements;

the type, quantity and source of waste.

(2) Emerging Local Development Plan – deposited April 2009, submitted to Welsh Assembly Government for Examination in November 2009, due adoption late 2010.

Policy SP 11 Waste arisings from Cardiff Council will be managed by:

Promoting and supporting additional treatment facilities, measures and strategies that represent the best practicable environmental option, having regard to the waste hierarchy and the proximity principle;

Encouraging the provision of in-building treatment facilities on existing and allocated areas of general industry;

Supporting the provision and maintenance of sustainable waste management storage and collection arrangements in all appropriate new developments; and

Supporting waste minimisation and the provision of facilities that use recycled or composted products.

WASTE 1 Sites for Waste Management Facilities

Proposals for the development of waste management facilities will be permitted where:

There is a demonstrable need assessed against county and regional requirements;

They conform with the principle of the waste hierarchy, the 'proximity principle' and the principle of regional self-sufficiency;

They would not cause unacceptable harm to the environment, built heritage or to human health;

They include acceptable proposals for restoration, aftercare and after-use, including the beneficial after-use of by-products;

They would not endanger aviation safety; and

They include acceptable proposals for the protection of adjoining and nearby land from landfill gas and leachate migration or contamination.

Facilities for the handling, treatment and transfer of waste will generally be encouraged towards existing B2 general industrial land. In addition the plan promotes the development of a Green Technology Park at Wentloog that seeks to encourage employment use for environmental technologies and renewable energy businesses that could also be linked to derive energy from sustainable sources, including energy from waste.

WASTE 2 Provision for Waste Management Facilities in Development;

Where appropriate, provision will be sought in all new development for facilities for the storage, recycling and other management of waste.

WASTE 3 Land for Waste Management;

Land will be allocated for waste management purposes at Lamby Way.

Monmouthshire County Council

(1) Approved Unitary Development Plan – Adopted 22nd June 2006.

W3 Subject to detailed planning considerations, household waste recycling centres and banks will be permitted where this will help to achieve a network of sites accessible to local Partnership.

W4 Proposals for major residential and commercial development will only be permitted where appropriate facilities for the recycling or composting of household waste are provided.

W5 Subject to detailed planning considerations, integrated proposals for the recovery of energy from waste will be allowed. Waste incineration without energy recovery will not be permitted.

W6 Proposals for new landfill and land raising sites and extensions to existing sites will be permitted where this would reduce the need to export wastes to sites outside the County without encouraging the use of landfill/land raising for dealing with wastes for which more appropriate options exist.

W9 Proposals for waste management facilities, except those involving the final deposit of waste on land at the site or open windrow composting, will be permitted within industrial sites (Class B2 of the Town and Country Planning Use Classes Order 1987).

(2) Emerging Local Development – consultation on Preferred Strategy June 2008 – Deposit anticipated in late spring/early summer 2010 and due adoption in December 2011.

S13 The LDP will allocate adequate land for a network of waste facilities to meet regional and local obligations in accordance with the requirements of the Regional Waste Plan. The sites and types of facilities chosen will promote a sustainable approach to waste management based on a hierarchy of reduction, reuse and recovery.

Newport City Council

(1) Approved Unitary Development Plan – Adopted 16th May 2006.

WD1 Landfill or land raising requirements for general household and commercial waste will continue to be accommodated at the Docks Way waste disposal site.

WD2 Land at Greenmoor is allocated for the tipping and storage of steelworks waste.

WD3 Proposals for further landfill/land raise waste disposal sites will be considered favourably.

WD4 An appropriate buffer zone will be required between any active waste disposal site and other development, with the extent of the safeguarding area.

WD6 Proposals for the development of in-building facilities which involve the recovery and re-use of materials will be permitted on B2 employment sites.

WD7 Proposals for the development of alternative methods of solid waste disposal will be permitted.

SP22 Waste Disposal

A hierarchical approach to waste management is favoured as follows:

Waste reduction;

Re-use;

Recycling;

Composting of organic waste;

Incineration with energy recovery;

Safe disposal.

The environmental impact of landfill, land-raising, incineration and other treatment should be minimised in terms of the best practicable environmental option and the proximity principle.

(2) Emerging Local Development Plan



LDP Preferred Strategy consultation in January 2010, due for adoption in January 2011.

Vale of Glamorgan Council

(1) Approved Unitary Development Plan – Adopted 18th April 2005

Policy 13 - Development proposals which encourage sustainable principles for waste disposal based on a hierarchical approach of:

Waste minimisation/avoidance;

Re-use of waste;

Waste re-cycling or recovery (including waste conversion to energy) and;

Waste disposal landfill with minimal environmental impact will be favoured.

WAST1 Identifies the following categories of sites where waste management facilities will be permitted:

Existing waste sites,

Existing and allocated B2 and B8 employment sites;

Within operational mineral working sites;

For green composting on land within or adjacent to farm building complexes.

WAST2 Policy setting out the criteria by which proposals for waste facilities on sites identified in Policy WAST1 will be assessed.

WAST3 Policy regarding relationship between waste facilities and adjacent land uses.

WAST4 Policy regarding the deposit of waste on agricultural land.

(2) Emerging Local Development Plan.

Consultation on LDP Preferred Strategy January 2009, due to be deposited Autumn 2010 and adoption in January 2011.

CSP12 SUSTAINABLE WASTE MANAGEMENT

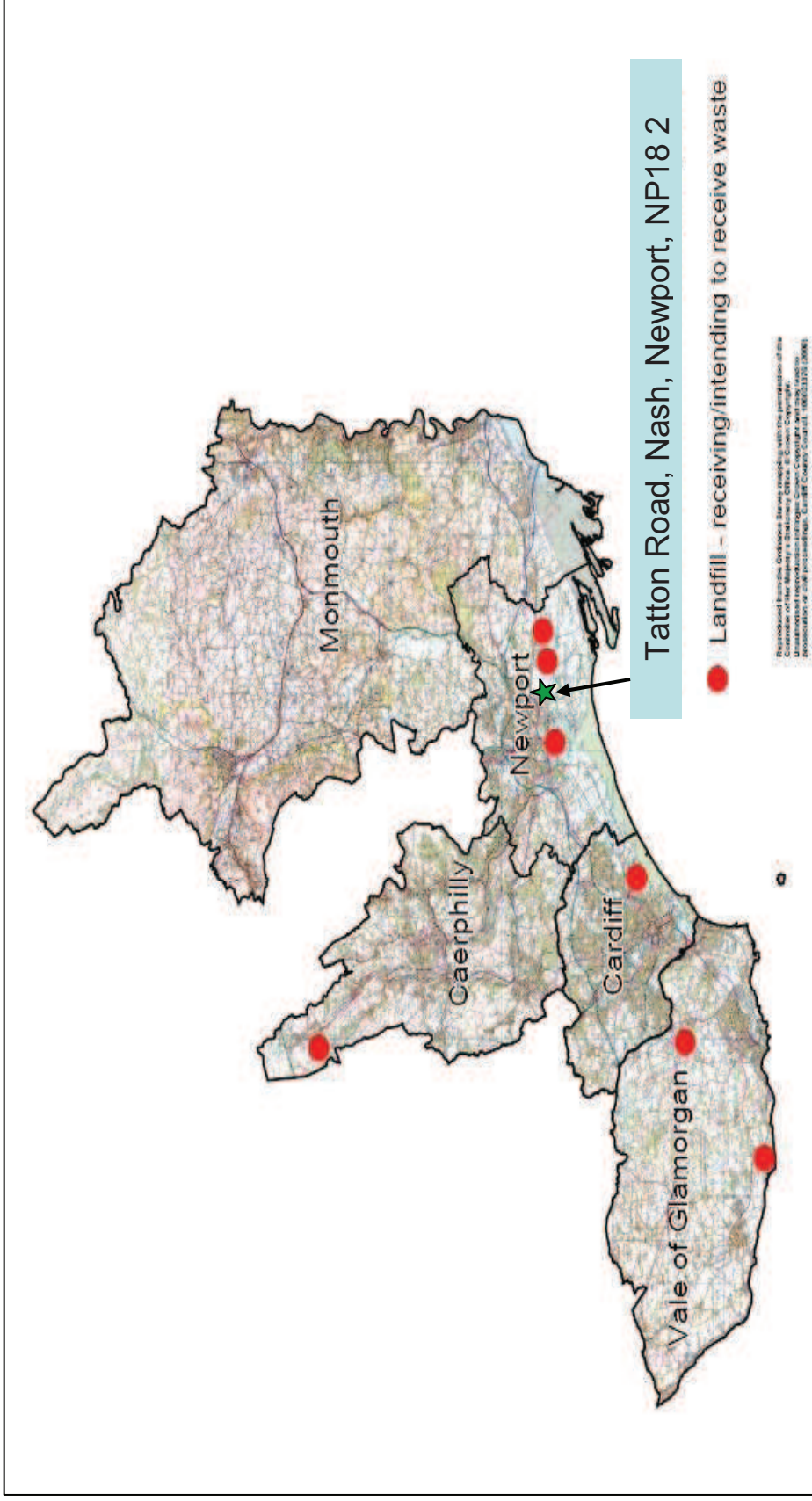
Proposals for the sustainable management of waste will be favoured where they support the objectives of the South East Wales Regional waste plan and the Partnership's local waste management strategy. In support of these objectives the following locations have been identified as being suitable for waste management facilities:

Atlantic trading estate;

The operational port of Barry docks.

Appendix D – Optional Site Information Pack

Plan: Tatton Road Location in Project Gwyrdd: Please see below a plan showing the location of the Optional Site in relation to the Prosiect Gwyrdd authorities.



3 Benefits and Constraints of Tatton Road Optional Site Location

3.1 It was identified within the document entitled "Prosiect Gwyrdd Evaluation Of Short listed Sites February 2009" that the potential benefits associated with this site are anticipated to include (but not limited to):

- a) In public ownership;
- b) Proximity to primary road network;
- c) Existing access road (Tatton Road entrance) could be unstopped;
- d) Potential for CHP;
- e) Outside of the Gwent Levels: Nash and Goldcliff Site of Special Scientific Interest ("SSSI");
- f) The site comprises a low quality existing landscape;
- g) On periphery of established business/industrial area, it is anticipated that potential development of the site could be accommodated without significantly encroaching upon undeveloped hinterland;
- h) Existing access road and utility infrastructure;
- i) No immediate surrounding residential development;
- j) Likely low costs of connection to electricity grid due to proximity of existing onsite infrastructure (to be confirmed).

3.2 It was identified within the document entitled "Prosiect Gwyrdd Evaluation Of Short listed Sites February 2009" that the potential constraints associated with this site are anticipated to include (but not limited to):

- a) Greenfield site, albeit with brown field characteristics;
- b) Within a Class C1 flood risk area, it is understood that early discussions with the Welsh Environment Agency have indicated that it may be possible that flood risks in this area could be managed effectively through considered design;
- c) Ground conditions may necessitate piling and other appropriate design solutions;

- d) Existing Grade II listed dwelling within 250 metres of site boundary (Tatton Farm under WAG control and tenanted);
- e) Existing food manufacturing unit within the surrounding area (potential perception issue);
- f) Presence of pylons and high voltage transmission lines and gas mains and associated easements potentially define the developable footprint of the site.

- **Boundary of the Site**

- The Optional Site is shown in drawing “Boundary Queensway Meadows Newport” Dated 11/01/10, which is available within the Project Data Room. The Optional Site is divided into two Plots; North Plot (10.50 acres) and South Plot (9.62 acres), the boundary of the location and the two plots is demonstrated on Drawing Titled “Boundary Queensway Meadows Newport” Dated 11/01/10 available within the Project Data Room.

- Terms of Site Purchase

3.3 Participants should also note the information set out below:

3.3.1 The Participant should be aware that if Tatton Road is reconfigured within the purchased plot, access will need to be maintained or constructed to the other plot and rights will be given to the Welsh Assembly Government to ensure unimpeded access is maintained at all times. Any new access road to be constructed will be to the same specification or higher than the existing Tatton Road and will extend 10 metres into the site which is not purchased.

3.3.2 In the event of the road remaining in situ (as shown on the plan) within the selected plot and the developer using it as a main point of access, rights will be granted along it to the Welsh Assembly Government to access the plot not selected by the developer.

3.3.3 WAG will grant a right of way to the land over Tatton Road upon the purchaser exercising the option.

4. Site Investigations

- 4.1 It is recognised that, as the Partnership is technology neutral, there is limited scope to progress a detailed planning application for the Optional Site. However, as data gathering for the

Environmental Impact Assessment ("EIA") can take up to a year or more, the Partnership has commenced elements of the EIA (where practicable) in order to mitigate the risk of delay to the procurement programme and to optimise the delivery timescales for the Optional Site.

- 4.2 If a Participant proposes to use the Optional Site, it shall be assumed that the Participant has satisfied itself that the information contained in and the scope of the EIA procured by the Partnership (to the extent relied upon by the Participant) is sufficient to support its Solution and that any variation and/or correction and/or new EIA shall be the Participant's risk.
- 4.3 To date the following Site Investigation Works have been carried out:
 - a) Utilities search;
 - b) Initial Ecological Appraisal;
 - c) Grid Connection Study;
 - d) Investigatory Geo-technical Work to confirm ground conditions (Commenced w/c 18th January 2010);
 - e) High Level Consultation with Internal Drainage Board.

5 Studies/Investigations Underway

- 5.1 To progress any Planning Application required for the Optional Site the Partnership is in the process of progressing the following:
 - a) Initial NCC Planning liaison;
 - b) High Level Consultation with Countryside Council for Wales.
- 5.2 Where appropriate results of the above studies/investigations will be made available in the Project Data Room.
- 5.3 List of Reports Currently Available within Project Data Room:
 - a) Prosiect Gwyrdd - Potential Site Assessment - October 2008.
 - b) Evaluation of Short listed Sites - February 2009.

- c) Initial Ecological Appraisal of Land at Tatton Road, Newport October 2009/Updated July 2010.
- d) Appendix 1 - Initial Ecological Appraisal of Land at Tatton Road, Newport October 2009.
- e) Tatton Rd, Queensway Meadows, Newport - Potential Site for Residual Waste Treatment Facility - Preliminary Electrical Connection Assessment.
- f) Boundary Queensway Meadow 11 Jan 2010.
- g) Tatton Rd - Preliminary Ground Investigation – March 2010.
- h) IDB – Mins of 17.12.09 – Final.
- i) Phase II Botanical Survey of Land at Tatton Road, Newport – July 2010

Appendix E – Extracts of the WAG Funding Criteria (for the WWPO Procurement Programme (including AD and Residual Waste Treatments))

No	Evaluation Criteria	Key Issue for OBCs/FBCs to Address
1	Strategic Fit	<p>Schemes must demonstrate how they will contribute to delivery of the emerging National Waste Strategy as set out in the Minister's Future Direction Paper dated October 2007, and Towards Zero Waste.</p> <p>Schemes should demonstrate how the project will make a positive contribution to the principles of Sustainable Development, evidencing that environmental, social and economic factors have been fully considered in accordance with good industry practice.</p> <p>Proposals should demonstrate how the project contributes to or complements longer-term national targets for recycling and composting as well as the treatment and diversion of biodegradable and other municipal waste from landfill, indicating the amount of biodegradable and other municipal waste expected to be diverted from landfill over the whole life of the project.</p> <p>Proposals should demonstrate how the project supports or complement the Authorities' plans for meeting WAG's recycling targets.</p> <p>Waste minimisation is at the top of the waste hierarchy. Whilst likely to be outside the scope of the proposed contract, the OBC should make clear what other actions the consortium/local authority is taking to reduce generation of MSW and how the interfaces and interdependencies with such actions and this project will be managed.</p> <p>Projects should consider the potential for including other waste streams such as commercial or industrial</p>

No	Evaluation Criteria	Key Issue for OBCs/FBCs to Address
		waste, on the basis of securing a value for money solution. However, projects must demonstrate that the project continues to deliver value for money in relation to the municipal waste being managed through it, and any cross subsidisation of the costs of disposing of non-municipal waste streams is transparent and acceptable to all stakeholders.
2	Reference Project	<p>The consortium/local authority should have done sufficient analysis of the technical, environmental and economic options to have identified a reference solution in order to satisfy themselves that there is at least one deliverable and affordable solution to the project prior to going to market.</p> <p>Options should have been developed and evaluated in line with WAG guidance on Option Appraisals for OBCs.</p> <p>For Residual Waste a do–minimum scenario should have been developed.</p>
3	Risk Management	<p>A project risk matrix should have been prepared, identifying all the foreseeable risks associated with the scheme, and making a preliminary risk allocation.</p> <p>Project risks should have been allocated appropriately between the parties following standard form guidance.</p> <p>An Internal procurement risk register identifying all risks to be managed by the public sector that ranks the lists in order of importance and a risk owner and mitigation strategy should have been developed.</p> <p>A regular reporting of risk management to the Consortium Project Board and a process to regularly update the risk register should have been developed.</p>

No	Evaluation Criteria	Key Issue for OBCs/FBCs to Address
4	Contract Structures	<p>Detail the interfaces and interdependencies between other activities out side the Scope of the Project (e.g. new collection activities).</p> <p>Detail how the envisaged contract structure has been determined and how such a structure is considered most likely to delivery VfM for the required services.</p> <p>There should be a commitment to use current version of SoPC terms and conditions or sector specific Standard Form when this has been approved.</p> <p>There should be a commitment to use the bidding process to embed standard Terms & Conditions.</p> <p>Any likely project or sector specific commercial/contract issues should identified and a process put in place to identify and deal with these issues.</p>
5	Joint working and Governance	<p>By OBC stage WAG would expect a Joint Working Agreement to be in place between participating authorities covering major points of principle, and that joint governance arrangements had been approved and established in accordance with best practice.</p> <p>Such plans should demonstrate evidence of strong joint working and the intention to have legally binding agreements or arrangements (e.g. joint waste management boards) in place by the start of the dialogue process.</p> <p>By FBC stage WAG would expect that arrangements and human and financial resources are in place for Authorities to effectively discharge their long term contract management procedures.</p>
6	Site, Planning	Proposals should demonstrate that other relevant authorities, the public and interested parties have been

No	Evaluation Criteria	Key Issue for OBCs/FBCs to Address
	and Statutory Processes	<p>consulted and that there is a broad consensus supporting the proposed solution. A compliant process for developing a development plan will have included community engagement and development/appraisal of options.</p> <p>Projects should have potential sites under consideration which accord with the relevant waste planning authority's statutory development plan and with the Regional Waste Plan. Development plans currently in preparation are expected to reflect TAN 21 and the Regional Waste Plan and therefore projects should align with the policies in Planning Policy Wales (PPW), TAN 21 Waste and the Regional Waste Plan.</p> <p>Authorities responsible for projects will be expected to engage in the preparation of the regional waste plan and relevant development plan so as to help secure an up-to-date and supportive planning context in line with PPW and TAN 21, including appropriate land allocations.</p> <p>Authorities should take proactive action to acquire sites in line with the adopted development plan and/or the relevant Regional Waste Plan, or which they are confident will accord with a development plan currently in preparation (an emerging development plan).</p>
7	Stakeholder Communication	<p>Proposals should demonstrate that other relevant Authorities, the public and interested parties have been consulted and that there is a broad consensus supporting a recognised long term waste management proposal which is reflected in the proposed solution. This should include the Authority's LAWDC if they have one.</p> <p>Affordability analysis (base case and sensitivities), and impact on budgets, accepted by Members, Senior Management and budget holders. Detail supporting evidence (e.g. cabinet minutes).</p> <p>Demonstrable support from all key sponsors (such as Councillors and Senior Officers). This evidence should include signed commitments from members, or minutes of members meetings clearly demonstrating</p>

No	Evaluation Criteria	Key Issue for OBCs/FBCs to Address
		<p>that they have committed to the ongoing affordability of the project as appropriate. The approval should be on the basis of members having a clear understanding of the range of possible costs based on a sensitivity analysis giving best and worst case scenarios.</p> <p>Consultation with all other stakeholders.</p> <p>Detail any relevant decision making processes.</p> <p>Ensure consistency between support of stakeholders and affordability commitments.</p> <p>Is there an effective communications strategy to liaise with all interested groups and keep them informed of progress/key decisions.</p>
8	Timetable	<p>Procurement timetable prepared.</p> <p>Detail and total length and breakdown into component parts.</p> <p>Timetable and affordability assumptions consistent.</p> <p>Stages of procurement process kept to a minimum consistent with achieving optimal project delivery at least cost.</p> <p>Total elapsed time from OJEU to contract award and eventual service delivery is realistic.</p> <p>Timetable is consistent with previous experience within the waste sector.</p>