

DATED

22 February 2013

(1) GLOUCESTERSHIRE COUNTY COUNCIL

and

(2) UBB WASTE (GLOUCESTERSHIRE) LIMITED

CONTRACT

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THIS CONTRACT is made on 22 February 2013

BETWEEN:

- (1) **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall, Gloucester, GL1 2TH (the "Authority"); and
- (2) **UBB WASTE (GLOUCESTERSHIRE) LIMITED** (Company No. 8301902) whose registered office is at Unit F, 2nd Floor, Pate Court, St Margaret's Road, Cheltenham, GL50 4DY (the "Contractor").

WHEREAS:

- (A) The Waste Strategy 2007 issued by the Secretary of State pursuant to the Environmental Protection Act 1990 (the "EPA") requires local authorities to achieve certain targets for recycling and composting which have been enshrined in national indicators ("NIs"). The Landfill Directive requires all local authorities to divert prescribed amounts of biodegradable municipal waste from Landfill and this is enforced by the Waste Emissions and Trading Act 2003 (together the NIs and Landfill diversion requirements shall be known as the "Statutory Targets").
- (B) The Authority is a Waste Disposal Authority under Section 30(2)(a) of the EPA.
- (C) Pursuant to a notice published in the Official Journal of the European Union on 19 August 2008, the Authority invited expressions of interest from appropriately qualified organisations for services relating to the design, installation, operation and maintenance of a residual waste treatment facility with a view to assisting the Authority in discharging the statutory obligations and in meeting its Statutory Targets on the basis set out in this Contract.
- (D) The Contractor has submitted proposals to the Authority setting out how it will meet the Output Specification relating to the construction, design, installation, financing, operation and maintenance of the Facility and the provision of the Services.
- (E) 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**

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

1.5 **Indexation**

In this Contract, save as regards the Payment Mechanism or 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 RPIx most recently published prior to the relevant calculation date and Index_2 is the value of RPIx 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**

Without prejudice to the remedies and contractual rights of the Contractor in respect of a risk, liability or obligation expressly provided in this Contract as being a risk, liability or obligation of the Authority: (i) nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any capacity, other than as a Waste Disposal Authority; and (ii) the exercise by the Authority of its duties, powers and functions in any other capacity other than as a Waste Disposal Authority shall not lead to any liability under this Contract 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 Clauses 1 to 100 (inclusive) of this Contract and any part of any of the Schedules or between

any part of any of the Schedules, the conflict will be resolved according to the following order of priority:

- i) Clauses 1 to 100;
- ii) Schedule 1 (Definitions);
- iii) Schedule 4 (Payment Mechanism);
- iv) Schedule 2 (Output Specification);
- v) Schedule 3 (Service Delivery Plans); and
- vi) the remaining Schedules equally.

3. COMMENCEMENT AND DURATION

3.1 Duration of Contract

This Contract and the rights and obligations of the Parties shall take effect on the Commencement Date and subject to Clause 3.3 and Clause 78.1.2 shall end on the Expiry Date or the Termination Date (if earlier).

3.2 The Services Period in respect of the Facility 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

3.3.1 The Authority may, on giving the Contractor not less than six months' notice in writing, extend the Contract Period for further periods of at least twelve (12) months by an amendment of the Expiry Date provided that the duration of the extensions may not exceed five years in total.

3.3.2 Where the Authority exercises its option pursuant to Clause 3.3.1 above, the Parties shall meet to negotiate any variation to the Contract which shall apply for the extension to the Contract Period.

3.3.3 In the event that the Parties do not reach an agreement regarding the extension to the Contract Period following the negotiation referred to

in Clause 3.3.2 by the date 2 months prior to the Expiry Date, the Contract shall expire pursuant to Clause 3.1.

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 this Contract and the Direct Agreement to be certified contracts 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 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, 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, administrative, or adjudication or mediation proceedings are against a Sub-Contractor), give the Authority notice of all such litigation, arbitration, administrative, 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 Commencement Date:

- 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 and the Ancillary Documents;

- 5.4.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Ancillary Documents has been taken or, in the case of any Ancillary 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 the Ancillary Documents are, or in the case of any Ancillary Document executed after the date of this Contract will be, legal, valid, binding and enforceable to the extent permitted by law and each Ancillary 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 and the Ancillary 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 any Ancillary 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 and any Ancillary 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 are or, when executed, will be in full force and effect and constitute 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 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 which would materially affect the interpretation or application of any of the Ancillary Documents,

and the Authority relies upon such warranties and representations.

5.5 **Warranty by Authority**

- 5.5.1 The Authority warrants and represents to the Contractor that to the best of its knowledge, information and belief (having made due and careful enquiry) as at the date of this Contract the information which it has provided for the purpose of the Disclosed Title Matters are true, complete and accurate in all respects, provided that no breach of this Clause shall be capable of giving rise to an Authority Default.
- 5.5.2 Subject to Clause 5.7 (Fraudulent Statements) and Clause 5.5.1, 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 Clauses 5.7 (Fraudulent Statements) and 5.5 (Warranty by Authority), 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 Clauses 5.7 (Fraudulent Statements) and 5.5 (Warranty by Authority) and the provision of Clause 14 (Fossils and Antiquities), the Contractor shall:

- 6.1.1 be deemed to have 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 be deemed to have 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 (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.

6.1.3 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 51.1.1 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, in the circumstances specified in Clause 7.3.1 (Ancillary Documents), the Contractor has complied with Clause 81 (Assignment and Subcontracting) to the extent relevant to such purported termination.

7.4 Changes to Financing Agreements

- 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 any new Financing Agreements or terminate, amend, waive any 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 any 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 (Changes to Financing Agreements), 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 the Deputy Chief Executive 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 the Contractor's General Manager 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 Not used

10.2 Grant of Lease

10.2.1

- (a) The Authority will grant and the Contractor will accept a Lease of the Freehold Site on the Lease Completion Date.
- (b) The term of the Lease shall commence on the Lease Completion Date and shall expire on the Expiry Date unless terminated earlier in accordance with this Contract (or extended following an extension to the term of this Contract pursuant to clause 3.3).
- (c) The Lease will be excluded from the security of tenure provisions set out in Part II of the Landlord and Tenant Act 1954.

10.2.2 Registration

- (a) The Contractor shall apply for and procure registration of the Lease 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 all reasonable endeavours (but without being required to incur any costs) to assist the Contractor in responding to any requisitions raised by HM Land Registry.

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

10.2.4 The Lease shall be granted subject to, but where applicable with, the benefit of the Disclosed Title Matters and the Contractor shall be deemed to take the Lease with full knowledge thereof and shall raise no requisition thereon or objection thereto.

10.2.5 The Contractor will comply with all Disclosed Title Matters insofar as they are still subsisting, capable of taking effect and affect the Site.

10.3 **Not used**

10.4 **Not used**

10.5 **Early Termination**

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

10.5.1 the Lease granted to the Contractor or any Contractor Related Party (or, if not granted at the time, the obligation to grant the Lease) shall automatically cease and determine with effect from the date of termination of this Contract;

10.5.2 the Contractor shall forthwith deliver to the Authority the Lease 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; 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 **Not Used**

10.7 **Adjacent Land and Third Party Consents**

10.7.1 The Contractor shall use its 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 a ground physical and geophysical investigation and to have inspected and examined the Site and its surroundings and (where applicable) any existing structures or works on, over or under the Site;

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, the load bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether 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 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);
 - 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 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 the 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 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 or otherwise dealing with any Contamination at or from the Site 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 To the extent that any part(s) of the Site suffer from or are affected by Contamination arising from a source off the Site (whether or not on Adjoining Property) the Contractor shall be responsible for such Contamination and the following provisions shall apply:

- 11.4.1 where any such matter arises on or before the Readiness Date for such Site it shall be deemed to be a Relief Event for a reasonable period (to be agreed between the Parties acting reasonably) for the purposes of this Contract;
- 11.4.2 where any such matter arises after the Readiness Date for such Site it shall be deemed to be an Excusing Cause (save in the period following the Readiness Date but before the Services Commencement Date where the Contractor shall be entitled to relief in accordance with Clause 21.2.4A) and a Relief Event to apply for a reasonable period (to be agreed between the Parties acting reasonably) but any work or change to the Services required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute an Authority Change;
- 11.4.3 before or after the Readiness Date the Contractor shall further hold the Authority harmless from cleaning up or otherwise dealing with such Contamination and shall indemnify the Authority in respect of all Direct Losses incurred by the Authority resulting from such Contamination.

11.5 **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 and shall comply with any other reasonable requirement of the Authority in respect of such materials and equipment.

11.6 **COSHH Register**

The Contractor shall maintain a control of substances hazardous to health (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 the Site 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 all 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, Proceedings or Permit 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 Facility:

- (a) the date on which each such Consent application was made;
- (b) the date on which each such Consent is expected or was obtained;
- (c) the 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.

12.6 Pursuant to the provisions of the 2009 Transfer, the Contractor shall be responsible for obtaining such consents and approvals as are necessary from the Transferor so as to enable the enjoyment of the rights granted under the said 2009 Transfer by the Contractor.

12.7 The Contractor shall take such steps as it deems in its absolute discretion to be reasonably necessary to enforce any breach of covenant by the Transferor which affects the rights to be enjoyed by the Contractor and in such cases shall:

12.7.1 notify the Authority of the breach occasioned;

12.7.2 provide the Authority with full details of the breach and the steps required to resolve such breach; and

12.7.3 keep the Authority regularly updated as to the resolution of the breach,

provided always that the steps referred to in this Clause 12.7 which are required of the Contractor following an Access Road Disruption Event are (without prejudice to the information and notification obligations set out in Clauses 12.7.1 to 12.7.3 (above)) set out exclusively in Clauses 12.8 and 12.17 (below).

- 12.8 The Authority shall be responsible for the payment of the Access Road Maintenance Payment to the Transferor under and in accordance with the 2009 Transfer and, notwithstanding the provisions of Clause 12.10 and Clause 12.11 of this Contract, the Contractor shall be entitled to relief in accordance with Clause 39 (Compensation Event) of this Contract where the Authority fails to discharge its payment obligations pursuant to the 2009 Transfer (including any under-payment or delayed payment) or where there is a dispute between the Authority and the Transferor relating to such payment obligations. For the avoidance of doubt, the Contractor's duty to mitigate with regard to its entitlement to Compensation Event relief in this Clause 12.8 shall be governed by Clause 39.2.3(b) and not Clause 12.11.
- 12.9 The Authority shall use reasonable endeavours to procure that the Transferor complies with its obligations in relation to the maintenance of the Access Road under or in connection with the 2009 Transfer. Either Party shall promptly notify the other when, in the relevant Party's reasonable opinion, the Transferor has failed to discharge such maintenance obligations and / or where there is a potential Access Road Disruption Event.
- 12.10 Subject to Clause 12.12 (save in respect of an Access Road Disruption Event arising under limbs (c) and (d) of that definition where, subject to the provisions of this Clause 12.10, Clause 39 (Compensation Events) shall apply to the exclusion of the provisions of Clause 12.11 to Clause 12.17 (inclusive)) and without prejudice to Clause 12.8, on the occurrence of an Access Road Disruption Event arising during the Works Period, the Contractor shall be entitled to relief in accordance with Clause 39 (Compensation Events) in the period following the expiry of ■ days from either the date on which the Access Road Disruption Event is first notified by the Contractor to the Authority or the date on which the Authority first becomes (or ought to have become) aware of the Access Road Disruption Event (whichever is earlier).
- 12.11 Subject to Clause 12.12 (save in respect of an Access Road Disruption Event arising under limbs (c) and (d) of that definition where, subject to the

provisions of this Clause 12.11, Clause 40 (Relief Events) shall apply to the exclusion of the provisions of Clause 12.12 to Clause 12.17 (inclusive)) and without prejudice to Clause 12.8, on the occurrence of an Access Road Disruption Event arising during the Services Period, the Contractor shall be entitled to relief in accordance with Clause 40 (Relief Events), provided that for the purposes of payment in accordance with Clause 45 (Invoicing and Payment) and Schedule 4 (Payment Mechanism), the pro rata amount of the Base Tonnage according to both paragraphs 6 and 14 of Schedule 4 and the payments associated with receipt of such pro rata amount of the Base Tonnage according to paragraph 19 of Schedule 4 shall continue to be payable for the duration of the Access Road Disruption Event.

12.12 The Contractor shall on becoming aware of an Access Road Disruption Event take reasonable steps to mitigate the consequences of the Access Road Disruption Event which may include the commencement of injunctive proceedings and/or the making of an application for specific performance against the Transferor (where in each case it would be reasonable to do so), provided that:

12.12.1 subject to Clause 12.14, the parties agree that the Contractor shall only be liable for Losses suffered and/or incurred in connection with the steps taken to mitigate the consequences of the Access Road Disruption Event up to an amount not exceeding [REDACTED] [REDACTED] for a single Access Road Disruption Event and [REDACTED] in aggregate during the Contract Period provided that the amount of any costs recovered by the Contractor from the Transferor or a third party in connection with the expenditure contemplated by this Clause 12.12 shall operate to reduce amounts accruing against the relevant expenditure limits set out in this Clause 12.12.1; and

12.12.2 the performance of any reasonable steps contemplated by this Clause 12.12 shall operate to discharge in full any obligation on the Contractor to mitigate the consequences of an Access Road Disruption Event which may be required as a condition to the entitlement of the Contractor to relief under or in connection with Clause 39 (Compensation Event), Clause 40 (Relief Event) and otherwise.

12.13 The Contractor shall inform the Authority and keep the Authority reasonably apprised of the relevant steps taken (and to be taken) by the Contractor in accordance with Clause 12.12 and provide a reasonable opportunity for the Authority to be joined in any proceedings following receipt of a written request from the Authority to be so joined. The Contractor shall provide to the Authority such information as regards the Losses referred to in Clause 12.12 at reasonable intervals and levels requested by the Authority.

12.14 The Contractor's liability for the Losses referred to in Clause 12.12 shall:

12.14.1 during the Works Period, exclude any Losses which will or are likely to arise following the expiry of the [REDACTED] period identified in Clause 12.10; and/or

12.14.2 at all times, exclude any Losses in excess of the limits provided in Clause 12.12.1,

for which the Authority will be liable in accordance with Clause 12.15.

12.15 Without prejudice to the rights of the Contractor elsewhere in this Clause 12, where continuance of the steps contemplated in Clause 12.12 would in the Contractor's reasonable opinion:

12.15.1 be necessary to bring the Access Road Disruption Event to an end; and

12.15.2 involve Losses being incurred and/or suffered beyond the time limit referred to in Clause 12.10 or the cost limits contemplated in Clause 12.12,

the Contractor shall provide the Authority with written notice of the same (such notice insofar as it relates to the cost limits contemplated in Clause 12.12 to be provided within a reasonable period prior to the date on which the relevant cost limit is exceeded) and this notice shall provide details of the steps proposed and a reasonable estimate of the extent of the Losses likely to be incurred and/or suffered in taking such steps. On receipt of such notice from the Contractor and subject to Clause 12.17, the Authority may instruct the Contractor in writing to take the steps notified and the Contractor shall implement the same. The Authority shall be responsible for all Losses reasonably and properly incurred by the Contractor in connection with the steps so notified and shall make payment to the Contractor in respect of such

Losses within a reasonable period (not to exceed 10 Business Days) from the date of receipt by the Authority of the relevant invoice(s) from the Contractor.

12.16 Where the Authority has instructed the Contractor to take the steps notified in accordance with Clause 12.15, the Contractor shall inform the Authority of the progress of the relevant steps, identify any further steps which the Contractor believes will be reasonably necessary to bring the Access Road Disruption Event to an end and update the Authority of any revision to the anticipated Losses to be incurred and/or suffered in taking the relevant steps which, for the avoidance of doubt shall be the responsibility of the Authority. Without prejudice to the Authority's payment obligations in Clause 12.15 and this Clause 12.16, the Contractor shall (subject to Clause 12.17) comply with the reasonable instructions of the Authority in relation to the steps to be taken by the Contractor to bring the Access Road Disruption Event to an end and shall not take any steps without first having obtained the prior written approval of the Authority.

12.17 Where:

12.17.1 the Authority does not instruct the Contractor to take the steps notified by the Contractor in accordance with Clause 12.15 within the later of 5 Business Days from receipt by the Authority of the Contractor's notice and the date on which the time period or cost limits contemplated in Clause 12.14 are exceeded; or

12.17.2 the Authority, in accordance Clause 12.16, instructs the Contractor to cease to take further steps to bring the Access Road Disruption Event to an end,

the Authority shall from such time be required at its own cost and risk to take reasonable steps to mitigate the consequences of the Access Road Disruption Event which may include the commencement of injunctive proceedings and/or the making of an application for specific performance against the Transferor (where in each case it would be reasonable to do so), and shall continue to do so until the Access Road Disruption Event comes to an end or until the Parties agree (acting reasonably) that continuance of such steps has no reasonable prospect of success, provided that from the date on which such agreement is reached (or should have been reached (the Parties acting reasonably)) Clauses 69.4 to 69.9 (excluding clause 69.7) shall apply

mutatis mutandis as if the Access Road Disruption Event were a Force Majeure Event provided that for the purposes of payment in accordance with Clause 45 (Invoicing and Payment) and Schedule 4 (Payment Mechanism), the amounts payable in accordance with Clause 12.11 shall continue to be paid for the duration of the Access Road Disruption Event until the earlier of the termination date and the date on which the Access Road Disruption Event is brought to an end.

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 the Readiness Date on or before the Planned Readiness Date;
- 13.1.2 the Facility shall achieve Services 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, Works Delivery Plans, Good Industry Practice, Guidance, all Consents and all applicable Legislation;
- 13.1.4 new or recycled 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 Delivery Plans) 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 the "Good Practice in the Selection of Construction Materials" by the British Council for Offices 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 (Protestor Action), the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Site are secure against trespassers, and clean and tidy so far as is practicable having regard to the nature of the Works;
- 13.1.8 adequate retaining and supporting walls are provided to support any Adjoining Property during the carrying out of the Works; and
- 13.1.9 the obligations in respect of the Works are carried out:
 - 13.1.9.1 in a manner consistent with Clause 88 (Quality Management Systems);
 - 13.1.9.2 in a manner that is not reasonably likely to be injurious to health or to cause damage to property; and
 - 13.1.9.3 in compliance with applicable Legislation and Consents (including without limitation the giving of notices and the obtaining of any such Consents) and so as not to prejudice the renewal of any such Consents.

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 Output Specification but not the Service Delivery Plans shall not be a defence to an allegation that the Contractor has not satisfied the Service Delivery Plans provided that the Output Specification shall take priority over the Service Delivery Plans in the event of any discrepancy or inconsistency between them; and
- 13.2.2 the fact that the Contractor has complied with the Service Delivery Plans but not the Output Specification shall not be a defence to an allegation that the Contractor has not satisfied the Output Specification.

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 ensure 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 not permit or suffer the storage of materials or the parking of vehicles by persons under the control of the Contractor outside the boundaries of the Site other than for reasonable periods necessary for loading and unloading;
- 13.3.5 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;

- 13.3.6 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 (excluding overnight accommodation) usual in connection with works of a like nature to the Works as contemplated by the Works Delivery Plans; and
- 13.3.7 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 Construction Programme

Subject to the provisions of Clause 13.7 (Sole Remedy for delay), 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.

13.6 Implementing a Variation to the Construction Programme

13.6.1 The Contractor shall be entitled to make any and all variations to the Construction Programme which would not alter or affect the Planned Readiness Date or the Planned Services Commencement Date.

13.6.2 The Contractor shall be obliged to propose variations to the Construction Programme which would affect the Planned Readiness Date or Planned Services Commencement Date by submitting the relevant variation to the Authority for review under the Review Procedure and implementing in accordance with Clause 13.6.3 below.

13.6.3 The Contractor shall not implement any variation to the Construction Programme which it is required to submit to the Authority for review under the Review Procedure pursuant to Clause 13.6.2 until the Authority consents or is deemed to have consented to the variation in accordance with the Review Procedure. Once consented to, a proposed variation will form part of the Construction Programme.

13.7 Sole Remedy for delay

A breach of Clause 13.1.1, 13.1.2 or 13.5 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:

13.7.1 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

13.7.2 termination under Clause 67 (Termination for Contractor Default) pursuant to limb (l) of the definition of Contractor Default); and/or

13.7.3 where applicable, Clause 69 (Termination on Force Majeure).

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 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 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 the 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 to 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 Clause 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 **Obligation to Finalise Design**

The Contractor shall develop and finalise the design and specification of the Works and the Authority shall review the Reviewable Design Data relating to the design in accordance with the Review Procedure and the provisions of this Clause 15 (Design Development).

15.3 Submission of Reviewable Design Data

The Contractor shall submit the Reviewable Design Data to the Authority's Representative for review under the Review Procedure.

15.4 No Construction prior to Review

15.4.1 Subject to Clause 15.4.2 the Contractor shall not commence or permit the commencement of the construction of the part or parts of the Works to which any Reviewable Design Data relate until it has submitted the relevant Reviewable Design Data for review and either it is confirmed by the Authority's Representative that the Contractor is entitled to proceed with construction in accordance with the Review Procedure or the Contractor is disputing the status of such Reviewable Design Data pursuant to paragraph 1.3 of Schedule 9 (Review Procedure).

15.4.2 If the Contractor commences or permits the commencement of construction before the Authority's Representative provides such approval or during such a dispute and it is subsequently determined 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 undo, remove from 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.

15.5 Approved Reviewable Design Data

With effect from the date on which any Reviewable Design Data is or becomes approved in accordance with the Review Procedure, the Contractor may proceed with the construction of the relevant part or parts of the Works (subject to the need to submit any associated Reviewable Design Data to review) in accordance with that approved Reviewable Design Data.

15.6 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.

15.7 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.

15.8 Rectification of Construction Proposals

If it should be found that the implementation of the Works in accordance with the Works Delivery Plans does not fulfil the Output Specification, the Contractor shall at its own expense amend the Works Delivery Plans and rectify the Works or any part of the Works affected. Such amendment and rectification shall have the effect that:

15.8.1 the Works Delivery Plans shall satisfy the Output Specification; and

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

15.9 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.

15.10 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 Commencement Date will not obviate, diminish or alter the Contractor's obligations hereunder and will be deemed to have been carried out pursuant to this Contract.

15.11 No Change to the Basic Design Proposals

For the avoidance of doubt the Contractor shall not amend or change the Basic 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 15.8, 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 during that Month 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 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 whatsoever which may at any time be payable to any local or other Relevant Authority in respect of the Works.

16.4 Site Meetings

The Contractor shall procure that the Authority's Representative is afforded a reasonable opportunity to attend programmed monthly Site meetings and any other progress critical or key meetings whether programmed or not relating to the Works and (whether or not the Authority's Representative has attended) that a copy of the minutes of such meetings is promptly supplied to the Authority.

16.5 Not used

16.6 Notification of Delays in Progress of the Works

Without prejudice to 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),

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

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.

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, 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 the 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 the Facility being issued in accordance with Clause 21 (Completion of the Works), a certified copy of the full Health and Safety File relating to the 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 and shall provide the Authority with a copy of the Contractor's monthly health and safety monitoring report.

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 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 of 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 notified of and entitled to attend all inspections undertaken by or meetings involving the Independent Certifier.

18.5 Replacement

In the event of the Independent Certifier's Deed of Appointment being terminated otherwise than for full performance, the Contractor and the

Authority shall 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 Deed of 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 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.

19.2 **Right to Open Up**

19.2.1 Subject to Clause 19.2.2 (and provided that in so doing the Authority uses its 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 Readiness Date 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 any 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 the Site 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 Delivery Plans, 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 the 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 all reasonable endeavours to obtain) enter upon any property used by the Contractor as a training or workshop facility 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 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 for 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 The 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 the Facility shall be the date on which an Acceptance Test Certificate is issued in respect of the 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 Works Delivery Plan 4 (“Commissioning”) contained in Schedule 3 (Service Delivery Plans) and which shall be approved or “not commented on” by the Authority under the Review Procedure 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 the 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 sixty (60) Business Days prior to the anticipated date upon which the Contractor considers that the Facility will be in a condition to proceed with the Tests (the “**Target Testing Date**”), provide to the Authority an indicative estimate of the levels, timings and periods of deliveries of Contract Waste necessary for commissioning and testing of the Facility. The Contractor shall, acting in accordance with Good Industry Practice, use reasonable endeavours to ensure such indicative estimate is as accurate as possible. Not less than twenty (20) Business Days prior to the Target Testing Date, the Contractor shall confirm to the Authority the necessary levels, timings and periods of deliveries.
- 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, provided always that for each week in which Contract Waste is delivered the Authority shall be entitled to deliver tonnages which are ■ below or ■ above those requested by the Contractor pursuant to Clause 21.2.3 or this Clause 21.2.4. 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. Without prejudice to the provisions of the Payment

Mechanism, following the Target Testing Date, the Contractor shall be entitled to request a change to the levels, timings and/or periods of deliveries notified under Clause 21.2.3 and/or a suspension of the delivery of Contract Waste, in which case the Authority shall use reasonable endeavours to comply with such request. The Authority shall be kept informed as to the likely need for a further finite period of delivery of Contract Waste to the Facility to allow for further testing. For the avoidance of doubt, Non Acceptance Deductions may apply, subject to Clause 21.2.4A, in respect of Contract Waste deliveries made further to this Clause 21.2 (Testing and Commissioning) but at no time shall the Contractor be required to Accept Contract Waste more than 10% over and above the levels requested pursuant to Clause 21.2.3 or this Clause 21.2.4.

21.2.4A If any of the circumstances set out in Clause 21.2.4B interfere adversely with, or cause a failure of, the Contractor's ability to Accept Contract Waste during the Commissioning Period, and provided that the effect of such circumstances is claimed within ten (10) Business Days of the date on which the Contractor becomes aware (or ought reasonably to have become aware) of the occurrence of such circumstances, then to the extent such failure or interference arises as a result of such circumstances:

21.2.4A.1 any such failure by the Contractor to Accept Contract Waste shall not constitute a breach of the provisions of this Contract by the Contractor; and

21.2.4A.2 any such failure to Accept Contract Waste shall be deemed not to have occurred.

21.2.4B The circumstances to which the provisions of Clause 21.2.4A relate are as follows:

21.2.4B.1 where the Facility or part thereof has been closed by written agreement between the Contractor and the Authority and as part of that agreement it has been agreed that no adjustments and / or Deductions in accordance with Schedule 4 (Payment Mechanism) will be levied;

- 21.2.4B.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 Charge pursuant to Schedule 19 (Revision of Base Case and Custody) (provided that the extent to which the Contractor is or has been excused is taken into account in the assessment of the Authority Change or Qualifying Change in Law);
- 21.2.4B.3 any matters referred to in Clause 11.4 which arise after the Readiness Date but before the Services Commencement Date.
- 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 Plan.
- 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

21.3.1 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 Clauses 21.2.8(a) or 21.3.1, 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.

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 21.4.1 shall be final, binding and enforceable upon the Parties (except in the case of fraud, collusion, bias or manifest error) 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 Hot Commissioning (as such term is defined in Appendix 2 (Definitions) to Schedule 2 (Output Specification)) 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 Test 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 the 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 Schedule 2 (Output Specification) shall apply.

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 (save where such requirement is waived in accordance with the definition of "Wilful Default" as set out in Schedule 33 (Power Offtake Arrangements));
- (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;

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 the Site and the 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 Services in accordance with the Services Method Statements.

22.3 In the event that the Authority cannot deliver Contract Waste to the Delivery Point of the Facility due to a failure of the Contractor to comply with the obligations under this Contract and in particular Clause 22.1, or in the event that the Contractor is unable to operate the Facility in accordance with the Method Statements (including during any period of Planned Maintenance) then (without prejudice to any other right and remedy of the Authority) the Contractor shall implement the Contingency Plans at its own cost and risk (subject to the Contractor being entitled to be compensated for such costs in accordance with the terms of the Contract where it is required to implement such Contingency Plans as a result of a Relevant Event or Excusing Cause).

23. **ACCEPTANCE OF CONTRACT WASTE**

23.1 Subject to Clauses 23.4 (Supplementary Contract Waste) and 21.2.4 (Testing and Commissioning), and without prejudice to Clause 23.5 (Additional Waste), the Contractor shall Accept all Contract Waste in accordance with the Output Specification and Schedule 31 (Waste Acceptance Protocol) subject at all times to the Maximum Tonnage. The Contractor shall only be entitled to reject Contract Waste in accordance with Schedule 31 (Waste Acceptance Protocol).

23.2 **Base Tonnage**

23.2.1 Without prejudice to Clause 23.1 or Clause 23.4, where the tonnage of Contract Waste (excluding Unacceptable Waste) delivered falls below the Base Tonnage, the Base Tonnage shall apply in calculating the "T" Tonnage Payment and "ATR" Annual Tonnage Payment Reconciliation components of the Unitary Charge as provided in paragraphs 6 and 14 respectively of Schedule 4 (Payment Mechanism).

23.2.2 Without prejudice to any other right or remedy of either Party, the Base 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 or a Compensation Event.

23.3 Authority Obligation to deliver

23.3.1 From the Services Commencement Date and subject to Clause 23.3.2, the Authority shall deliver all Exclusive Waste (and/or procure that all Exclusive Waste is delivered) to the Contractor.

23.3.2 The provisions of Clause 23.3 (Authority obligation to deliver) shall not apply to the extent that the Contractor does Not Accept Contract Waste or to Contract Waste which is handled, processed or Landfilled outside the Contract because of a Relief Event, Force Majeure Event or Excusing Cause.

23.3.3 Changes to the Administrative Area shall be treated and assessed as an Authority Change save that any Third Party Income shall be calculated in accordance with paragraph 6 (Principles Relating to Third Party Income) of Schedule 19 (Revision of Base Case and Custody). Changes to the Administrative Area shall not constitute an event of Authority Default.

23.4 Supplementary Contract Waste

The Authority shall have the right to deliver Supplementary Contract Waste in accordance with the following provisions:

Tranche 1 SCW

23.4.1

(a) Without prejudice to Clause 23.4.2, in any Contract Year, the Authority shall be entitled to deliver Tranche 1 SCW up to the Tranche 1 SCW Limit, provided that:

23.4.1.1 it gives at least two (2) weeks' notice to the Contractor prior to the start of the relevant Contract Year of its intention to do so;

23.4.1.2 acting reasonably, it provides details of the proposed volumes of Contract Waste to be delivered in each Month during such Contract Year which shall be

based on a reasonable forecast assessment undertaken by the Authority in respect of the proposed said volume of Tranche 1 SCW for the relevant Contract Year, such forecast shall be split between Base Case Tonnage, Tranche 1 SCW, Tranche 2 SCW and Tranche 3 SCW;

23.4.1.3 in any one Month during such Contract Year the proposed volume of Tranche 1 SCW shall not exceed [REDACTED] tonnes;

23.4.1.4 in any one Contract Year the proposed volume of Tranche 1 SCW shall not exceed [REDACTED] [REDACTED] tonnes;

23.4.1.5 the Authority has provided to the Contractor such data as has been used by the Authority in the formulation of its Contract Waste forecast assessment;

23.4.1.6 the Authority shall from time to time provide the Contractor with such additional data throughout the Contract Year which has resulted or may result in an adjustment to the Contract Waste forecast assessment; and

23.4.1.7 the Authority shall review and amend on a monthly basis the forecast assessment relating to the Tranche 1 SCW to improve the accuracy of the forecast assessment.

(b) In the event that the Authority has not provided a notice to the Contractor pursuant to Clause 23.4.1.1, the Authority shall in any event be entitled at any time during the Contract Year to provide 1 Month's notice to the Contractor that it intends to deliver Tranche 1 SCW during the remainder of the Contract Year up to the Tranche 1 SCW Limit for those remaining Months, subject always to the Authority complying with the provisions of Clauses 23.4.1.2 to 23.4.1.7.

- 23.4.2 Notwithstanding Clause 23.4.1, the Authority shall be entitled, subject to providing the Contractor with as much notice as is reasonably practicable in the circumstances, to increase the amounts of Tranche 1 SCW to be delivered in any Month at any time during the Contract Year provided always such amount does not exceed [REDACTED] [REDACTED] tonnes above the proposed volume for that Month set out in the notice provided pursuant to Clause 23.4.1.
- 23.4.3 At the end of the Contract Year, the amount of Tranche 1 SCW delivered in each Contract Month will be calculated for the purpose of paragraph 6.6 of Schedule 4 (Payment Mechanism), such that for any Contract Month in which there is an excess of Tranche 1 SCW above [REDACTED] tonnes delivered, such excess shall be “Excess Tranche 1 SCW” for the Contract Month.
- 23.4.4 Nothing in Clauses 23.4.1 or 23.4.2 will affect the Authority’s or the Contractor’s rights and obligations applicable to the delivery of Contract Waste up to the Base Case Tonnage.

Tranche 2 SCW

- 23.4.5 The Authority shall be entitled to deliver Tranche 2 SCW in any Contract Year up to the Tranche 2 SCW Limit provided that:
- 23.4.5.1 the Authority commits to the delivery of any Tranche 2 SCW for the Minimum SCW Period, subject to the SCW Increase Notice not being revoked in accordance with Clause 23.4.7;
 - 23.4.5.2 the Authority has provided a SCW Increase Notice at least six (6) months prior to the date on which it wishes to commence delivery of the Tranche 2 SCW to the Contractor of the approximate proposed volumes of the Tranche 2 SCW to be delivered in each relevant Contract Year; and which shall be based on a reasonable forecast assessment undertaken by the Authority in respect of the proposed said volume of Tranche 2 SCW;
 - 23.4.5.3 the Authority has provided to the Contractor such data as has been used by the Authority in the

formulation of its Contract Waste forecast assessment;

23.4.5.4 the Authority shall from time to time provide the Contractor with such additional data throughout the Contract Year which has resulted or may result in an adjustment to the Contract Waste forecast assessment;

23.4.5.5 the Authority shall act reasonably at all times in formulating its waste forecasts and the provision of any such information and associated data to the Contractor; and

23.4.5.6 at least 3 months before commencement of any delivery, the Authority shall confirm the exact volumes of Tranche 2 SCW to be delivered during the Contract Year, such volumes to be only [REDACTED] of the approximate proposed volumes set out in the original notice provided pursuant to Clause 23.4.5.2. In the event that the Authority fails to confirm the exact volumes within [REDACTED] of the approximate proposed volumes specified in an SCW Increase Notice served pursuant to Clause 23.4.5.2, the Authority shall be deemed to confirm delivery of the volumes specified in the relevant SCW Increase Notice.

Tranche 3 SCW

23.4.6 The Authority shall be entitled to deliver Tranche 3 SCW provided that:

23.4.6.1 the Authority commits to the delivery of any Tranche 3 SCW for the Minimum SCW Period, subject to the SCW Increase Notice not being revoked in accordance with Clause 23.4.7;

23.4.6.2 the Authority has provided a SCW Increase Notice at least six (6) months (or such period as can be agreed between the Parties at the time) prior to the

date on which it wishes to commence delivery of the Tranche 3 SCW together with details of the projected volumes of the Tranche 3 SCW to be delivered in each relevant Contract Year; and which shall be based on a reasonable forecast assessment undertaken by the Authority in respect of the proposed said volume of Tranche 3 SCW;

23.4.6.3 the Authority has provided to the Contractor such data as has been used by the Authority in the formulation of its Contract Waste forecast assessment;

23.4.6.4 the Authority shall from time to time provide the Contractor with such additional data throughout the Contract Year which has resulted or may result in an adjustment to the Contract Waste forecast assessment;

23.4.6.5 the Authority shall act reasonably at all times in formulating its waste forecasts and the provision of any such information and associated data to the Contractor; and

23.4.6.6 the Contractor shall not be obliged to Accept any Tranche 3 SCW or to terminate any existing Third Party Waste Contract(s) or reduce capacity committed to Third Party Waste customers in order to Process the Tranche 3 SCW unless the Authority has agreed to pay for all costs and / or losses arising from such reduction in capacity or termination which have been previously notified to the Authority in writing.

23.4.7 If the Authority has provided a SCW Increase Notice in relation to Tranche 2 SCW and Tranche 3 SCW, then such notice may not be revoked after ten (10) days have elapsed since the date of such notice.

SCW Reduction Notice

23.4.8 If the Authority has provided a SCW Increase Notice then:

23.4.8.1 without prejudice to the Authority's obligation to pay the Contractor for any Tranche 2 SCW and Tranche 3 SCW which has been notified in accordance with Clauses 23.4.5.6 and 23.4.6.2, the Authority may deliver in any Contract Year a volume of Tranche 1 SCW which is less than the amount (if any) which it has notified the Contractor in accordance with Clause 23.4.1, without providing a SCW Reduction Notice to the Contractor pursuant to Clause 23.4.8.2 and the provisions of Clause 23.4.9 relating to Substitute Waste shall not apply to such shortfall in Tranche 1 SCW;

23.4.8.2 without prejudice to Clause 23.4.8.1, no earlier than six (6) months following the commencement of the Contract Year to which such SCW Increase Notice relates the Authority shall be entitled to provide twelve (12) months' prior notice ("**SCW Reduction Notice**") to the Contractor of the date on which it shall reduce the volume of any Tranche 2 SCW and / or Tranche 3 SCW it intends to deliver during the remainder of the SCW Period and from the date stipulated in the relevant SCW Reduction Notice the Authority shall only be obliged to deliver the reduced volumes of Tranche 2 SCW or Tranche 3 SCW (as the case may be) set out in the SCW Reduction Notice;

23.4.8.3 if the Authority delivers fewer tonnes of SCW than it has notified in the SCW Increase Notice (as may have been amended by a SCW Reduction Notice) the difference in volume shall be the "**SCW Shortfall**" and the provisions of Clause 23.4.9 relating to SCW Substitute Waste shall apply.

23.4.9 If at any time there is a SCW Shortfall, the provisions of Clause 25.2 (Substitute Waste) shall be deemed to apply so that:

- 23.4.9.1 the Contractor shall use reasonable endeavours (equivalent to those applying in clause 25.2.4, both in relation to the obligation to secure SCW Substitute Waste and the requirements as to the price to be obtained) to procure volumes of SCW Substitute Waste to meet such SCW Shortfall;
- 23.4.9.2 where the Contractor has procured SCW Substitute Waste to fill such SCW Shortfall, it shall reimburse the Authority, where applicable, in accordance with the same principles applying to Substitute Waste and pursuant to the same payment, reconciliation and set-off mechanics as apply to Substitute Waste;
- 23.4.9.3 a failure to use reasonable endeavours would result in a reduction in the amount of Tranche 2 SCW and / or Tranche 3 SCW in respect of which the Contractor is entitled to receive payment which has been notified in accordance with Clauses 23.4.5.6 and 23.4.6.2 by an amount equal to the amount of SCW Substitute Waste the Contractor would have secured if it had complied with its obligations under Clause 23.4.9.1;
- 23.4.9.4 provided the Contractor has used reasonable endeavours to secure SCW Substitute Waste to meet any SCW Shortfall, the Authority shall reimburse the Contractor for the loss of all Third Party Income resulting from any failure to deliver the volumes of Tranche 2 SCW and / or Tranche 3 SCW (less any Third Party Income generated from SCW Substitute Waste procured in accordance with this Clause 23.4.9).

Definition of Exclusive Waste

23.4.10 The definition of Exclusive Waste shall be amended so that it shall include:

- 23.4.10.1 Tranche 1 SCW as notified by the Authority in accordance with Clause 23.4.1 above; and

23.4.10.2 such volume of Tranche 2 SCW and / or Tranche 3 SCW as notified by the Authority in accordance with Clauses 23.4.5.6 and / or 23.4.6.2 above less any reduction of the volumes of Tranche 2 SCW and / or Tranche 3 SCW notified by the Authority in accordance with Clause 23.4.8.2 above.

23.5 Additional Waste

23.5.1 Not less than two (2) months prior to the start of each Contract Year the Authority shall notify the Contractor of the projected amount of Additional Waste it intends to deliver in the subsequent Contract Year together with sufficient waste data as the Contractor may reasonably require to demonstrate projected Additional Waste arising in each quarter of such Contract Year.

23.5.2 No later than twenty (20) Business Days from receipt of any notice from the Authority pursuant to Clause 23.5.1, the Contractor shall notify the Authority of the amount of Additional Waste that it can Process at the Facility and the amount of Additional Waste that can be passed on to third party waste treatment facilities.

23.5.3 To the extent that:

23.5.3.1 the Contractor has notified the Authority that it can Process Additional Waste at the Facility, the Contractor shall Accept and Process such Additional Waste; and

23.5.3.2 the Contractor has notified the Authority that Additional Waste can be passed on to third party waste treatment facilities, the Contractor shall use reasonable endeavours to secure alternative means for disposing of such Additional Waste,

provided always that the Contractor shall not be obliged to terminate any existing Third Party Waste Contract or reduce capacity committed to Third Party Waste customers unless the Authority has agreed to pay for any costs arising from such reduction in capacity or termination.

23.5.4 Where, pursuant to Clause 23.5.3:

23.5.4.1 Additional Waste is Accepted by the Contractor for Processing at the Facility, the payment per tonne for such Additional Waste shall be agreed between the Parties (acting reasonably) at that time. Any dispute as to the payment per tonne for Processing Additional Waste shall be determined in accordance with the Dispute Resolution Procedure; and

23.5.4.2 Additional Waste is accepted by the Contractor to be passed on to third party waste treatment facilities, the payment per tonne for such Additional Waste shall be on a pass through basis with reference to the actual costs incurred by the Contractor at the time, which shall be agreed between the Parties at the time;

but for no other purposes shall Additional Waste be treated as Contract Waste or shall any other components of Schedule 4 (Payment Mechanism) apply.

23.6 **WCA Baseline and Composition Risk**

23.6.1 If at any time there is a Material Departure pursuant to paragraph 10 of Schedule 32 (WCA Composition Protection), and unless the Authority has already issued an Authority Change Notice in respect of such matters, the Contractor shall issue a notice to the Authority (a "WCA Baseline Change Notice") setting out details of the Material Departure from the WCA Baseline and providing reasonable evidence in support.

23.6.2 The Authority shall respond within one Month of receipt of a WCA Baseline Change Notice by either:

(a) issuing an Authority Change Notice relating to the matter in which case the provisions of Clause 43 (Authority and Contractor Changes) shall apply (which for the avoidance of doubt may not subsequently be withdrawn in accordance with Schedule 21 (Change Protocol)); or

- (b) notifying the Contractor in writing that it disputes the fact that there is a Material Departure from the WCA Baseline and referring the matter to the Dispute Resolution Procedure.
- 23.6.3 If the Authority does not respond in accordance with either of Clauses 23.6.2(a) or 23.6.2(b) above, then Clause 23.6.2(b) shall apply.
- 23.6.4 The Parties shall refer to the Dispute Resolution Procedure any dispute as to whether there is a Material Departure from the WCA Baseline and any dispute as to the changes required as a consequence of the Authority Change Notice. The Authority will at all times act in good faith in relation to the reporting and identification of Material Departures from the WCA Baseline and will use reasonable endeavours to provide such information in relation thereto as the Contractor shall reasonably require.
- 23.6.5 For the avoidance of doubt, Material Departures from the WCA Baseline shall not give rise to an event of Authority Default or a Compensation Event.
- 23.6.6 The provisions of this Clause 23.6 (WCA Baselines and Composition Risk) shall protect the Contractor against changes in composition, or the balance of commodities in the Contract Waste arising in the Administrative Area as a result of a WCA Commodity Change. The provisions of this Clause 23.6 are not intended nor shall they be deemed to protect the Contractor from increases or decreases in the volume of Contract Waste because such increases or decreases are calibrated and catered for within the "B" Base component of the Unitary Charge and Base Tonnage as described in the Payment Mechanism.
- 23.6.7 The Authority shall act reasonably and in good faith in notifying the Contractor as soon as reasonably practicable of Material Departures or pending Material Departures from the WCA Baseline of which the Authority is aware.

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

In all circumstances throughout the Commissioning Period and the Services Period the Contractor shall, subject to Clause 23.4 (Supplementary Contract Waste), receive, 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 40 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 If at any time during a Contract Year following the Services Commencement Date, the Authority reasonably believes that the Exclusive Waste will be less than the Base Tonnage of Contract Waste, then it will be entitled to notify the Contractor ("Substitute Waste Notice"):

- (a) that it considers Contract Waste in the relevant Contract Year will fall below the Base Tonnage;
- (b) the amount by which it considers there will be shortfall between the amount of Contract Waste being provided

and the Base 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 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 calorific value at least equal to Contract Waste. For the purposes of this Clause 25.2.4, "reasonable endeavours" shall mean the Contractor (and the Operating Sub-Contractor) shall act as a prudent commercial waste operator (in accordance with the principles, inter alia, of the Substitute Waste Plan) would act in securing Waste for its own facility having the capability of the Facility (including in determining whether the entities from which Substitute Waste is sourced are creditworthy). For the avoidance of doubt, only such Third Party Waste (if any) which is delivered in excess of an amount equal to the difference between the Base Tonnage and the Maximum Tonnage for the relevant Month during the Shortfall Period shall be deemed to be Substitute Waste. The tonnage of Third Party Waste to be delivered in priority to Substitute Waste in each Month during the Shortfall Period will be calculated as follows: $(\text{Maximum Tonnage} - \text{Base Tonnage}) / 12$.

25.2.5 In the event that the Contractor secures Substitute Waste then income received by the Contractor in relation to that Substitute Waste will be subject to the provisions of Schedule 4 (Payment Mechanism).

25.3 **Top Up Waste**

25.3.1 Where there is a Contract Waste Shortfall and / or a SCW Shortfall the Authority may either issue a Substitute Waste Notice or procure

Top Up Waste itself in which case such Top Up Waste shall be treated as Contract Waste and the definition of Contract Waste shall be deemed amended so as not to refer to the Administrative Area provided that:

- (a) such amendment shall be deemed only to the extent reasonably necessary to remedy the Contract Waste Shortfall and / or the SCW Shortfall; and
- (b) the Authority shall have no obligation to deliver and Clause 23.3.1 shall not, for the avoidance of doubt, apply to any Waste from outside the Administrative Area.

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:

- 26.1.1.1 the Facility is available as required by this Contract and the Output Specification;
- 26.1.1.2 it can maintain the design intention of the Facility to achieve its full working life; and
- 26.1.1.3 the Facility and 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 as required by this Contract and the Output Specification.

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 Facility and the Assets to assess whether the Facility and 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 [REDACTED]
- 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 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.

26.2.4(A) If the Authority has failed to use reasonable endeavours to minimise disruption pursuant to Clause 26.2.3, the Parties agree that the exercise of the Authority's rights in relation to that survey shall be deemed to be an Excusing Cause entitling the Contractor to relief pursuant to Clause 41.

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 26.2.5 or if the Authority is or becomes aware of a breach by the Contractor of its obligations under Clause 26.2.4 then Appendix 3 of Schedule 2 (*Output Specification*) shall apply.

26.3 **Planned Maintenance**

The Contractor shall undertake routine repairs and maintenance of the Facility and the Assets in accordance with a Schedule of Planned 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

29.1.1 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, an accident book which shall be open to inspection by the Authority's Representative or the Authority's safety adviser.

29.1.2 The Contractor shall have regard to its obligations under Schedule 2 (Output Specification) when preparing its own statement.

29.1.3 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.

29.1.4 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.

30. EQUIPMENT

30.1 The Contractor shall from the Services Commencement Date:

- 30.1.1 provide, repair, maintain and replace all Equipment and fixed installations necessary for the provision of the Services;
- 30.1.2 maintain all Equipment and fixed installations in accordance with Clause 26.1 (Maintenance);
- 30.1.3 use its reasonable endeavours to ensure that all Equipment and fixed installations 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 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 or any revenue lost by the Contractor shall be borne by the Authority to the extent that the Emergency was not caused by the Contractor's negligence or breach 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 Output Specification.

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 a Readiness Test 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); or

32.3.2 have submitted two (2) or more erroneous Monitoring Reports or claims for payment under Clause 45 (Invoicing and Payment), within a [REDACTED] 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 that it will perform (and is capable of performing) its obligations under this Contract 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 [REDACTED] Months following the Authority notice (if it has not already been established) 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 Clause 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 Clause 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 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 (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 Unitary Charge 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 Unitary Charge 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 Unitary Charge Payment to be paid during the Required Action

33.6.1 The Monthly Unitary Charge 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 (or where there have been fewer than █████ Months since the Services Commencement Date, Clause 33.6.1(b) shall apply):

- (a) the average Monthly Unitary Charge 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 Unitary Charge 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 Unitary Charge Payment forecast in the Sponsor Base Case.

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 paragraph 6.8 to Schedule 19 (Revision of Base Case and Custody); and

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. 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 Service, 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 price. 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**

34.2.1 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 [REDACTED] 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.

34.2.2 Without prejudice to Clause 34.1 the Parties agree that the Contractor shall be entitled to propose that a Market Testing exercise should be held jointly at or about the same time with another value testing exercise under one of the Contractor's Sub-Contracts for consideration by the Authority (acting reasonably) pursuant to this Clause 34.2.2 provided that the Contractor shall only be entitled to make such a proposal within [REDACTED] Months of a Market Testing Review Date and the period of time between successive Market Testing Review Dates shall never be greater than [REDACTED] years and [REDACTED] Months. If the Authority agrees to the Contractor's proposal pursuant to this Clause 34.2.2, Clause 34.1 shall apply.

34.3 **Adjustments to Unitary Charge**

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 Charge 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 Charge 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 In respect of any Market Tested Services:

- (a) to which clause 34.1.10 applies; or
- (b) which the Authority has in accordance with clause 34.1 decided not to Market Test,

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 Charge 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 Unitary Charge 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, the Parties shall adjust the Monthly Unitary Charge 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 Unitary Charge 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 Unitary Charge 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 Unitary Charge 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. **BEST VALUE**

The provisions of Schedule 15 (Best Value and Continuous Improvement) shall apply in respect of the Authority's Best Value Duty (as defined in Schedule 15).

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 Services; 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 Services 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 in relation to Personnel and potential Personnel engaged in respect of the provision of the Services only, (and only to the extent that such Personnel will have or are reasonably likely to have contact with visitors to the Facility), procure that a Criminal Records Bureau check (or any successor or replacement service) is undertaken in respect of such Personnel or potential Personnel;
- 37.5.3 procure that, where any Personnel discloses any Convictions, or is found to have any Convictions, the same shall be immediately notified to the Authority;
- 37.5.4 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 Contractor Related Party in the provision of the Services, receives a Conviction or whose previous Convictions become known to the Contractor (or any Contractor Related Party involved in the provision of the Services); and
- 37.5.5 if reasonably requested by the Authority, provide copies of the records of any unspent Convictions of any Personnel.

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 Services or any part of the Services. 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 Equalities and Human Rights Commission, 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 public sector equality duty under section 149 of the Equality Act 2010.

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 at the Site, or following the Planned Works Commencement Date on or before the Works Commencement Longstop Date, and as a result there is a delay to 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 at the Facility; and/or

39.1.3 the Contractor is unable to achieve Services Commencement on or before the Planned Services Commencement Date at the Facility 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 Planned Readiness Date and/or the Planned Services Commencement Date or (following the 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 Commencement Date, Planned Readiness Date or the Planned Services Commencement Date and/or breach of the Contractor's obligations under this Contract; or following the Planned Works Commencement Date, delay in commencing the Works before the Works Longstop Date or following the Planned Services Commencement Date, delay in achieving Services 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 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 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 Services Commencement Date for the Facility, the Authority shall compensate the Contractor in accordance with Clause 39.6 below by an adjustment to the Unitary Charge in accordance with Clause 53 (Revision of Base Case and Custody);

39.3.5 in the case of delay, the Planned Works Commencement Date or, following the Planned Works Commencement Date, the Works Commencement Longstop Date, shall be postponed by such time as shall be reasonable for such Compensation Event, taking into account the likely effect of the delay; and/or

39.3.6 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:

(a) commencing the Works on or before the Planned Works Commencement Date; or after the Planned Works Commencement Date, commencing the Works by the Works Commencement Longstop Date; and/or

(b) achieving the Readiness Test Certificate on or before the Planned Readiness Date; and/or

(c) achieving the Acceptance Test Certificate on or before the Planned Services Commencement Date; or after the Planned Services Commencement Date achieving the Acceptance Test Certificate on or before the Acceptance Longstop Date; 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**

Subject to clause 40.5 below, to obtain relief, the Contractor must:

40.2.1 as soon as practicable, and in any event within ten (10) 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 Services Commencement Date, delay in achieving Service Commencement by the Acceptance Longstop Date;
- (c) the time lost 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 Works Commencement Date) the Works Commencement Longstop 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 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 on Contractor Default).

40.3A Relief for Disclosed Title Matters

If and to the extent that a Relief Event as defined in limb (k)(ii) of that definition occurs, then such Relief Event shall apply for such period as shall be reasonable in the circumstances of that Relief Event, provided that such period shall not exceed [REDACTED] days either as a single event or when aggregated with other Relief Events arising under limb (k)(ii) of that definition.

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 provided that any such Deductions shall, to the extent that they are being incurred as a consequence of the Relief Event, be disregarded for the purposes of the Authority's right to terminate this Contract for Contractor Default.

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 any Planned Services Commencement Date and/or the Acceptance Longstop Date, 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 ten (10) Business Days of the date on which the Contractor becomes aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, then to the extent such failure or interference arises as a result of such Excusing Cause:

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 payment under this Contract (including lost electricity income) up to an amount corresponding to the payment that the Contractor would have received (including electricity income) had the Base Tonnage been delivered and 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 the Facility or part thereof that has been closed by written agreement between the Contractor and the Authority and as part of that agreement it has been agreed that 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 Charge pursuant to Schedule 19 (Revision of Base Case and Custody) (provided that the extent to which the Contractor is or has been excused is taken into account in the assessment of the Authority Change or Qualifying Change in Law);

41.2.3 any matters referred to in Clause 11.4.2 which are deemed to be an Excusing Cause;

41.2.4 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, in each case in accordance with the Contract;

41.2.5 any matter referred to in Clause 26.2.4(A) which is deemed to be an Excusing Cause.

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**

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 all reasonable endeavours to prevent Protester Action affecting the Site and/or the Facility including for the avoidance of doubt providing appropriate security and security fencing, an appropriately manned weighbridge and providing reasonable additional security measures in the event that and for so long as there are reasonable grounds for believing that a higher risk of Protester Action persists.
- 42.2 Notwithstanding the provisions of Clause 42.1 above, in the event Protester Action arises at or around the Site and/or the Facility or on the Access Road to the Site 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 (f) 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 Services;
- 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 Works Commencement Date, Planned Readiness Date and/or Planned Services Commencement Date and/or meet the Output Specification and/or the Service Delivery Plans 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 Services. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in

accordance with Clauses 44.2 (Parties to Discuss) to 44.6 (Adjustment to Unitary Charge).

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 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 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 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 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 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 but only to the extent referred to in clause 51.1.

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 that 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 in accordance with paragraph 9.2.1 of Part 1 of Schedule 21 (Change Protocol).

44.6 **Adjustment to Unitary Charge**

Any compensation payable under this Clause 44 (Change in Law) by means of an adjustment to or reduction in the Unitary Charge 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 Charge

The Authority shall pay the Contractor the Monthly Unitary Charge Payment in respect of each Payment Period and (where relevant) the Annual Reconciliation Payment, as defined in and calculated in accordance with Schedule 4 (Payment Mechanism).

45.2 Report and Invoice

In respect of the Monthly Unitary Charge Payment for a Payment Period, not later than ten (10) Business Days after the start of the relevant Payment Period, the Contractor shall submit to the Authority:

45.2.1 a report (“**Invoice Report**”) showing for that Payment Period:

- (a) the Commissioning Payment for that Month, and
- (b) the Tonnage Payment for that Month;
- (c) the Landfill Payment for that Month;
- (d) Performance Deductions for the Month preceding the preceding Month;
- (e) Mileage Deductions for the Month preceding the preceding Month;
- (f) Non Acceptance Deductions for the Month preceding the preceding Month;
- (g) the Electricity Payment (as defined in Schedule 4 (Payment Mechanism)) for the preceding Month;
- (h) Other Components for the preceding Month;
- (i) the amount of any Annual Reconciliation Payment as determined pursuant to Clause 45.3 (Annual Reconciliation); and
- (j) any other amounts due or payable by one Party to the other under or in connection with this Contract;

45.2.2 a Monthly Service Report (as defined in Appendix 2 (Definitions) to Schedule 2 (Output Specification) to this Contract); and

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

45.3 **Annual Reconciliation**

Within two (2) Months of the end of each Contract Year, the Contractor shall calculate and submit the Annual Reconciliation Payment to the Authority whereupon the Annual Reconciliation Payment shall be included (as set out in Clause 45.2.1 (Report and Invoice)) in the Invoice Report immediately following its calculation.

45.4 **Final Payment Period**

45.4.1 During the final two (2) Payment Periods of the Contract Period, in addition to the amounts referred to in Clause 45.2 (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).

45.4.2 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 45.4 (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 within twenty (20) Business Days of the final Business Day of the final Payment Period, together 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 45.4 (Final Payment Period) or, where the Contractor owes monies to the Authority in excess of the withheld sums, from the date on which it was agreed or determined that such excess sums were due to the Authority, until all relevant monies have been paid in full and whether before or after judgment.

45.5 Payment

45.5.1 Subject to Clause 45.7 (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 Payment Period in question.

45.5.2 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, where the Authority notifies the Contractor in writing, carry forward that amount to the next report in reduction of amounts which would otherwise have been owed by the Authority to the Contractor.

45.6 Electricity Payment Provisions

45.6.1 Terms used in this Clause 45.6 but not defined shall have the meaning given to them in Schedule 33 (Power Offtake Arrangements).

45.6.2 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]:

45.6.2.1 [REDACTED]; and

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[Redacted]

45.6.2.3 [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]; and

45.6.2.4 [Redacted]
[Redacted]
[Redacted]:

(a) [Redacted]; and

(b) [Redacted]
[Redacted]

45.6.3 [Redacted]:

[Redacted]
[Redacted]
[Redacted]
[Redacted] and

45.6.3.2 [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted].

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

45.6.4 [REDACTED]
[REDACTED]
[REDACTED]:

45.6.4.1 [REDACTED]
[REDACTED]
[REDACTED] or

45.6.4.2 [REDACTED]
[REDACTED]
[REDACTED]

45.7 Disputed Amounts

45.7.1 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 45.7 (Disputed Amounts) shall apply.

45.7.2 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.

45.7.3 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.

45.8 Response to Authority Notice

Within five (5) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 45.7 (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:

45.8.1 to retain on a permanent basis any amounts withheld pursuant to Clause 45.7 (Disputed Amounts); and

45.8.2 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.

45.9 **Dispute**

If the Contractor responds (pursuant to Clause 45.8 (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 45.7 (Disputed Amounts), the matter or matters in question shall be determined under the Dispute Resolution Procedure.

45.10 **Determination of Dispute**

If the determination of any dispute conducted pursuant to Clause 45.10 (Dispute) shows that:

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

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

then 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.

45.11 **Indexation**

On each Indexation Date any amounts that are to be Indexed pursuant to Schedule 4 (Payment Mechanism) shall be adjusted for the Contract Year

commencing on that Indexation Date in accordance with Schedule 4 (Payment Mechanism).

45.12 **Readiness Milestone Payment**

45.12.1 The Parties acknowledge that the Financial Model is based on an assumption that a Readiness Milestone Payment of thirteen million pounds sterling (£13,000,000) (excluding VAT) (the “**Readiness Milestone Payment**”) will be paid to the Contractor by the Authority following the Readiness Date in accordance with this Clause 45.12.

45.12.2 On or within five (5) Business Days of the Readiness Date, the Contractor shall issue an invoice to the Authority in respect of the Readiness Milestone Payment and provide to the Authority a copy of the following documents:

45.12.2.1 invoices from the Construction Sub-Contractor in respect of milestone payments made under the Construction Sub-Contract up to the Readiness Date relating to civil works and building / structural envelope costs and other works on which there is no relief under the Capital Allowances Act 2001 nor any other relief or allowance for corporation tax purposes by the Contractor for an amount at least equal to the Readiness Milestone Payment; and

45.12.2.2 the Readiness Test Certificate from the Independent Certifier and the certificate issued by the Senior Lender’s technical adviser to the Senior Lenders following the Readiness Date,

(collectively referred to as “**Documents**”).

The Authority shall be obliged to pay the Readiness Milestone Payment within 10 Business Days of receipt of the Documents.

45.12.3 It is agreed and acknowledged that it is the intention that the Readiness Milestone Payment shall be treated as payment for capital in accordance with generally accepted accounting principles in the United Kingdom from time to time.

45.12.4 It is agreed and acknowledged that it is the intention that the Readiness Milestone Payment shall be a contribution towards expenditure incurred by the Contractor in respect of the construction costs of the Works relating to civil works and building / structural envelope costs and other works on which there is no relief under the Capital Allowances Act 2001 nor any other relief or allowance for corporation tax purposes by the Contractor.

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 for the avoidance of doubt 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 No entry into, amendment, waiver or exercise of any right relating to a Third Party Waste Contract or an Off-Take Contract shall have the effect of increasing the Authority's liabilities on termination or on the occurrence of a Relevant Event and/or have a material adverse effect on the Authority's potential share of Third Party Income, unless the Contractor has obtained confirmation from the Authority that the Third Party Waste Contract or Off-Take Contract complies or continues to comply with Clause 51.1.2.

51.1.2 At any time after the Commencement Date, if and whenever the Contractor shall enter into or any Affiliate enters into any Third Party Waste Contracts and/or Off-Take Contracts the Contractor shall ensure or procure as the case may be that any such contract is in writing and:

(a) in respect of all Third Party Waste Contracts and Off-Take Contracts:

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; and

b. contains provisions whereby the breakage costs in circumstances where they could be passed to the Authority are limited to those that a commercially prudent

facility operator having regard to standard market practice would accept in an arm's length contract for the relevant contract and further are limited to Direct Losses.

- (b) in respect of any Third Party Waste Contracts and/or Off-Take Contracts which have a term greater than [REDACTED] years or an annual value greater than [REDACTED] (£[REDACTED]) (Indexed) (in each case a "Material Off-Take Contract" or a "Material Third Party Waste Contract"):
- a. (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 rights, title and interest in and to such contract to the Authority (or Authority nominated person) on termination or expiry of this Contact; and
 - b. in relation to a Material Third Party Waste Contract only, that the provisions of Clause 51.4 (Third Party Waste Contracts) are complied with.

51.2 Affiliates

51.2.1 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 51.1.2 have been complied with.

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

51.3.1 The Contractor shall:

- (a) afford the Authority a reasonable opportunity to conduct due diligence on any Material Third Party Waste Contract and/or any Material 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 Material Third Party Waste Contract and/or any Material Off-Take Contract accordingly before such contract is concluded; and
- (c) on request and free of charge, provide copies of any Material Third Party Waste Contract and Material Off-Take Contract and any related documents to the Authority's Representative.

51.4 Material Third Party Waste Contracts

51.4.1 Where a Material Third Party Waste Contract is to be entered into with a local authority (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 part 5 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 Material 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.

51.5 Third Party Waste Processing

51.5.1 The Contractor shall be entitled 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 all Legislation, 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 Base Case Tonnage) pursuant to and in accordance with the requirements of this Contract; and
- (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 the Target Landfill Tonnage and Performance Standards.

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 facility 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:

54.2.1.1 administrative overheads;

54.2.1.2 payments to Sub-Contractors and by Sub-Contractors to sub-contractors;

54.2.1.3 capital and revenue expenditure; and

54.2.1.4 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 54.2.1.1 to 54.2.1.4 (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 the maintenance of, detailed records relating to the performance of the Works and the delivery of the Services, in each case in accordance with Good Industry Practice, the requirements of Clause 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 advisors) 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 Audit Commission or District Auditor, ombudsman or their representatives who reasonably require access to the same.

54.5 Retention

The records referred to in this Clause 54 (Contractor's 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 this 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 its Sub-Contractors will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Project.

54.7 Confidentiality

All information referred to in this Clause 54 (Contractor's 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 the Contractor 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 all 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 all 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, on or before the issue of the Notice to Proceed, take out and maintain or procure the maintenance of the insurances described in Part 1 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 issue of the Notice to Proceed.
- 55.1A Prior to the issue of the Notice to Proceed, the Contractor shall not carry out any Works other than the Pre-Commencement Works. The Contractor shall, prior to carrying out the Pre-Commencement Works provide documentary evidence reasonably acceptable to the Authority to demonstrate that the Pre-Commencement Works (including both the Construction Sub-Contractor and the Contractor) are insured under the Balfour Beatty Plc's group Contractors 'All Risks' insurance policy (being substantially in line with the Contractor's 'All Risks' cover detailed in the JLT Letter). The provision of such evidence shall be a condition to the commencement of the Pre-Commencement Works and, notwithstanding the provisions of this Clause 55.1A, the Contractor shall be fully responsible for carrying out the Pre-Commencement Works. The Contractor shall maintain this policy in respect of the Pre-Commencement Works from the date on which such Pre-Commencement Works are commenced at the Site to the date of issue of the Notice to Proceed.
- 55.2 The Contractor shall during the Services Period take out and maintain or procure the maintenance of the insurances described in Part 2 of Schedule 10 (Required Insurances) and any other insurances as may be required by law.
- 55.3 The Contractor shall use its best endeavours to procure that any broker (who shall at all times be of good repute) of the Contractor charged with the responsibility from time to time of placing or maintaining any of the Required Insurances provides the Authority with a broker's letter of undertaking substantially in the form set out at Part 4 of Schedule 10 on:
- 55.3.1 inception and each renewal of any of the Required Insurances; and
- 55.3.2 appointment of a replacement broker.

- 55.4 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.
- 55.5 With the exception of the insurances required by law, the insurances referred to in Clauses 55.1 and 55.2 shall:
- 55.5.1 subject to Clause 55.5.6 below, name the Contractor as co-insured with any other party maintaining the insurance;
 - 55.5.2 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);
 - 55.5.3 contain a Clause waiving the insurers' subrogation rights against the Authority, its employees and agents in accordance with Endorsement 2 in Part 3 of Schedule 10 (Required Insurances);
 - 55.5.4 provide for thirty (30) Business Days' prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 1 in Part 3 of Schedule 10 (Required Insurances);
 - 55.5.5 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); and
 - 55.5.6 wherever possible, and where the Authority is to be a co-insured party in accordance with Schedule 10 (Required Insurances), 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 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 £50,000 on any of the insurance policies referred to in this Clause 55 accompanied by full details of the incident giving rise to the claim.
- 55.10 The Contractor shall promptly and diligently deal with all claims made under the insurances referred to in Clauses 55.1 and 55.2 in accordance with all requirements of the applicable insurers.
- 55.11 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.
- 55.12 The insurance premiums in respect of the insurances referred to in Clauses 55.1 and 55.2 shall be the responsibility of the Contractor.
- 55.13 The insurances referred to in this Clause 55 shall be effected with insurers approved by the Authority such approval not to be unreasonably withheld or delayed.
- 55.14 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 renewable 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.

56. REINSTATEMENT

56.1 All insurance proceeds received under any policy referred to in paragraph 1 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 Damage Policy in respect of a single event (or a series of related events) in an amount in excess of £[REDACTED] (Indexed) shall be paid into the Joint Insurance Account and subject to Clause 56.3, any insurance proceeds standing to the credit of the Joint Insurance Account (together with any interest accrued thereon) may be withdrawn by the Contractor from the Joint Insurance Account subject to the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

56.2.1 as required to enable the Contractor to make payments in accordance with the contractual arrangements entered into to effect the reinstatement works the subject of the claim giving rise to those insurance proceeds and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding those works; and

56.2.2 following the implementation of those reinstatement works to the reasonable satisfaction of the Authority (not to be unreasonably withheld or delayed), as the Contractor may require,

and the Parties shall operate the signatory requirements of the Joint Insurance Account to give effect to such payments.

56.3 Subject to Clause 56.5 (Economic Test) where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "Relevant Incident") in an amount in excess of £[REDACTED] (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; 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 (Obligations) 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 (Obligations) 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 the Facility, the Contractor shall carry out the work in accordance with the Output Specification and the Service Delivery Plans so that on completion of the work the provisions of this Contract are complied with.

56.5 **ECONOMIC TEST**

- 56.5.1 If the Facility is destroyed or substantially destroyed in a single event and the insurance proceeds (when taken together with any other funds available to the Contractor) are equal to or greater than the amount required to repair or reinstate the Facility, then the Contractor shall calculate the Senior Debt Loan Life Cover Ratio as used in the Funder Base Case (on the assumption that the Facility is repaired or reinstated in accordance with Clause 56.3).
- 56.5.2 If the calculation referred to in Clause 56.5.1 above shows that the Senior Debt Loan Life Cover Ratio is greater than or equal to [REDACTED] then the Contractor shall be subject to the procedure set out in Clauses 56.1 to 56.4.
- 56.5.3 Subject to Clause 56.5.5 if the calculation referred to in Clause 56.5.1 above shows that the Senior Debt Loan Life Cover Ratio is less than [REDACTED], then an amount equal to the lesser of:
- 56.5.3.1 the insurance proceeds; and
 - 56.5.3.2 the Base Senior Debt Termination Amount, or if any Additional Permitted Borrowing has been advanced, the Revised Senior Debt Termination Amount,
- shall be released from the Joint Insurance Account to the Contractor.
- 56.5.4 If, pursuant to Clause 56.5.3 above, insurance proceeds are released from the Joint Insurance Account, the Contractor shall be in breach of its obligations under this Contract and shall not, pursuant to Clause 40 (Relief Events), be relieved of its obligations unless it can demonstrate, to the satisfaction of the Authority, that it can carry out the works necessary to repair, reinstate or replace the assets which are subject to the relevant claims in accordance with Clause 56.4 (Works Carried Out) and within a reasonable timescale.
- 56.5.5 Where Clause 56.5 (Economic Test) applies, the Contractor shall notify the Authority whether the Loan Life Cover Ratio is less than [REDACTED]. The Authority may within twenty (20) Business Days of receiving such notice elect to implement the following provisions, in which case Clause 56.5.3 shall cease to apply:

56.5.5.1 the Contractor shall be subject to the procedure set out in Clauses 56.1 to 56.4;

56.5.5.2 the Authority shall provide relief from appropriate provisions of this Contract (on such terms as are agreed with the Contractor as appropriate) to the extent required to ensure that the Loan Life Cover Ratio is equal to the event of default level (on the basis that the Contractor receives the insurance proceeds it would have been entitled to receive had such relief not been granted) until the earlier of:

- (a) the date on which the Assets are repaired or reinstated in accordance with the Reinstatement Plan (as defined in Clause 56.3.1); or
- (b) the date on which the Assets are scheduled to be repaired or reinstated in accordance with the Reinstatement Plan.

57. **UNINSURABILITY**

57.1 **Uninsurable Risks**

Nothing in this Contract 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, third party liability insurance, environmental impairment liability insurance, delay in start up, marine cargo insurance, marine cargo delay in start up insurance or business interruption 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 5 Business Days of becoming aware of the same and in any event at least 5 Business Days before expiry or cancellation of any existing insurance in respect of that risk; and

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 Contractor Related Party; 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 PFI 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 environmental impairment liability 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, third party liability and environmental impairment 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 cargo insurance, marine cargo delay in start up insurance 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 only) the amount of insurance proceeds that would have been payable 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 Charge 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 Charge 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 has become Uninsurable and the Authority's notification to the Contractor in notification to the Contractor in accordance with clause 57.3.1 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 (i) 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 (ii) meeting 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**

59.1 The provisions of Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances) shall apply in respect of insurance premia for the Required Insurances.

59.2 **Review of Sums Insured, Limits of Indemnity and Deductibles**

The Sums Insured, Limits of Indemnity and Maximum Deductibles applicable to the Required Insurances set out at Part 2 of Schedule 10 (Required Insurances) shall be reviewed prior to each renewal and increased as appropriate with effect from each renewal date such that any increased amount is equal to the next whole insurable amount or deductible available in the insurance market.

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 (Contractor Not Responsible), 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 the Facility); and

61.1.3 third party actions, claims and/or demands (other than for breach of statutory duty) 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 or on property which is in the ownership or control of the Authority, the Contractor, a sub-contractor 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 (and/or negligence) by the Contractor of its obligations under this Contract to the extent there are no other remedies available to the Authority under this Contract which would compensate the Authority and/or the Authority Related

Party in respect of the total amount of the liability incurred as a result of the relevant action, claim and/or demand.

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) or Clause 61.2 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 Authority Related Party or by the breach of the Authority of its obligations under this Contract;
- 61.3.3 WCA claims for mileage payments in relation to which the Contractor's liability is provided for in paragraph 9 (Mileage Deduction) of Schedule 4 (Payment Mechanism); or
- 61.3.4 any claim made pursuant to Clauses 61.1.2, 61.1.3 or Clause 61.2, to the extent that the amount of the Contractor's Uninsured Losses exceeds [REDACTED] £ [REDACTED] in any Contract Year and [REDACTED] £ [REDACTED] in aggregate over the Contract Period.

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 Contract.

62. **SOLE REMEDY**

62.1 **Common Law Rights of the Contractor**

62.1.1 Without prejudice to any entitlement of the Contractor:

- (a) to specific performance of any obligation under this Contract;
- (b) to injunctive relief; or
- (c) to any other express right or remedy of the Contractor pursuant to this Contract,

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 the Facility shall be the operation of Clause 39.3 (Compensation Event).

62.1.3 For the avoidance of doubt (and subject to the Contractor's rights pursuant to Part XII (Termination and Compensation on Termination) of this Contract arising out of or in connection with any termination of this Contract), the Contractor will be entitled to enforce in contract, tort or otherwise any rights, benefits, entitlement or obligations under the Contract in circumstances where termination of this Contract pursuant to limb (b) and/or limb (c) of the definition of Authority Default is or could become the sole express right or remedy for the purposes of Clause 62.1 (Common Law Rights of the Contractor).

62.2 **Common Law Rights of the Authority**

Subject to:

62.2.1 any other express right of the Authority pursuant to this Contract (including, but not limited to, those under Schedule 33 (Power Offtake Arrangements)); 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 Termination for Corrupt Gifts and Fraud), 74 (Compensation on Voluntary Termination by the Authority), 74B (Compensation Termination on an Authority Break Point Date), 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, any Financing Agreement and any Third Party Waste Contract (or any other contract generating Third Party Income) 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 it 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 paragraphs 10 (Non-Acceptance Deductions) and 18 (Diversion Performance Deductions) of Schedule 4 (Payment Mechanism).

62.7.2 Nothing in this Clause 62.7 shall prevent the New Contractor or Expert from adjusting the Adjusted Highest Compliant Tender Price or Estimated Fair Value of the Contract as a consequence of the operation of Schedule 4 (Payment Mechanism) during the currency of the New Contract or Deemed New Contract.

62.8 Sub-Contractor Claims

Where:

62.8.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and

62.8.2 the Contractor subsequently makes a claim against the Authority under this Contract 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.

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 Clause 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 admit liability in respect of, 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 63.1.5, then the Indemnifier shall be released from any liability under the relevant indemnity 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.

63.2 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.

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 and Authority Break Point Date 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:

67.1.1.1 the type and nature of Contractor Default that has occurred, giving reasonable details; and

67.1.1.2 that in the case of any Contractor Default referred to in limbs (a), (g), (h) and (q) this Contract will terminate on the day falling forty (40) Business Days after the date the Contractor receives the Termination Notice, unless:

- (a) 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
- (b) in the case of any Contractor Default falling under limbs (g), (h) and (q) the Contractor rectifies the Contractor Default within forty (40) Business Days after the date the Contractor receives the Termination Notice; or

67.1.1.3 that in the case of any other Contractor Default (not being limbs (a), (g), (h) and (q)), 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(a) 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 (q) 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 **Persistent Breach**

- 67.3.1 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 (disregarding any applicable caps in the Payment Mechanism or Excusing Causes)) has continued for more than thirty [REDACTED] **Business** Days or occurred more than [REDACTED] times in any [REDACTED] Month period then the Authority may serve a notice on the Contractor:

67.3.1.1 specifying that it is a formal warning notice;

67.3.1.2 giving reasonable details of the breach; and

67.3.1.3 stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

- 67.3.2 If, following service of a warning notice the breach specified has continued beyond [REDACTED] **Business** Days or recurred [REDACTED] or more times within the [REDACTED] Month period after the date of service, then the Authority may serve another notice (a "Final Warning Notice") on the Contractor:

67.3.2.1 specifying that it is a Final Warning Notice;

67.3.2.2 stating that the breach specified has been the subject of a warning notice served within the [REDACTED]

■ Month period prior to the date of service of the Final Warning Notice; and

67.3.2.3 stating that if the breach continues beyond ■ days or recurs ■ or more times within the ■ Month period after the date of service of the Final Warning Notice, this Contract may be terminated.

67.3.3 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 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 all 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 [REDACTED] 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 [REDACTED] 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 Charge 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 all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

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.

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 or Authority Break Point Date Termination) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Voluntary Termination by the Authority.

74A TERMINATION ON AN AUTHORITY BREAK POINT DATE

74A.1 Without prejudice to its rights under Clause 73.1 (Voluntary Termination by the Authority), the Authority may terminate the Contract on any of the Authority Break Point Dates by complying with its obligations under Clauses 74A.2 to 74A.4 below.

74A.2 If the Authority wishes to terminate the Contract under this Clause, it must give notice to the Contractor stating:

74.A.2.1 that the Authority is terminating the Contract under this Clause 74A (Termination on an Authority Break Point Date);

74.A.2.2 that the Contract will terminate on the specified Authority Break Point Date, which must be a minimum of **twenty (20)** Business Days after the date of receipt of the notice; and

74.A.2.3 whether the Authority has chosen to exercise its option under Clause 74A.3 below.

74A.3 On termination, 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.

74A.4 Provided the notice has been provided in accordance with Clause 74A.2 above, the Contract will terminate on the specified Authority Break Point Date.

74B COMPENSATION ON TERMINATION ON AN AUTHORITY BREAK POINT DATE

The provisions of Part 2 (Compensation following Authority Default or Authority Voluntary Termination or Authority Break Point Date) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination on an Authority Break Point Date.

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), 56.5 (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 [REDACTED] Months prior to the Expiry Date, the Authority shall be entitled to carry out or procure the carrying out of a final survey of the Assets to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under Clause 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 Charge.

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 Charge 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 Charge 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 Services 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 Services 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 immediately 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 all information reasonably required by the Authority to carry out the Services (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 Services and information relating to the Assets including the Equipment and fixed installations 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 for the avoidance of doubt Off-Take Contracts and Third Party Waste 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) 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, fixed installations 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,

the obligation to transfer the relevant Equipment and fixed installations (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 or Operating 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 this 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 Services (or any part of the Services) to the Authority or any New Contractor of such services the same or similar to the Services, 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 Services 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 Services;
- 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, 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 2 and 3 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 [REDACTED] Months prior to the Expiry Date, the Authority shall notify the Contractor in writing whether it wishes to retender the provision of the Services.

80.7 If the Authority wishes to retender the provision of the Services 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 Services 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 Services to a New Contractor or to the Authority, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer; and
- 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 and the Lease 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 the Lease and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract and the Lease 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, for the avoidance of doubt, 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, the Direct Agreement and the Lease; or
- 81.1.3 any other public body whose obligations under this Contract, the Direct Agreement and the Lease 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, the Direct Agreement and the Lease.

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 or the Lease in whole or in part except with the prior written consent of the Authority, provided that consent shall not be required for the grant of a sublease by the Contractor to a Sub-Contractor during the Contract Period

provided that the security of tenure provisions set out in Part II of the Landlord and Tenant Act 1954 are excluded.

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-Contractor 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 two occasions 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), 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 67.3 (Persistent Breach); and/or
- (b) failure to Accept Contract Waste at the Facility to which Non-Acceptance Deductions apply; 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 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 Default Points or any Warning Notices or Final Warning Notices in respect of Clause 67.3 (Persistent Breach) shall apply for the purposes of limbs (b), (m) and (p) of the definition of Contractor Default for 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 Charge during that period pursuant to Schedule 4 (Payment Mechanism) but such Deductions shall not be included for the purposes of determining whether the cumulative thresholds for the issue of a Contract Default Notice as set out in Table 3.2 of the Performance Measurement Framework.

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 replacement sub-contract does not include provisions acceptable to the Authority (acting reasonably) in respect of the assignment of the replacement sub-contract, PROVIDED that reasonable provisions allowing an assignment for the purposes of a bona fide internal restructuring within the proposed replacement 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 replacement sub-contractor's group of companies;
- 81.6.2 the replacement sub-contract contains terms materially less advantageous to the Authority than the Sub-Contract entered into on the date of this Contract;
- 81.6.3 the proposed 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 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 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 replacement sub-contractor is not being engaged in accordance with terms and conditions which are consistent with Good Industry Practice; or

81.6.7 the proposed replacement sub-contractor does not have the legal capacity, power or authority to become a party to the replacement sub-contract; or

81.6.8 the new or replacement Sub-Contractor will not enter into an Authority Collateral Warranty 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,

provided that notwithstanding the foregoing, no replacement of any sub-contract shall have the effect of increasing the Authority's liabilities on early termination or otherwise of this Contract.

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 Clauses 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, Ramboll UK Ltd (in its capacity as employer's agent), the Operating Sub-Contractor or any of the following specified Sub-Contractors:

- (a) Balfour Beatty JV (Balfour Beatty Construction Northern Limited and Balfour Beatty Engineering Services Limited) in respect of the civil engineering/balance of plant package of work;
- (b) Babcock Wilcox Volund in respect of the furnace/boiler package of work;
- (c) LAB S.A. in respect of the gas treatment/emissions control package of work;

to the Authority on the date of this Contract and from Masias Recycling S.L. ("Masias") in respect of IBA equipment supply and the steam turbine provider in respect of the steam turbine, Fletcher Rae (UK) Limited in respect of architectural services and Ramboll UK Ltd in its capacity as civil and structural engineer within ten (10) Business Days of the appointment of the relevant party.

81.10.2 not engage any new or any replacement Construction Sub-Contractor, the Professional Team, Operating Sub-Contractor or any of the specified Sub-Contractor's named in Clause 81.10.1 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, HoldCo and Intermediate Co 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, HoldCo or Intermediate Co.
- 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.
- 82.6 Subject to Clauses 82.7 and 82.9, 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 82.10, 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) shall be disregarded;
 - 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) shall be disregarded; or
 - 82.7.3 any transfer of shares or of any interest in shares by a person to its Affiliate shall be disregarded.
- 82.8 Where Clause 82.7.3 above applies and subsequent to any such transfer (the “original Transfer”) the transferee ceases to be an Affiliate of the original transferor, it shall be a breach of this Clause 82 if the share or interests which were the subject of the original Transfer are not within **fifteen (15)** Business Days of the transferee ceasing to be an Affiliate of the original transferor transferred to that original transferor or any Affiliate of such transferor.
- 82.9 At any time from the date falling **three (3) Months** from the date of this contract and until the expiry of the Lock-in Period, BBIPIL or any of its Affiliates shall be at liberty to transfer or otherwise dispose of any of their legal, beneficial or equitable interest in their shareholding in Holdco in whole or in part to any fund or account managed by an Affiliate of BBIPIL including, without limitation, Balfour Beatty Infrastructure Partners LP (together “BBIP”), and such transfer shall be disregarded for the purpose of Clause 82.6 above provided that following such transfer(s);
- 82.9.1 BBIPIL and its Affiliates (excluding BBIP) together retain the legal, beneficial or equitable interest in at least twenty-five percent (25)% of the shares in Holdco;
 - 82.9.2 BBIP will not sell, transfer or otherwise dispose of any of their legal, beneficial, equitable or other interest in its shareholding in Holdco acquired by virtue of this Clause 82.9 until the expiry of the Lock-in

Period save to the extent that such sale, transfer or disposition is to BBIPIL or one of its Affiliates; and

82.9.3 the transferee shall inform the Authority as soon as reasonably practicable (and in any event within **twenty (20) Business Days**) of the transfer.

82.10 On and from the expiry of the Lock-In Period any shareholder in Holdco shall, subject to Clauses 82.2 and 82.5, be at liberty to sell their shareholdings in Holdco in whole or in part.

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 Services 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 any Offtake Agreement entered into pursuant to Schedule 33 (Power Offtake Arrangements) 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 an 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 Sub-Contractors;
 - 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 and/or Intermediate Co 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 (including in relation to electricity generation and offtake) 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; or
 - (c) an offtaker appointed pursuant to Schedule 33 (Power Offtake Arrangements);
- 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 District Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Contractor and/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 Information 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 Clause 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 Services 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 Services 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 rights, 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 for the avoidance of doubt 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 data or information to be provided or maintained by the Contractor pursuant to Schedule 2 (*Output Specification*) is 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 Related 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 Services 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 Facility, Equipment and fixed installations and/or the Services 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 Services 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 Services and/or any services analogous to the Services 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 paragraphs 2.2.14 to 2.2.16 of Schedule 2 (Output Specification).

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 EEA.

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 out 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, the Lease and the Direct Agreement constitute the entire agreement between the Parties in connection with their subject matter and supersede all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract and the Lease.

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 or the Lease 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 the Lease or not) except those expressly repeated or referred to in this Contract or the Lease 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 or the Lease (as the case may be); and

95.2.2 this Clause shall not apply to any statement, representation or warranty made fraudulently, or to any provisions of this Contract or the Lease (as the case may be) which were induced by fraud, for which the remedies available shall be all those available under the law governing this Contract or the Lease (as the case may be).

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
UBB Waste (Gloucestershire) Limited	Deputy Chief Executive
Unit F, 2 nd Floor, Pate Court,	Gloucestershire County Council, Shire Hall, Gloucester GL1 2TH

St Margaret's Road,
Cheltenham GL50 4DY

Fax: 01242 261535

Fax: 01452 425640

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.

100. GOVERNING LAW AND JURISDICTION

The Contract and any non-contractual obligations arising out of or in connection with this Contract shall be governed by and construed in all respects in accordance with the laws of England. Subject to Schedule 22 (Dispute Resolution Procedure), the Parties submit to the exclusive jurisdiction of the Courts of England.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

THE COMMON SEAL of)
GLOUCESTERSHIRE COUNTY COUNCIL)
was affixed in the presence of:)
Peter Jones (Signature))
Deputy Chief Executive)

Seal of the Gloucestershire
County Council affixed.

Executed as a deed by)
UBB Waste (Gloucestershire))
Limited)
acting by Javier Peiro as attorney

Javier Peiro (Signature)

Signature of attorney

Signature of witness Sarah Kilner

Name of witness Sarah Kilner

Address of witness Norton Rose, Norton Rose LLP, 3
More London Riverside, London,
SE1 2AQ, United Kingdom,
nortonrose.com

Occupation of witness Paralegal.....
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