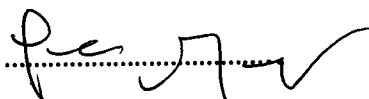


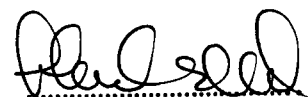
Dated 3<sup>rd</sup> November 2012

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**SOUTH LONDON WASTE PARTNERSHIP  
RESIDUAL WASTE TREATMENT CONTRACT  
SCHEDULES**

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Authority

  
Contractor

## SCHEDULE 1

### DEFINITIONS

#### 1. DEFINITIONS

1.1 Except where the context otherwise requires capitalised terms shall have the following meanings:

**1999 Act** means the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007);

**Abandon** means, except where relieved of the obligation to carry out construction related obligations by the express provisions of this Contract, not to carry out any Works contemplated by the Construction Programme at a Site for twenty (20) Business Days consecutively or for twenty (20) Business Days during a sixty (60) day period (whether consecutive or not) in any Contract Year;

**Acceptance Test Certificate** means a certificate issued by the Independent Certifier that the Key Facility Acceptance Tests or the Waste Transfer Station Acceptance Tests (as the case may be) have been satisfied;

**Acceptance Longstop Date** means such date that is twelve (12) Months after the Key Facility Planned Service Commencement Date;

**Acceptance Tests** means the Tests so described in Schedule 11 (Tests);

**Actual Landfill Tonnage** means the actual tonnage of Core Contract Waste, Substitute Waste (excluding Ad Hoc Waste) and asbestos Landfilled during the relevant period;

**Adjoining Owners** means all owners and occupiers of Adjoining Property;

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

**Adjudicator** has the meaning given to it in paragraph 3 (Adjudication), of Schedule 22 (Dispute Resolution Procedure);

<b>Adverse Rights</b>	means all (if any) rights of light and air and other rights and easements whatever (including any rights and easements in respect of Conduits) and all (if any) other restrictions enjoyed over the Site(s) by any Adjoining Property or Adjoining Owner;
<b>Affected Party</b>	has the meaning given to it in the definition of Force Majeure Event in Schedule 1 (Definitions);
<b>Affiliate</b>	means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and "holding company" and "subsidiary" shall have the meaning given to them in Section 1159 of the Companies Act 2006;
<b>Agreed Form</b>	means in relation to any document, the form of the document agreed between the Parties and initialled by or on behalf of the Parties for the purpose of identification;
<b>All Reasonable Endeavours (Environmental Permit)</b>	<p>means in relation to any application for an Environmental Permit:</p> <ul style="list-style-type: none"><li>(a) the incurring of such expenditure and the doing of all things reasonably necessary (including without limitation, full engagement with the Environment Agency in discussions regarding the proposed application for an Environmental Permit at an appropriate time prior to the submission of such application, the commencement of any prosecution or defence of appeal proceedings in accordance with the Environmental Permitting Regulations 2010 where there is a reasonable prospect of success) and in doing so the exercising of all proper care and skill to secure or procure the grant of the satisfactory permit;</li><li>(b) the preparation of all documentation and supporting information in accordance with good practice for Environmental Permits; and</li><li>(c) the prompt answering of queries from the Environment Agency;</li></ul>
<b>Ancillary Documents</b>	means those documents to which the Authority is not a party to and which are listed in Part 1 of Schedule 5 (Ancillary Documents) as they may be amended or replaced from time to time;
<b>As Built Drawings</b>	means drawings, technical information, models, operation and maintenance manuals to encompass the method of construction, manufacture, operation and maintenance of each element of

the Waste Transfer Station in sufficient detail to allow a competent person to understand all material elements of the construction of the Waste Transfer Station and to maintain, dismantle, reassemble, adjust and operate all plant and equipment forming the same;

**Assets**

means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Waste Transfer Station in accordance with this Contract including:

- (a) any land or buildings;
- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, the Operating Manual, health and safety manuals and other know how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred) to the extent that the Contractor has full legal and beneficial ownership;
- (e) any revenues and any other contractual rights; and
- (f) any Waste Transfer Station consents;

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

**Associated Company**

means in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the Holding Company of that relevant company, and in the case of the Contractor shall include each of the Shareholders;

**Authority Change**

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

**Authority Change Notice**

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

**Authority Default**

means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Assets, the Key Facility and/or shares of

the Contractor by the Authority or other Relevant Authority;

- (b) a failure by the Authority to make payment of any amount of money exceeding two (2) months Monthly Unitary Charge Payment that is due and payable by the Authority under this Contract within twenty (20) Business Days of service of a formal written demand by the Contractor, where that amount fell due and payable two (2) (or more) Months prior to the date of service of the written demand;
- (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of three (3) Months; or
- (d) a breach by the Authority of Clause 81.1 (Restrictions on Transfer of this Contract by the Authority) occurs;

**Authority Default Termination Sum** means the amount payable by the Authority following termination for Authority Default in accordance with Clause 66 (Compensation on Termination for Authority Default);

**Authority Property** has the meaning given to it in Clause 61.1.2 (Indemnities);

**Authority Project Intellectual Property** means all Intellectual Property Rights owned by the Authority and subsisting in any Disclosed Data, the Trade Marks and/or any other materials, information documents data and/or know how, provided or made available by the Authority to any Contractor Related Party at any time during the Contract Period;

**Authority Related Party** means any of the following:

- (a) an officer, servant, employee or agent of the Authority acting in that capacity; or
- (b) any contractor or sub-contractor of the Authority of any tier and their directors, officers, servants, employees or agents acting in that capacity; or
- (c) the WCAs and any local authority which is a member of the Partnership (excluding

the Authority); or

- (d) in relation to the Villiers Road Site, the lessees, servants and invitees of the Royal London Borough of Kingston Upon Thames,

but excluding, in any case, the Contractor and any Contractor Related Parties;

**Authority's Representative**

means the representative appointed by the Authority pursuant to Clause 9.1 (Representatives of the Authority);

**Authority's Requirements**

means the requirements of the Authority in respect of the Project set out in Schedule 2 (Authority's Requirements);

**Base Case**

means the Financial Model agreed between the Parties prior to the date of this Contract (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Unitary Charge;

**Beddington Lane Site**

means the area edged red on the Site Plan together with the Key Facility and the service ducts and media for all utilities and services serving the Key Facility at Beddington;

**Business Day**

means a day (other than a Saturday, Sunday or national public holiday) on which banks are open for domestic business in the City of London;

**Capital Expenditure**

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

**CDM Regulations**

means the Construction (Design and Management) Regulations 2007;

**Certification Requirements**

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

**Change in Costs**

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

- (a) the costs of continued employment of, or making redundant, staff who are no longer required;
- (b) the costs of employing additional staff;
- (c) reasonable professional fees;
- (d) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Charge;
- (e) the effects on costs of implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (f) operating costs, or life cycle, maintenance or replacement costs;
- (g) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible);
- (h) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (j) Losses, including reasonable legal expenses on an indemnity basis;

**Change in Law**

means the coming into effect after the date of this Contract of:

- (a) Legislation, other than any Legislation which on the date of this Contract has been published:

- (i) in a draft Bill as part of a Government Departmental Consultation Paper;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) as a proposal in the Official Journal of the European Communities;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;
- Change in Revenue** means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor including Third Party Income subject to Clause 50.2 (Third Party Income) (without double counting);
- Change of Ownership** means:
- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the rights to dividends); and/or
  - (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above;
- Commencement Date** means the date of this Contract;
- Commercial Waste** has the meaning given in Section 75(7) of the EPA;
- Commercially Sensitive Information** means the sub set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 23 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 23 (Commercially Sensitive Information);



- Commissioning Payment** means the amount calculated in accordance with paragraph 5 of the Interim Services Payment Mechanism set out in Schedule 4 (Payment Mechanism);
- Commissioning Period** means the period between the Readiness Date and the Key Facility Services Commencement Date;
- Commissioning Plan** means the detailed plan developed from the Outline Commissioning Plan in accordance with the Commissioning Requirements;
- Commissioning Requirements** means the requirements for the commissioning contained in Part 1 (PR2 - Commissioning Requirements) of Schedule 2 (Authority's Requirements);
- Compensation Event** means:
- (a) a breach by the Authority of any of its obligations under this Contract;
  - (b) a breach by the Royal London Borough of Kingston of any of its obligations under the Leases or any wrongful forfeiture of any of the Leases;
  - (c) the wilful actions, omissions, negligence of an Authority Related Party in relation to the Villiers Road Site save to the extent that such wilful actions, omissions or negligence are caused by the wilful actions, omissions, negligence, breach or default of the Contractor or a Contractor Related Party;
  - (d) (except in relation to any occupation by a Contractor Related Party or an Affiliate), a failure by Royal London Borough of Kingston to provide or procure the provision of the Villiers Road Site with vacant possession by the Interim Services Commencement Date;
  - (e) any obstruction of the Villiers Road Site or interference with its Permitted Use (as defined in the Leases) by the Authority or an Authority Related Party which results in the inability of the Contractor to utilise the Villiers Road Site and/or meet its obligations under this Contract (but excluding any obstruction arising because of an act or omission of a Contractor Related Party or an Affiliate of the

Contractor);

- (f) any obstruction or interference by the Authority or an Authority Related Party of the Access Road (as defined in the Leases) (but excluding any obstruction or interference arising because of an act or omission of a Contractor Related Party or an Affiliate of the Contractor);
- (g) any interruption of utilities to the Villiers Road Site caused by the Authority or an Authority Related Party (but excluding any interruption arising because of an act or omission of a Contractor Related Party or an Affiliate of the Contractor);

**Compensation Event TPI Adjustment** has the meaning given to it in paragraph 6.3 of Schedule 19 (Revision of Base Case and Custody);

**Conduits** means all pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus and includes any fixtures, louvers, cowls and any other ancillary apparatus;

**Confidential Information** means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how, of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and

- (b) Commercially Sensitive Information;

**Consents** means all permissions, consents, approvals, certificates, permits, licenses and authorisations of a Relevant Authority required for the performance of any of the Contractor's obligations under this Contract including for the avoidance of doubt:

- (a) all Environmental Permits;
- (b) all Planning Permissions; and

	(c) all Planning Obligations;
<b>Consents List</b>	has the meaning given to it in Clause 12.5.1;
<b>Contract Area</b>	means the Partnership’s administrative area as may be amended from time to time;
<b>Construction Panel</b>	has the meaning given to it in paragraph 4.1 (Identity of Adjudicator) of Schedule 22 (Dispute Resolution Procedure);
<b>Construction Programme</b>	means the programme for the carrying out of the Works as contained in the Works Method Statements;
<b>Construction Sub-Contract</b>	means, subject to Clause 7 (Amendment of Documents) the Construction Sub-Contract(s) in the Agreed Form between the Contractor and the Construction Sub-Contractor relating to the Works;
<b>Construction Sub-Contract Dispute</b>	has the meaning given to it in paragraph 17.1 (Similar Disputes) of Schedule 22 (Dispute Resolution Procedure);
<b>Construction Sub-Contractor</b>	means CNIM Lagan (South London) Limited (Registered Number NI613349 whose registered office is at Rosemount House, Sydenham Road, Belfast, Northern Ireland BT3 9HA or such other Sub-Contractor(s) as the Contractor may, subject to Clause 81 (Assignment and Sub-Contracting), appoint to carry out the Works;
<b>Contamination</b>	means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or Hazardous Substances, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);
<b>Contingency Plans</b>	means the contingency arrangements set out in the Method Statements;
<b>Contract Month</b>	means each successive calendar Month in a Contract Year;
<b>Contract Period</b>	means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;
<b>Contract Waste</b>	means all Waste arising in the Partnership’s administrative area (and such other Waste as may be made available by the Partnership) and delivered to the Contractor by or on behalf of the Partnership and as described more fully in the Overview and Definitions of Schedule 2 (Authority’s Requirements). Contract Waste does

not include for the avoidance of doubt Third Party Waste or Substitute Waste;

**Contract Waste Shortfall**

has the meaning given in Clause 25.2.4(b);

**Contract Year**

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

- (a) the first Contract Year shall be the period commencing on the Commencement Date and ending on the day immediately following 31st March; and
- (b) the final Contract Year shall be the period commencing on 1st April immediately preceding the last day of the Contract Period and ending on that day;

**Contractor Change**

has the meaning set out in Schedule 21 (Change Protocol);

**Contractor Change Notice**

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

**Contractor Default**

means any one or more of the following events:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services;
- (b) a Persistent Breach occurs;
- (c) a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;
- (d) any receiver or receiver manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any material property that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor;
- (f) an administration order is made or an administrator is appointed in respect of the Contractor;

- (g) a breach by the Contractor of its obligations under Clause 6A (Parent Company Guarantee);
- (h) the Contractor is in breach of the terms of either of the Leases;
- (i) the Contractor Abandons the Works at any time;
- (j) failure to submit a Planning Application by the 31<sup>st</sup> March 2013;
- (k) failure to commence the Key Facility Works by such date as six (6) Months after the Key Facility Planned Works Commencement Date;
- (l) not used;
- (m) the Acceptance Test Certificate for the Key Facility has not been issued by the Acceptance Longstop Date;
- (n) if the tonnage to which Non-Acceptance Deductions applies is equal to or exceeds:
  - (i) ████████ tonnes in any consecutive period of three (3) Months; or
  - (ii) ████████ tonnes in any twelve (12) Month period;
- (o) not used;
- (p) if Actual Landfill Tonnage is equal to or greater than ██████% of Target Landfill Tonnage:
  - (i) for more than nine (9) Months in any consecutive period of twelve (12) Months; or
  - (ii) more than twelve (12) Months in any twenty-four (24) Month period; or
- (q) the Contractor is served with a Non-Performance Contractor Default Notice pursuant to paragraph 1.8.3 of Part 2 of Schedule 2;

- (r) subject to Clause 57 (Uninsurability) a breach by the Contractor of its obligations to take out and maintain any of the Required Insurances;

<b>Contractor Controlled Parts of the Villiers Road Site</b>	means the Villiers Road Site but excluding the area shaded white and marked as being the HWRC Site on the lease plan attached to the Lease;
<b>Contractor Materials</b>	means all or any programmes, software, code, databases, data materials, works (whether literary, artistic or otherwise), know how and/or information which are developed from time to time by the Contractor and/or any Contractor Related Party in connection with the maintenance, management, provision, replacement, carrying out and operation of the Waste Transfer Station and/or the Interim Service and/or the Services (as the case may be);
<b>Contractor Related Party</b>	means the Contractor's agents and Sub-Contractors (including without limitation the Construction Sub-Contractor) and its or their subcontractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any person on or at the Sites at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party);
<b>Contractor's Proposals</b>	means the proposals of the Contractor to deliver the Project to satisfy the Authority's Requirements, as set out in the CD-rom appended to Schedule 3 (Contractor's Proposals) and initialled by the Parties;
<b>Contractor's Representative</b>	means the person to be appointed by the Contractor pursuant to Clause 9.2 (Representatives of the Contractor);
<b>Contractor's Share</b>	means [REDACTED] pounds [REDACTED];
<b>Contractor Warranted Data</b>	means the information relating to the Contractor and its Affiliates contained in Schedule 6 (Contractor Warranted Data);
<b>Conviction</b>	means, other than in relation to minor road-traffic offences, any previous prosecutions, convictions cautions and binding over orders;
<b>Cumulative Capital Expenditure</b>	means the aggregate of:

- (a) all Capital Expenditure which has been incurred as a result of a Qualifying Change in Law under limbs (b), (c), (d) and (e) of that definition that has come into effect during the Contract Period; and
- (b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a Qualifying Change in Law under limbs (b), (c), (d) and (e) of that definition under Clause 44 (Change in Law);

**Delivery Point** has the meaning given to it in Schedule 4 (Payment Mechanism);

**Design Data** means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction and testing of the Key Facility and/or the Waste Transfer Station (as the case may be);

**Direct Losses** means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;

**Disclosed Data** means information relating to the Project disclosed to the Contractor and its Shareholders and advisers including:

- (a) the Invitation to Submit Final Tenders issued by the Authority in respect of the Project;
- (b) the Invitation to Submit Refined Solutions issued by the Authority in respect of the Project;
- (c) the Invitation to Submit Detailed Solutions issued by the Authority in respect of the Project;
- (d) the Descriptive Document issued by the Authority on or around 13 May 2009 in relation to the Project;

- (e) the data room maintained by the Partnership during the procurement process and to which the Contractor has had access in respect of such information contained in the data room as at ten (10) Business Days prior to the Commencement Date;

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

- (a) the Project and not to similar PPP projects;
- (b) the Contractor and not to other persons; and/or
- (c) PPP Contractors and not to other persons;

**Disputed Amount** has the meaning given to it in Clause 45.5.2 (Disputed Amounts);

**Dispute Resolution Procedure** means the procedure for the resolution of disputes set out in Schedule 22 (Dispute Resolution Procedure);

**DPA** means the Data Protection Act 1998;

**Emergency** means an event causing or, in the reasonable opinion of a Party, threatening to cause death or serious injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Interim Services or Services operating under normal circumstances and requiring the mobilisation and organisation of the emergency services (and whether or not an Emergency has arisen shall be determined in the case of any dispute by the Authority acting reasonably);

**Enforced Closure** means that a Facility is required by Law and/or any Environmental Permit to be closed to the reception of Waste;

**Environmental Information Regulations** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

**Environmental Laws** means:



- (i) Legislation; and/or
- (ii) Guidance (relating to England and which the Contractor is legally bound to comply with);and/or
- (iii) the requirements of any governmental or administrative authority or any Relevant Authority,

in each case, relating to pollution or protection of the Environment and which affects the construction, management, operation or maintenance of the Sites for the provision of Interim Services or the Services;

**Environmental Permitting Regulations** means the Environmental and Permitting (England and Wales) Regulations 2007 SI 2007 No. 3538;

**Environmental Permit** means the permit required and issued by the Permitting Authority pursuant to the Environmental Permitting Regulations in respect of the Facilities;

**EPA** means the Environmental Protection Act 1990 (as amended);

**Equipment** means all moveable plant and equipment to be provided and maintained by the Contractor at the Waste Transfer Station in order to comply with its obligations under this Contract;

**Equipment List** means the list detailing all Equipment prepared and updated in accordance with Clause 30 (Equipment);

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

**Excluded Third Party Waste Contracts** means a contract between the Contractor and a third party:

(a) for a period up to three (3) years in respect of Waste; and/or

(b) for a period up to two (2) years in respect of electricity offtake contracts;

**Executive** shall have the meaning given in the CDM Regulations;

<b>Extension of Contract Period</b>	has the meaning as defined within Clause 3.5 (Commencement and Duration);
<b>Excusing Cause</b>	means those events listed in Clause 41.2 (Excusing Causes);
<b>Expiry Date</b>	means the earlier of: (i) the 25 <sup>th</sup> anniversary of the Key Facility Services Commencement Date or such other date as the Parties may agree as part of a Revised Project Plan; or (ii) the 35 <sup>th</sup> anniversary of the Commencement Date;
<b>Facility</b>	means the Key Facility or the Waste Transfer Station and 'Facilities' shall be interpreted as referring to both the Key Facility and the Waste Transfer Station;
<b>Fees Regulations</b>	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
<b>Final Equipment List</b>	has the meaning given in Clause 30.1.5 (Equipment);
<b>Final Warning Notice</b>	means a notice served under Clause 67.4.2 (Persistent Breach);
<b>Financial Close</b>	means the date of this Contract;
<b>Financial Model</b>	means the financial model reference SLWP ContractB FC Model 051112 A.xls in the Agreed Form and as updated from time to time in accordance with this Contract;
<b>First Lease</b>	means a Lease for the Villiers Road Site in the form set out in Part A of Schedule 7 (Sites Information);
<b>First Lease Completion Date</b>	means the Interim Services Commencement Date;
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
<b>Force Majeure Event</b>	means the occurrence after the date of this Contract of:  (a) war, civil war, armed conflict or

terrorism; or

(b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of any actions or breach of the Contractor or its sub-contractors of any tier except where such actions of the Contractor constitute solely the receipt or treatment by the Contractor of Contract Waste (containing nuclear, chemical or biological contamination) in accordance with the Contract; or

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

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

<b>Force Majeure TPI Adjustment</b>	has the meaning given to it in paragraph 6.6 of Schedule 19 (Revision of Base Case and Custody);
<b>General Change in Law</b>	means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law or a Change of Law within limbs (d) or (e) of the definition of Qualifying Change in Law;
<b>Good Industry Practice</b>	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or the Construction Sub-Contractor or any sub-contractor under the same or similar circumstances;
<b>Guarantor</b>	has the meaning given in the Parent Company Guarantee issued pursuant to Clause 6A.1(Parent Company Guarantee);
<b>Guidance</b>	means any applicable guidance or directions where failure to comply will result in prosecution or enforcement action;
<b>Handback Requirements</b>	means the requirements on termination or expiry of this Contract set out in Part 1 (PR4 - Handback Requirements) of Schedule 2 (Authority's Requirements);

<b>Hazardous Substances</b>	means any natural or artificial substance (whether in the form of a solid, liquid, gas or vapour) the existence, generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing Harm to man or any other living organism or causing damage to the Environment or property or public health or welfare and includes but is not limited to any controlled special hazardous toxic radioactive or dangerous waste;
<b>Holding Company</b>	has the meaning given to it in Section 1159 of the Companies Act 2006;
<b>Household Waste</b>	has the meaning attributed to it in Section 75(5) and Section 89 of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations 1992;
<b>Indemnified Party</b>	has the meaning given to it in Clause 61.3 (Notification of Claims);
<b>Indemnifying Party</b>	has the meaning given to it in Clause 61.3 (Notification of Claims);
<b>Independent Certifier</b>	means the person appointed jointly by the Authority and the Contractor to act as independent certifier to the Project in accordance with the Independent Certifier's Deed of Appointment;
<b>Independent Certifier's Deed of Appointment</b>	means the deed of appointment of the Independent Certifier substantially in the form set out in Schedule 12 (Independent Certifier's Deed of Appointment);
<b>Index</b>	has the meaning given to it in Schedule 4 (Payment Mechanism);
<b>Indexation Date</b>	has the meaning given to it in Schedule 4 (Payment Mechanism);
<b>Indexed</b>	has the meaning given to it in Schedule 4 (Payment Mechanism);
<b>Indemnified Losses</b>	means for the purposes of Clause 61 (Indemnities): <ul style="list-style-type: none"><li>(a) Direct Losses; and</li><li>(b) Indirect Losses, if and to the extent that the Required Insurances taken out by the Contractor in respect of a loss claimed under any of the Required Insurances meets the claim for the Indirect Loss and the Contractor successfully recovers that Indirect</li></ul>

Loss so claimed by the Authority from the insurer, using its reasonable endeavours to do so;

<b>Indirect Losses</b>	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;
<b>Information</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000;
<b>Insurance Term</b>	means any terms and/or conditions required to be included in a policy of insurance by Clause 55 (Required Insurances) and/or Schedule 10 (Required Insurances) but excluding any risk;
<b>Intellectual Property Rights</b>	means any and all patents, trade marks, service marks, copyrights, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;
<b>Interim Services</b>	means the services, to be provided by the Contractor to the Authority from 1 <sup>st</sup> April 2014 in accordance with the Interim Services Method Statement until the Key Facility Services Commencement Date, to treat or dispose of Contract Waste;
<b>Interim Services Commencement Date</b>	means 1 <sup>st</sup> April 2014;
<b>Interim Services Period</b>	means the Interim Services to be provided on and from the Interim Services Commencement Date until the Key Facility Services Commencement Date;
<b>Initial Waste Transfer Station Works</b>	means the installation and construction works listed in table 1.7-1 of Method Statement 1.7;
<b>Joint Insurance Account</b>	means the joint bank account to be established in the names of the Authority and the Contractor on or prior to any of the insurance policies becoming operable;
<b>Key Facility</b>	means all those areas coloured pink on the Beddington Lane Site plan and identified as the Key Facility;
<b>Key Facility Acceptance</b>	means such date that is twelve (12) Months after

<b>Longstop Date</b>	the Key Facility Planned Service Commencement Date;
<b>Key Facility Planned Service Commencement Date</b>	means the relevant date set out in Schedule 8 (Key Dates) or such other date as the Parties may agree;
<b>Key Facility Planned Readiness Date</b>	means the relevant date set out in Schedule 8 (Key Dates) or such other date as the Parties may agree;
<b>Key Facility Planned Works Commencement Date</b>	means the relevant date set out in Schedule 8 (Key Dates) or such other date as the Parties may agree;
<b>Key Facility Readiness Longstop Date</b>	means such date as is twelve (12) Months after the Key Facility Planned Readiness Date;
<b>Key Facility Services Commencement Date</b>	means the date on which Services Commencement occurs at the Key Facility in accordance with Clause 21.1.3;
<b>Key Facility Works</b>	means the Works in relation to the Key Facility as described in the Contractor's Proposals to meet the Authority's Requirements;
<b>Landfill</b>	<p>(a) for the purposes of Landfill Tax has the meaning attributed to it by Section 65(1) of the Finance Act 1996; and</p> <p>(b) for all other purposes has the meaning given to it in Waste Emissions Trading Act 2003;</p> <p>and "Landfilled" and "Landfilling" shall be interpreted accordingly;</p>
<b>Landfill Directive</b>	has the meaning given in Council Directive 1999/31/EC;
<b>Landfill Tax</b>	has the meaning set out in Section 39(1) of the Finance Act 1996;
<b>Landlord's Notice</b>	means a notice in a form complying with the requirements of Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;
<b>Latest Service Element</b>	means the prevailing gate fees for the Market Tested Services as at the Market Testing Review Date;
<b>Leading Counsel</b>	has the meaning given to it in Schedule 26 (Planning);

<b>Lease</b>	means either the First Lease or the Second Lease as the context admits and references to Leases shall mean both the First Lease and the Second Lease;
<b>Legal Requirements</b>	means that a Facility complies with all Legislation so that is its lawfully able to receive Contract Waste demonstrated inter alia by the obtaining and maintenance of a valid Planning Permission and Environmental Permit;
<b>Legislation</b>	means:  (a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;  (b) any exercise of the Royal Prerogative; and  (c) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,  in each case in the United Kingdom;
<b>Licence</b>	has the meaning given in Clause 10.1.3 (Access during Construction);
<b>Lock In Period</b>	means the period expiring on the date that is twelve (12) Months after the Key Facility Services Commencement Date;
<b>Losses</b>	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
<b>Maintenance Requirements</b>	means those requirements in respect of the maintenance of the Waste Transfer Station set out in Part 1 (PR3 - Service Requirements) of Schedule 2 (Authority's Requirements);
<b>Market Costs</b>	means the charges made by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question;
<b>Market Tested Services</b>	means the Specialist Waste Services;
<b>Market Testing</b>	market testing in accordance with Clause 34.1

	(Market Testing Procedure);
<b>Market Testing Proposal</b>	has the meaning given to it in Clause 34.1.2 (Market Testing Procedure);
<b>Market Testing Review Dates</b>	means every fifth anniversary of the Commencement Date;
<b>Maximum Tonnage</b>	has the meaning given to Maximum Tonnage in Schedule 4 (Payment Mechanism);
<b>Method Statements</b>	means the Works Method Statement and the Services Method Statements as amended from time to time in accordance with this Contract;
<b>Mileage Deductions</b>	means the amount calculated in accordance with paragraph 15 of Schedule 4 (Payment Mechanism);
<b>Minimum Tonnage</b>	has the meaning given to Minimum Tonnage in Schedule 4 (Payment Mechanism);
<b>Month</b>	means any month in a Contract Year provided that:  (a) the first Contract Month shall commence on the Commencement Date and end on the last day of the month in which the Commencement Date occurs; and  (b) the last Contract Month shall begin on the first day of the month in which the last day of the Contract Period occurs and end on that day,  and the term Months shall be construed accordingly;
<b>Monthly Payment</b>	has the meaning given to it in Schedule 4 (Payment Mechanism);
<b>Municipal Waste</b>	means all waste which by virtue of Legislation a local authority has a statutory duty or power to collect, including (without limitation) Household Waste, Commercial Waste, fly tips and street cleansing arisings;



<b>New Contamination</b>	means any Release of Contamination after the Interim Services Commencement Date at or from the Contractor Controlled Parts of the Villiers Road Site, the presence or origin of which is either recorded in the New Contamination Log or which Release the Authority can demonstrate on the balance of probabilities was due to an act or omission of the Contractor or a Contractor Related Party;
<b>New Contamination Log</b>	means a record of all Releases at the Villiers Road Site to be kept by the Contractor pursuant to Clause 11.2;
<b>New Contractor</b>	means the person who has entered or who will enter into the New Contract with the Authority;
<b>New Contractor Rectification Period</b>	means such period as is reasonable in the circumstances from the date of the New Contract to allow the New Contractor to carry out the New Contractor Rectification Works as shall be agreed by the Parties or in default of agreement determined pursuant to Clause 60 (Dispute Resolution);
<b>New Contractor Rectification Plan</b>	means the rectification plan to be implemented by the New Contractor setting out the New Contractor Rectification Works and timescales;
<b>New Contractor Rectification Works</b>	means such works (including new and rectification works) and implementation of such new systems as shall be required to enable the New Contractor to achieve the standards and targets set out in Schedule 2 (Authority' Requirements);
<b>NNDR</b>	means the National Non Domestic Rates (or successor or replacement thereof) as contained in the Local Government Finance Act 1988;
<b>Non-Acceptance Deduction</b>	has the meaning as defined within Schedule 4 (Payment Mechanism);
<b>Notice of Non-Completion</b>	has the meaning given to it in Clause 21.2.8(b);
<b>Notice to Proceed</b>	means the Notice to Proceed as defined in clause 3.2 of the Construction Sub-Contract;
<b>Off-Take Contracts</b>	means any contracts relating to incinerator bottom ash, air pollution control residues, landfill or specialist waste services or any other similar off-take contract;
<b>Operating Manual</b>	has the meaning given to it in Clause 28.1

	(Maintenance of Manual);
<b>Operational Panel</b>	has the meaning given to it in paragraph 4 (Identity of Adjudicator) of Schedule 22 (Dispute Resolution Procedure);
<b>Option Period</b>	has the meaning given to it in Clause 57.4 (Relevant Payment);
<b>Outline Commissioning Plan</b>	means the plan relating to the Key Facility provided by the Contractor in accordance with the Works Requirements as set out in the Works Method Statement;
<b>Outstanding Work</b>	has the meaning given to it in Clause 79.4 (Maintenance Work);
<b>Partnership</b>	means the South London Waste Partnership formed between the Authority, the London Borough of Merton, the London Borough of Sutton and the Royal Borough of Kingston Upon Thames including such other authority members who may be admitted from time to time;
<b>Party</b>	means a party to this Contract and 'Parties' shall be construed accordingly;
<b>Payment Mechanism</b>	means the payment mechanism set out in Schedule 4 (Payment Mechanism);
<b>Payment Period</b>	means each Month during the Contract Period;
<b>Performance Deductions</b>	has the meaning given to it in Schedule 4 (Payment Mechanism);
<b>Permitting Authority</b>	means the relevant competent regulatory authority for the purposes of the issuing of an Environmental Permit;
<b>Persistent Breach</b>	means a breach for which a Final Warning Notice (referred to in Clause 67.4.2 (Persistent Breach)) has been issued, (which has continued or recurred three (3) or more times within six (6) Months after the date on which such Final Warning Notice is served on the Contractor);
<b>Personal Data</b>	means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Interim Services or Services;
<b>Personnel</b>	means the employees, servants, agents, sub-contractors or other representatives, engaged at the Sites in the provision of the Works, Interim Services and/or Services but only to the extent

that such persons are engaged by either:

- (i) the Contractor or any company within the Viridor Group; or
- (ii) the Construction Sub-Contractor; or
- (iii) any sub-contractor of the Construction Sub-Contractor;

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

**Physical Damage Policies** has the meaning given to it in Clause 56.1 (Reinstatement);

**Planning Act** means the Town and Country Planning Act 1990;

**Planning Application** means any planning application submitted or to be submitted by or on behalf of the Contractor pursuant to paragraph 2 (Planning Consents) of 26 (Planning) to the appropriate Planning Authority in respect of the Key Facility Works (or any part) (including any amendment to the application) pursuant to the Planning Act;

**Planning Authority** means the relevant authority for the purposes of the Planning Act;

**Planning Obligation** means any agreement or obligation undertaken pursuant to:

- (a) section 106 of the Planning Act;
- (b) section 111 Local Government Act 1972;
- (c) sections 38 or 278 Highways Act 1980 as amended by section 23 of the New Roads and Street Works Act 1991;
- (d) section 104 Water Industry Act 1991 or any other provision of similar intent, within the meaning of the Water Act 1989, with a Relevant Authority for the supply of water or the drainage of surface or foul water from the Site; or
- (e) any agreement with a Relevant Authority or utility company relating to the passage or transmission of gas, water, electricity,

foul or surface water drainage or any of them;

**Planning Permission** means the planning permission granted in relation to the Key Facility being in every case either:

- (a) detailed planning permission; or
- (b) outline planning permission together with such approvals of reserved matters as are required to enable the Contractor to commence the Key Facility Works; and
- (c) in every case granted by a Planning Authority, the Secretary of State or an inspector appointed by him for that purpose;

**PPP Contractor** means a person that has contracted with the Government, a local authority or other public or statutory body to provide services under a public private partnership;

**Practical Completion** means in respect of the Waste Transfer Station Refurbishment Works, that the Waste Transfer Station Refurbishment Works have reached a stage of completeness so that there are no apparent deficiencies or defects in the Waste Transfer Station Refurbishment Works and so that there are no incomplete works the condition or completion of which would prevent normal reasonable and beneficial use; provided that the Waste Transfer Station Works shall not be considered not to have reached practical completion by reason only of minor defects which can be remedied without interference with or interruption of the use of the Waste Transfer Station Refurbishment Works as aforesaid;

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

**Price Reference Date** means 1 April 2011;

**Proceedings** means any of the following:

- (a) a calling in or determination by the Secretary of State or any inspector appointed by him of the Planning Application under Section 77 of the Planning Act;
- (b) an appeal against refusal including Deemed Refusal) of any Planning

Application;

- (c) an application seeking to remove or modify any conditions imposed by the Planning Permission;
- (d) an appeal against refusal including Deemed Refusal of any application to remove or modify any conditions imposed by the Planning Permission; and
- (e) an application to the Court pursuant to Section 288 of the Planning Act;

**Programmed Maintenance**

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

**Prohibited Act**

means:

- (a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- (b) entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority; or
- (c) committing any offence:
  - (i) under the Bribery Act 2010;

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

(iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority;

(d) defrauding or attempting to defraud or conspiring to defraud the Authority;

**Project** means the provision of waste management services to the Authority by the Contractor as contemplated by this Contract including the carrying out of the Works and the provision of the Interim Services or Services;

**Project Document** means the Project Agreement and any document entered into by the Authority with the Contractor and/or the Construction Sub-Contractor in relation to the Project;

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

**Qualifying Change in Law** means:

(a) a Discriminatory Change in Law; and/or

(b) a Specific Change in Law; and/or

(c) a General Change in Law, which comes into effect after a period of one year from the date of this Contract and which involves Capital Expenditure; and/or

which was not foreseeable at the date of this Contract; or

(d) any Legislation or Guidance coming into effect after the date of this Contract giving effect to any of those documents or policies listed in the Waste Law List; and/or

- (e) any change to or revocation of any condition of an Environmental Permit for the Facilities other than where such change or revocation arises as a result of:
  - (i) the acts or omissions of the Contractor or any Contractor Related Party (save for acts or omissions directly resulting from compliance with the Contractor's obligations under the Contract); or
  - (ii) any breach of the Contract by the Contractor or any Contractor Related Party;

<b>Qualifying Change in Law TPI Adjustment</b>	has the meaning given to it in paragraph 6.1 of Schedule 19 (Revision of Base Case and Custody);
<b>Readiness Date</b>	means in respect of the Key Facility, the date on which the Readiness Test Certificate is issued in respect of the Key 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 Key Facility passed its Readiness Tests;
<b>Readiness Test Certificate</b>	means a certificate issued by the Independent Certifier that the Readiness Tests at the Key Facility have been satisfied;
<b>Readiness Tests</b>	means the Key Facility Tests so described in Schedule 11 (Tests);
<b>Recipient</b>	has the meaning given to it in Clause 49.1.2 (VAT on Payments);
<b>Reinstatement Outline</b>	has the meaning given to it in Clause 56.3.1;
<b>Reinstatement Plan</b>	has the meaning given to it in Clause 56.3.5;
<b>Reinstatement Works</b>	has the meaning given to it in Clause 56.3.1 (Reinstatement);
<b>Release</b>	means any release, spillage, emission, leading, pumping, injection, deposit, disposal, discharge, leeching or migration of Hazardous Substances into the ground in or under or from the Villiers Road Site other than in compliance with Environmental Laws;
<b>Relevant Authority</b>	means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public

	or statutory person of the government of the United Kingdom or of the European Union;
<b>Relevant Discharge Terms</b>	means the terms referred to in Section 6 (Local Government (Contracts) Act 1997);
<b>Relevant Environmental Authority</b>	means any Relevant Authority or other regulatory body exercising its powers under Environmental Laws;
<b>Relevant Event</b>	means an Authority Change, a Qualifying Change in Law, a Compensation Event or any other matter as a result of which there may be a revision of the Unitary Charge in accordance with Schedule 19 (Revision of Base Case and Custody);
<b>Relevant Incident</b>	has the meaning given to it in Clause 56.3 (Reinstatement);
<b>Relevant Person</b>	means a Shareholder and any of its Affiliates;
<b>Relevant Payment</b>	has the meaning given in Clause 57.4;
<b>Relevant Proceeds</b>	means any amounts standing to the credit of the Joint Insurance Account in accordance with Clause 56.3.6 (Reinstatement);
<b>Relief Event</b>	means: <ul style="list-style-type: none"> <li>(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;</li> <li>(b) failure by any statutory undertaker, utility company, local authority or other like body (but excluding for the avoidance of doubt the Authority as purchaser) to carry out works or provide services;</li> <li>(c) any accidental loss or damage to the development or any roads servicing it or the Sites or cables required in connection with the export of electricity from the Sites;</li> <li>(d) any failure or shortage of power, fuel or transport;</li> <li>(e) any blockade or embargo which does not constitute a Force Majeure Event;</li> </ul>



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

generally affecting the energy, waste disposal, electricity, construction, chemical, haulage and waste management industries or a significant sector of them;

- (g) the occurrence of Protester Action provided that the Contractor has complied with its obligations pursuant to Clause 42;
- (h) the discovery of fossils, antiquities or human remains requiring action in accordance with Clause 14 (Fossils and Antiquities); or
- (i) the delivery to a Facility as part of a delivery of waste during the Commissioning Period and/or the Interim Services Period or the Services Period of munitions, hazardous materials or human remains which directly results in Enforced Closure;

unless:

- (A) any of the events listed in paragraphs (a) to (i) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any of its sub-contractors; or
  - (B) in the case of paragraph (i) above arises (directly or indirectly) as a result of the negligence of the Contractor or any of its sub-contractors;
- (j) the lawful exercise by any provider of utilities (or their respective employees, agents and subcontractors) on, over or under the Villiers Road Site of any statutory rights to access to and egress from and to conduct any associated works in relation to any utilities infrastructure

to the extent that such exercise interferes with and/or prevents the Contractor from conducting the Works;

- (xi) until the Planning Longstop Date (modified in accordance with any Revised Project Plan) and provided that the Contractor has complied with its obligations to use All Reasonable Endeavours in accordance with Schedule 26 (Planning), the Contractor has not obtained a Satisfactory Planning Permission for the Key Facility;
- (xii) provided that the Contractor has used and is continuing to use All Reasonable Endeavours (Environmental Permit) to obtain an Environmental Permit, the Contractor has not obtained an Environmental Permit for the Facilities;
- (xiii) the Authority exercises its right to monitor or carry out surveys pursuant to Clause 19.1 in circumstances where the Contractor is not in breach of this Contract.

<b>Requests for Information</b>	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term 'request' shall apply);
<b>Required Action</b>	has the meaning given to it in Clause 33.3 (Action by Authority);
<b>Required Insurances</b>	means the insurances specified in Schedule 10 (Required Insurances);
<b>Required Standard</b>	has the meaning given to it in Clause 79.3.1 (Results of Survey);
<b>Restricted Share Transfer</b>	means any transfer of shares in the Contractor or Holdco: <ul style="list-style-type: none"> <li>(a) during the Lock in Period; or</li> <li>(b) to any person engaged or with substantial interests in gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons; or</li> </ul>

- (c) to any person whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of residual waste treatment in the area; or
- (d) to any person whose activities in the reasonable opinion of the Authority, could pose a threat to national security;

<b>Restrictions</b>	means all matters (whether arising before or after the date of this Contract) affecting a Site(s) or its use registered or capable of registration as local land charges, and all notices, charges, orders, resolutions, demands, proposals, requirements, regulations, restrictions, agreements, directions or other matters affecting a Site(s) or its use served or made by any local or other competent authority or otherwise arising under any Legislation;
<b>Review Procedure</b>	means the procedure set out in Schedule 9 (Review Procedure);
<b>Reviewable Design Data</b>	means the items of Design Data listed in paragraph 7 of the Review Procedure;
<b>RPIX</b>	the index published in Table RPO5 (RPI all items - excluding Mortgage Interest Payment (RPIX) reference CHMK published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with Schedule 22 (Dispute Resolution Procedure);
<b>Schedule of Programmed Maintenance</b>	means the Contractor's annual programme for the maintenance of the Facility(ies) and the Assets to satisfy the Service Requirements;
<b>Second Lease</b>	a lease for the Villiers Road Site in the form set out in Part B of Schedule 7 (Sites Information) and any further lease granted pursuant to Clause 10.2 of this Contract;
<b>Second Lease Completion Date</b>	means the Key Facility Services Commencement Date;

<b>Service Delivery Plan</b>	means the plans set out in Part 2 of Schedule 3 (Contractor's Proposals);
<b>Services</b>	means the whole of the services or any of them to be provided by the Contractor on and from the Key Facility Services Commencement Date pursuant to this Contract which are necessary for the Contractor to undertake in order to comply with the Service Requirements, the Services Method Statements and the other provisions of this Contract;
<b>Services Method Statements</b>	means the proposals for the method of providing the Interim Services and/or the Services to satisfy the Service Requirements set out in the CD-rom included at Schedule 3 (Contractor's Proposals);
<b>Services Media</b>	means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media appliances and apparatus including any fixtures, louvers, cowls and other ancillary apparatus;
<b>Services Period</b>	means the period specified in Clause 3.2 (Commencement and Duration);
<b>Service Requirements</b>	means the specification contained in Part 1 (PR3 - Service Requirements) of Schedule 2 (Authority's Requirements);
<b>Shareholders</b>	means any person from time to time holding share capital in the Contractor or its Holding Company;
<b>Shortfall Period</b>	has the meaning given in Clause 25.2.4(c);
<b>Site Conditions</b>	means the conditions of the Site(s) including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;
<b>Site Plan</b>	means the plan of each of the Sites set out in Schedule 15 (Site Plans);
<b>Site(s)</b>	means the Beddington Lane Site and the Villiers Road Site;
<b>Snagging Items</b>	means minor defects, deficiencies or omissions of a snagging nature which do not prevent the Independent Certifier from issuing an Acceptance Test Certificate;
<b>Snagging List</b>	means the list to be prepared by the Independent Certifier in accordance with Clause 21.5.1

(Snagging Items) containing Snagging Items;

<b>Specialist Services</b>	<b>Waste</b>	means any services in relation to the disposal of Contract Waste Category B and Contract Waste Category C (as such terms are defined in Part 3 of Schedule 2;
<b>Specific Change in Law</b>		means: <ul style="list-style-type: none"><li>(a) any Change in Law which specifically refers to:<ul style="list-style-type: none"><li>(i) the construction, operation and maintenance of premises for the provision of any service the same as or similar to any of the Services; or</li><li>(ii) to the holding of shares in companies whose main business is providing services the same as or similar to the Services or the construction operation and maintenance of premises for the provision of any service the same as or similar to any of the Services;</li></ul></li><li>(b) in the case of the Key Facility any Change in Law which specifically refers to emissions from industrial facilities; or</li><li>(c) any Change in Law that discriminates against the sale of electricity generated from a waste to energy plant;</li><li>(d) any Change in Law which affects the Triads or LECs regime in place on Financial Close;</li></ul>
<b>Step-in Event</b>		means those events referred to in Clause 33.1 (Right to Step-in);
<b>Sub-Contractors</b>		means each of the counterparties of the Contractor to the Construction Sub-Contract or any person engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Works, the Interim Services or the Services (or any of them). References to sub-contractors means sub-contractors (of any tier) of the Contractor;
<b>Sub-Contracts</b>		means the contracts entered into between the Contractor and the Sub-Contractors;

<b>Substitute Guarantor</b>	a company which meets the Guarantee Criterion set out in Clause 6A.5.1 and having the legal capacity power and authority to enter into and perform the obligations under the Guarantee;
<b>Substitute Waste</b>	means waste (other than Contract Waste and Third Party Waste) of the same or similar composition as Contract Waste which is to be received at the Facilities in the event that the amount of Contract Waste falls below the Minimum Tonnage in a Contract Year;
<b>Substitute Waste Amount</b>	means an amount calculated as being the number tonnes of Substitute Waste contracted for by the Contractor in a Contract Year multiplied by the Substitute Waste Price;
<b>Substitute Waste Contract</b>	means the contract entered into by the Contractor and the Substitute Waste Contractor provided any such contracts entered into with Affiliates of the Contractor shall be excluded unless the contracts with the Affiliates have been entered into on an arm's length basis;
<b>Substitute Waste Contractor</b>	means the person providing the Substitute Waste;
<b>Substitute Waste Notice</b>	has the meaning given in Clause 25.2.4;
<b>Substitute Waste Plan</b>	means the plan for the disposal of Substitute Waste developed from the Outline Substitute Waste Plan and updated in accordance with Clause 25.2;
<b>Substitute Waste Price</b>	means the gate fee per tonne payable by the Substitute Waste Contractor under or in connection with the Substitute Waste Contract;
<b>Successful Tenderer</b>	has the meaning given to it in Clause 34.3.1 (Adjustments to Unitary Charge);
<b>Suitable Substitute Contractor</b>	means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:  <ul style="list-style-type: none"><li>(a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Contract;</li><li>(b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts)</li></ul>

which are sufficient to enable it to perform the obligations of the Contractor under the Contract; and

(c) being a Suitable Third Party;

<b>Suitable Third Party</b>	means any person who is not an Unsuitable Third Party;
<b>Supplier</b>	has the meaning given to it in Clause 49.1.2 (VAT on Payments);
<b>Target Landfill Tonnage</b>	means the actual tonnage of Core Contract Waste, Substitute Waste (excluding Ad Hoc Waste) and asbestos received by the Contractor during the relevant period multiplied by the Target Landfill Rate. Where the Target Landfill Rate is calculated as one minus the Contract Diversion Rate as set out in Appendix 3 to Schedule 4 (Payment Mechanism);
<b>Tax</b>	means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Contract and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;
<b>Tenant's Declaration</b>	means a statutory declaration in a form complying with the requirements of Schedule 2 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;
<b>Tender Documents</b>	has the meaning given to it in Clause 34.1.1(d) (Market Testing Procedure);
<b>Termination Date</b>	means any date of early termination of this Contract in accordance with Part XII (Termination and Compensation on Termination);
<b>Termination Notice</b>	means a notice of termination issued in accordance with this Contract;
<b>Termination Sum</b>	has the meaning given to it in Schedule 17 (Compensation on Termination);
<b>Test Certificate</b>	means a Readiness Test Certificate or an Acceptance Test Certificate as appropriate;
<b>Tests</b>	means the Readiness Tests and Acceptance Tests (as appropriate);
<b>Third Party Consents</b>	means, in relation to any Adverse Right which would or might be interfered with by the carrying out of the Works or the Interim Services or the

Services, the consent in writing of all Adjoining Owners entitled to or interested in the Adverse Right in question to either:

- (a) the removal or diversion (whether temporarily or permanently) of the subject matter of the Adverse Right in question; or
- (b) the carrying out of the Works or Interim Services or Services notwithstanding such interference;

such consent in each case to be on terms previously approved in writing by the Authority (such approval not to be unreasonably withheld or delayed);

**Third Party Income** means the Contractor's income from third parties (other than the Authority under this Contract) associated with the Project including without limitation that derived from the sale of or making arrangements in relation to third party waste, electricity and recyclates (less the costs of generating such income where such costs are reasonably additional to the costs in the Base Case);

**Third Party Waste** means all waste received at the Facilities other than Contract Waste and Substitute Waste;

**Third Party Waste Contracts** means contracts entered into by the Contractor in respect of Third Party Waste excluding Off-Take Contracts;

**Trade Marks** means the trade mark(s) relating the Partnership's logo (whether unregistered or registered and including any applications for registration) and other Intellectual Property Rights subsisting in such trade marks from time to time;

**Uninsurable** means in relation to a risk, either that:

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



Kingdom;

**Unitary Charge**

means the payment calculated in accordance with Schedule 4 (Payment Mechanism);

**Unsuitable Person**

means any person who:

- (a) has any Conviction;
- (b) in the reasonable opinion of the Authority:
  - (i) is or is likely to cause damage to the reputation of the Authority; or
  - (ii) persistently fails or would fail to comply with the health and safety or other material obligations of the Contractor under this Contract; or
  - (iii) is not a fit and proper person to be engaged, or employed in or in connection with the provisions or performance of any part of the Service; or
  - (iv) may present an actual or potential risk to the health, safety or welfare of any Authority Related Party or member of the public; or
  - (v) is not appropriately trained, qualified, skilled and/or competent to carry out any part of the Service;

**Unsuitable Third Party**

means any of:

- (a) any person or party who has a material interest in the production, distribution or sale of tobacco products, alcoholic drinks and/or pornography;
- (b) any person or party whose activities are, in the reasonable opinion of the Authority, incompatible with the provision of residual waste treatment in the area; or
- (c) any person or party whose activities, in the reasonable opinion of the Authority,

could pose a threat to national security;

<b>VAT</b>	Means any value added taxes;
<b>Villiers Road Site</b>	means the area coloured pink and cross hatched blue, cross hatched green and cross hatched red on the Site Plan together with the Waste Transfer Station, weighbridges and the service ducts and media for all utilities and services serving the Waste Transfer Station at Villiers Road;
<b>Viridor Limited</b>	means Viridor Limited (Company Number 02456473) whose registered office is at Peninsula House, Rydon Lane, Exeter, Devon, EX2 7HR;
<b>Viridor Group</b>	means any subsidiary of Viridor Limited from time to time;
<b>Waste</b>	has the meaning ascribed to it in Section 75 of the EPA;
<b>Waste Law List</b>	means the anticipated Changes in Law set out in Schedule 14 (Waste Law List);
<b>Waste Management Licence</b>	means all statutory permissions, authorisations, licences and similar forms of instrument required under the Environmental Protection Act 1990 and any other legislation governing the acceptance, treatment, keeping, deposit and disposal of waste;
<b>Waste Transfer Station Refurbishment Works</b>	means the removal and replacement of the Waste Transfer Station cladding system, relating to the parts of the Waste Transfer Station leased to the Contractor;
<b>Waste Transfer Station</b>	means the facility for the transfer of Contract Waste located at the Villiers Road Site;
<b>Waste Transfer Station Planned Practical Completion Date</b>	means the relevant date set out in Schedule 8 (Key Dates) or such other date as the Parties may agree;
<b>Waste Transfer Station Planned Works Commencement Date</b>	means the relevant date set out in Schedule 8 (Key Dates) or such other date as the Parties may agree;
<b>Waste Transfer Station Works</b>	means the Works in relation to the Waste Transfer Station as described in the Contractor's Proposals to meet the Authority's Requirements, being the Initial Waste Transfer Station Works and the Waste Transfer Refurbishment Works;

<b>WCAs</b>	means the Authority, the London Borough of Merton, the London Borough of Sutton and the Royal Borough of Kingston upon Thames;
<b>Works</b>	means all of the works (including design and works necessary for obtaining access to the Site(s), commissioning and conduct of the Tests) to be undertaken in respect of the Key Facility and/or the Waste Transfer Station (as the context requires) in accordance with this Contract, the Works Requirements, Commissioning Requirements and the Works Method Statements;
<b>Works Delivery Plans</b>	means the plans set out in paragraph 1 of Part 1 of Schedule 3 (Contractor's Proposals);
<b>Works Method Statements</b>	means part of the Contractor's Proposals as set out in the CD-rom included at Schedule 3 (Contractor's Proposals);
<b>Works Period</b>	means the period from the Works Commencement Date (as defined in the Construction Sub-Contract) to the Key Facility Services Commencement Date; and
<b>Works Requirements</b>	means the specification contained in Part 1 (PR1 - Works Requirements) of Schedule 2 (Authority's Requirements).

**SCHEDULE 2**  
**AUTHORITY'S REQUIREMENTS**

SOUTH LONDON WASTE PARTNERSHIP

RESIDUAL WASTE TREATMENT SERVICE

**SCHEDULE 2**

**AUTHORITY'S REQUIREMENTS**

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## OVERVIEW

### Introduction

- i This Schedule comprises three parts. Part 1 defines the Performance Requirements in relation to the Works, commissioning, Services and handback, which the Contractor shall provide pursuant to the Contract. Part 2 of this Schedule comprises the Performance Management Framework. Part 3 includes definitions relevant to this Schedule.
- ii Unless expressly defined elsewhere in this Schedule or this Contract, capitalised words shall have the meaning given in Part 3 - Definitions and any references to any enactment, order, regulation or other similar instrument, statute or statutory provision shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted.
- iii References to Contract in this Schedule is reference to the Contract to which the Authority's Requirements relate.
- iv The Authority's Requirements defines the requirements of the Authority in the provision of the Services. The Contractor must perform the Services in accordance with all of the requirements of the Authority's Requirements.
- v This overview section outlines the general requirements and scope of the Services.

### Project Objective

- vi The fundamental objective of the Services is to treat residual waste made available from the Partnership in order to minimise the climate change impact of managing municipal solid waste through effective diversion from landfill in the most efficient means possible.

### Scope of the Service

- vii The Contract will involve the design, build, finance and operation of the Key Facility to treat residual waste.
- viii The Services will include:
  - viii.a The securing of the Beddington Lane Site;
  - viii.b Obtaining all Consents, including Planning Permission and the Environmental Permit;
  - viii.c The design, construction, commission and financing of the Key Facility for the provision of the Services;
  - viii.d The receipt and acceptance of residual municipal waste at the Sites;
  - viii.e The operation and maintenance of the Sites;
  - viii.f The handling of all outputs from the Sites including the transfer of recovered materials, transfer of process residues, and the sale of recovered materials, energy produced under the Contract and any spare treatment capacity;

- viii.g The provision of performance and reporting information; and
- viii.h The provision of web-based community waste education information.

#### Partnership Working

- ix The Contractor and the Authority shall adopt a philosophy of partnership working with the Partnership authorities, authorised contractors and other stakeholders to achieve the Services and the Performance Standards.
- x In furtherance of these aims, the Contractor and the Authority shall co-operate closely in all matters of mutual interest relevant to the Services. This shall include projects undertaken by the Authority and other parties, as well as with the Contractor.

#### Contract Waste

- xi Contract Waste shall generally be comprised of the following categories.

##### Contract Waste Category A (“Core” Contract Waste streams)

- xi.a Residual Household Waste (including waste classified under Schedule 2 of the Controlled Waste Regulations 1992);
- xi.b Household bulky waste, including but not limited to co-mingled fractions of
  - xi.b.1 Waste electrical and electronic equipment;
  - xi.b.2 Reusable materials;
  - xi.b.3 Residual waste;
  - xi.b.4 Inert waste.
- xi.c Residual commercial waste;
- xi.d Residual waste delivered from Household Reuse and Recycling Centres (HRRCs);
- xi.e Litter and refuse from the cleansing and maintenance of parks and open spaces;
- xi.f Fly tipped waste;
- xi.g Mechanical street cleansing arisings;
- xi.h Gully cleansing arisings;
- xi.i Waste from house clearances;
- xi.j Waste contaminants and residues from any other Partnership waste management contracts that are appropriate for treatment at the Key Facility and as approved by the Authority’s Representative; and
- xi.k Other waste collected by or on behalf of the Partnership from time to time as approved by the Authority’s Representative.

##### Contract Waste Category B (“Specialist” Contract Waste streams)

- xi.l Dog faeces;
- xi.m Tyres;
- xi.n Asbestos;



- xi.o Separately collected clinical waste that is Household Waste (in accordance with the European Waste Catalogue EWC 18-01-01, 18-01-03 and 18-01-04), and in all cases not containing prescription only medicines;
- xi.p Batteries (car);
- xi.q Gas cylinders;
- xi.r Pressurised containers; and
- xi.s Fire extinguishers.

Contract Waste Category C (“Ad-hoc” Contract Waste streams)

- xi.t Animal carcasses;
  - xi.u Separately collected household hazardous waste;
  - xi.v Separately collected clinical waste that is Household Waste other than as set out above in Contract Waste Category B;
  - xi.w Car parts >25kg or where there are reasonable grounds to suspect they may contain hazardous substances;
  - xi.x Waste from house clearances that are commercial and/or industrial in origin and similar in nature to construction and demolition wastes in accordance with Chapter 17 of the European Waste Catalogue;
  - xi.y Septic tank sludge and waste from sewage cleaning (being waste in accordance with the European Waste Catalogue EWC 20-03-04 and 20-03-06)
  - xi.z Radioactive wastes;
  - xi.aa Abandoned vehicles;
  - xi.bb Fireworks and flares;
  - xi.cc Bombs / explosives; and
  - xi.dd Petrol or other inflammable fuels.
  - xi.ee All other waste contaminants and residues from any other Partnership waste management contracts that are not covered in xi.j as approved by the Authority’s Representative.
- xii Contract Waste collected by the Partnership may contain small quantities of Hazardous Waste that the Contractor is required to manage. In due course the Partnership may be required to collect Hazardous Waste separately from the majority of the Waste collected by the Partnership and the Contractor shall be required to manage the disposal of such waste as an Authority Change to the Services implemented pursuant to the provisions of Clause 43 of this Contract if so directed.
- xiii The definition of Contract Waste may change due to changes in Legislation. Any such waste stream arising from such changes may fall within the scope of the Services. Where such changes result in waste streams being removed from the definition of Contract Waste such changes shall be addressed in accordance with Clause 44 (Change in Law).

Waste Quantity and Composition

- xiv The Authority gives no guarantee as to the composition of Contract Waste to be delivered to the Contractor.
- xv The Contractor shall accept and manage all Contract Waste delivered during the term of the Contract save that:
  - xv.a There shall be an adjustment to the Unitary Charge to preserve a Minimum Tonnage assumption in the event that the Contract Waste tonnage delivered to the Contractor falls below the Minimum Tonnage, except where such shortfall is due to unavailability of the Services; and
  - xv.b The Authority shall be entitled to propose a Change to the Services where the amount of Contract Waste which the Authority wishes to deliver under the Contract exceeds the Maximum Tonnage. Nothing in this Contract shall oblige the Contractor to accept tonnages in excess of the Maximum Tonnage.

## PART 1: PERFORMANCE REQUIREMENTS

Part 1 of this Schedule defines the Performance Requirements and is divided into the following parts:

- PR1: Works Requirements
- PR2: Commissioning Requirements
- PR3: Services Requirements
- PR4: Handback Requirements

### Appendix A: Works Quality Standards

Subject to the express provisions of the Contract, the Contractor shall comply with the Works, Commissioning, Services and Handback Requirements in accordance with the Performance Requirements set out in PR1 to PR4 of Part 1 of this Schedule.

Sections of the Performance Requirements set out Part 1 of this Schedule are subject to the Performance Management Framework regime set out in Part 2 of this Schedule.

## SCHEDULE 2

### AUTHORITY'S REQUIREMENTS

#### PART 1

### PERFORMANCE REQUIREMENTS

#### PR1 - WORKS REQUIREMENTS

##### General

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

##### Consents and Planning Requirements

- 1.4 The Contractor shall be responsible for obtaining all of the Consents including but not limited to the Planning Permission and Environmental Permit for the Beddington Lane Site and Villiers Road Site (where required) and subject to Schedule 26 (Planning) for the discharge of any associated conditions placed on these consents or permissions.

##### Design and Delivery Requirements

- 1.5 The Contractor shall ensure that the Key Facility is designed, allocated a permit, and constructed in order to deliver the Services in accordance with this Schedule.
- 1.6 The Contractor shall provide Works at the Beddington Lane Site and Villiers Road Site that shall be suitable and efficient for the reception of all vehicles bringing Contract Waste to the Sites and for vehicle egress from the Sites. The Sites shall be capable of accepting all vehicles of a size up to and including a front-end loader (FEL) collection vehicle and a bulk haulage unit and trailer up to legal road maximums. The Contractor shall use reasonable endeavours to provide Sites that are capable of accepting or be readily adaptable to accept a wide range of vehicles.
- 1.7 The Works shall be designed and constructed to ensure that all waste processing treatment and product storage takes place within enclosed buildings or structures with appropriate environmental controls provided.
- 1.8 The environmental assessment tool to be used is BREEAM for the buildings, incorporating the relevant elements of CEEQUAL for the supporting infrastructure and external aspects of the Key Facility.

- 1.9 The Contractor shall use reasonable endeavours to utilise methods and materials in the Works which are sustainable and cover aspects such as energy efficiency, renewable energy, recycled content, and water management.
- 1.10 The Key Facility Works shall be designed and constructed to include suitable reception facilities and material handling equipment to facilitate storage for unprocessed Contract Waste of a size and volume which are capable of storing up to five (5) days average Contract Waste arisings by volume.
- 1.11 Storage areas shall be designed to be capable of accepting, storing and transferring Contract Waste out of the Key Facility for recycling or disposal.
- 1.12 The Works shall be designed and constructed to include all necessary infrastructure and utility services required to meet the requirements of this Schedule including but not limited to their connection, security of supply and capacity.

#### Minimum Works Requirements

- 1.13 The Contractor shall ensure that the Works comply with Good Industry Practice, Legislation and Consents including, but not limited to, the following:
  - a) British Standards, Codes of Practice, or equivalent European industry recognised standards and guidance;
  - b) Health and Safety at Work Executive guidance notes;
  - c) Requirements of the utilities companies;
  - d) Building Research Establishment Digest Recommendations;
  - e) The Civil Engineering Environmental Quality Assessment and Award Scheme;
  - f) Fire safety requirements in agreement with the fire authority; and
  - g) Relevant Environmental Agency guidance notes, consents and authorisations.
- 1.14 The Contractor shall provide materials, equipment, plant, machinery and other goods of sound and satisfactory quality and appropriate for the purposes for which they will be used.

#### Civil and Building Works Specification

- 1.15 The Contractor shall adopt and implement a recognised industry standard civil and building works specification, for the design, construction, commissioning and testing of the Works.
- 1.16 The architectural, civil engineering and site works and finishes provided shall be in accordance with current industrial standards having regard to Good Industry Practice in the waste management industry and conforming to the requirements of the relevant necessary consents.

#### Mechanical and Electrical Specifications

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

#### Existing Structures and Infrastructures

- 1.18 The Contractor shall be responsible for identifying and undertaking all enabling works necessary to ensure the Sites are suitable for the development of the Works and operation of Services.
- 1.19 The Contractor shall carry out all demolition of existing structures as appropriate and make safe redundant infrastructure on the Sites in accordance with BS6187:2000 (Code of Practice for demolition).
- 1.20 The Contractor shall be responsible for undertaking remediation or removal of any contaminated waste, material or land to the extent that it relates to the Beddington Lane Site or to New Contamination at the Villiers Road Site.
- 1.21 The Contractor shall carry out any protection and diversion works associated with any existing infrastructures located on the Sites required for the construction of the Works and ensure continuity of utility supplies to any Adjoining Properties in so far as they may be affected by the Works. This shall include but is not limited to gas, electricity, water, sewerage and communications services.
- 1.22 The Contractor shall ensure that adequate retaining walls and/or support to excavated faces are provided as appropriate to support any Adjoining Property during the carrying out of the Works.
- 1.23 The Contractor shall ensure the relevant Site is safe and secure during construction activities to prevent unauthorised access to the relevant Site in accordance with the Works Delivery Plan.
- 1.24 The Works shall be suitably housed and protected in accordance with Legislation such that waste delivery vehicle operators, the Authority's Representative, Authority staff or visitors cannot gain access to areas or parts of the relevant Site that could cause harm or a risk to their health and safety.

#### Site Access & Circulation

- 1.25 The Contractor shall design and construct the internal road and pedestrian area layout within the Beddington Lane Site to allow safe movement of vehicles and pedestrians and with regard to health and safety Legislation and Good Industry Practice. The pedestrian routes shall be segregated from vehicle movements where possible, and shall be appropriate for use by both the workforce and external visitors to the Key Facility.
- 1.26 The Contractor shall provide access to the Beddington Lane Site from the external road network.

- 1.27 In designing and constructing the Beddington Lane Site the Contractor shall take account of the need to avoid vehicles queuing on the highway and to incorporate this into the Key Facility Works design.

#### Partnership interface

- 1.28 The Contractor shall from the Key Facility Services Commencement Date, provide a colour CCTV system to view the following parts of the Beddington Lane Site and Villiers Road Site as a minimum;
- a) the approach area, including the point at which vehicles access and egress the public highway;
  - b) the points of measurement for calculating vehicle turnaround times;
  - c) the weighbridge(s); and
  - d) the Waste acceptance area(s).

The Authority's Representative shall have remote live access to the CCTV system, enabling it to control the views available as necessary.

- 1.29 The Contractor shall provide a room at the Beddington Lane Site suitable for use as a meeting room for 12 people that can also be used by the Authority upon reasonable notice.

## Environmental Consideration and Nuisance Control

1.30 The Contractor shall minimise nuisance and environmental impact during construction and shall design and construct the Works so as to minimise nuisance and environmental impact including but not limited to the impact of:

- a) Light;
- b) Noise;
- c) Vermin and other pests;
- d) Litter;
- e) Flies;
- f) Dust;
- g) Emissions;
- h) Odour; and
- i) Traffic.

1.31 The Contractor shall ensure that all construction vehicles leaving the relevant Site are adequately cleaned to prevent the deposit of any material amounts of waste material and debris on any Adjoining Property. If such material or debris is so deposited the Contractor shall employ such measures as shall be necessary to remove the material and debris and to clean and reinstate such Adjoining Property to the reasonable satisfaction of the owners or occupiers of the Adjoining Property.

## Health and Safety

1.32 The Contractor shall:

- a) Liaise with the Health and Safety Executive on all relevant matters;
- b) Co-ordinate its health and safety plans at the Villiers Road Site with the Authority's health and safety policies; and
- c) Take all necessary steps, and provide the Authority with such information as the Authority reasonably requires to satisfy itself that all necessary steps are being taken, to identify and control risks to the health and safety of persons involved in the Works.

## Quality Management System

1.33 The Contractor shall implement a QMS that is compliant with ISO9001 or equal throughout the construction and Commissioning Period. The QMS introduced shall be to an appropriate recognised standard for the design, construction and commissioning of the Works and shall be in place before construction commences.

1.34 The Contractor shall appoint a quality manager who shall in respect of the Villiers Road Works:

- a) Ensure the effective operation of and implementation of the QMS;
- b) Audit the QMS at regular intervals (and as a minimum every twelve (12) months) and report the findings of such audit to the Contractor and the Authority;



- c) Audit any sub-contractor's QMSs, as a minimum every twelve (12) months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractors and the Authority;
- d) Review the QMS at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
- e) Liaise with the Authority on all matters relating to quality assurance.

## Environmental Management System

- 1.35 The Contractor shall implement an EMS in compliance with ISO14001 or equal at all times throughout the construction and Commissioning Period. The EMS introduced shall be to an appropriate recognised standard for the design, construction and commissioning of the Villiers Road Works and shall be in place before construction commences.
- 1.36 The Contractor shall appoint an environmental management manager who shall in respect of the Villiers Road Works:
- a) Ensure the effective operation of and implementation of the EMS;
  - b) Audit the EMS at regular intervals (and as a minimum every twelve (12) months) and report the findings of such audit to the Contractor and the Authority;
  - c) Audit any sub-contractor's EMSs, as a minimum every twelve (12) months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractors and the Authority;
  - d) Review the EMS at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
  - e) Liaise with the Authority on all matters relating to environmental management.

## Construction Waste Management

- 1.37 The Contractor shall, if required by Legislation in respect of the Works on each Site:
- a) implement a Site waste management plan throughout the design and construction period and include in such plan project-specific targets for waste recovery and reused and recycled content set out in paragraphs (c) and (d) below and for waste reduction;
  - b) measure and report in accordance with Good Industry Practise the quantity of waste produced and the quantity of waste sent to Landfill (tonnes per £100k of construction spend);
  - c) recover at least a minimum of 80% of construction waste and demolition materials; and
  - d) ensure that a minimum of 15% of total material value derives from reused and recycled content in new build, select the top opportunities to exceed this figure without increasing the cost of materials.
- 1.38 Before starting the Works on each Site, the Contractor shall submit to the Authority's Representative a copy of the Site waste management plan, if required under 1.37, identifying the actions to be taken to reduce waste, increase the level of recovery and increase reused and recycled content, and quantifying the resulting changes. The Contractor shall forecast waste quantities and reused and recycled content using a recognised industry standard tool.
- 1.39 On completion of the Works on each Site, the Contractor shall submit to the Authority's Representative a copy of the completed Site waste management plan, if required under 1.37, reporting the forecast and actual performance for waste quantities, disposal routes, and reused and recycled content used in construction.

## Construction Programme

- 1.40 The Contractor shall develop and maintain a Construction Programme covering the Works which shall be based on the Construction Programme included in the Works Delivery Plan.
- 1.41 The Contractor shall submit to the Authority the Construction Programme for the Works on or around Notice to Proceed. Any subsequent material amendment to the Construction Programme made in accordance with Clauses 13.5 and 13.6 shall be provided to the Authority within 5 Business Days of its amendment and adoption.
- 1.42 The Contractor shall carry out the Works in accordance with the Construction Programme.

## Construction Phase Reporting

- 1.43 The Contractor shall submit to the Authority within five (5) Business Days following the end of each Month during the Works Period, a "Monthly Construction Progress Report" covering the construction activities carried out in the immediately preceding month at each of the Sites. The Monthly Construction Progress Report shall include as a minimum a description of the following:
- a) An assessment of actual progress by comparison to the submitted Construction Programme;
  - b) Any issues that may impact on the deliverability of the Construction Programme;
  - c) Progress with meeting the Works Requirements;
  - d) Progress with obtaining Consents;
  - e) Progress with discharging any requirements of the Consents;
  - f) Report on any material risk to achieving the Key Dates (Schedule 8); and
  - g) Where the Monthly Construction Progress Report covers the period in which the Readiness Test Certificate is issued, the Monthly Construction Progress Report shall include a copy of the Readiness Test Certificate.

## As Built Drawings

- 1.44 The Contractor shall maintain a set of electronic As Built Drawings compatible with AutoCAD and shall update the As Built Drawings to reflect any changes from time to time.
- 1.45 The Contractor shall provide the Authority upon request with read-write electronic As Built Drawings compatible with AutoCAD within ten (10) Business Days of such request. Drawings issued by the Contractor shall be deemed to be the final latest version of the drawings and any editing of drawings by the Authority shall not be classed as amended As Built Drawings. Where any element of doubt exists the final set as issued by the Contractor will be treated as the correct version.

## Communications

- 1.46 The Contractor shall develop and comply with a communication plan during the Works Period (the "Works Communication Plan") which:

## Schedule 2

- a) Identifies those likely to be affected by the Works;
- b) Identifies likely concerns and takes all appropriate steps to mitigate these concerns; and;
- c) Records all complaints and comments (verbal or otherwise), letters or notices from any members of the public or statutory authority.

1.47 The Contractor shall register each relevant Site in the Considerate Constructors Scheme (the national initiative set up by the construction industry) and comply with the Considerate Code of Practice.

## SCHEDULE 2

### AUTHORITY'S REQUIREMENTS

#### PART 1

### PERFORMANCE REQUIREMENTS

#### PR2 - COMMISSIONING REQUIREMENTS

##### Commissioning

- 2.1 The Contractor shall develop a detailed Commissioning Plan based on an outline commissioning plan included in the Works Delivery Plan. The detailed Commissioning Plan shall be no less onerous than that included with the Works Delivery Plan.
- 2.2 The Contractor shall submit to the Authority, as an item for review under the Review Procedure as set out in Schedule 9, the detailed Commissioning Plan at least six (6) Contract Months prior to the Key Facility Planned Readiness Date. The Commissioning Plan shall include but not be limited to the Contractor's proposals for:
- a) Cold commissioning (e.g without waste) of individual Equipment and Facilities;
  - b) The process to achieve the Readiness Tests set out in Schedule 11 for the Key Facility;
  - c) Hot commissioning (e.g with waste) of the Works including the incremental acceptance, processing and treatment of Contract Waste; and
  - d) The process to achieve the Acceptance Tests set out in Schedule 11 for the Key Facility and for the Initial Waste Transfer Station Works.

The Contractor shall carry out the commissioning in accordance with the Commissioning Plan. The Authority shall have the right to conduct inspections of the Waste Transfer Station Facility, and, subject to Clause 21.2.9, to attend any commissioning and performance inspection, enquiry, test or investigation undertaken by or on behalf of the Contractor in accordance with the Contract at the Key Facility and the Waste Transfer Station.

- 2.3 Prior to the issuance of the Readiness Test Certificate, the Contractor shall carry out cold commissioning of the Key Facility Works to demonstrate that the design, construction, installation and plant performance:
- a) Comply with health and safety Legislation and guidance;
  - b) Comply with manufacturers requirements;
  - c) Are suitable for testing their integration within the Key Facility Works;
  - d) Are fit for their intended purpose; and
  - e) Are capable of meeting the requirement of PR2 - Commissioning Requirements.

- 2.4 After the issuance of the Readiness Test Certificate, the Contractor shall carry out hot commissioning of the Key Facility Works to demonstrate that their design, construction, installation and plant performance:
- a) Comply with health and safety Legislation and guidance;
  - b) Comply with manufacturers requirements;
  - c) Are suitable for integration within the Works;
  - d) Are fit for their intended purpose; and
  - e) Are meeting the relevant requirements of PR3 - Services Requirements.

#### Commissioning Phase Reporting

- 2.5 The Contractor shall submit to the Authority within five (5) Business Days following the end of each Contract Month during the Commissioning Period, a Monthly Commissioning Progress Report covering all the commissioning and testing activities carried out in the preceding Contract Month. The Monthly Commissioning Progress Report shall include as a minimum a description of the following:
- a) Assessment of actual progress by comparison to the submitted Commissioning Programme;
  - b) Summary of the commissioning tasks in the following monthly period; and
  - c) Details of any commissioning works that may result in a delay to the delivery of a fully operational and commissioned Facility and the Contractor's proposal for minimising the impact of such delays.

#### Mechanical and Electrical Specifications

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

## SCHEDULE 2

### AUTHORITY'S REQUIREMENTS

#### PART 1

### PERFORMANCE REQUIREMENTS

#### PR3 - SERVICE REQUIREMENTS

#### General Requirements

3.1 The Contractor shall provide and maintain:

- a) A Service Delivery Plan that show how the requirements of this PR3 will be delivered;
- b) Relevant quality assurance standards for the Services;
- c) Relevant environmental management standards for the Services;
- d) Monitoring and reporting systems for the performance of the Services and;
- e) Access for the Authority to information and assistance necessary to monitor the Services.

#### PR3.1 DIVERSION TARGETS

#### Contract Waste Landfill Diversion

3.2 The Contractor shall accept all Contract Waste from the Interim Services Commencement Date. Following the Interim Services Commencement Date the Contractor shall make the Facilities available and shall achieve the Contract Targets as defined and set out in Schedule 4.

#### PR3.2 ENVIRONMENTAL MANAGEMENT

#### Sustainable Development and Carbon Impacts

3.3 In providing the Interim Services or the Services, the Contractor shall comply with (where relevant) the national, regional and local policy framework and the South London Waste Plan adopted by the Partnership in 2012. Particular regard should be paid to the principle of sustainable development, and minimising the carbon footprint of the service.

3.4 The Contractor shall, from the Key Facility Services Commencement Date, develop and comply with a carbon management plan (the "Carbon Management Plan") that demonstrates how the carbon footprint of the Services are to be managed over the life of the Contract. This shall cover the operation of the Key Facility, and any associated transportation, but shall exclude elements that are outside the remit of this Contract such as the kerbside collection of waste. It shall contain appropriate performance standards and methodology for their measurement and reporting, including frequencies for doing so.

## Impact on the Local Environment

3.5 The Contractor shall develop and comply with an environmental impact control plan that shall include all procedures and actions required by the Contractor to:

- i. Minimise the environmental impacts of transporting, receiving, treating and disposing of Contract Waste and Third Party Waste including but not limited to the impacts from:
  - a) Dust and particulates;
  - b) Emissions to air;
  - c) Emissions to water;
  - d) Odour;
  - e) Nuisances, including ;
    - i. Traffic;
    - ii. Light;
    - iii. Noise;
    - iv. Vermin and other pests;
    - v. Litter; and
    - vi. Flies;
- ii. Meet the environmental conditions contained or referred to within the Consents;
- iii. Meet all the requirements of Legislation; and
- iv. Where practical, minimise amenity impacts on the local population,

with respect to the relevant Site and all Contractor operations and activities external to the relevant Site (the "Environmental Impact Control Plan").

3.6 The Contractor shall implement at its own cost any amendments to the Environmental Impact Control Plan including for the avoidance of doubt amendments required as a result of changes to the Facilities and Services but excluding any costs required as a result of an Authority Change.

3.7 The Contractor shall only place or store Contract Waste in designated on-site storage areas.

## Litter management

3.8 The Contractor shall ensure that the ground within the agreed zone at the Sites as set out in the Service Delivery Plan, including but not limited to the public highway at each Site entrance, is kept free from litter in accordance with the agreed cleanliness standards.

3.9 In the event that the Contractor is made aware of a fly tipping incident within the agreed zone, excluding the circumstances of clause 3.11 below, then the Authority's Representative shall be notified within one (1) hour and the responsibility for dealing with the incident shall be at their discretion and the Contractor shall act in accordance with the required action as directed by the



Authority's Representative acting reasonably.

3.10 Where waste referred to in paragraph 3.9 above is brought to the attention of the Contractor by the Authority then:

- a) Within twenty (20) minutes of being notified, the Contractor shall, contain and control such waste with consideration to its health and safety obligations; and
- b) Within three (3) hours, or such longer period as necessary if this is required by the Environment Agency or other Relevant Authority for the purposes of gathering evidence, the Contractor shall remove and dispose of the fly-tipped waste and clean up any affected surrounding area.

## PR3.3 OPERATIONAL INTERFACE

### Delivery

- 3.11 The Primary Delivery Point for the Royal Borough of Kingston Upon Thames shall be the Villiers Road Site. The Primary Delivery Point for the London Borough of Merton, the London Borough of Sutton or the London Borough of Croydon shall be the Beddington Lane Site. The Primary Delivery Point for clinical waste as defined in paragraph xi.o of this Schedule 2 shall be as defined in Method Statement 5.1 of the Service Delivery Plan. The Contractor shall accept Contract Waste delivered by an Authorised Vehicle to each Primary Delivery Point in accordance with the conditions and opening hours of any relevant Consent at the Interim Services Commencement Date. The Contractor shall use its reasonable endeavours to apply for reception of Contract Waste twenty four (24) hours per day every day with no exceptions at the Beddington Lane Site.
- 3.12 The Contractor shall take full account of variable waste delivery patterns that can arise, particularly after public and bank holidays. The Contractor shall use its reasonable endeavours to determine the likely extent of abnormal waste delivery patterns and make due allowance for them while preserving the standards that apply to 'normal' waste delivery periods. The Contractor shall maintain a close liaison between the appropriate levels of management of the Contractor and the Authority in relation to day to day Contract Waste deliveries.
- 3.13 The Contractor shall develop and implement a Vehicle Acceptance Procedure for the processing of Authorised Vehicles, vehicles carrying Third Party Waste and the management of vehicles not previously notified in advance to the Contractor as an Authorised Vehicle or without the correct written or electronic authorisation.
- 3.14 The Contractor shall ensure a maximum turnaround time of no more than twenty (20) minutes per vehicle delivering Contract Waste to the Villiers Road Site or Beddington Lane Site except where such delay arises from activities by such vehicle outside of the control of the Contractor (including requests for assistance in the unloading of Contract Waste) or as detailed within the Vehicle Acceptance Procedure. From the Interim Services Commencement Date until the Key Facility Services Commencement Date, the turnaround time shall be measured in accordance with the agreed system in operation on the day prior to Service Commencement. From the Key Facility Services Commencement Date the turnaround time shall be measured from passing the incoming Automatic Number Plate Recognition (ANPR) camera to exiting the outgoing Site Weighbridge.
- 3.15 The Contractor shall provide such assistance as is reasonably required to assist in the unloading of Contract Waste commensurate with the design and operation of the Facilities and as specified within the relevant Method Statements.
- 3.16 The Contractor shall prevent the queuing of vehicles delivering Contract Waste (up to the Maximum Tonnage), and those delivering Third Party Waste, on the public highway at the Site entrances for longer than 20 minutes, when such vehicles are

endeavouring to access the Site except where such delay arises from activities outside the control of the Contractor.

### Third Party Waste

3.17 The Contractor shall be entitled to process Third Party Waste at the Sites, up to quantities which take up any spare capacity over and above that taken by Contract Waste, provided that:

- a) Contract Waste shall be accepted and treated in priority to Third Party Waste;
- b) Up to the Maximum Tonnage, Third Party Waste will not displace Contract Waste from the Facilities.

3.18 The Contractor shall develop and comply with a Third Party Waste plan that sets out the protocol for the acceptance of Third Party Waste (the "Third Party Waste Plan").

### Information

3.19 The Contractor shall at each Site from the Key Facility Services Commencement Date develop, install and maintain a computerised card entry system and data handling system which shall be electronically linked to the weighbridge and shall record the weights, sources and types of Contract Waste and any Third Party Waste delivered, without the need for manual input.

3.20 The Contractor shall inspect, monitor, weigh and electronically record, in relation to each Contract Waste and Third Party Waste load and vehicle entering or exiting the Sites, information required for the purpose of meeting their obligation under the Contract and in support of the Authority's statutory reporting requirements, including but not limited to:

- a) Date;
- b) Description of waste;
- c) Gross and net weights;
- d) Disposal contractor number;
- e) Registered Contract Waste/Third Party Waste carrier number;
- f) Source/destination of waste/product/residue;
- g) Time of arrival/departure; and
- h) Vehicle registration number.

3.21 In the event of breakdown of a weighbridge installation, a manual auditable recording system shall immediately be implemented and maintained in operation, and the Contractor shall arrange for all manual tickets to be electronically scanned into the management information system.

3.22 Weighbridges shall be calibrated in accordance with the requirements of Trading Standards.

3.23 The Contractor shall reinstate the weighbridge within three (3) days of

### Schedule 2

implementing the manual recording system except where calibration in accordance with Trading Standards requirements cannot be obtained within three (3) days.

- 3.24 The Contractor shall produce an electronic weighbridge ticket for each movement of Contract Waste and residues to or from each Site and shall keep copies of such tickets for a period of seven years.

#### Contract Management

- 3.25 The Contractor shall prepare a Weekly Service Report and submit it to the Authority's Representative within one (1) Business Day of the end of each week (i.e. by the end of the first Business Day of the following week) during the Service Period. The Weekly Service Report shall set out all information required by the Authority to verify the performance of the Contractor in respect of the previous Contract week, as set out in Schedule 16 to this Contract.
- 3.26 The Contractor shall prepare a Monthly Service Report and submit it to the Authority's Representative within ten (10) Business Days after the Contract Month end. The Monthly Service Report shall set out all information required by the Authority to verify the performance of the Contractor and the Monthly Payment in respect of the Contract Month just ended as set out in Schedule 16 to this Contract.
- 3.27 The Contractor shall submit to the Authority's Representative within twenty (20) Business Days of the end of each Contract Year, an Annual Service Report on the performance and delivery of the Services for the previous Contract Year. The Annual Service Report shall set out all information required by the Authority to verify the performance of the Contractor as set out in Schedule 16 to this Contract.
- 3.28 The Contractor shall upon a written request from the Authority's Representative, promptly provide such written evidence or other supporting information as the Authority's Representative may reasonably require for verifying and auditing the information and other material contained in either the Monthly Service Report or the Annual Service Report. The Authority's Representative may make comments on and/or make objections to the written evidence, supporting information, Monthly Service Report or Annual Service Report and in such cases shall provide the Contractor with written comments and/or objections within ten (10) Business Days of receipt of the evidence, information or Monthly Service Report or Annual Service Report as the case may be.
- 3.29 The Contractor shall provide within five (5) Business Days of a request from the Authority's Representative, provide information to support the Authority's internal and external public relations activities in connection with the Project.
- 3.30 The Contractor shall attend fortnightly meetings with the Authority and other regular meetings as set out in the Contractor's Delivery Plan. The Contractor shall also attend other meetings, as reasonably requested with at least five (5) Business Days notice by the Authority, at which the Service is being discussed.

- 3.31 From the Interim Services Commencement Date until the Key Facility Services Commencement Date, the Contractor shall maintain the agreed management information system in operation on the day prior to the Interim Services Commencement Date.
- 3.32 From the Key Facility Services Commencement Date the Contractor shall implement and operate a management information system that shall as a minimum, record the information required to produce all the reports required under this Schedule.
- 3.33 From the Key Facility Services Commencement Date, the Contractor shall:
- a) Ensure that all systems comprising the management information system shall be maintained in accordance with Good Industry Practice and shall be capable of interfacing electronically with those of the Authority and shall follow principles of transparency and auditability; and
  - b) Permit the Authority and Authority personnel unfettered remote access to the management information system, on a real time industry-standard machine-readable format.
- 3.34 The Contractor shall review its operational practices and processes to identify ways to improve the efficiency of the Services and, where reasonably practical and economically advantageous to do so, shall implement updated practices and procedures. The Contractor shall report any such identified and prepared improvements within the Monthly Service Report.
- 3.35 The Contractor shall, develop, submit, monitor, and maintain and thereafter perform the Services in accordance with the Service Delivery Plan that sets out the Contractor's Method Statements for the delivery of the Services. The Contractor shall review, and update if required, all Method Statements within the Service Delivery Plan, and provide the same for approval to the Authority's Representative, as an item for review under the Review Procedure as set out in Schedule 9, within 20 (twenty) Business Days after the start of each Contract Year or such other date as may be agreed from time to time in writing by the Authority's Representative (acting reasonably).

#### Emergency Arrangements

- 3.36 The Contractor shall ensure a senior member of Personnel is available to provide a direct contact point for the Authority twenty four (24) hours a day throughout the period from the date of the Acceptance Test Certificate to the expiry of the Contract.
- 3.37 The Contractor shall produce and agree with the Authority an emergency call out procedure.
- 3.38 The Contractor shall complete an annual exercise to test the emergency call out procedures. This exercise will be planned and executed with Authority involvement.

- 3.39 Where required, the Contractor shall assist emergency planning exercises being carried out by the Royal Borough of Kingston Upon Thames, London Borough of Merton, London Borough of Sutton or the London Borough of Croydon (up to a maximum of 4 per annum in aggregate).
- 3.40 In respect of the Villiers Road Site only, the Contractor shall operate and maintain a suitable communication system for its operatives and managers that must be capable of being used by both the Contractor's employees and the Authority in the event of an emergency.

#### Community Involvement

- 3.41 The Contractor shall develop, implement and operate the Services such that they provide opportunities for community involvement.
- 3.42 The Contractor shall develop and comply with a community liaison plan that shall include the scope, purpose and timetable for all liaison with relevant stakeholders during operation of the Services, and how the Services provide opportunities for community involvement (the "Community Liaison Plan").
- 3.43 The Contractor shall arrange and facilitate community liaison group meetings on a yearly basis at a minimum.
- 3.44 The Contractor shall provide electronic content for a public access, web-based virtual visitors centre to be operated by the Authority. Within 30 Business Days of the Key Facility Services Commencement Date, this shall include the provision of professionally produced pre-recorded video clips at the Key Facility, and process description text and diagrams for all the main waste reception and treatment areas, including any third party facilities. The Authority shall have editorial and approval rights over the content of the virtual visitors centre.
- 3.45 Subject to paragraph 3.44 above, the Contractor shall, where necessary, provide electronic information to the Authority within five (5) days after the end of each Contract Month to ensure that all of the information related to the Contract that is contained on the Authority's website is current and correct.
- 3.46 From the Key Facility Services Commencement Date, the Contractor shall give up to twelve (12) sets of visitors per Contract Year (maximum groups of 12 persons) guided tours of the Key Facility by or on behalf of the Authority by prior arrangement. Such tours shall follow an agreed defined tour route and will include viewing the main stages of the waste treatment process, and shall include any health and safety requirements including the provision of personal protective equipment.
- 3.47 The Contractor shall develop and comply with an enquiries and complaints plan that sets out the procedures to follow for managing questions, complaints and disputes relating to the operation of the facilities and the performance of the services (the "Enquiries and Complaints Plan").

3.48 The Contractor shall within four (4) hours of receipt of a complaint implement the Enquiries and Complaints Plan for all complaints received by the Contractor in relation to the Waste Transfer Station or Key Facility activities.

## PR3.4 FACILITIES AND CONTRACT MANAGEMENT

### Programmed Maintenance at Villiers Road Site

- 3.49 From the Key Facility Services Commencement Date, the Contractor shall undertake Programmed Maintenance which includes all maintenance of the Villiers Road Site to comply with the manufacturer's requirements, Operating Manuals, Method Statements, agreed lifecycle replacement and to achieve the Works Quality Standards set out in Appendix A.
- 3.50 The Programmed Maintenance shall be carried out in a safe manner to comply with Good Industry Practice, Legislation and comply with the relevant Method Statements at all times.
- 3.51 As part of the Programmed Maintenance for the Villiers Road Site, the Contractor shall produce and issue to the Authority, as an item for review under the Review Procedure as set out in Schedule 9, a detailed Annual Schedule of Programmed Maintenance which shall be submitted to the Authority six (6) months prior to the Key Facility Planned Service Commencement Date and each anniversary thereof. This shall include but not be limited to information relating to all implications arising from carrying out the proposed maintenance and all implications on the Authority's operations while the maintenance is in progress.
- 3.52 The Contractor shall produce a Monthly Schedule of Programmed Maintenance each Month. The Monthly Schedule of Programmed Maintenance shall be consistent with the Annual Schedule of Programmed Maintenance. The Monthly Schedule of Programmed Maintenance shall include but not be limited to information relating to the upcoming maintenance for the following Contract Month and any implications arising from the previous Contract Month's Programmed Maintenance.
- 3.53 The Contractor shall comply with the Monthly Schedule of Programmed Maintenance and shall use reasonable endeavours to ensure that all maintenance identified within the Schedule is completed no later than one Contract Month after the programmed maintenance date.
- 3.54 The Contractor shall make provisions within the Annual and Monthly Schedules of Programmed Maintenance to minimise any nuisance and environmental impact during the maintenance activities in order to ensure they do not constitute a nuisance during maintenance.

### Contingency Plan and Mobilisation Plan

- 3.55 The Contractor shall provide a seamless transition between the existing service and the provision of the Services. The Contractor shall manage business continuity arrangements throughout the Contract Period and shall manage the handback of the Services on the earlier of the Expiry Date and the date of early termination of the Contract.

## Schedule 2



- 3.56 The Contractor shall develop and comply with a mobilisation plan that sets out the Contractor's proposals for all significant events up to the Key Facility Services Commencement Date (the "Mobilisation Plan").
- 3.57 The Contractor shall develop and comply with a contingency plan that identifies how the Interim Services and the Services will be provided in the event that the Authority is required to deliver Contract Waste to a Contingency Delivery Point on a permanent or temporary basis (the "Contingency Plan"), or in the event all or part of the Services is unavailable. Contingency Delivery Points shall be local reception points within 5 miles of the any point of the Partnership boundary or at further distance at the sole discretion of the Authority, such that the delivery of the Contract Waste will not have an undue impact on the collection systems in use.
- 3.58 The Contractor shall review the Contingency Plan on at least an annual basis in order to validate its continued viability, and submit any proposed changes to the Contingency Plan to the Authority as an item for review under the Review Procedure as set out in Schedule 9,.
- 3.59 Where possible the Contractor shall notify the Authority's Representative no less than forty eight (48) hours prior to implementing the Contingency Plan and shall implement the Contingency Plan to ensure a continuous provision of the Services. In circumstances mitigating against forty eight (48) hours notice, the Contractor shall endeavour to provide as much notice as reasonably possible, and report to the Authority's Representative in reasonable detail the reasons for not providing prior notice within 4 hours of such contingency event occurring.

#### Quality Management System

- 3.60 The Contractor shall implement and operate a QMS that;
- a) has all procedures and systems in place from the Interim Services Commencement Date
  - b) is certified to ISO9001 within 9 months following the Key Facility Services Commencement Date.
- 3.61 The Contractor shall appoint a quality manager who shall in respect of the Services:
- a) Ensure the effective operation of and implementation of the QMS;
  - b) Audit the QMS at regular intervals (and as a minimum every twelve (12) Contract Months) and report the findings of such audit to the Contractor and the Authority;
  - c) Audit any sub-contractor's QMSs, as a minimum every twelve (12) Contract Months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractors and the Authority;
  - d) Review the QMS at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
  - e) Liaise with the Authority on all matters relating to quality assurance.

#### Environmental Management System

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- 3.62 The Contractor shall implement and operate an EMS that:
- a) has all procedures and systems in place from the Interim Services Commencement Date that being the system in place on the day prior to the Interim Services Commencement Date which shall be maintained for the duration of the interim Services prior to full functionality on and from the Key Facility Services Commencement Date; and
  - b) is certified to ISO14001 within 9 months following the Key Facility Services Commencement Date.
- 3.63 The Contractor shall appoint an environmental management manager who shall in respect of the Services:
- a) Ensure the effective operation of and implementation of the aforementioned EMS;
  - b) Audit the EMS at regular intervals (and as a minimum every twelve (12) Contract Months) and report the findings of such audit to the Contractor and the Authority;
  - c) Audit any sub-contractor's EMSs, as a minimum every 12 Contract Months, to ensure the Contractor's overall compliance with the Contract and report the findings of such audits to the sub-contractor and the Authority;
  - d) Review the EMS at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
  - e) Liaise with the Authority on all matters relating to environmental management.

#### Health and Safety

- 3.64 In carrying out the Services, the Contractor shall comply with all applicable health and safety Legislation including but not limited to:
- a) Report any incidents under RIDDOR to the Health and Safety Executive;
  - b) Manage their compliance with health and safety Legislation and obligations in relation to their provision of Services;
  - c) Provide all Contractor personnel with the appropriate personal protective equipment;
  - d) Ensure that suitable first aid equipment is provided to all personnel invited on to the Sites; and
  - e) Maintain accurate and up to date health and safety records and documentation and make these available for inspection by the Authority's Representative or the Authority's safety adviser when reasonably requested including COSHH manuals, Method Statements and risk assessments for each Site.
- 3.65 In the case of any accidents involving members of the public, the Contractor shall provide details of the same to the Authority within one (1) Business Day of such occurrence

- 3.66 In the case of any accidents that are reportable under RIDDOR, the Contractor shall provide details of the same to the Authority within two (2) Business Days of the occurrence becoming notifiable.

#### Fire Safety

- 3.67 The Contractor shall carry out a detailed fire assessment of each Site within one (1) month of the Key Facility Services Commencement Date, taking into account all health and safety issues, protection of the environment and the requirement for business continuity. This review shall include, but is not limited to reviewing best practice and recommendations from fire investigations on similar facilities and other related best practice industry guidance.
- 3.68 The Contractor shall carry out the Services in a manner which is consistent with the adopted fire strategy for each Site, which shall include but is not limited to procedures and the provision of quarantine areas in the event of a fire or potential risk of fire.
- 3.69 The Contractor shall continually review the risks of fire associated with each Site including taking account of prevailing Good Industry Practice.
- 3.70 The Contractor shall make any necessary changes to the fire strategy and propose changes to the relevant Method Statement to take account of prevailing Good Industry Practice.

#### Resourcing

- 3.71 The Contractor shall employ sufficient personnel, including all relevant grades of supervisory staff, to ensure that Services are provided at all times and in all respects. The Contractor shall ensure that a sufficient reserve of its own personnel is available to meet all obligations during holidays and absences.
- 3.72 The Contractor shall develop and annually maintain, personnel procedures and policies covering all relevant matters including discipline, grievance, equal opportunities and health and safety. These procedures and policies shall comply with all relevant Legislation and Good Industry Practice and copies of them shall be issued to the Authority once completed.
- 3.73 The Contractor shall assist the Authority in complying with its obligation under section 71 of the Race Relation Act 1976 (as amended) to ensure that its functions are carried out with due regard to the need to eliminate unlawful racial discrimination and to promote equal opportunities and good relations between people of different racial groups.
- 3.74 The Contractor, in providing the Services, shall undertake to comply with all relevant equalities legislation including the Sex Discrimination Act 1975 (as amended by the Equalities Act 2006), the Race Relations Act (as amended by the Race Relation Act 2000) and the Disabilities Discrimination Act 1995, and the Statutory Codes of Practice on the Duty to Promote Racial Equality (2002), the Duty

#### Schedule 2

to Promote Gender Equality (November 2006) and the Duty to Promote Equality in relation to Disability.

- 3.75 The Contractor shall develop and maintain an appropriate and up-to-date induction programme for all Contractor personnel and the Contractor shall ensure all new Contractor personnel involved in the Services delivery undertake the induction programme prior to their commencement of duties.
- 3.76 The Contractor shall ensure that all Contractor personnel engaged in the delivery of the Services, in addition to the induction programme, are at all times properly and adequately notified, trained, instructed and competent and that appropriate information is recorded within their personal training records (including if practicable by way of continuing professional development) with regard to:
- a) The task that the individual has to perform;
  - b) All the provisions of this Contract relevant to the duties to be performed;
  - c) The standing instructions and procedures, where relevant, to the Services;
  - d) All relevant health and safety hazards, rules, policies and procedures concerning health and safety at work and all other mandatory and statutory requirements;
  - e) Fire precautions and fire procedures;
  - f) The need for Contractor personnel to show courtesy and consideration at all times; and
  - g) Improving energy and resource efficiency at the Facilities in line with mandatory standards and continuous improvement.

and the Contractor shall provide the Authority with any information the Authority reasonably requests in relation to Contractor personnel providing such do not breach data protection duties of the Contractor.

- 3.77 In carrying out the duties described in this Schedule, the Contractor shall ensure all Contractor personnel are properly dressed in appropriate uniforms and work wear (including protective clothing and footwear where required) and wear identification badges at all times while working at the Sites.
- 3.78 The Contractor shall act in a manner to promote a positive image and not bring the Authority into disrepute. The Contractor shall adopt and adhere to a staff code of conduct, which has been agreed between the parties, governing the behaviour of all employees.

#### Signage and Security

- 3.79 Each Site shall have sufficient clear, visible and legible signage to safely direct authorised users around the Sites (including signage for containers, storage areas and welfare facilities as appropriate) and such signage shall be kept up to date and be reasonably free from damage.
- 3.80 The Contractor shall ensure the security of the Sites, and allow the Authority safe and efficient access during the opening hours to the Sites.

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- 3.81 So far as permitted to do so by Legislation, the Contractor shall prevent unauthorised persons from entering the Sites.
- 3.82 So far as permitted to do so by Legislation, the Contractor shall take adequate measures to prevent Authority Related Parties from remaining at the Facilities for longer than necessary to perform their duties.
- 3.83 The Authority shall not be liable for any claim for loss by the Contractor resulting from any breach of security, except where such loss is a result of the actions of the Authority or an Authority Related Party.
- 3.84 In respect of the Project, the Contractor shall comply with the Authority's IT security arrangements and the Authority's obligations under the Data Protection Act 1998/Computer Misuse Act 1990.
- 3.85 The Contractor shall only use forms of branding which relate to the Authority or the Partnership in the delivery of the Services where such branding has been agreed in advance with the Authority's Representative.

#### CCTV Systems

- 3.86 The Contractor shall arrange for remote live view-only access to the CCTV system for the Authority's Representative at all times from the Key Facility Services Commencement Date, which will enable the Authority's Representative to view the following parts of the Beddington Lane Site and the Villiers Road Site as a minimum:
- a) the approach area on the public highway and before the weighbridge, including the point at which vehicles access and egress the public highway;
  - b) the points of measurement for calculating vehicle turnaround times;
  - c) the weighbridge(s);
  - d) the Waste acceptance area(s).

The Authority's Representative shall be able to switch views remotely as necessary.

#### Transfer and Haulage

- 3.87 Contract Waste, once delivered to the relevant Site, shall be deemed to have been transferred in to the ownership of the Contractor, unless the Contractor rejects such waste in accordance with the Waste Acceptance Protocol and notifies the Authority's Representative or nominated deputy in accordance with the Waste Acceptance Protocol.
- 3.88 The Contractor shall undertake all loading of outgoing haulage vehicles for all process residues and rejects.
- 3.89 The Contractor shall develop and comply with a waste transport plan to address all activities involving the Contractor's vehicle fleet and associated traffic

#### Schedule 2

management arrangements (including signage) to and from Sites, and including agreed transport routes (the "Waste Transport Plan").

- 3.90 The Contractor shall take all reasonable measures in a manner consistent with Good Industry Practice and Legislation, to ensure safe and sustainable transport of materials.
- 3.91 Contract Waste, products and residues, transported under the control of the Contractor, shall only be transported in enclosed containers or on netted / sheeted vehicles.

#### Management of Products and Residues from Contract Waste

- 3.92 The Contractor shall develop and comply with an offtake plan which sets out the Contractor's policies and strategies with regard to the arrangements for offtake of products and residues arising from the Key Facility Services Commencement Date (the "Offtake Plan").
- 3.93 Products shall not be deemed to have been sold or delivered to an end user until such time as they are accepted by a third party processor or an end market.
- 3.94 The Contractor shall ensure that adequate landfill capacity exists for all residues for the term of the Contract.
- 3.95 The Contractor shall supply the Authority with details of end-users and treatment and landfill site(s) to be used as part of the Services and provide a copy of the Environmental Permit or Certificate of Exemption for each.
- 3.96 The Contractor shall notify the Authority of any proposed changes or substitution of end-users and treatment and landfill sites in advance of such changes, and update the Service Delivery Plan accordingly in accordance with this Contract.

## SCHEDULE 2

### AUTHORITY'S REQUIREMENTS

#### PART 1

### PERFORMANCE REQUIREMENTS

#### PR4 - HANDBACK REQUIREMENTS

##### Handback Requirements

- 4.1 The Contractor shall develop a detailed handback plan for the Villiers Road Site based on the outline handback plan included in the Service Delivery Plan and submit it in accordance with this Contract to the Authority within the first calendar year following the Key Facility Services Commencement Date (the "Handback Plan"). The Handback Plan shall outline the agreed timetable and activities required for all significant events leading up to the handback of the Villiers Road Site to the Authority for use at either the Expiry Date or on early termination of the Contract.
- 4.2 The Contractor shall comply with the Handback Plan at all times during the handback process and notify the Authority that it has done so on a weekly basis.
- 4.3 The Contractor shall handback the Villiers Road Site in a physical and operational condition which meets the Works Quality Standards in Appendix A. The condition on handback shall be subject to agreement with the Authority, and subject to surveys, in accordance with the relevant part of the Contract and the Leases.
- 4.4 In the event of any contamination of the Villiers Road Site that is identified as being the responsibility of the Contractor, then the Contractor shall either carry out remediation works to remove the contamination or pay the Authority a sum agreed by the two parties in lieu of remediating the contamination.
- 4.5 The Contractor shall ensure that any remedial work required by the Authority is carried out and completed to the Authority's satisfaction at the Contractor's cost before the Expiry Date.
- 4.6 The Contractor shall, at the Contractor's cost, provide necessary training to a reasonable number of personnel which the Authority nominates for the running of the Villiers Road Site at least one (1) Contract Month before the planned Expiry Date to ensure the continued operation of the Site.

##### Training and Software

- 4.7 The Contractor shall, at the Contractor's cost, provide necessary training for the running of the Villiers Road Site to a reasonable number of persons notified by the Authority to the Contractor no later than three (3) Contract Months before the end of the Contract Period to ensure the continued operation of the Villiers Road Site.

- 4.8 The Contractor shall hand over all software used in the operation of the Villiers Road Site to the Authority including any specialist software which has been specifically created for the waste management facilities. Training in this software shall be provided by the Contractor at the Contractor's cost to a reasonable number of personnel nominated by the Authority.
- 4.9 A complete and up-to-date set of software manuals and software licenses shall be provided by the Contractor at the Contractor's cost to the Authority one (1) month prior to the end of the Contract Period.

#### Permits, Consents and Licences

- 4.10 The Contractor shall assist the Authority in the transfer of all Consents for the Villiers Road Site to the Authority by the end of the Contract Period.
- 4.11 Provision for the dismantling or aftercare of some or all facilities at the Villiers Road Site during or following the Contract Period may be carried out under separately agreed contractual arrangements. However, the Contractor should, as appropriate, separately prepare a suitable aftercare plan and provide an estimate for associated costs 6 months prior to the end of the Contract Period. The inclusion of these items within the Contract will be subject to the approval of the Authority.
- 4.12 This aftercare plan shall detail the care and maintenance of the Villiers Road Site, and include monitoring, maintenance of restoration materials and vegetation together with the management of EMS already in place, and until such time as the Environment Agency is satisfied that the Environmental Permit may be handed in, and/or where there is agreement that on-going liabilities may revert back to the responsibility of the Authority.



## APPENDIX A - WORKS QUALITY STANDARDS

Structures and Buildings:	<ul style="list-style-type: none"> <li>i) Structurally sound, secure and weatherproof;</li> <li>ii) Free from damage and deterioration allowing for reasonable fair wear and tear but subject to the maintenance obligations set out in clause 26 (Programmed Maintenance) of this Contract and the Annual Schedule of Programmed Maintenance;</li> <li>iii) Be kept reasonably free from dirt, discolouration, extraneous growth; and</li> <li>iv) Pests and vermin reasonably controlled in accordance Consents and Good Industry Practice.</li> </ul>
Plant and Equipment:	<ul style="list-style-type: none"> <li>i) Function as intended and operates in accordance with the manufacturers requirements;</li> <li>ii) Structurally sound, secure and weatherproof;</li> <li>ii) Free from damage and deterioration allowing for reasonable fair wear and tear but subject to the maintenance obligations set out in clause 26 (Programmed Maintenance) of this Contract and the Annual Schedule of Programmed Maintenance;</li> <li>iii) Be kept reasonably free from dirt, discolouration, extraneous growth; and</li> <li>iv) Pests and vermin reasonably controlled in accordance with Consents and Good Industry Practice.</li> </ul>
Road/Hard Landscape:	<ul style="list-style-type: none"> <li>i) Roads and hard landscape must be fit for purpose;</li> <li>ii) All roads, signs and car parking marks clearly visible;</li> <li>iii) Have reasonably even and intact surfaces;</li> <li>iv) Be kept reasonably free from any damage;</li> <li>v) Free of deterioration which represents tripping hazards;</li> <li>vi) Be maintained so as not to cause damage to any vehicles using the Facility;</li> <li>vii) Be kept reasonably free of snow, mud, waste and ice such that the Facilities are safe to use; and</li> <li>viii) Be approved as necessary by the Relevant Authorities.</li> </ul>
Fencing:	<ul style="list-style-type: none"> <li>i) Structurally sound, intact, secure and weatherproof;</li> <li>ii) Of a consistent material and colour for each type; and</li> <li>iii) Free from damage and deterioration.</li> </ul>

Unless otherwise agreed in the relevant Works Delivery Plan or Annual Schedule of Programmed Maintenance the above standards will need to be complied with.

## SCHEDULE 2

### AUTHORITY'S REQUIREMENTS

#### PART 2: PERFORMANCE MANAGEMENT FRAMEWORK

- 1.1 Introduction
- 1.1.1 This section outlines the Performance Measurement Framework (PMF) for the Waste Services Contract.
- 1.1.2 The PMF ensures that the Performance Requirements as set out in the Authority's Requirements PR1 to PR4 are maintained throughout the Contract Period. Within the PMF, failure to meet a Performance Requirement is called a Performance Standard Failure.
- 1.1.3 Figure 1 illustrates the Performance Management Framework.
- 1.1.4 Definitions relevant to this Part 2 are set out in Part 3 of this Schedule 2.
- 1.2 Performance System
- 1.2.1 The Performance Standards to be applied to the Services are set out in column 2 of Table 6.
- 1.2.2 If the Contractor fails to meet any of the Performance Standards set out in this Schedule a Performance Standard Failure shall be recorded.
- 1.2.3 For each Performance Standard Failure that occurs, Non-Performance Points may be applied as set out in Table 1, in accordance with this Schedule.
- 1.2.4 Where any single act or omission of the Contractor has resulted in a non compliance with more than one of the Performance Standards then the Authority's Representative shall be entitled to make Performance Standard Failures in respect of the Performance Standard which has been breached with the largest resulting Non-Performance Category.
- 1.2.5 Each failure to meet a Performance Standard within Non-Performance Category C or D will result in a Service Correction Notice being issued and shall incur Non-Performance Points as set out in Table 1.
- 1.2.6 Each failure to meet a Performance Standard within Non-Performance Category A or B will result in a Serious Service Failure Notice being issued, and shall incur Non-Performance Points as set out in Table 1.
- 1.2.7 Non-Performance Points shall apply to a Performance Standard Failure regardless of whether the Performance Standard Failure has been rectified by the time it is reported to the Authority's Representative.

Table 1 - Non-Performance Categories and related Non-Performance Points

Non-Performance Category	Non-Performance Points per Performance Standard
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	Failure
A	2000
B	1000
C	400
D	200

### 1.3 Monitoring and Reporting

- 1.3.1 The Contractor will be responsible for the monitoring, reporting and accurate recording at all times of its own performance of the Services and of compliance and non-compliance with the requirements of the Performance Management Framework.
- 1.3.2 The monitoring frequency for each Performance Standard Failure is set out in column 4 of Table 6. Evidence that the Performance Standards are being met, or identification of any failure and its subsequent rectification, will be required at the specified Monitoring Frequency as defined in Table 2.
- 1.3.3 Non-exclusive examples of the evidence base likely to be used to identify Performance Standard Failures, and the Measurement Units (MU) for each Performance Standard Failure are set out in column 5 of Table 6.

Table 2: Monitoring Frequency

Period	Label
Daily	D
Weekly	W
Monthly	M
Annual	A
Per Occurrence	PO

- 1.3.4 The Contractor shall notify the Authority's Representative as soon as is reasonably practicable of any Performance Standard Failure, giving such detail as may be reasonable in the circumstances.
- 1.3.5 The Authority's Representative may, upon becoming aware of a Performance Standard Failure, serve upon the Contractor a written notice specifying the details of the relevant Performance Standard Failure.
- 1.3.6 The Contractor will record the date and time of each Performance Standard Failure, which will be deemed to have occurred when it comes to the notice of or is notified to the Contractor whichever is the sooner.
- 1.3.7 Where the Monitoring Frequency is stipulated as "Annual", any relevant Non-Performance Points shall be deemed to be accrued in the Contract Month in which the Performance Standard Failure occurred, and that particular Performance Standard Failure shall not be counted again in subsequent Contract Months.
- 1.3.8 Where the Monitoring Frequency is stipulated as 'per occurrence' the Normal Monitoring Point shall be the time at which the Contractor ought reasonably to have been aware of the failure.

- 1.3.9 The Contractor shall set out in the Monthly Services Report;
- (a) The total number of Non-Performance Points incurred in the Month to which the report refers, and the Performance Standards against which they have been accrued; and
  - (b) The total number of Non-Performance Points incurred in the previous 15 Months, including the Month to which the report refers.
- 1.3.10 Where a Performance Standard Failure refers to a matter being “justified” unless the Contractor demonstrates to the reasonable satisfaction of the Authority’s Representative that the matter was not factually correct it shall be deemed to be factually correct and justified, and shall constitute a Performance Standard Failure.
- 1.3.11 The Contractor shall upon written request by the Authority’s Representative attend a meeting to discuss the issue of a Serious Service Failure Notice and subsequent actions to rectify the Serious Service Failure.
- 1.4 Rectification Period
- 1.4.1 For certain Performance Standard Failures there is a Rectification Period as is set out in column 3 of Table 6, and defined in Table 3 below.

Table 3: Rectification Periods

Service Rectification Category	Narrative	Permitted Service Rectification Period
1	Emergency	60 minutes
2	Urgent	3 hours
3	Necessary	24 hours
4	Routine	72 hours
5	Routine	1 week
6	Routine	1 month
7	Routine	3 months
8	Routine	6 months

- 1.4.2 The first Rectification Period shall run from the earlier of:
- a) the time the Contractor detects a failure to meet a Performance Standard at the Normal Monitoring Point or the time at which the Contractor ought reasonably to have been aware of the failure; or
  - b) the time at which the Authority’s Representative notifies the Contractor of a failure to meet a Performance Standard;
- and each subsequent Rectification Period shall run from the expiry of the previous Rectification Period.
- 1.4.3 Each Performance Standard Failure which has a Rectification Period shall be deemed to continue until it is both rectified and the Authority’s Representative has been notified of such rectification. If a default continues beyond the applicable Rectification Period further Performance Standard Failures will accrue for that continuing default at the rate of one per subsequent Rectification Period.

- 1.4.4 If the original Performance Standard Failure for Non-Performance Categories C and D is not rectified before the end of the Rectification Period then it shall become a Serious Service Failure. A Serious Service Failure Notice shall apply, and Non-Performance Points with a ratchet multiplier of times two (x2) shall accrue into the Non-Performance Points Bank, and Non-Performance Points with no ratchet multiplier shall be applied for the purposes of Performance Deductions pursuant to Schedule 4 (Payment Mechanism).
- 1.4.5 If a Serious Service Failure is not rectified within the Rectification Period then an additional Serious Service Failure Notice will be applied and there shall be applied Non-Performance Points with a ratchet multiplier of times two (x2) which shall accrue into the Non-Performance Points Bank, and Non-Performance Points with no ratchet multiplier shall be applied for the purposes of Performance Deductions pursuant to Schedule 4 (Payment Mechanism).
- 1.5 Repeat Failure
- 1.5.1 From the Key Facility Services Commencement Date, if a Performance Standard Failure in Non-Performance Category C and D occurs again at the next Normal Monitoring Point for an event which is substantially the same in all material respects to one that has previously been rectified then it shall be deemed a Repeat Failure. For any Performance Standard where the Monitoring Frequency is stipulated as 'per occurrence' the next Normal Monitoring Point shall be the time at which the Contractor ought reasonably to have been aware of the relevant failure. Where the next Performance Standard Failure occurs more than six (6) months after the previous Performance Standard Failure event, this shall not be counted at a Repeat Failure. Repeat Failures shall not apply to Performance Standard 3.16 (turnaround times), nor shall they apply during the performance of the Interim Services.
- 1.5.2 The first Repeat Failure will incur Non-Performance Points with a ratchet multiplier of times two (x2) shall accrue into the Non-Performance Points Bank, On the occurrence of the second Repeat Failure (e.g. third failure in a row), the Performance Failure will be escalated to a Serious Service Failure, and there shall be applied a Serious Service Failure Notice and Non-Performance Points with a ratchet multiplier of times two (x2) shall accrue into the Non-Performance Points Bank, and Non-Performance Points with no ratchet multiplier shall be applied for the purposes of Performance Deductions pursuant to Schedule 4 (Payment Mechanism).
- 1.6 Rectification Plan
- 1.6.1 The Contractor shall within five (5) Business Days of a written request from the Authority's Representative, or such period as may be agreed in writing by the Authority's Representative and the Contractor Representative each acting reasonably, produce and submit a Rectification Plan in response to a Serious Service Failure Notice, additional Serious Service Failure Notice or Non-Performance Warning Notice. A Rectification Plan may also be required in the event of twenty five (25) or more failures against Performance Standard 3.16 (turnaround times) in any Week, such plan requiring a reduction to twelve (12) or less failures within the following Week where such consequent failures have an underlying cause(s) the same or similar in all material respects to those in the preceeding week.
- 1.6.2 The requirements for producing and complying with the Rectification Plan are set out in Table 4.

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- 1.6.3 If the Rectification Plan is not implemented to the reasonable satisfaction of the Authority's Representative within the Rectification Period set-out within the Rectification Plan, there will again be allotted against the Contractor Non-Performance Points, and an updated Rectification Plan will be required to be produced by the Contractor. This will be repeated at the end of each Rectification Period set-out in the Rectification Plan until the requirements of the Rectification Plan are met.
- 1.6.4 Notwithstanding that the Contractor may have fulfilled the Rectification Plan, the performance management system still applies to any Performance Standard Failure incurred throughout the implementation of the Rectification Plan and thereafter, unless the Authority's Representative specifically deems that the performance management system does not apply.

Table 4 - Rectification Plan requirements

Stage	Requirement
1	Authority's Representative issues written request for a Rectification Plan.
2	Contractor prepares the Rectification Plan, listing all actions, including proposed amendments to the Service Delivery Plan, which a competent contractor acting in accordance with Good Industry Practice would reasonably regard as necessary to rectify the relevant failure and ensure that the likelihood of a repeat of such failure is minimised.
3	<p>The Rectification Plan shall include as a minimum;</p> <ul style="list-style-type: none"> <li>(a) Unique Rectification Plan reference.</li> <li>(b) Date of the Rectification Plan.</li> <li>(c) Nature of Performance Standard Failure(s) (including Performance Standard reference).</li> <li>(f) Rectification methodology including measurable actions, activities and outputs.</li> <li>(g) Resources required for the rectification (including plant and staff).</li> <li>(h) Any extra monitoring and reporting frequencies required to avoid future failures of the relevant Performance Standard Failures.</li> <li>(e) Rectification Period to be applied to the actions to be carried out to rectify the Performance Standard Failure (default is as per the relevant Performance Standard Failure or otherwise as determined from time to time by the Authority's Representative acting reasonably and proportionately).</li> <li>(d) The Non-Performance Category to be applied in the event the Rectification Plan is not implemented (default is as per the relevant Non-Performance Category or otherwise as determined from time to time by the Authority's Representative acting reasonably and proportionately).</li> <li>(i) Blank space for results of rectification.</li> <li>(j) Blank space for signatures of Authority's Representative and Contractor Representative.</li> </ul>
4	<p>Authority's Representative receives the Rectification Plan and if satisfied that it complies with the Contractor's obligations in section 3, and shall notify the Contractor Representative in writing promptly, and in any event within three (3) Business Days of receipt from the Contractor..</p> <p>If the Authority's Representative considers that the Rectification Plan does not so comply he shall notify the Contractor Representative giving reasonable</p>

Stage	Requirement
	<p>details of the alleged non-compliance.</p> <p>If the Authority's Representative and the Contractor Representative are unable to agree a suitable Rectification Plan within a further five (5) Business Days of such notification or such period as may be agreed in writing by the Authority's Representative and the Contractor Representative each acting reasonably, the matter shall be determined at the instance of either party under clause 60 of the Agreement (Dispute Resolution).</p>
5	Contractor implements the Rectification Plan
6	Contractor assesses achievement - Contractor Representative inserts text on results of rectification
7	Close out Rectification Plan between Contractor Representative and Authority's Representative - sign-off by both parties

#### 1.7 Non-Performance Points Bank

1.7.1 All Non-Performance Points allocated pursuant to this Schedule shall be accumulated for a period of fifteen (15) Contract Months from the date of allocation of Non-Performance Points which shall be deemed to be the last day of the Month in which the Performance Standard Failure occurred. The sum of all Non-Performance Points at any given time shall constitute the Non-Performance Points Bank. The Non-Performance Points Bank shall be reset to zero on the day prior to the Key Facility Services Commencement Date.

1.7.2 Each Month, the number of Non-Performance Points in the Non-Performance Points Bank shall be assessed by the Authority's Representative to determine whether or not the Lower Limit Threshold or Upper Limit Threshold have been exceeded.

1.7.3 For the avoidance of doubt Non-Performance Points shall always accrue into the Non-Performance Points Bank regardless of the monetary deductions under Schedule 4.

Table 5 - Thresholds within the Non-Performance Points Bank

Threshold	Lower Limit Threshold	Upper Limit Threshold
Threshold for Non-Performance Points accumulated over period of 15 Months	Greater than 400,000	Greater than 780,000

#### 1.8 Non-Performance Warning and Contractor Default

1.8.1 Where the Lower Limit Threshold within the Non-Performance Points Bank is exceeded, the Authority's Representative may at his discretion serve upon the Contractor a notice stating that the Lower Limit Threshold has been exceeded (Non-Performance Warning Notice), require a Rectification Plan, and shall allot against the Contractor one Lump Sum Failure Deduction.

1.8.2 Where the Upper Limit Threshold within the Non-Performance Points Bank is exceeded, the Authority's Representative may at his discretion serve upon the

Contractor a notice stating that the Upper Limit Threshold has been exceeded (Non-Performance Contractor Default Notice). Such failure shall constitute a Contractor Default in accordance with limb q of the definition of Contractor Default and the Council may terminate the Contract pursuant to clause 67 (Termination on Contractor Default) of this Contract.

1.8.3 From the Key Facility Services Commencement Date, in the event that the Actual Landfill Tonnage achieved for the Contract Year is less than the Target Landfill Tonnage in the relevant Contract Year, the Authority's Representative may at his discretion serve upon the Contractor a notice stating that the Contract Diversion Rate has not been met in the relevant Contract Year (Non-Performance Warning Notice), require a Rectification Plan, and shall allot against the Contractor one Lump Sum Failure Deduction.

1.9 Non-Performance Points Bank Calculation

1.9.1 The sum of relevant Non-Performance Points that arise in a relevant Month and are accrued in the Non-Performance Points Bank, shall be determined in accordance with the following formula:

$$NPPB_m = [ (P_{A1} * N_A) + (P_{B1} * N_B) + (P_{C1} * N_C) + (P_{D1} * N_D) ] + [ (P_{AU} * N_{AU} * 2) + (P_{BU} * N_{BU} * 2) + (P_{CUR} * N_{CUR} * 2) + (P_{DUR} * N_{DUR} * 2) ]$$

Where:

NPPB <sub>m</sub>	=	the sum of the relevant Non-Performance Points that arise in the relevant Month that are accrued into the Non-Performance Points Bank
P <sub>A1</sub>	=	points arising for each first Performance Standard Failure allocated to Non-Performance Category A
P <sub>B1</sub>	=	points arising for each first Performance Standard Failure allocated to Non-Performance Category B
P <sub>C1</sub>	=	points arising for each first Performance Standard Failure allocated to Non-Performance Category C
P <sub>D1</sub>	=	points arising for each first Performance Standard Failure allocated to Non-Performance Category D
P <sub>AU</sub>	=	points arising for each unrectified Performance Standard Failure allocated to Non-Performance Category A (excluding any multiplier pursuant to paragraphs 1.4.3, 1.4.4, 1.5.1 and 1.5.2 of Schedule 2 Part 2).
P <sub>BU</sub>	=	points arising for each unrectified Performance Standard Failure allocated to Non-Performance Category B (excluding any multiplier pursuant to paragraphs 1.4.3, 1.4.4, 1.5.1 and 1.5.2 of Schedule 2 Part 2).
P <sub>CUR</sub>	=	points arising for each unrectified and Repeat Performance Standard Failure allocated to Non-Performance Category C (excluding any multiplier pursuant to paragraphs 1.4.3, 1.4.4, 1.5.1 and 1.5.2 of Schedule 2 Part 2).
P <sub>DUR</sub>	=	points arising for each unrectified and Repeat Performance Standard Failure allocated to Non-Performance Category D (excluding any multiplier pursuant to paragraphs 1.4.3, 1.4.4, 1.5.1 and 1.5.2 of Schedule 2 Part 2).



$N_A$	=	The total number of Performance Standard Failures allocated to Non-Performance Category A that arise in the relevant Month
$N_B$	=	The total number of Performance Standard Failures allocated to Non-Performance Category B that arise in the relevant Month
$N_C$	=	The total number of Performance Standard Failures allocated to Non-Performance Category C that arise in the relevant Month
$N_D$	=	The total number of Performance Standard Failures allocated to Non-Performance Category D that arise in the relevant Month
$N_{AU}$	=	The total number of unrectified Performance Standard Failures allocated to Non-Performance Category A that arise in the relevant Month
$N_{BU}$	=	The total number of unrectified Performance Standard Failures allocated to Non-Performance Category B that arise in the relevant Month
$N_{CUR}$	=	The total number of unrectified Performance Standard Failures and Repeat (2 <sup>nd</sup> Repeat or more) Performance Standard Failures allocated to Non-Performance Category C that arise in the relevant Month
$N_{DUR}$	=	The total number of unrectified Performance Standard Failures and Repeat (2 <sup>nd</sup> Repeat or more) Performance Standard Failures allocated to Non-Performance Category D that arise in the relevant Month

#### 1.10 Lump Sum Deductions Calculation

1.10.1 The number of relevant Lump Sum Failure Deductions that arise in a relevant Month (LSFD<sub>m</sub>) for the purposes of applying financial deductions in Schedule 4 (Payment Mechanism), shall be determined in accordance with the number of notices served by the Authority's Representative upon the Contractor, stating that a Lump Sum Failure Deduction has occurred.

#### 1.11 Non-Performance Points Calculation

1.11.1 The sum of relevant Non-Performance Points that arise in a relevant Month for the purposes of applying financial deductions in Schedule 4 (Payment Mechanism), shall be determined in accordance with the following formula:

$$NPP_m = [ (P_{A1} * N_A) + (P_{B1} * N_B) ] + [ (P_{AU} * N_{AU}) + (P_{BU} * N_{BU}) + (P_{CUR} * N_{CUR}) + (P_{DUR} * N_{DUR}) ]$$

Where:

$NPP_m$	=	the sum of the relevant Non-Performance Points that arise in the relevant Month
$P_{A1}$	=	points arising for each first Performance Standard Failure allocated to Non-Performance Category A
$P_{B1}$	=	points arising for each first Performance Standard Failure allocated to Non-Performance Category B
$P_{AU}$	=	points arising for each unrectified Performance Standard Failure allocated to Non-Performance Category A (excluding any multiplier pursuant to paragraphs

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		1.4.3, 1.4.4, 1.5.1 and 1.5.2 of Schedule 2 Part 2).
$P_{BU}$	=	points arising for each unrectified Performance Standard Failure allocated to Non-Performance Category B (excluding any multiplier pursuant to paragraphs 1.4.3, 1.4.4, 1.5.1 and 1.5.2 of Schedule 2 Part 2).
$P_{CUR}$	=	points arising for each unrectified Performance Standard Failures and Repeat Performance Standard Failure allocated to Non-Performance Category C (excluding any multiplier pursuant to paragraphs 1.4.3, 1.4.4, 1.5.1 and 1.5.2 of Schedule 2 Part 2).
$P_{DUR}$	=	points arising for each unrectified Performance Standard Failures and Repeat Performance Standard Failure allocated to Non-Performance Category D (excluding any multiplier pursuant to paragraphs 1.4.3, 1.4.4, 1.5.1 and 1.5.2 of Schedule 2 Part 2).
$N_A$	=	The total number of Performance Standard Failures allocated to Non-Performance Category A that arise in the relevant Month
$N_B$	=	The total number of Performance Standard Failures allocated to Non-Performance Category B that arise in the relevant Month
$N_{AU}$	=	The total number of unrectified Performance Standard Failures allocated to Non-Performance Category A that arise in the relevant Month
$N_{BU}$	=	The total number of unrectified Performance Standard Failures allocated to Non-Performance Category B that arise in the relevant Month
$N_{CUR}$	=	The total number of unrectified Performance Standard Failures and Repeat (2 <sup>nd</sup> Repeat or more) Performance Standard Failures allocated to Non-Performance Category C that arise in the relevant Month
$N_{DUR}$	=	The total number of unrectified Performance Standard Failures and Repeat (2 <sup>nd</sup> Repeat or more) Performance Standard Failures allocated to Non-Performance Category D that arise in the relevant Month

Figure 1: The Performance Management Framework Flow Chart

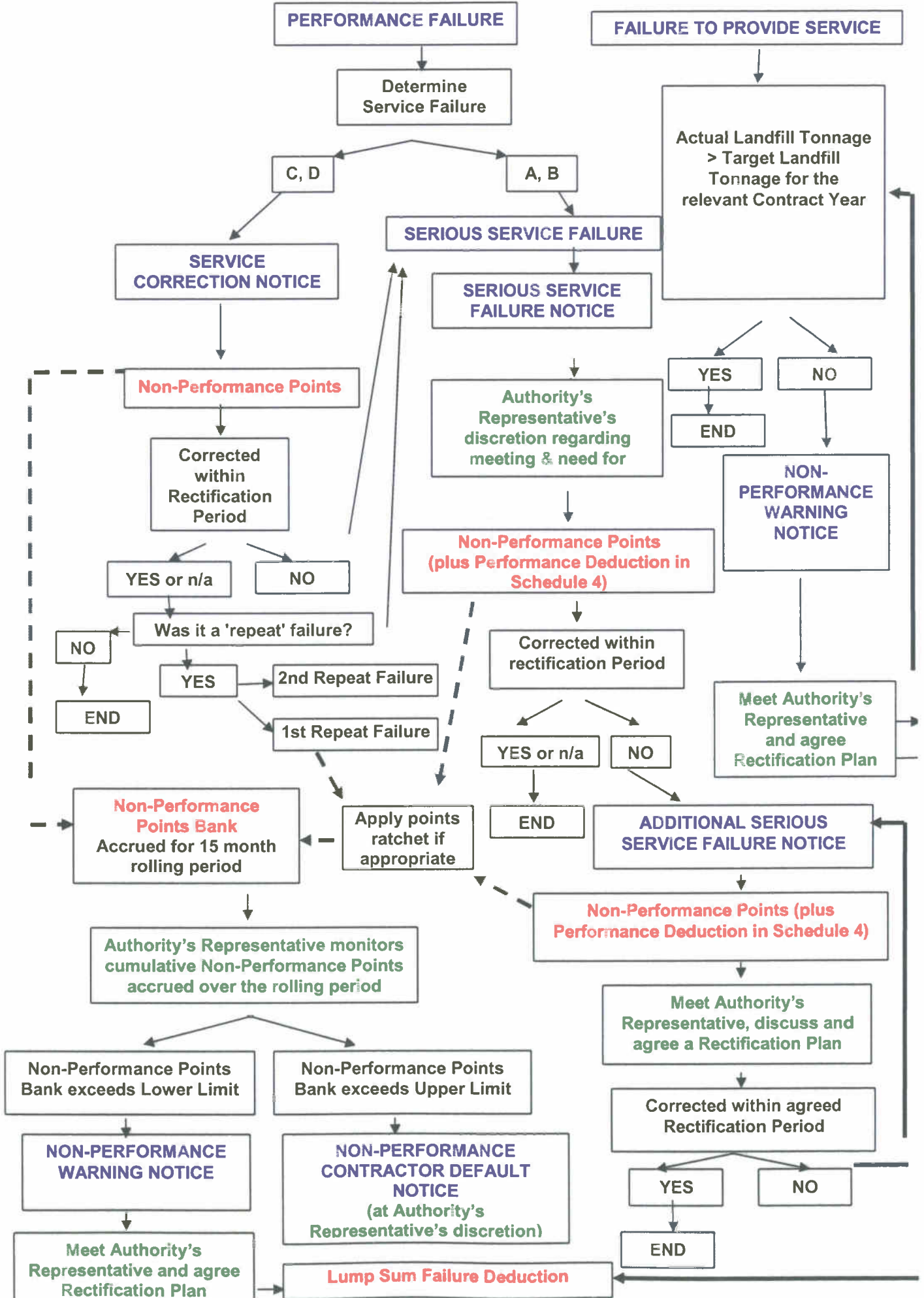


Table 6: Performance Matrix

To be applied to the Facilities operated by the Contractor under this Contract.

Performance Standard cross-reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
A	Except where expressly covered elsewhere in the Performance Management System, manage waste reception, treatment, transfer and disposal services in accordance with the Authority Requirements and Service Delivery Plan.	5	PO	<p>EB: Written communication records between the Parties.</p> <p>MU: Except where expressly covered elsewhere in the Performance Management System, each failure to comply with a Method Statement which is not rectified within 5 Business Days of written notification of such failure by the Authority's Representative setting out in reasonable detail the nature of such failure, or other such additional rectification time as reasonably determined by the Authority's Representative.</p>	D
B	Except where expressly covered elsewhere in the Performance Management System, produce and update the Method Statements, plans or	4	PO	<p>EB: Receipt and approval of the plans and procedures, and updates thereof as necessary, in accordance with the Contract</p> <p>MU: Each Method Statement, plan or procedure, and updates thereof as</p>	B

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	procedures required under the Contract			necessary, not submitted in accordance with the Contract	
C	Except where expressly covered elsewhere in the Performance Management System, fail to notify the Partnership of a Performance Standard Failure	4	PO	EB: Audits, data systems, customers, visual inspections, site diary MU: Per failure coming to the attention of the Contractor that is not notified to the Authority within appropriate timeframe.	B
D	Except where expressly covered elsewhere in the Performance Management System, adhere to an agreed Rectification Plan	4	PO	EB: Adherence to the agreed rectification plan in accordance with the Contract MU: Each failure to adhere to a rectification plan once agreed with the Authority.	B
PR3.2 Environmental Management					
3.4	From the Key Facility Services	7	A	EB: Records demonstrating the implementation and application of the	A

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	Commencement Date the Contractor has acted in accordance with the Carbon Management Plan.			Carbon Management Plan  MU: Each year where the service is not operated in accordance with the Carbon Management Plan.	
3.5	Contractor has complied with the Environmental Impact Control Plan.	4	M	EB: Records demonstrating the implementation and application of the Environmental Impact Control Plan.  MU: Each month where the service is not operated in accordance with the Environmental Impact Control Plan.	C
3.7	Contractor has stored Contract Waste in designated Site storage facilities			EB: Records in Site Diary and/or CCTV footage.  MU: Each occurrence where Contractor has failed to store Contract Waste in designated on-site storage facilities.	D
3.8	The Contractor has ensured that the agreed	3	D	EB: Physical inspections and/or records in Site diary	C

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	<p>zone at each Site as set out in the Service Delivery Plan including the access road, meet the cleanliness standards for litter at 4pm on each day.</p> <p>If a period is required by the Environment Agency or other Relevant Authority for the purposes of gathering evidence, failure shall be measured on each occasion that waste is not removed within one (1) hour of being authorised to do so.</p>			<p>MU: Each 24 hour period during which the Contractor has failed to meet the litter and flytipped cleanliness standards.</p>	
3.9	<p>The Contractor has notified the Authority's Representative within one (1) hour of becoming aware of a fly tipping incident within the agreed zone at each Site and</p>	3	PO	<p>EB: Written communication records between the Parties.</p> <p>MU: Each occurrence where the Contractor has failed to notify the Authority's Representative and act accordingly</p>	D

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	has acted in accordance with the required action as directed by the Authority's Representative acting reasonably.				
3.10(a)	The Contractor has contained and controlled any fly-tipped waste within the agreed zone at each Site within 20 minutes of the waste being observed or notified by the Authority.	2	PO	EB: Physical inspections and/or records in Site diary MU: Each occurrence where Contractor has failed to contain and control litter or fly tipped waste within defined timescale.	B
3.10(b)	The Contractor has removed and disposed of any fly-tipped waste at each Site within 3 hours of the waste being observed or notified by the Authority. If a longer period is	3	PO	EB: Physical inspections and/or records in Site diary, and evidence of authorisation by Environment Agency or other Relevant Authority if relevant MU: Each occurrence where Contractor has failed to remove and dispose of litter or fly	D



Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	required by the Environment Agency or other Relevant Authority for the purposes or gathering evidence, failure shall be measured on each occasion that waste is not removed within one (1) hour of being authorised to do so.			tipped waste within defined timescale.	
<b>PR3.3 Operational Interface</b>					
3.13	The Contractor has implemented the Vehicle Acceptance Procedure.	N/A	PO	EB: Services carried out in accordance with Method Statement 5.1 and Schedule 31. MU: Each occurrence where the Vehicle Acceptance Procedure is not implemented.	D
3.14	Vehicles delivering Contract Waste have achieved the required turnaround time of no greater than 20 minutes, excluding instances outside the	N/A	PO	Records of turnaround times for vehicles delivering Contract Waste. MU: Each occurrence where a vehicle turnaround time at a Facility exceeds the defined turnaround time.	C

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	control of the Contractor, or a where a vehicle driver has asked for assistance in unloading Contract Waste, or as stated in the Vehicle Acceptance Protocol.				
3.15	The Contractor has provided reasonable assistance in unloading Contract Waste within 20 minutes of it being requested by a driver of a vehicle delivering Contract Waste.	1	PO	EB: Justified notification by a vehicle driver, validated through CCTV where necessary.  MU: Each justified notification by a vehicle driver, validated through CCTV where necessary, of a failure to provide assistance in unloading contract waste within the defined time of it being requested.	D
3.16	The Contractor has prevented the queuing of vehicles delivering Contract Waste on the public highway at the site entrance for longer than 20	2	PO	EB: CCTV system records and/or visual inspection.  MU: Each occurrence that the Contractor has not prevented queuing of vehicles delivering Contract Waste onto the public	C

Schedule 2 – Authority’s Requirements

Performance Standard reference to Authority’s Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	minutes when endeavouring to access the site except where such delay arises from activities outside the control of the Contractor.			highway at the site entrance for longer than 20 minutes, by reference to the CCTV system.	
3.19	<del>The Contractor has developed and installed a computerised card entry system and data handling system from the Key Facility Services Commencement Date</del>	5	A	Evidence of availability of computerised card entry and data handling system. MU: <del>Each month that the Contractor does not have a computerised card entry and data handling system installed at each Site under this contract.</del>	A
3.19	From the Key Facility Services Commencement Date the Contractor has ensured that a computerised card entry system and data handling system is available at all times for all parties.	1	PO	EB: Records of availability of computerised card entry and data handling system. MU: Each occurrence that the Contractor does not have an operational computerised card entry and data handling system at each Site from the Key Facility Services Commencement Date.	D

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.20 and 3.21	<p>Each load of Contract Waste and Third Party Waste brought to the Sites and leaving the Sites has been inspected, monitored, weighed and as a minimum the relevant information, as requested by PR3.20, has been electronically recorded or in the event of weigh bridge breakdown has recorded such data using the approved manual data recording system</p>	n/a	PO	<p>EB: Complete electronic or manual records with the information specified in PR3.3.</p> <p>MU: Each occurrence (vehicle load) where Contract and Third Party Waste has not been inspected, monitored, weighed and had the specified data recorded either electronically or manually.</p>	B
3.21	<p>The Contractor has implemented the manual recording system during any breakdown of a weighbridge installation, and arranged for all</p>	1	PO	<p>EB: Site diary and/or incomplete records of scans in management information system.</p> <p>MU: Each occurrence of the manual recording system not being implemented during any breakdown of a weighbridge installation, or evidence that manual tickets have not been electronically</p>	A

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.23	<p>manual tickets to be electronically scanned into the management information system.</p> <p>The Contractor has reinstated the weighbridge within three (3) days of implementing the manual recording system except where calibration in accordance with Trading Standards requirements cannot be obtained within three (3) days.</p>	3	D	<p>scanned into the management information system.</p> <p>EB: Site diary and/or records in management information system.</p> <p>MU: Each day after the defined timescale that the weighbridge has not been reinstated</p>	D
3.24	<p>The Contractor has issued an electronic copy of the weighbridge ticket to each vehicle which transports Contract Waste and residues to and from any of the Facilities and/or Sites.</p>	N/A	PO	<p>EB: Records in management information system. and/or random checking by the Authority's Representative.</p> <p>MU: Each occurrence of the Contractor not issuing a weighbridge ticket to each vehicle which transports Contract Waste and residues to and from any of the Facilities and/or Sites.</p>	D

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.24	The Contractor has retained electronic copies of the weighbridge tickets for seven years	N/A	PO	<p>EB: Regular audits of the system and/or provision of records on request of the Authority's Representative.</p> <p>MU: Each occurrence that an incomplete electronic set of weighbridge tickets for a Contract Month is identified, where such Contract Month is within the preceding 7 years.</p> <p>Note: This standard shall not be applied retrospectively before that day that the incomplete data set is identified, or re-applied again with respect to the same data set.</p>	A
3.25 - 3.27	The Contractor has submitted all reports in accordance with Schedule 16	3	PO	<p>EB: In accordance with the Contract.</p> <p>MU: Each occurrence of a complete report not being submitted in accordance with the defined schedule.</p>	C
3.28	The Contractor shall upon a reasonable written request from the Authority provide information within an appropriate timescale	3	PO	<p>EB: Written communication records between the Parties.</p> <p>MU: Each occurrence that the Contractor fails to provide information to support the Monthly and Annual Service Reports</p>	D

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.29	to support the Monthly and Annual Service Reports The Contractor shall provide within 5 Business Days of a request from the Authority information to support the Authority's internal and external public relations activities in connection with the Project.	3	PO	Written communication records between the Parties. MU: Each occurrence where the Contractor has not provided the Authority with information to support the Authority's internal and external public relations activities in connection with the Project.	D
3.30	The Contractor shall attend fortnightly meetings with the Authority and other regular meetings as set out in the Contractor's Delivery Plan. The Contractor shall also attend all other meetings, as reasonably requested with at least 5	N/A	PO	EB: Meeting attendance records and/or written communication records between the Parties. MU: Each occurrence where the Contractor has not attended the monthly meetings or other meetings as set out in the Contractor's Delivery Plan or other meetings, as reasonably requested with at least five (5) Business Days notice (or ten (10) in the case of a Liaison Procedure meeting) or other	D

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	<p>Business Days notice by the Authority except in respect of Liaison Procedure meetings which require at least ten (10) Business Days notice to be provided and other timeframes as set-out in the Contract, at which the Service is being discussed.</p>			<p>timeframes as may be set out in the Contract by the Authority, at which the Services are being discussed.</p>	
<p>3.31 and 3.32</p>	<p>From the Key Facility Services Commencement Date, the management information system as a minimum records the information required to produce all the reports required under Schedule 16. Prior to this, from the Interim Services Commencement Date</p>	<p>4</p>	<p>PO</p>	<p>Regular audits of the system in accordance with the Contract, and/or random checking by the Authority's Representative.</p> <p>MU: Each occurrence that an incomplete data set is identified</p> <p>Note: This shall not be applied retrospectively before that day that the incomplete data set is identified</p>	<p>C</p>



Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	until the Key Facility Services Commencement Date, maintain the management information system in operation on the day prior to Interim Service Commencement.				
3.33 (a)	From the Key Facility Services Commencement Date the management information system is maintained in accordance with Good Industry Practice.	3	PO	EB: Regular audits of the system in accordance with the Contract, and/or random checking by the Authority's Representative.  MU: Each occurrence in which the MIS is not maintained in accordance with Good Industry Practice.	A
3.33 (b)	From the Key Facility Services Commencement Date, the management information system allows unfettered electronic access by the Authority and Authority personnel, on	3	PO	The Partnership has notified the Contractor of a restriction in access, recording the time, date and type of restriction.  MU: Each occurrence where the Partnership does not have access to the MIS or equivalent information on spreadsheet.	A

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	<p>a real time industry-standard machine-readable format provided that if the machine readable format is not available then the Contractor will provide the Authority, as soon as reasonably practicable, with spreadsheets containing the relevant information. Prior to this from the Interim Service Commencement Date until the Key Facility Services Commencement Date provide access to the management information system in operation on the day prior to Interim Service Commencement Date.</p>				
3.36	A nominated contact has been available for	1	PO	EB: Authority communication records of date and time when nominated contact	A

Schedule 2 – Authority’s Requirements

Performance Standard reference to Authority’s Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	<p>direct contact within 1 hour of initial contact by the Authority’s</p> <p>Representative twenty four (24) hours a day throughout the period from the date of the Acceptance Test Certificate to the expiry of the Contract.</p>			<p>was attempted but failed.</p> <p>MU: Each occurrence in which a nominated Contractor contact has not been available within an hour of initial contact being attempted.</p>	
3.38	<p>The Contractor has completed the annual emergency call out procedures exercise with Authority involvement.</p>	5	A	<p>EB: Records showing response to any emergency call out procedures exercise (site diary or written records).</p> <p>MU: Failure to test the emergency call out procedures upon request, with Authority involvement, on an annual basis.</p>	B
3.39	<p>When required, the Contractor has assisted emergency planning exercises carried out by the Royal Borough of</p>	2	PO	<p>EB: Records showing assistance given in emergency exercise (site diary or written records).</p> <p>MU: Each occurrence where the Contractor</p>	A

Schedule 2 – Authority’s Requirements

Performance Standard reference to Authority’s Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	Kingston Upon Thames, London Borough of Merton, London Borough of Sutton and the London Borough of Croydon (up to a maximum of 4 per annum in aggregate)			has failed to assist in emergency planning exercise carried out by the Partnership or its constituent authorities.	
3.42	The Contractor has complied with the Community Liaison Plan in accordance with the Contract	N/A	PO	EB: Records demonstrating the implementation and application of Method Statement 5.7. MU: Each occurrence where the Contractor does not comply with the Community Liaison Plan	B
3.44	The Contractor has provided updated content for the virtual visitor centre in accordance with the Contract.	5	PO	EB: Records of provision of content to the Authority (correspondence with Authority’s Representative or summary in Monthly Report). MU: Each occurrence where the Contractor fails to provide updated content for the virtual visitor centre upon reasonable request from the Authority’s Representative.	C

Schedule 2 – Authority’s Requirements

Performance Standard reference to Authority’s Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.46	From the Key Facility Services Commencement Date the Contractor has provided guided tours of the Key Facility in accordance with the Contract	5	PO	EB: Communications with Partnership and/or user feedback MU: Each visit cancelled due to Contractor default except where such cancellation is due to circumstances outside of the Contractor’s control.	C
3.48	The Contractor has acted in accordance with the approved complaints procedures within four (4) hours of receiving a complaint	2	PO	EB: Complaints log to monitor complaint management progress. MU: Each occurrence that the Contractor does not comply with the approved complaints procedure within the defined timescales.	C
<b>PR3.4 Facilities and Contract Management</b>					
3.53	The Contractor has complied with the Monthly Schedule of Programmed Maintenance and completed all Programmed Maintenance identified in the plan	5	M	EB: Written record of Monthly Schedule of Programmed Maintenance and written record of maintenance carried out in the Contract Month within the Monthly Service Report. MU: Failure to complete all Programmed Maintenance as per the Monthly Schedule of Programmed Maintenance no later than	A

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	no later than one Contract Month after the programmed maintenance date.			one Contract Month after the programmed maintenance date.	
3.56	The Contractor has implemented and complied with the Mobilisation Plan.	5	W	EB: Records demonstrating the implementation and application of Method Statement 1.10 . MU: Failure to comply with the Mobilisation Plan.	B
3.57	The Contractor has complied with the Contingency Plan	1	PO	EB: Records demonstrating the implementation and application of Method Statement 6.3 as appropriate. MU: The Contractor has failed to comply with the Contingency Plan.	A
3.59	The Contractor has notified the Authority's Representative no less than forty eight (48) hours before implementing the Contingency Plan or in circumstances mitigating against	1	PO	EB: Written record of notification sent to Authority's Representative prior to implementation. MU: Except in the case of an emergency, each occurrence the Contractor has failed to notify the Authority's Representative, within the defined time period, that the Contingency Plan will be implemented, up to a maximum of forty eight (48) hours.	D

Schedule 2 – Authority’s Requirements

Performance Standard reference to Authority’s Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	forty eight (48) hours notice, the Contractor shall report to the Partnership in reasonable detail the reasons for not providing forty eight (48) hours notice within four (4) hours of such contingency event occurring				
3.60 (a)	The Contractor has implemented an appropriate QMS from the Interim Service Commencement Date.	7	M	EB: Proof of evidence that system implemented and in accordance with the Method Statement 6.7. MU: The Contractor has not implemented from the Interim Service Commencement Date	B
3.60 (b)	The Contractor has certified the QMS to ISO9001 within 9 months of the Key Facility Services Commencement Date.	7	M	EB: Provision of certificate to Authority’s Representative. MU: The Contractor has not certified the QMS within required timeframe.	B
3.60	The Contractor has operated the QMS in accordance with its	5	M	EB: Records demonstrating the implementation and application of Method Statement 6.7.	D

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	terms.			MU: The Contractor has failed to operate the QMS in accordance with its terms.	
3.62 (a)	The Contractor has implemented an appropriate EMS from the Interim Service Commencement Date.	7	M	EB: Proof of evidence that system implemented and in accordance with Method Statement 6.7. MU: The Contractor has not implemented an appropriate EMS from the Interim Service Commencement Date	B
3.62 (b)	The Contractor has certified the EMS to ISO14001 within 9 months of the Key Facility Services Commencement Date.	7	M	EB: Provision of certificate to Authority's Representative. MU: The Contractor has not certified the EMS within required timeframe	B
3.62	The Contractor has operated the EMS in accordance with its terms.	5	M	EB: Records demonstrating the implementation and application of Method Statement 6.7. MU: The Contractor has failed to operate the EMS in accordance with its terms.	D
3.64(a)	The Contractor has reported all RIDDOR incidents at facilities	2	D	EB: Written record of all incidents in Monthly Service Report contains all details of reportable incidents and date and time	B



Schedule 2 – Authority’s Requirements

Performance Standard reference to Authority’s Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
	under this Contract to the Health and Safety Executive.			reported to relevant body.  MU: The number of reportable incidents the Contractor has failed to report to the Health and Safety executive.	
3.64 (c)	Contractor has provided its employees with the necessary personal protective equipment and uniforms in accordance with Good Industry Practice	2	W	EB: Physical inspection and related records of any non-conformance in Site Diary.  MU: Each Contractor employee that does not have the necessary personal protective equipment and uniforms in accordance with Good Industry Practice.	B
3.64 (d)	The Contractor has ensured that suitable first aid equipment is provided to all Personnel	2	D	EB: Physical inspection and related records of any non-conformance in Site Diary.  MU: Each period where first aid equipment is not available to all Contractor personnel.	C
3.64(e)	The Contractor has all health and safety records and documentation relevant to the Facilities maintained and up to date.	4	M	EB: Documents are available to the Authority’s Representative when requested.  MU: The Contractor does not have all health and safety records and documentation maintained and up to date.	C

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.65 and 3.66	The Contractor has reported to the Authority within 2 Business Days any RIDDOR reportable accident at a Facility under this Contract, and within 1 Business Day accidents involving a member of public.	3	PO	EB: Written communication records between the Parties.  MU: Each reportable incident involving a member of the public or a RIDDOR accident the Contractor has failed to report to the Authority within the defined time period.	A
3.67	The Contractor has carried out a detailed fire assessment of all Facilities and operations on the Sites within one (1) month of the Key Facility Services Commencement Date.	6	A	EB: Documents are available to the Authority's Representative when requested.  MU: The Contractor has failed to carry out a detailed fire assessment of all Facilities and operations on the Sites within three (3) months of the Key Facility Services Commencement Date	A
3.68	The Contractor has carried out the Services in a manner consistent with the fire strategy for the Sites and Facilities.	N/A	PO	EB: Site records and audits,  MU: Each occurrence of the Contractor failing to carry out the Service in a manner consistent with the fire strategy for the Sites and Facilities.	A

Schedule 2 – Authority’s Requirements

Performance Standard reference to Authority’s Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.76	The Contractor has provided the Authority with any information the Authority reasonably requests in relation to its employees providing such do not breach data protection duties of the Contractor; except where explicitly covered elsewhere under the performance standards.	5	PO	EB: Documents are available to the Authority’s Representative when requested.  MU: Each occurrence of the Contractor failing to provide to the Partnership any information reasonably requested in relation to its employees.	D
3.77	The Contractor has ensured that its employees are properly dressed in appropriate uniforms and work wear, including identification badges, while working in the Facilities.	2	W	EB: Physical inspection and related records of any non-conformance in Site Diary.  MU: Each occurrence where a member of the Contractor staff is not dressed in appropriate uniform or wearing identification badges.	D

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.79	The Facilities and designated areas at each Site have sufficient clear, visible and legible signage to safely divert authorised users around the Site and such signage has been kept up to date and has been reasonably free from damage.	5	M	EB: Physical inspection and related records of any non-conformance in Site Diary. MU: Each site where signs do not meet the performance standard.	D
3.80	The Contractor has maintained the security of both Sites at all times	2	D	EB: Records demonstrating the implementation and application of Method Statement 6.4. MU: Each site where security does not meet the performance standard.	B
3.86	The Authority's Representative has remote live access to an operational CCTV system from the Key Facility Services Commencement Date.	4	PO	EB: The Partnership has notified the Contractor of a restriction in access, recording the time, date and type of restriction MU: Each occurrence where the Contractor fails to provide the Authority's	C

Schedule 2 – Authority's Requirements

Performance Standard reference to Authority's Requirements	Performance Standard	Rectification Category (ref: Table 1)	Monitoring Frequency (ref: Table 2)	Evidence Base (EB) and Monitoring Units (MU)	Non-Performance Category
3.89	Each of the Contractor's vehicles have complied with the Waste Transport Plan in terms of route restrictions and/or netting/sheeting of all vehicles	N/A	PO	<p>Representative with remote live access to an operational CCTV system at each Site.</p> <p>EB: Records demonstrating the implementation and application of Method Statement 6.5</p> <p>MU: Each occurrence where a vehicle fails to comply with the relevant Method Statement, excluding excusing events.</p>	B
3.92	The Contractor has complied with the Offtake Plan from the Key Facility Services Commencement Date.	N/A	PO	<p>EB: Records demonstrating the implementation and application of Method Statement 3.5.</p> <p>MU: Each occurrence where the Contractor does not comply with the Offtake Plan.</p>	C
PR4: Handback Requirements.					
4.2	The Contractor has complied with the Handback Plan.	5	W	<p>EB: Records demonstrating the implementation and application of Method Statement 7 as relevant.</p> <p>MU: Each week or part thereof that the Contractor does not comply with the Handback Plan.</p>	B

**Schedule 2 – Authority's Requirements**

SCHEDULE 2

AUTHORITY'S REQUIREMENTS

PART 3: DEFINITIONS

The following definitions are used in this Schedule:

Ad Hoc Waste	means Municipal Waste that the Contractor from time to time agrees to manage on behalf of the Authority under the Contract that is not included within the definition of Contract Waste;
Annual Schedule of Programmed Maintenance	means the schedule to be submitted by the Contractor on an annual basis containing the information prescribed in PR3.4;
Annual Service Report	means the report to be submitted by the Contractor on an annual basis containing the information prescribed in PR3.3;
Authorised Vehicle	means the vehicles used to deliver Contract Waste that have been authorised in accordance with the Vehicle Acceptance Procedure;
BREEAM	means the Building Research Establishment environmental assessment method;
CEEQUAL	means the Civil Engineering Environmental Quality Assessment and Award Scheme;
Contract Waste Category A	means the type of waste identified as Contract Waste Category A in the Authority's Requirements which the Partnership or a Authority Related Party delivers to the Contractor pursuant to this Agreement and which the Contractor is, subject to the Waste Acceptance Protocol, obliged to accept and manage in consideration of the Tonnage Based Element (as defined in Schedule 4 (Payment Mechanism));
Contract Waste Category B	means the type of waste identified as Contract Waste Category B in the Authority's Requirements which, upon the written request from the Project Director (such request stipulating the waste type and duration of such request), the Contractor is, subject to the Waste Acceptance Protocol, obliged to accept and dispose in consideration of the Contract Waste Category B Processing Cost (as defined in Schedule 4 (Payment Mechanism));
Contract Waste Category C	means the type of waste identified as Contract Waste Category C in the Authority's Requirements, which upon the written request from the Project Director (such request stipulating the waste type and duration of such

	request), the Contractor is, subject to the Waste Acceptance Protocol, obliged to accept and manage in consideration of the Contract Waste Category C Processing Costs;
Contingency Delivery Point	means the point of discharge of Contract Waste as defined within the Contingency Plan;
COSHH	means Control of Substances Hazardous to Health Regulations 2002;
Enquiries and Complaints Plan	means the plan developed in compliance with the requirements prescribed in PR3.3;
Environmental Impact Control Plan	means the plan to be developed by the Contractor in accordance with PR3.2;
Environmental Management System or EMS	means the system prescribed in PR1 and PR3.4;
European Waste Catalogue	means the list of waste descriptions established by Decision 2000/532/EC of the European Commission;
Evidence Base or EB	means the example Evidence Base used to demonstrate compliance with each Performance Standard, as listed in Table 6 of Part 2 of this Schedule;
Lower Limit Threshold	means the relevant level of Non-Performance Points accrued in the Non-Performance Points Bank as stipulated in Table 5 of Part 2 of this Schedule;
Lump Sum Failure Deduction	means each instance of a Non-Performance Warning Notice being issued to the Contractor by the Authority;
Monthly Commissioning Progress Report	means the report to be submitted by the Contractor on a monthly basis containing the information prescribed in PR1, paragraph 2.6;
Monthly Construction Progress Report	means the report to be submitted by the Contractor on a monthly basis containing the information prescribed in PR1, paragraph 1.45;
Monthly Schedule of Programmed Maintenance	means the schedule to be submitted by the Contractor on a monthly basis containing the information prescribed in PR3.4;
Monthly Service Report	means the report to be submitted by the Contractor on a monthly basis containing the information prescribed in PR3.3;
Monitoring Frequency	means the period for monitoring and reporting on Performance Standard Failures as prescribed in Table 2 of Part 2 of this Schedule;
Monitoring Units or MU	means the example unit of measurement for each single Performance Standard Failure. as set out in Table 2 of Part 2 of this Schedule;
Non-Performance Contractor	means where the Contractor exceeds the Upper Limit



Default Notice	Threshold within the Non-Performance Points Bank for cumulative Performance Standard Failures over a fifteen (15) month rolling period, then the Authority may at their discretion issue a Non-Performance Contractor Default Notice under this Contract;
Non-Performance Points	means the points incurred for each Performance Standard Failure according to the relevant Non-Performance Category. Points are accrued into the Non-Performance Points Bank.
Non-Performance Points Bank	means the cumulative number of points accrued over a rolling 15-month period, and used as the basis for issuing Non-Performance Warning Notices and possibly a Non-Performance Contractor Default Notice.
Non-Performance Warning Notice	means a written notice issued at the discretion of the Authority pursuant to paragraphs 1.8.1 and 1.8.3 of Part 2 of this Schedule;
Non-Performance Category	means the relevant category of Non-Performance Points accrued for any particular Performance Standard Failure as set out in Table 1 of Part 2 of this Schedule, and assigned to each Performance Standard in Table 6 of Part 2 of this Schedule;
Normal Monitoring Point	means the latest time a Performance Standard should be measured if the Contractor is complying with the Monitoring Frequency for that Performance Standard as set out in the Table 2 (Monitoring Frequency) of Part 2 of this Schedule. For any Performance Standard where the Monitoring Frequency is 'per occurrence' the Normal Monitoring Point shall be the time at which the Contractor ought reasonably to have been aware of the failure to meet the Performance Standard;
Performance Management Framework	means the framework prescribed in Figure 1 of Part 2 of this Schedule;
Performance Requirement or PR	means each performance requirement of Part 1 of this Schedule;
Performance Standard	means the Partnership's Requirements that are subject to the Performance Management Framework, as set out in Table 6 of Part 2 of this Schedule.
Performance Standard Failure	means each event measured in accordance with Part 2 of this Schedule where the Contractor fails to meet a Performance Standard;
Primary Delivery Point	means the points of discharge of Contract Waste as defined in PR3.3;
Programmed Maintenance	means the maintenance of the Facilities prescribed in PR3.4;
Rectification Period	means the period in which the Contractor is required to

	rectify the failure (if capable of rectification) before Non-Performance Points are again incurred, as set out in Section 1.4 of Part 2 of this Schedule;
Rectification Plan	means the written plan which the Authority may at its discretion require the Contractor may be required to submit following any of the following occurrences; any Performance Standard Failure which has not been rectified within the first or subsequent Rectification Period, issue of a Serious Service Failure Notice, or issue of a Non-Performance Warning Notice, as set out in Part 2 of this Schedule;
Repeat Failure	means a Performance Standard Failure incurred pursuant to Section 1.5 of Part 2 of this Schedule;
Quality Management System or QMS	means the system prescribed in PR1 and PR3.4;
Rejected Load	means a load rejected in accordance with the Waste Acceptance Protocol;
RIDDOR	means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
Serious Service Failure	means a Performance Standard Failure against a Non-Performance category A or B Performance Standard, or a category C or D failure pursuant to paragraphs 1.4.3 or 1.5.2 of Part 2 of this Schedule;
Serious Service Failure Notice	means the notice issued by either the Contractor or the Authority to record and register a Performance Standard Failure;
Service Correction Notice	means the notice issued by either the Contractor or the Authority to record and register a Performance Standard Failure of a category C or D Performance Standard, as set out in Part 2 of this Schedule;
Upper Limit Threshold	means the relevant level of Non-Performance Points accrued in the Non-Performance Points Bank as stipulated in Table 5 of Part 2 of this Schedule;
Vehicle Acceptance Procedure	means the agreed procedure developed by the Contractor for the processing of Authorised Vehicles and the management of vehicles which are not Authorised Vehicles;
Waste Acceptance Protocol	means the agreed procedure set-out in Schedule 31 (Waste Acceptance Protocol) for the acceptance or rejection of all waste received at the Facilities;
Weekly Service Report	means the report to be submitted by the Contractor on a weekly basis containing the information prescribed in PR3.3;
Works Quality Standards	means the standards prescribed in Appendix A.




**SCHEDULE 4**  
**PAYMENT MECHANISM**


# **South London Waste Partnership**


## **Schedule 4 - Payment Mechanism**

## PAYMENT MECHANISM SCHEDULE

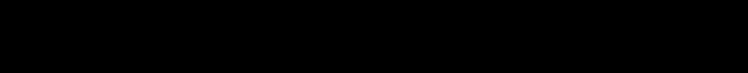
1.1 The following definitions are used in this Schedule:

<b>Accepted</b>	means the Contractor is able to lawfully accept Contract Waste at the Delivery Point or Contingency Delivery Point and where delivered by the Authority in fact does accept it (and the terms Accept and Contract Waste Accepted shall be construed accordingly);
<b>Active Waste</b>	means waste subject to Landfill Tax at the standard rate for active waste
<b>Actual Diversion Rate (<math>A_D</math>)</b>	as defined in paragraph 7.5;
<b>Actual Diversion Rate (<math>A_{Dm-1}</math>)</b>	as defined in paragraph 6.5;
<b>Ad Hoc Waste</b>	has the meaning given to it in paragraph xi of Schedule 2 (Authority's Requirements);
<b>Ad Hoc Waste Payment</b>	means the amount calculated in accordance with paragraph 8;
<b>Adjusted Minimum Tonnage</b>	means the amount calculated in accordance with paragraph 5.4;
<b>Agreed Abatement</b>	has the meaning given to it in Schedule 21 (Change Protocol);
<b>Annual Base Payment Reconciliation</b>	means the amount calculated in accordance with paragraph 5;
<b>Annual Base Payment Forecast</b>	means the amount calculated in accordance with paragraph 4.3;
<b>Annual Landfill Reconciliation Payment</b>	means the amount calculated in accordance with paragraph 7;
<b>Base Case Third Party Income Threshold</b>	
<b>Base Payment Indexation Factor</b>	means the amount calculated in accordance with paragraph 19.1;
<b>Base Price Band</b>	means the tonnage ranges set out in Appendix 1;
<b>Base Price per Tonne</b>	means the relevant price per tonne for the relevant Base

	Price Band as set out in Appendix 1;
<b>Contingency Delivery Point</b>	has the meaning given to it in Schedule 2 (Authority's Requirements);
<b>Contract Diversion Rate</b>	means the Contract Diversion Rate to be met by the Contractor in each Contract Year set out in Appendix 3;
<b>Contract Performance Bonus</b>	means the amount calculated in accordance with paragraph 11;
<b>Contract Waste Accepted</b>	means all Contract Waste accepted by the Contractor in accordance with the Waste Acceptance Protocol;
<b>Contract Waste Not Accepted</b>	means all Contract Waste not accepted by the Contractor ;
<b>Core Contract Waste</b>	has the meaning given to it in paragraph xi of Schedule 2 (Authority's Requirements);
<b>Delivery Point</b>	means a Primary Delivery Point or a Contingency Delivery Point;
<b>Diversion Deduction for biodegradable municipal waste (BMW)</b>	means the amount calculated in accordance with paragraph 13;
<b>Diversion Deduction Rate</b>	
<b>Excess Revenue Share</b>	means the amount calculated in accordance with paragraph 12;
<b>Excess Substitute Waste Payment</b>	means the amount calculated in accordance with paragraph 17;
<b>Excess Third Party Income</b>	means the amount calculated in accordance with paragraph 12.6;
<b>Forecast Specialist Contract Waste</b>	means the forecast tonnages of Specialist Contract Waste set out in Appendix 2 in each Contract Year;
<b>Forecast Core Contract Waste</b>	means the forecast tonnages of Core Contract Waste set out in Appendix 2 in each Contract Year;
<b>Full Indexation Factor</b>	means the amount calculated in accordance with paragraph 19.2;
<b>High Value Change</b>	has the meaning given to it in Schedule 21 (Change Protocol);

<b>Inactive Waste</b>	means waste subject to Landfill Tax at the reduced rate for inactive waste;
<b>Index Publication Date</b>	means the date on which the Index is published;
<b>Indexed</b>	means, subject to indexation, in accordance with paragraph 19;
<b>Low Value Change</b>	has the meaning given to it in Schedule 21 (Change Protocol);
<b>Maximum Tonnage</b>	means the maximum tonnage of Contract Waste Accepted which may be accepted by the Contractor in a Contract Year as set out in Appendix 2;
<b>Medium Value Change</b>	has the meaning given to it in Schedule 21 (Change Protocol);
<b>Mileage Deduction</b>	means the amount calculated in accordance with paragraph 15;
<b>Mileage Rate</b>	
<b>Minimum Tonnage</b>	means the Minimum Tonnage to be provided by the Authority in each Contract Year as set out in Appendix 2;
<b>Monthly Base Payment</b>	means the amount calculated in accordance with paragraph 4;
<b>Monthly Landfill Tax Payment</b>	means the amount calculated in accordance with paragraph 6;
<b>Monthly Unitary Charge</b>	means the amount calculated in accordance with paragraph 3;
<b>NNDR</b>	means National Non-Domestic Rates;
<b>Non Acceptance Deduction</b>	means the deduction calculated in accordance with paragraph 16;
<b>Other Payment</b>	means the amount calculated in accordance with paragraph 9;
<b>Overall Deduction Cap</b>	means the amount calculated in accordance with paragraph 20;



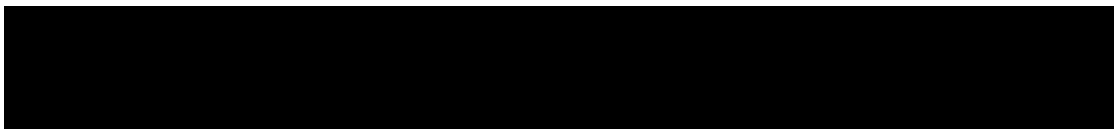
<b>Performance Deduction</b>	means the amount calculated in accordance with paragraph 14;
<b>Performance Deduction Cap</b>	
<b>Performance Management Framework</b>	means the framework set out in Part 2 (Performance Management Framework) of Schedule 2 (Authority's Requirements);
<b>Primary Delivery Point</b>	means the point of discharge of Contract Waste as defined within Schedule 2 (Authority's Requirements);
<b>Specialist Contract Waste</b>	has the meaning given to it in paragraph xi of Schedule 2 (Authority's Requirements);
<b>Stretch Target Diversion Rate</b>	means, in respect of the relevant Contract Year, the diversion rate as set out in Appendix 3 to this Schedule 4 (Payment Mechanism);
<b>Substitute Waste Payment</b>	means the amount calculated in accordance with paragraph 17;
<b>Substitute Waste Clawback Payment</b>	means the amount calculated in accordance with paragraph 18;

## **2 Interpretation**

- 2.1 Unless otherwise provided, references in this Schedule to Clauses and Schedules shall be references to the relevant Clauses and Schedules in the Contract.
- 2.2 Unless otherwise provided, references to parts, paragraphs, tables and appendices shall be references to parts, paragraphs, tables and appendices in this Schedule.
- 2.3 The Parties agree that without prejudice to the express provisions of the Contract, this Schedule shall form the sole basis of payment by the Authority to the Contractor.
- 2.4 VAT properly chargeable on any component of the Unitary Charge shall be payable as set out in Clause 49 (VAT) of the Contract.
- 2.5 Where the symbol  $\Sigma$  is used in formulae it shall have the meaning 'sum of'.
- 2.6 'm' shall relate to Contract Months.
- 2.7 'y' shall relate to Contract Years.
- 2.8 Reference to a value being 'pro-rated in a partial Contract Year' means that that value should be multiplied by the number of days in the partial Contract Year and then divided by 365.
- 2.9 This Schedule (Payment Mechanism) shall be read in conjunction with the Contract and the Authority's Requirements.

### 3 Monthly Unitary Charge Payment ( $UC_m$ )

- 3.1 The Monthly Unitary Charge Payment in respect of each Contract Month shall be calculated in accordance with the following formula:



where:

$UC_m$	The Monthly Unitary Charge Payment in respect of the relevant Contract Month.
$BP_m$	The Monthly Base Payment in respect of the relevant Contract Month as calculated in accordance with paragraph 4.
$BPR_y$	The Annual Base Payment Reconciliation in respect of the relevant Contract Year as calculated in accordance with paragraph 5.
$L_{m-1}$	The monthly Landfill Tax Payment calculated in accordance with paragraph 6.
$LR_y$	The Annual Landfill Reconciliation Payment in respect of the relevant Contract Year as calculated in accordance with paragraph 7.
$AW_{m-2}$	The Ad Hoc Waste Payment in respect of the relevant Contract Month calculated in accordance with paragraph 8.
$OP_{m-2}$	The Other Payment in respect of the relevant Contract Month calculated in accordance with paragraph 9.
$NNDR_{m-1}$	The National Non-Domestic Rates Payment in respect of the relevant Contract Month calculated in accordance with paragraph 10.
$B_y$	The Contract Performance Bonus in respect of the relevant Contract Year calculated in accordance with paragraph 11.
$ERS_y$	The Excess Revenue Share in respect of the relevant Contract Year calculated in accordance with paragraph 12.
$DD_y$	The Diversion Deduction for biodegradable municipal waste (BMW) in respect of the relevant Contract Year calculated in accordance with paragraph 13.
$PD_{m-2}$	The Performance Deduction in respect of the relevant Contract Month calculated in accordance with paragraph 14.
$NAD_{m-2}$	The Non Acceptance Deduction in respect of the relevant Contract Month calculated in accordance with paragraph 16.

- $M_{m-2}$  The Mileage Deduction in respect of the relevant Contract Month calculated in accordance with paragraph 15.
- $SWP_y$  The Substitute Waste Payment in respect of the relevant Contract Year calculated in accordance with paragraph 17.
- $SWCP_y$  The Substitute Waste Clawback Payment in respect of the relevant Contract Year calculated in accordance with paragraph 18.

**4 Monthly Base Payment (BP<sub>m</sub>)**

- 4.1 The Monthly Base Payment (BP<sub>M</sub>) provides a payment to the Contractor for the Services provided in the relevant Contract Month that varies with the tonnages of Contract Waste Accepted (excluding Ad Hoc Waste) by the Contractor in each Contract Month.
- 4.2 The Monthly Base Payment will apply for the period from the Key Facility Services Commencement Date to the earlier of the Expiry Date and the Termination Date.
- 4.3 The Annual Base Payment Forecast is calculated in accordance with the following formula:



where:

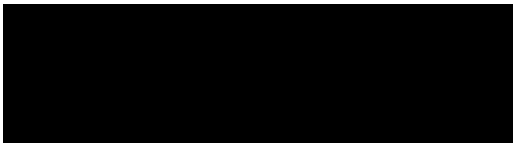
**CCW<sub>n</sub>** = where Base Price Band 'n' is Band 1 then BT<sub>n</sub> is the Minimum Tonnage of Contract Waste for the relevant Contract Year . For all other Base Price Bands BT<sub>n</sub> shall be the tonnage of Forecast Core Contract Waste (updated from time to time in accordance with Clause 25.2.1) that falls with that Base Price Band.

**CCWP<sub>n</sub>** = the relevant Base Price per tonne for Core Contract Waste Price Band 'n', as set out in Appendix 1.

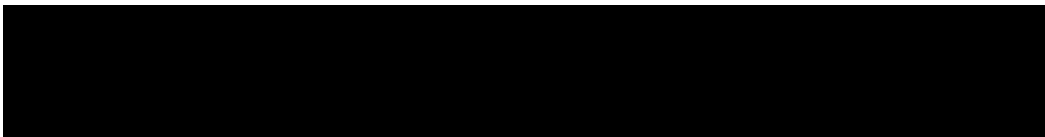
**SCW<sub>n</sub>** = the tonnage of each category of Forecast Specialist Contract Waste (updated from time to time in accordance with Clause 25.2.1).

**SCWP<sub>n</sub>** = the relevant Base Price per tonne for Specialist Contract Waste category 'n', as set out in Appendix 1.

- 4.4 The Base Payment for a Contract Month shall be calculated in accordance with the following formula:



where:

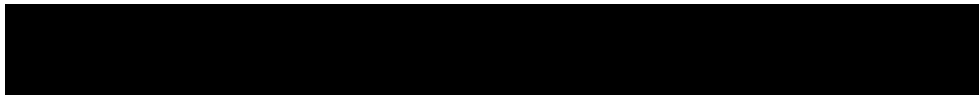


**M** = the relevant Contract Month.

4.5 Where Services commence or end during the relevant Contract Year, the Monthly Base Payment will be adjusted accordingly on a pro-rata basis.

## 5 Annual Base Payment Reconciliation (BPR<sub>y</sub>)

- 5.1 The Annual Base Payment Reconciliation (BPR<sub>y</sub>) is calculated and applied in the Contract Month which is the second calendar month following the end of the relevant Contract Year.
- 5.2 The Annual Base Payment Reconciliation adjusts the Monthly Base Payments made to the Contractor during the relevant Contract Year to ensure that the Monthly Base Payments made in respect of the relevant Contract Year correctly reflect the Core Contract Waste price bands set out in Appendix 1 and the Adjusted Minimum Tonnage.
- 5.3 The Annual Base Payment Reconciliation is calculated in accordance with the following formula:



where:

- CCW<sub>1</sub> = the Adjusted Minimum Tonnage for the relevant Contract Year as calculated in paragraph 5.4.
- CCWP<sub>n</sub> = the Base Price per tonne for Core Contract Waste, Price Band 1 as set out in Appendix 1.
- CCW<sub>2</sub> = the tonnage of Core Contract Waste Accepted by the Contractor above the Adjusted Minimum Tonnage and up to the maximum tonnage permitted within Core Contract Waste Price Band 2 during the relevant Contract Year.
- CCWP<sub>2</sub> = the Base Price per tonne for Core Contract Waste, Price Band 2 as set out in Appendix 1.
- CCW<sub>3</sub> = the tonnage of Core Contract Waste Accepted by the Contractor within Core Contract Waste, Price Band 3 during the relevant Contract Year.
- CCWP<sub>3</sub> = the Base Price per tonne for Core Contract Waste Price Band 3 as set out in Appendix 1.
- SCW<sub>n</sub> = the tonnage of Specialist Contract Waste Accepted within each Price Band during the relevant Contract Year.
- SCWP<sub>n</sub> = the relevant Base Price per tonne for Specialist Contract Waste, Price Band 'n', as set out in Appendix 1.
- $\sum BP_m$  = the sum of the Monthly Base Payments made by the Authority to the Contractor in respect of the relevant Contract Year.

- 5.4 The Adjusted Minimum Tonnage ( $AMT_y$ ) for the relevant Contract Year will be calculated in accordance with the following formula:



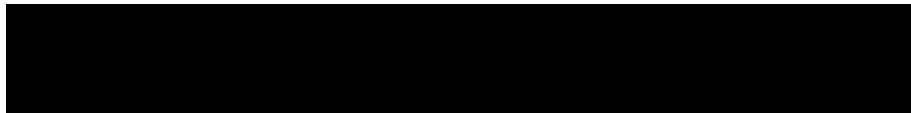
where:

- $MT_y$  = the Minimum Tonnage for the relevant Contract Year as set out in Appendix 2.
- $NAT_y$  = the tonnage of Contract Waste Not Accepted by the Contractor in the relevant Contract Year.
- $SWA_y$  = where the Contractor has not complied with obligations under Clause 25.2 to secure Substitute Waste the number of tonnes of Substitute Waste which the Contractor would have secured (over and above the amount of Substitute Waste (if any) which the Contractor actually does secure) if it had complied with its obligations.

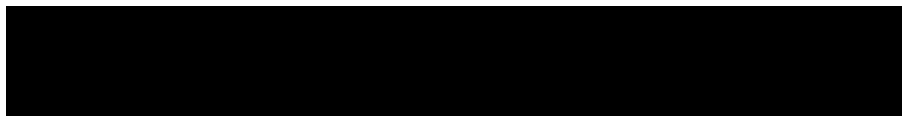


## 6 Monthly Landfill Tax Payment ( $L_{m-1}$ )

- 6.1 The Monthly Landfill Tax Payment ( $L_{m-1}$ ) provides a payment to the Contractor in respect of Landfill Tax incurred as a result of the Landfilling of Active Waste and Inactive Waste during the relevant Contract Month based on the actual tonnages Landfilled in the previous calendar month.
- 6.2 The Monthly Landfill Payment shall be paid from the Key Facility Services Commencement Date to the earlier of the Expiry Date and the Termination Date.
- 6.3 The Monthly Landfill Payment will exclude any costs associated with the Landfilling of Ad Hoc Waste and Specialist Contract Waste other than asbestos.
- 6.4 In the event that the Actual Diversion Rate (calculated as  $1 - A_{Dm-1}$ ) achieved during the relevant Contract Month is greater than or equal to the Contract Diversion Rate for the Contract Year in which the relevant Contract Month occurs, then the Monthly Landfill Payment in respect of that Contract Month shall be determined in accordance with the following formula:



- 6.5 In the event that the Actual Diversion Rate (calculated as  $1 - A_{Dm-1}$ ) achieved during the relevant Contract Month is less than the Contract Diversion Rate for the Contract Year in which the relevant Contract Month occurs, then the Monthly Landfill Payment in respect of the Contract Month shall be determined in accordance with the following formula:



where:

$$A_{Dm-1} = VL_{m-1} / V_{m-1}$$

$C_D$  = the Contract Diversion Rate as set out in Appendix 3 to this Schedule 4 (Payment Mechanism).

$V_{m-1}$  = the actual tonnage of Core Contract Waste and Substitute Waste (excluding Ad Hoc Waste) received in the calendar month immediately prior to the relevant Contract Month.

$ASBL_{m-1}$  = the actual tonnage of asbestos Accepted month immediately prior to the relevant Contract Month and sent to Landfill.

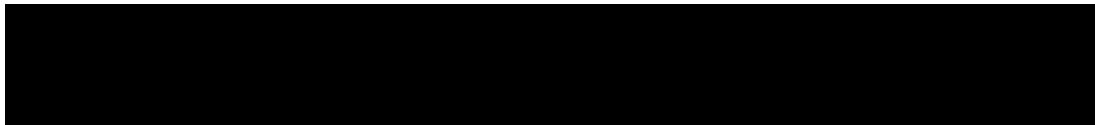
- $VAA_{m-1}$  = the actual tonnage of Core Contract Waste, Substitute Waste (excluding Ad Hoc Waste) and asbestos Landfilled in the calendar immediately month prior to the relevant Contract Month that is Active Waste.
- $VAI_{m-1}$  = the actual tonnage of Core Contract Waste, Substitute Waste (excluding Ad Hoc Waste) and asbestos Landfilled in the calendar month immediately prior to the relevant Contract Month that is Inactive Waste.
- $VL_{m-1}$  = the actual tonnage of Core Contract Waste, Substitute Waste (excluding Ad Hoc Waste) and asbestos Landfilled in the calendar month immediately prior to the relevant Contract Month.
- $L_{TA}$  = the prevailing rate of Landfill Tax per tonne for Active Waste in the relevant Contract Year.
- $L_{TI}$  = the prevailing rate of Landfill Tax per tonne for Inactive Waste in the relevant Contract Year.

## 7 Annual Landfill Reconciliation Payment ( $LR_y$ )

- 7.1 The purpose of the Annual Landfill Reconciliation Payment ( $LR_y$ ) is to ensure that the sum of the Monthly Landfill Payments for the Contract Year reflect the Actual Diversion Rate ( $A_D$ ) achieved during the relevant Contract Year.
- 7.2 The Annual Landfill Reconciliation Payment will be calculated in the first Contract Month following the end of the Contract Year and paid in the second Contract Month after the end of each Contract Year.
- 7.3 The Annual Landfill Reconciliation Payment shall be paid from the Key Facility Services Commencement Date to the earlier of the Expiry Date and the Termination Date.
- 7.4 Where the Actual Diversion Rate (calculated as  $1-A_D$ ) achieved during the Contract Year is greater than or equal to the Contract Diversion Rate ( $C_D$ ) then the Annual Landfill Reconciliation Payment ( $LR_{m=5}$ ) for the Contract Year shall be determined in accordance with the following formula:



- 7.5 Where the Contract Diversion Rate ( $C_D$ ) for the Contract Year is greater than the Actual Diversion Rate (calculated as  $1-A_D$ ) achieved by the Contractor then the Annual Landfill Reconciliation Payment ( $LR_{m=5}$ ) for the Contract Year shall be determined in accordance with the following formula



where:

$$A_D = V_L / V_A.$$

$C_D$  = the Contract Diversion Rate as set out in Appendix 3 to this Schedule 4 (Payment Mechanism).

$V_A$  = the actual tonnage of Core Contract Waste and Substitute Waste (excluding Ad Hoc Waste) received in the Contract Year.

$ASBL_A$  = the actual tonnage of asbestos Accepted during the relevant Contract Year and sent to Landfill.

$V_{AA}$  = the actual tonnage of Core Contract Waste, Substitute Waste (excluding Ad Hoc Waste) and asbestos Landfilled in the relevant Contract Year that is Active Waste.

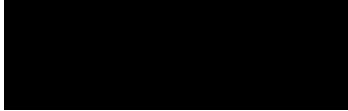
- $V_{AI}$  = the actual tonnage of Core Contract Waste, Substitute Waste (excluding Ad Hoc Waste) and asbestos Landfilled in the relevant Contract Year that is Inactive Waste.
- $V_L$  = the actual tonnage of Core Contract Waste, Substitute Waste (excluding Ad Hoc Waste) and asbestos Landfilled during the relevant Contract Year.
- $L_{TA}$  = the prevailing rate of Landfill Tax per tonne for Active Waste in the relevant Contract Year.
- $L_{TI}$  = the prevailing rate of Landfill Tax per tonne for Inactive Waste in the relevant Contract Year.



**8 Ad Hoc Waste Payment ( $AW_{m-2}$ )**

8.1 The Ad Hoc Waste Payment ( $AW_{m-2}$ ) shall be paid from the Key Facility Services Commencement Date to the earlier of the Expiry Date and the Termination Date.

8.2 In the event that the Contractor is required to handle Ad Hoc Waste in any Contract Month, the Authority shall pay the Contractor's costs as follows:



where:

$AWP_{M-2}$  the sum of all reasonable and proper costs invoiced to the Contractor during the relevant calendar month during which Ad Hoc Waste was treated and invoiced during the Contract Month which shall be two months following the relevant calendar month for receiving, handling, transporting, recycling, treating and/or disposing of Ad Hoc Waste.

8.3 For the avoidance of doubt, no payment shall be made by the Authority in respect of Ad Hoc Waste unless the Contractor's invoice relating to the same is supported by documentary evidence reasonably satisfactory to the Authority that such costs have been or will be reasonably and properly incurred and are properly calculated.

**9 Other Payment (OP<sub>m-2</sub>)**

9.1 The Other Payment (OP<sub>M-2</sub>) shall be paid from the Key Facility Services Commencement Date to the earlier of the Expiry Date and the Termination Date.

9.2 The Other Payment shall be calculated in accordance with the following formula:



Where

AC<sub>m-2</sub> cost of Low Value Change invoiced in the Contract Month which is two months following implementation in accordance with Schedule 21 (Change Protocol).

AA<sub>m-2</sub>  $AA_{m-2} = AAV_{m-2} * DD$

where

AAV<sub>m-2</sub> = The Agreed Abatement for a Low Value Change, Medium Value Change or High Value Change, as applicable, in respect of the calendar month which is two months prior to the relevant Contract Month, as set out in Schedule 21 (Change Protocol).

DD = The number of days delay during the Contract Year from the date the Contractor Response should have been submitted or the Change should have been completed or implemented until the date the Contractor Response is submitted or the Change is completed or implemented.

AS<sub>m-2</sub> Any other services as agreed in writing by the Contractor and Authority from time to time.

FCA Any additional financing charges as a consequence of an agreement by both Parties to adjust the intercompany loan interest rate in accordance with paragraph 2.1.8 of Schedule 26 (Planning)

**10 National Non-Domestic Rates Payment (NNDR<sub>m-1</sub>)**

- 10.1 In any Contract Month from the Key Facility Services Commencement Date to the earlier of the Expiry Date and the Termination Date, where the Contractor is liable for and has paid NNDR in respect of the Villiers Road Site or the Beddington Lane Site then the Monthly Unitary Charge Payment (UC<sub>m</sub>) shall include the National Non-Domestic Rates Payment (NNDR<sub>M-1</sub>) calculated in accordance with Paragraph 10.3.
- 10.2 If directed by the Authority's Representative, the Contractor shall appeal the quantum of NNDR and if this occurs any payments by the Authority in respect of NNDR shall include all costs reasonably incurred by the Contractor in pursuing such an appeal provided that the Contractor's invoice for the relevant Contract Month is supported by documentary evidence reasonably satisfactory to the Authority that such costs have been or will be incurred and are properly calculated.
- 10.3 The NNDR for each Contract Month shall be calculated in accordance with the following formula:



where:

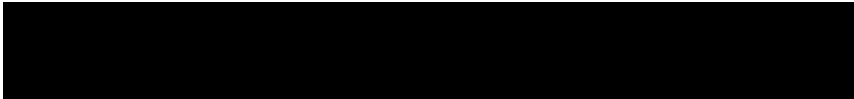
- NNDR<sub>VRS</sub> = The amount of NNDR properly paid by the Contractor in respect of the Villiers Road Site in the calendar month immediately prior to the relevant Contract Month.
- NNDR<sub>KF</sub> = The amount of NNDR properly paid by the Contractor in respect of the Key Facility in the calendar month immediately prior to the relevant Contract Month.
- FC = The Key Facility capacity being 274,600 tonnes per annum (pro-rated in a partial Contract Year).
- APT = Authority projected tonnages for the relevant Contract Year as identified in Appendix 2 to this Schedule 4 (Payment Mechanism).

- 10.4 For the avoidance of doubt, following the Key Facility Service Commencement Date the rent payable in respect of the Villiers Road Site is reflected within the Core Contract Waste Price Band and is not treated as a pass-through cost within the payment mechanism (as it is under Schedule 4A).

**11 Contract Performance Bonus (B<sub>y</sub>)**

- 11.1 For each Contract Year, the Contract Performance Bonus (B<sub>y</sub>) is to be calculated and included within the Monthly Unitary Charge Payment as soon as practically possible in the following Contract Year after the relevant information becomes available.

- 11.2 The Contract Performance Bonus will be payable where the Contractor has exceeded the Stretch Target Diversion Rate.
- 11.3 The Contract Performance Bonus shall be paid from the Key Facility Services Commencement Date to the earlier of the Expiry Date and the Termination Date.
- 11.4 The Contract Performance Bonus in respect of each Contract Year is determined in accordance with the following formula:



where:

- $A_D$  =  $V_L / V_A$ .
- $STC_D$  = the Stretch Target Diversion Rate in respect of the relevant Contract Year, as set out in Appendix 3 to this Schedule 4 (Payment Mechanism).
- $V_A$  = the actual tonnage of Contract Waste and Substitute Waste (excluding Ad Hoc Waste) received in the relevant Contract Year.
- $V_{AA}$  = the actual tonnage of Contract Waste and Substitute Waste (excluding Ad Hoc Waste) Landfilled in the relevant Contract Year that is Active Waste.
- $V_{AI}$  = the actual tonnage of Contract Waste and Substitute Waste (excluding Ad Hoc Waste) Landfilled in the relevant Contract Year that is Inactive Waste.
- $V_L$  = the actual tonnage of Contract Waste and Substitute Waste (excluding Ad Hoc Waste) Landfilled during the relevant Contract Year.
- $L_{TA}$  = The lower of the prevailing rate of Landfill Tax per tonne for Active Waste in the relevant Contract Year and £80 (not to be indexed).
- $L_{TI}$  = The lower of the prevailing rate of Landfill Tax per tonne for Inactive Waste in the relevant Contract Year and £2.50 (not to be indexed).

Provided that if the Contract Performance Bonus is calculated to be a negative number pursuant to paragraph 11.4 then the Contract Performance Bonus shall be deemed to be zero (0).



**12 Excess Revenue Share (ERS<sub>y</sub>)**

12.1 The Excess Revenue Share shall be paid from the Key Facility Services Commencement Date to the earlier of the Expiry Date and the Termination Date.

12.2 For each Contract Year, the Excess Revenue Share is to be calculated and included within the Monthly Unitary Charge Payment as soon as practically possible in the following Contract Year after all information necessary to calculate the Excess Revenue Share becomes available.

12.3 The Excess Revenue Share applies to all income received by the Contractor from third parties including but not limited to:

- excess revenue derived from the sale of energy;
- excess revenue derived from the sale of Core Contract Waste Price Band 2 capacity not utilised by the Authority to third parties; and
- excess revenue from Third Party Waste which is received.

12.4 The Excess Revenue Share for each relevant Contract Year shall be determined in accordance with the following formula:



where:

ERS<sub>y</sub> = the Excess Revenue Share for the relevant Contract Year

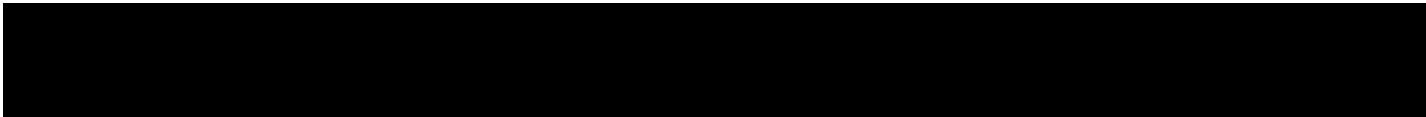
ER<sub>y</sub> = the Excess Third Party Income for the relevant Contract Years as calculated in accordance with Paragraph 12.6.

ERS<sub>CUM</sub> = the cumulative actual amount (in pounds) of Excess Revenue Share payments received by the Authority from the Contractor during the period from the Key Facility Services Commencement Date up to and including the previous Contract Year.

ΣSWCP<sub>ERS</sub> = the Substitute Waste Clawback Payment for the relevant Contract Years as calculated in accordance with paragraph 18.

12.5 In the event that ERS<sub>y</sub> for any Contract Year is calculated as a negative number, the value of ERS<sub>y</sub> shall be deemed to be zero.

12.6 The Excess Third Party Income for the relevant Contract Year shall be calculated in accordance with the following formula:



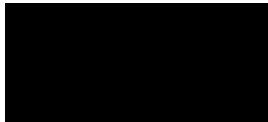
where:

$REC_A$  = the sum of the actual cumulative amount (in pounds sterling) of revenue received by the Contractor from the sale of electricity during the period from the Key Facility Services Commencement Date up to and including the relevant Contract Year.

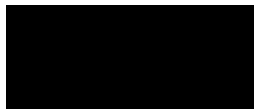


= the cumulative amount (in pounds sterling) of Third Party Income from the sale of electricity during the period from the Key Facility Services Commencement Date up to and including the relevant Contract Year (n), where the annual real amounts are as set out in Appendix 4 to this Schedule 4 (Payment Mechanism) and these are indexed by  $FI_{RPIX+0.5\%}$  for each relevant Contract Year.

$NCW_A$  = the actual cumulative amount (in pounds sterling) of revenue received by the Contractor from the processing of Third Party Waste during the period from the Key Facility Services Commencement Date up to and including the relevant Contract Year, excluding that revenue arising from the processing of Substitute Waste.



= the guaranteed cumulative amount (in pounds sterling) of Third Party Income to be received by the Contractor up to and including the relevant Contract Year (n) from the processing of Third Party Waste, where the annual real amounts as set out in Appendix 4 to this Schedule 4 (Payment Mechanism) and these are indexed by FI for each relevant Contract Year.

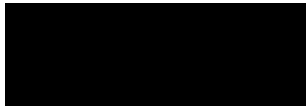


= the forecast guaranteed income (in pounds sterling) of Core Contract Waste Price Band 2 tonnage to be received by the Contractor up to and including the relevant Contract Year (n) from the processing of Price Band 2 tonnage waste as set out in Appendix 4 to this Schedule 4 (Payment Mechanism) and these are indexed by BI for each relevant Contract Year.

FI = Full Indexation Factor for the relevant Contract Year as defined in paragraph 19.

$FI_{RPIX+0.5\%}$  = Full Indexation Factor (RPIX+0.5%) for the relevant Contract Year as defined in Paragraph 19.

BI = Base Payment Indexation Factor for Price Band 2 for the relevant Contract Year as defined in paragraph 19.



= the cumulative amount (in pounds sterling) of Base Case Third Party Income Threshold above which Excess Revenue is shared from the Key Facility Services Commencement Date up to and including the relevant Contract Year (n), where the annual real amounts are as set out set out within Appendix 4 to this Schedule 4 (Payment Mechanism) and these are indexed by FI for each relevant Contract Year.

### 13 Diversion Deduction for BMW (DDy)

- 13.1 The Diversion Deduction for BMW (DDy) is applicable from the Key Facility Services Commencement Date until the earlier of the Expiry Date and the Termination Date.
- 13.2 For each Contract Year, the Diversion Deduction for BMW is to be calculated and included within the Monthly Unitary Charge Payment as soon as practically possible in the following Contract Year after the relevant information becomes available.
- 13.3 The Diversion Deduction for BMW is calculated in accordance with the following formula:



where:

- $A_D$  =  $V_{LCORE} / V_A$ .
- $C_D$  = the Contract Diversion Rate as set out in Appendix 3 to this Schedule 4 (Payment Mechanism).
- $V_A$  = the actual tonnage of Core Contract Waste and Substitute Waste (excluding Ad Hoc Waste) received in the Contract Year.
- $V_{LCORE}$  = the actual tonnage of Core Contract Waste and Substitute Waste (excluding Ad Hoc Waste) Landfilled during the relevant Contract Year.
- DDR = the Diversion Deduction Rate.
- BMW = the deemed BMW content of Contract Waste as calculated according to MBEAM and submitted by the Authority to DEFRA and the Environment Agency under Waste Data Flow (expressed as a percentage of Contract Waste). Where such a submission has not been made by the Authority the deemed BMW content of municipal waste in England as determined by DEFRA and the Environment Agency<sup>1</sup>.
- FI = Full Indexation Factor for the relevant Contract Year as defined in paragraph 19.

- 13.4 Where the Diversion Deduction for BMW is calculated as a negative number it shall be deemed to be zero.

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<sup>1</sup> A 2009 research paper determined this to be 66.71% ([http://randd.defra.gov.uk/Document.aspx?Document=WR0119\\_8662\\_FRP.pdf](http://randd.defra.gov.uk/Document.aspx?Document=WR0119_8662_FRP.pdf))

13.5 Where the Contractor can demonstrate that failure to meet the Contract Diversion Rate has occurred due to the Contractor having been unable to process waste at the Key Facility the Diversion Deduction for BMW shall not exceed £475,000 multiplied by the Full Indexation Factor in any Contract Year (pro-rated in a partial year).

**14 Performance Deduction ( $D_{m-2}$ )**


14.1 The Performance Deduction ( $D_{M-2}$ ) is deducted from the Monthly Unitary Charge Payment ( $UC_m$ ) for each Contract Month.

14.2 The Performance Deduction for the relevant Contract Month shall be determined in accordance with the following formula:




where:

**$NPP_{m-2}$**  the number of Non Performance Points incurred by the Contractor during the calendar month two months prior to the relevant Contract Month as calculated in accordance with Part 2 (Performance Management Framework) of Schedule 2 (Authority's Requirements).

**$NPPR$**  equals 

**$LSFD_{m-2}$**  the number of Lump Sum Failure Deductions incurred by the Contractor during the calendar month two months prior to the relevant Contract Month as calculated in accordance with Part 2 (Performance Management Framework) of Schedule 2 (Authority's Requirements).

**$LSFDR$**  equals 

**$FI$**  Full Indexation Factor for the relevant Contract Year as defined in paragraph 19

Provided that the sum of the Performance Deductions within any Contract Year shall not exceed the Performance Deduction Cap in the relevant Contract Year.

**15 Mileage Deduction ( $M_{m-2}$ )**

- 15.1 The Mileage Deduction is deducted from the Monthly Unitary Charge Payment ( $UC_m$ ) for each Contract Month.
- 15.2 The Mileage Deduction will reimburse the Authority's additional transport costs where the Contractor has required the Authority to divert Contract Waste from a Primary Delivery Point to a Contingency Delivery Point.
- 15.3 The Mileage Deduction will apply from the Key Facility Services Commencement Date to the earlier of the Expiry Date and Termination Date.
- 15.4 The Mileage Deduction will be calculated in accordance with the following formula:



where:

**$TD_{m-2}$**  The tonnage of Contract Waste diverted from a Primary Delivery Point to a Contingency Delivery Point during the calendar month two months prior to the relevant Contract Month.

**AD** DCD – DD

where:

DCD = The return distance (in miles) travelled by the Authority's vehicles to the Contingency Delivery Point (along the most direct adopted highway that provides a legal route suitable for the Authority's vehicles) during the calendar month two months prior to the relevant Contract Month. (expressed as an average distance per tonne).

DD = The return distance (in miles) that would otherwise have been travelled by the Authority's vehicles to the Delivery Point (along the most direct adopted highway that provides a legal route suitable for the Authority's vehicles) during the calendar month two months prior to the relevant Contract Month. (expressed as an average distance per tonne).

**MR** Mileage Rate

**FI** Full Indexation Factor for the relevant Contract Year as defined in paragraph 19.

**16 Non Acceptance Deduction ( $NAD_{m-2}$ )**

- 16.1 The Non Acceptance Deduction ( $NAD_{M-2}$ ) is deducted from the Monthly Unitary Charge Payment for each Contract Month.
- 16.2 The Non Acceptance Deduction will reimburse the Authority additional costs incurred by the Authority as a result of the Contractor's failure to accept Contract Waste in accordance with the Waste Acceptance Protocol at any Delivery Point.
- 16.3 The Non Acceptance Deduction will apply from the Key Facility Services Commencement Date to the earlier of the Expiry Date and Termination Date.
- 16.4 The Non Acceptance Deduction will be calculated in accordance with the following formula:



where:

$AC_{m-2}$  The actual costs reasonably and properly incurred by the Authority as a result of Contract Waste Not Accepted by the Contractor at any Delivery Point during the calendar month two months prior to the relevant Contract Month.

Actual costs shall include (without limitation) the cost of alternative treatment, landfill gate fees, Landfill Tax at the prevailing rate and any additional transport costs incurred by the Authority in the disposal of Contract Waste Not Accepted.

$BW_{m-2}$  The Monthly Base Payment withheld as a result of Contract Waste Not Accepted by the Contractor at any Delivery Point during the calendar month two months prior to the relevant Contract Month calculated as:



where:

$BT_{na}$  means the amount in tonnes of Contract Waste Not Accepted during the calendar month two months prior to the relevant Contract Month.

$BP_{n-2}$  means the Band 1 Base Price per tonne applicable to the Contract Waste Not Accepted as set out in Appendix 1.

- 16.5 In the event that in any Contract Month  $NAD_{m-2}$  is a negative number,  $NAD_{m-2}$  shall be deemed to be zero,



**17 Substitute Waste Payment (SWP<sub>y</sub>)**

17.1 For each Contract Year, the Substitute Waste Payment (SWP<sub>y</sub>) is to be calculated and included within the Monthly Unitary Charge Payment as soon as practically possible in the following Contract Year after the relevant information becomes available.

17.2 Where, in a relevant Contract Year, the Authority fails to deliver the Minimum Tonnage of Contract Waste then the Substitute Waste Payment will be calculated in accordance with the following formula:



where

SW<sub>ELEC</sub> = the amount (in pounds sterling) of lost income from the sale of electricity in the relevant Contract Year, due to the tonnages of Contract Waste and Substitute Waste together being less than the Adjusted Minimum Tonnage as calculated in paragraph 17.3 of this Schedule 4 (Payment Mechanism).

ESWP = Excess Substitute Waste Payment in respect of the relevant Contract Year as calculated in paragraph 17.4 of this Schedule 4 (Payment Mechanism).

17.3 The Substitute Waste Electricity Payment (SW<sub>ELEC</sub>) is calculated in accordance with the following formula:



where:

AMT<sub>y</sub> = the Adjusted Minimum Tonnage of Contract Waste for the relevant Contract Year, as calculated in paragraph 5.4 of this Schedule 4 (Payment Mechanism).

CW = the actual tonnage of Contract Waste Accepted in the relevant Contract Year.

SW = the tonnage of Substitute Waste Accepted by the Contractor for the relevant Contract Year.

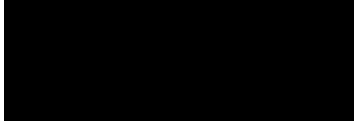
TTW = the Key Facility capacity, being 274,600 tonnes per annum (pro-rated in a partial Contract Year).

REC<sub>c</sub> = the real forecast revenue from electricity production for the relevant Contract Year in Appendix 4 of this Schedule 4 (Payment Mechanism).

$FI_{RPIX+0.5\%}$  = Full Indexation Factor (RPIX+0.5%) as defined in Paragraph 19.

17.4 Excess Substitute Waste Payment (ESWP<sub>y</sub>)

where:



where:

$$SWBP < SW_{TPI}$$

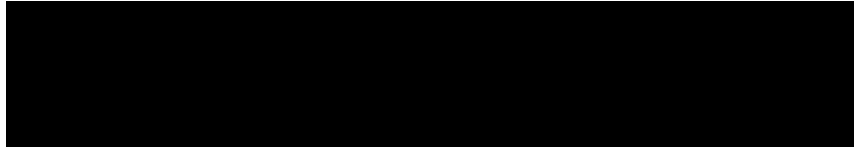


where:

- ESWP = Excess Substitute Waste Payment in respect of the relevant Contract Year.
- SWBP = Substitute Waste Base Payment being the amount of the sum of the Monthly Base Payments received by the Contractor for tonnages which the Authority failed to deliver within the guaranteed Minimum Tonnage as set out in Appendix 2 to this Schedule 4.
- $SW_{TPI}$  = the Substitute Waste Price received by the Contractor in the relevant Contract Year from Third Parties.
- $SW_{ELEC}$  = as calculated in accordance with paragraph 17.3 of this Schedule 4 (Payment Mechanism).

**18 Substitute Waste Clawback Payment  $SWCP_y$**

18.1 Where the Authority has made, over the course of the Services Period, Substitute Waste Payments to the Contractor, the Authority shall be entitled to receive excess Third Party Income (in excess of the Third Party Income Share Threshold levels set out in Appendix 4) prior to the sharing of such revenues with the Contractor in accordance with paragraph 12, Excess Revenue Share. The Substitute Waste Clawback Payment for the relevant Contract Year ( $SWCP_y$ ) will be calculated in accordance with the following formula:



Where:

- $ER_y$  = the Excess Third Party Income for the relevant Contract Years as calculated in accordance with paragraph 12.6.
- $\sum SWP_y$  = the aggregate Substitute Waste Payments in respect of the current and prior Contract Years calculated in accordance with paragraph 17.
- $\sum SWCP$  = the aggregate Substitute Waste Clawback Payments in respect of prior Contract Years.

18.2 In the event that  $SWCP_y$  for any Contract Year is calculated as a negative number, the value of  $SWCP_y$  shall be deemed to be zero.

**19 Indexation**

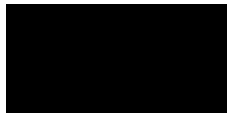
19.1 The Base Payment Indexation Factor shall be calculated in accordance with the following formula:



where:

- BI** Base Payment Indexation Factor for the relevant Contract Year.
- FI** Full Indexation Factor for the relevant Contract Year.
- FP** Fixed Proportion of the Base Payment which shall be 75%.

19.2 The Full Indexation Factor for the Contract Year  $y$  represents the increase or decrease in RPI $x$  over the period since the Base Date and shall be calculated as follows:



where:

- FI** the Full Indexation Factor for the relevant Contract Year;
- RPI $x_{y-1}$**  the value published for RPI $x$  in March for February immediately preceding Contract Year  $y$ ; and
- RPI $x_{base}$**  the value published for RPI $x$  for February immediately preceding April 2011, being 230.5.

19.3 The Full Indexation Factor The Full Indexation Factor (RPI $x+0.5\%$ ) for the Contract Year  $y$  represents the increase or decrease in (RPI $x+0.5\%$ ) over the period since the Base Date and shall be calculated as follows:



where:

- FI**<sub>RPIx+0.5%</sub> the Full Indexation Factor for the relevant Contract Year.
- RPIx<sub>y-1</sub>** the value published for RPIx in March for February in the immediately preceding Contract Year y.
- RPIx<sub>base</sub>** the value published for RPIx for February in the immediately preceding April 2011, being 230.5.
- Y** Number of complete years since February 2011 to the February immediately preceding Contract Year y.

19.4 Changes to Indices affecting the Indexation Factor

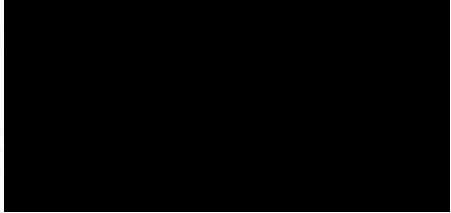
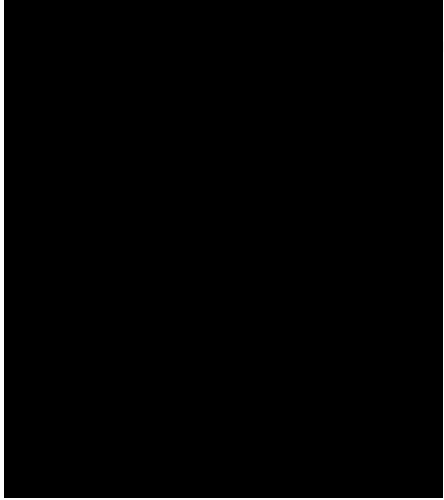
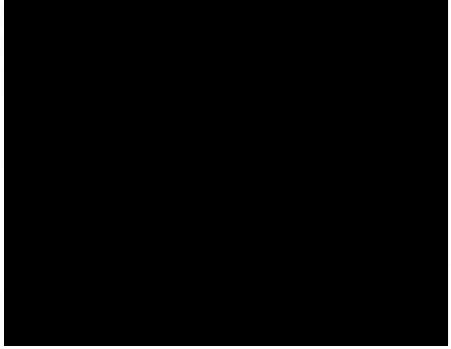
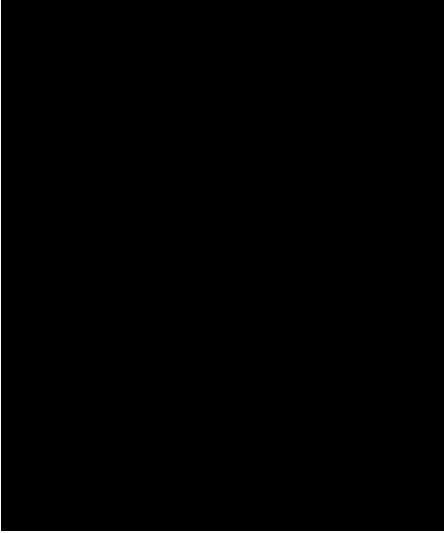
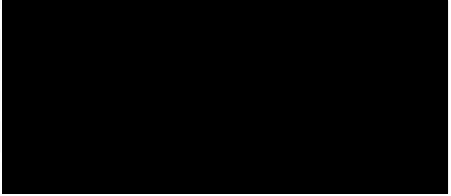
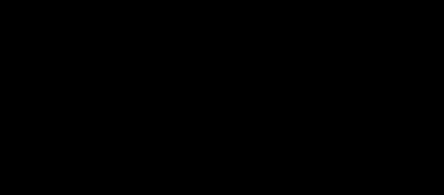
19.5 If there is a material change in the nature or basis of any Index, or if any Index is discontinued, the Parties shall seek to agree upon an alternative to that Index which as closely replicates the relevant Index as is possible, and such consequential changes shall be made to the calculations provided for in this paragraph 19 as are necessary to ensure that all payments to be made pursuant to this Contract shall be the same as if such change had not occurred. Any dispute regarding changes to the Index and/or calculations may be referred by either Party to the Disputes Resolution Procedure.

19.5.1 If any error or mistake shall occur in the publication for the figures for the relevant Index which have been used at any time in any calculation pursuant to this Schedule which is subsequently duly acknowledged and corrected by the Office of National Statistics or the relevant body with responsibility for the publication of such Index, the calculations in which the incorrect figures were used for the adjustments of any part of the Monthly Unitary Charge shall be recalculated using the correct figures. Any dispute regarding the recalculations pursuant to this paragraph 19 may be referred at the request by either Party to the Disputes Resolution Procedure. Any overpayment or underpayment by either Party to the other which has occurred as a result of the incorrect figures shall be paid or repaid by the Party to the other within seven (7) Business Days of the recalculation being agreed or determined (as the case may be).

20 Overall Deduction Cap



APPENDIX 1 – Base Payment Summary

Core Contract Waste Price Bands	Tonnage Range	Base price per tonne
Price Band 1		
Price Band 2		
Price Band 3		

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**Specialist Contract Waste Gate Fees (2)**

<b>Waste Stream</b>	<b>Gate Fee/tonne</b>	<b>Eligible for Landfill Tax pass through under Monthly Landfill Tax Payment (paragraph 6)</b>
Separately Collected Clinical Waste		
Dog Faeces		
Tyres		
Asbestos		

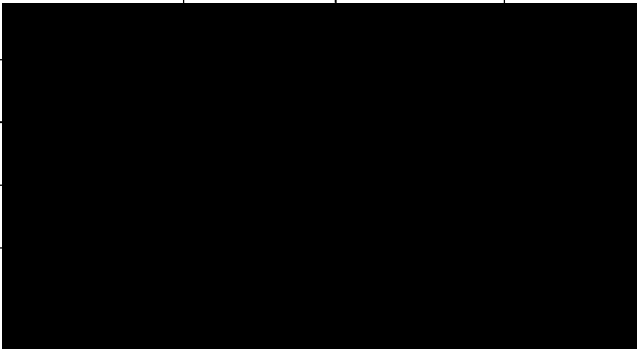
Where FI is Full Indexation Factor for the relevant Contract Year as defined in paragraph 19.

**APPENDIX 2 –Minimum Tonnage, Authority Projected Tonnages and Maximum Tonnage**

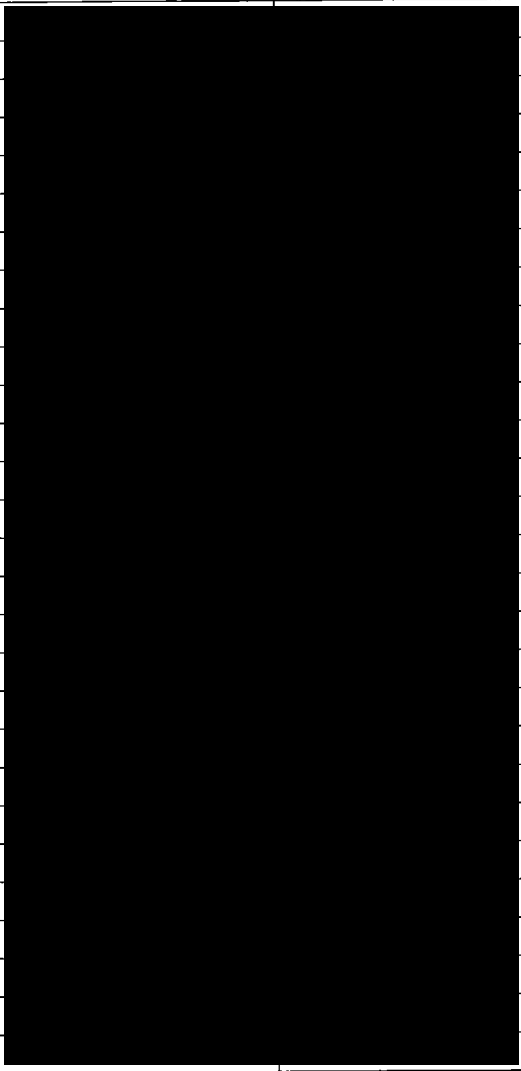
Financial Year Commencing	Annual Tonnages – Core Contract Waste		
	Minimum Tonnage	Authority Projected Tonnages	Maximum Tonnage
01-Apr-14			
01-Apr-15			
01-Apr-16 (Partial Year to reflect 2/8/16 to 31/3/17)			
01-Apr-17			
01-Apr-18			
01-Apr-19			
01-Apr-20			
01-Apr-21			
01-Apr-22			
01-Apr-23			
01-Apr-24			
01-Apr-25			
01-Apr-26			
01-Apr-27			
01-Apr-28			
01-Apr-29			
01-Apr-30			
01-Apr-31			
01-Apr-32			
01-Apr-33			
01-Apr-34			
01-Apr-35			
01-Apr-36			
01-Apr-37			
01-Apr-38			
01-Apr-39			
01-Apr-40			
01-Apr-41 (Partial Year to reflect 1/4/41 to 31/7/42)			



<b>Authority Projected Tonnages – Specialist Contract Waste</b>				
<b>Financial Year Commencing</b>	<b>Separately Collected Clinical Waste</b>	<b>Dog Faeces</b>	<b>Tyres</b>	<b>Asbestos</b>
01-Apr-14				
01-Apr-15				
01-Apr-16 (Partial Year to reflect 2/8/16 to 31/3/17)				
01-Apr-17				
01-Apr-18				
01-Apr-19				
01-Apr-20				
01-Apr-21				
01-Apr-22				
01-Apr-23				
01-Apr-24				
01-Apr-25				
01-Apr-26				
01-Apr-27				
01-Apr-28				
01-Apr-29				
01-Apr-30				
01-Apr-31				
01-Apr-32				
01-Apr-33				
01-Apr-34				
01-Apr-35				
01-Apr-36				

	<b>Authority Projected Tonnages – Specialist Contract Waste</b>			
<b>Financial Year Commencing</b>	<b>Separately Collected Clinical Waste</b>	<b>Dog Faeces</b>	<b>Tyres</b>	<b>Asbestos</b>
01-Apr-37				
01-Apr-38				
01-Apr-39				
01-Apr-40				
01-Apr-41 (Partial Year to reflect 1/4/41 to 31/7/42)				

**APPENDIX 3 – Diversion Rates**

Financial Year Commencing	Contract Diversion Rate	Stretch Target Diversion Rate
01-Apr-14		
01-Apr-15		
01-Apr-16		
01-Apr-17		
01-Apr-18		
01-Apr-19		
01-Apr-20		
01-Apr-21		
01-Apr-22		
01-Apr-23		
01-Apr-24		
01-Apr-25		
01-Apr-26		
01-Apr-27		
01-Apr-28		
01-Apr-29		
01-Apr-30		
01-Apr-31		
01-Apr-32		
01-Apr-33		
01-Apr-34		
01-Apr-35		
01-Apr-36		
01-Apr-37		
01-Apr-38		
01-Apr-39		
01-Apr-40		
01-Apr-41		

**APPENDIX 4 – Third Party Income**

<b>Financial Year Commencing</b>	<b>Annual real Third Party Income from sale of electricity guaranteed within the Base Case (REC<sub>c</sub>)</b>  <b>£</b>	<b>Annual real Third Party Income from Third Party Waste guaranteed within the Base Case (NCW<sub>c</sub>)</b>  <b>£</b>	<b>Annual real Base Price Band 2 Income forecast to be received within the Base Case (B2CW<sub>c</sub>)</b>  <b>£</b>	<b>Base Case Third Party Income Threshold (BCTPIT<sub>c</sub>)</b>  <b>£</b>
01-Apr-14				
01-Apr-15				
01-Apr-16 (Partial Year to reflect 2/8/16 to 31/3/17)				
01-Apr-17				
01-Apr-18				
01-Apr-19				
01-Apr-20				
01-Apr-21				
01-Apr-22				
01-Apr-23				
01-Apr-24				
01-Apr-25				
01-Apr-26				
01-Apr-27				
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01-Apr-31				
01-Apr-32				
01-Apr-33				
01-Apr-34				
01-Apr-35				
01-Apr-36				
01-Apr-37				
01-Apr-38				
01-Apr-39				
01-Apr-40				
01-Apr-41 (Partial Year to reflect 1/4/41 to 31/7/42)				

**SCHEDULE 4A**  
**PAYMENT MECHANISM**

**Schedule 4A – Payment Mechanism**

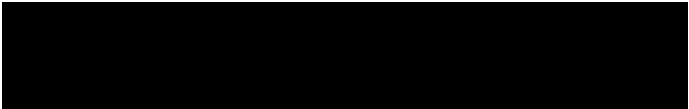
# South London Waste Partnership

Interim Services Payment Mechanism

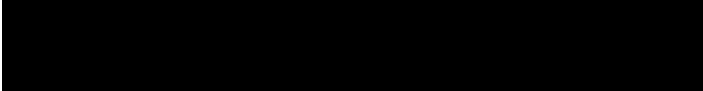
Schedule 4A

## 1 Definitions

1.1 The following definitions are used in this Schedule:

<b>Ad Hoc Waste</b>	has the meaning given to it in Schedule 2 (Authority's Requirements);
<b>Agreed Abatement</b>	has the meaning given to it in Schedule 21 (Change Protocol);
<b>Commissioning Payment</b>	means the amount calculated in accordance with paragraph 5;
<b>Commissioning Period Gate Fee</b>	means the relevant price per tonne for the purpose of Commissioning the Key Facility as set out in Appendix 1;
<b>Contingency Delivery Point</b>	has the meaning given to it in Schedule 2 (Authority's Requirements);
<b>Contract Diversion Rate</b>	means the Contract Diversion Rate to be met by the Contractor in each Contract Year and set out in Appendix 3;
<b>Contract Waste Accepted</b>	means all Contract Waste accepted by the Contractor in accordance with the Waste Acceptance Protocol;
<b>Contract Waste Not Accepted</b>	means all Contract Waste not accepted by the Contractor;
<b>Delivery Point</b>	means a Primary Delivery Point or a Contingency Delivery Point;
<b>Diversion Deduction Rate</b>	
<b>Full Indexation Factor</b>	means the indexation factor calculated in accordance with paragraph 13.1;
<b>High Value Change</b>	has the meaning given to it in Schedule 21 (Change Protocol);
<b>Index Publication Date</b>	means the date on which the Index is published;
<b>Indexed</b>	means, subject to Indexation, in accordance with paragraph 13;



<b>Interim Services Commencement Date</b>	means 1 April 2014;
<b>Interim Services Period Ad Hoc Waste Payment</b>	means the amount calculated in accordance with paragraph 6;
<b>Interim Services Payment</b>	Means the amount calculated in accordance with paragraph 4
<b>Interim Services Period Diversion Deduction</b>	means the amount calculated in accordance with paragraph 9;
<b>Interim Services Period Contract Diversion Rate</b>	means the diversion rate for the purposes of calculating the Interim Services Period Diversion Deduction set out in Appendix 3 for each Contract Year;
<b>Interim Services Period Monthly Unitary Charge</b>	means the amount calculated in accordance with paragraph 3;
<b>Interim Services Period National Non-Domestic Rates Payment</b>	means the amount calculated in accordance with paragraph 8;
<b>Interim Services Period Non Acceptance Deduction</b>	means the deduction applied in respect of non acceptance of Contract Waste calculated in accordance with paragraph 12;
<b>Interim Services Period Other Payment</b>	means the amount calculated in accordance with paragraph 7;
<b>Interim Services Period Overall Deduction Cap</b>	means the amount calculated in accordance with paragraph 14;
<b>Interim Services Period Performance Deduction</b>	means the amount calculated in accordance with paragraph 9;
<b>Interim Services Period Performance Deduction Cap</b>	
<b>Interim Services Period Performance Management Framework</b>	means Part 2 (Performance Management Framework) of Schedule 2 (Authority's Requirements);
<b>Interim Services Period Specialist Contract Waste Payment</b>	means the amount calculated in accordance with paragraph 4.5;

**Interim Services Period  
Thermal Treatment Facility**



**Interim Services Period  
Thermal Treatment Payment**

means the amount calculated in accordance with paragraph 4.4;

**Interim Services Period  
Mileage Deduction**

means the amount calculated in accordance with paragraph 11;

**Low Value Change**

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

**Maximum Diversion Deduction  
Tonnage**

means the number of tonnes calculated in accordance with paragraph 8.5;

**Medium Value Change**

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

**Mileage Rate**



**Primary Delivery Point**

means the point of discharge of Contract Waste as defined within Schedule 2 (Authority's Requirements);

**Specialist Contract Waste**

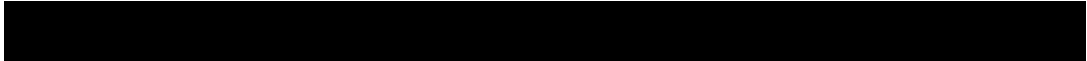
has the meaning given to it in paragraph xi of Schedule 2 (Authority's Requirements);

## 2 Interpretation

- 2.1 Unless otherwise provided, references in this Schedule to Clauses and Schedules shall be references to the relevant Clauses and Schedules in the Contract.
- 2.2 Unless otherwise provided, references to parts, paragraphs, tables and appendices shall be references to parts, paragraphs, tables and appendices in this Schedule.
- 2.3 The Parties agree that without prejudice to the express provisions of the Contract, this Schedule shall form the sole basis of payment by the Authority to the Contractor during the Interim Services Period.
- 2.4 VAT properly chargeable on any component of the Unitary Charge shall be payable as set out in Clause 49 (VAT) of the Contract.
- 2.5 Where the symbol  $\Sigma$  is used in formulae it shall have the meaning 'sum of'.
- 2.6 'm' shall relate to Contract Months.
- 2.7 'y' shall relate to Contract Years.
- 2.8 Reference to a value being 'prorated in a partial Contract Year' means that that value should be multiplied by the number of days in the partial Contract Year and then divided by 365.
- 2.9 This Schedule (Interim Payment Mechanism) shall be read in conjunction with the Contract and the Authority's Requirements.

### 3 Interim Services Period Monthly Unitary Charge (ISPUC<sub>m</sub>)

- 3.1 Prior to the Key Facility Services Commencement Date, the Interim Services Period Monthly Unitary Charge in respect of each Contract Month shall be calculated in accordance with the following formula:



where:

ISPUC <sub>m</sub>	The Interim Services Period Monthly Unitary Charge in respect of the relevant Contract Month.
ISP <sub>m</sub>	The Interim Services Payment in respect of the relevant Contract Month calculated in accordance with paragraph 4.
C <sub>m</sub>	The Commissioning Payment in respect of the relevant Contract Month calculated in accordance with paragraph 5.
ISPAW <sub>m-2</sub>	The Interim Services Period Ad Hoc Waste Payment in respect of the relevant Contract Month calculated in accordance with paragraph 6.
ISPOP <sub>m-2</sub>	The Interim Services Period Other Payment in respect of the relevant Contract Month calculated in accordance with paragraph 7.
ISPNNDR <sub>m-1</sub>	The Interim Services Period National Non-Domestic Rates and Villiers Road Site Rent Payment in respect of the relevant Contract Month calculated in accordance with paragraph 8.
ISPDD <sub>y</sub>	The Interim Services Period Diversion Deduction in respect of the relevant Contract Year calculated in accordance with paragraph 9.
ISPPD <sub>m-2</sub>	The Interim Services Period Performance Deduction in respect of the relevant Contract Month calculated in accordance with paragraph 10.
ISPND <sub>m-2</sub>	The Interim Services Period Non Acceptance Deduction in respect of the relevant Contract Month calculated in accordance with paragraph 12.
ISPM <sub>m-2</sub>	The Interim Services Period Mileage Deduction in respect of the relevant Contract Month calculated in accordance with paragraph 11.

#### 4 Interim Services Payment (ISP<sub>m</sub>)

4.1 The Interim Services Payment (ISP<sub>m</sub>) is to be paid from the Interim Services Commencement Date to the Key Facility Services Commencement Date for tonnages sent to Landfill or processed at the Interim Services Period Thermal Treatment Facility.

4.2 The Interim Services Payment in respect of each Contract Month shall be determined in accordance with the following formula:



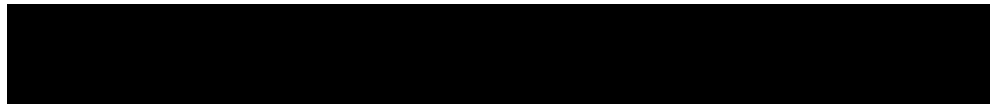
where:

ISPLC<sub>m-1</sub> = the Interim Services Period Landfill Payment in respect of the previous Contract Month calculated in accordance with paragraph 4.3.

ISPEFW<sub>m-1</sub> = the Interim Services Period Thermal Treatment Payment in respect of the previous Contract Month calculated in accordance with paragraph 4.4.

ISPSCWP<sub>m-1</sub> = the Interim Services Period Specialist Contract Waste Payment in respect of the previous Contract Month calculated in accordance with paragraph 4.5.

4.3 The Interim Services Period Landfill Payment (ISPLC<sub>m-1</sub>) in respect of the previous Contract Month shall be determined in accordance with the following formula:



where:

TL<sub>m-1</sub> = The tonnage of Contract Waste Accepted by the Contractor during the calendar month prior to the relevant Contract Month.

TEFW<sub>m-1</sub> = The tonnage of Contract Waste Accepted by the Contractor during the calendar month prior to the relevant Contract Month and treated at the Interim Services Period Thermal Treatment Facility.

ISPLGF = The Interim Services Period Landfill Gate Fee, including Landfill Tax, as set out in Appendix 1.

CT<sub>m-1</sub> = As defined in paragraph 5.3

- $C_D$  = The Contract Diversion Rate for Landfill Tax risk share as set out in Appendix 3
- $L_{TA}$  = The prevailing rate of Landfill Tax per tonne for Active Waste in the relevant Contract Year
- $ELTA$  = The Expected Landfill Tax Rate being [REDACTED] at 1 April 2014 indexed in accordance with paragraph 13.

4.4 The Interim Services Period Thermal Treatment Payment ( $ISPEFW_{m-1}$ ) in respect of the previous Contract Month shall be determined in accordance with the following formula:

[REDACTED]

where:

- $TEFW_{m-1}$  = The tonnage of Contract Waste Accepted by the Contractor during the calendar month prior to the relevant Contract Month and treated at the Interim Services Period Thermal Treatment Facility during the relevant Contract Month.
- $ISPTGF$  = The Interim Service Period Thermal Treatment Gate Fee as set out in Appendix 1.

4.5 The Interim Service Period Specialist Contract Waste Payment ( $ISPSCWP_{m-1}$ ) in respect of the previous Contract Month shall be determined in accordance with the following formula:

[REDACTED]

where

- $ISPSCW_n$  the tonnage of each category of Specialist Contract Waste Accepted during the calendar month prior to the relevant Contract Month
- $ISPSCWP_n$  the relevant Base Price per Tonne for Specialist Contract Waste category 'n', as set out in Appendix 1.

**5 Commissioning Payment ( $C_m$ )**

5.1 The Commissioning Payment ( $C_m$ ) is to be paid during the Commissioning Period for tonnages of Contract Waste Accepted by the Contractor for the purpose of commissioning the Key Facility.

5.2 Where tonnages are requested for commissioning and subsequently not processed via the Key Facility they shall be processed in accordance with paragraph 4.

5.3 The Commissioning Payment in respect of each Contract Month shall be determined in accordance with the following formula:



where:

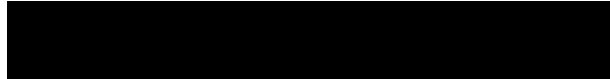
$C_m$  = The Commissioning Payment in respect of the relevant Contract Month.

$CT_{m-1}$  = the actual tonnage of Contract Waste Accepted (excluding Ad Hoc Waste) by the Contractor for the purpose of commissioning the Key Facility during the calendar month prior to the relevant Contract Month.

CPGF = the Commissioning Period Gate Fee as set out in Appendix 1.

**6 Interim Services Period Ad Hoc Waste Payment (ISPAW<sub>m-2</sub>)**

- 6.1 The Interim Services Period Ad Hoc Waste Payment (ISPAW<sub>m-2</sub>) shall be paid from the Interim Services Commencement Date to the Key Facility Services Commencement Date
- 6.2 In the event that the Contractor is required to handle Ad Hoc Waste in any Contract Month, the Authority shall pay the Contractor's costs as follows:



where

ISPAW<sub>m-2</sub> the sum of all reasonable and proper costs invoiced to the Contractor during the calendar month two months prior to the relevant Contract Month for receiving, handling, transporting, recycling, treating and/or disposing of Ad Hoc Waste.

- 6.3 For the avoidance of doubt, no payment shall be made by the Authority in respect of Ad Hoc Waste unless the Contractor's invoice relating to the same is supported by documentary evidence reasonably satisfactory to the Authority that such costs have been or will be reasonably and properly incurred and are properly calculated.



**7 Interim Services Period Other Payment (ISPOP<sub>m-2</sub>)**

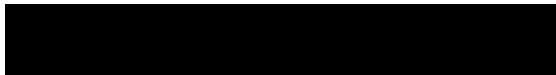
7.1 The Interim Services Period Other Payment (ISPOP<sub>m-2</sub>) shall be paid from the Interim Services Commencement Date to the Key Facility Services Commencement Date.

7.2 The Interim Services Period Other Payment shall be calculated in accordance with the following formula:



where

AC<sub>m-2</sub> the cost of a Low Value Change invoiced two months following the relevant Contract Month when implementation of the Change occurs in accordance with Schedule 21 (Change Protocol).



where

AAV<sub>m-2</sub> = The Agreed Abatement for a Low Value Change, Medium Value Change or High Value Change, as applicable, in the two calendar months prior to the relevant Contract Month Schedule 21 (Change Protocol).

DD = The number of days delay during the Contract Year from the date the Contractor Response should have been submitted or the Change should have been completed or implemented until the date the Contractor Response is submitted or the Change is completed or implemented.

AS<sub>m-2</sub> Any other service as agreed in writing by the Contractor and Authority from time to time.

**8 Interim Services Period National Non-Domestic Rates and Villiers Road Site Rent Payment (ISPNNDR<sub>m-1</sub>)**

8.1 If directed by the Authority's Representative, the Contractor shall appeal the quantum of ISPNNDR and if this occurs any payments by the Authority in respect of ISPNNDR shall include all costs reasonably incurred by the Contractor in pursuing such an appeal provided that the Contractor's invoice for the relevant Contract Month is supported by documentary evidence reasonably satisfactory to the Authority that such costs have been incurred and are properly calculated.

8.2 The ISPNNDR for each Contract Month shall be calculated in accordance with the following formula:



where:

ISPNNDR<sub>VRS</sub> = From the Interim Services Commencement Date to the Key Facility Services Commencement Date the amount of NNDR properly paid by the Contractor in respect of the Villiers Road Site during the calendar month prior to the relevant Contract Month.

ISPNNDR<sub>KF</sub> = During the Commissioning Period the amount of NNDR properly paid by the Contractor in respect of the Key Facility during the calendar month prior to the relevant Contract Month.

FC = The Key Facility capacity being 274,600 tonnes per annum (pro-rated in a partial Contract Year).

APT = Authority projected tonnages for the relevant Contract Year as identified in Appendix 2 to Schedule 4 (Payment Mechanism).

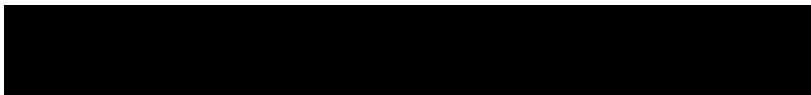
VRRENT = From the Interim Services Commencement Date to the Key Facility Services Commencement Date the amount of rent properly paid by the Contractor to the Royal Borough of Kingston upon Thames in respect of the Villiers Road Site during the calendar month prior to the relevant Contract Month.

## 9 Interim Services Period Diversion Deduction (ISPDD<sub>y</sub>)

9.1 The Interim Services Period Diversion Deduction (DD<sub>y</sub>) is applicable from the Interim Services Commencement Date until the Key Facility Services Commencement Date.

9.2 For each Contract Year, the Interim Services Period Diversion Deduction is to be calculated and included within the Monthly Unitary Charge Payment as soon as practically possible in the following Contract Year after the relevant information becomes available.

9.3 The Interim Services Period Diversion Deduction is calculated in accordance with the following formula:



where:

$A_D = V_{LCORE} / V_A$

$C_{BMWD}$  = the Interim Services Period Contract Diversion Rate as set out in Appendix 3 to this Schedule 4A (Payment Mechanism).

$V_A$  = the actual tonnage of Core Contract Waste (excluding Ad Hoc Waste) received in the Contract Year.

$V_{LCORE}$  = the actual tonnage of Core Contract Waste (excluding Ad Hoc Waste) Landfilled during the relevant Contract Year.

DDR = the Diversion Deduction Rate

BMW = the deemed biodegradable municipal waste (BMW) content of Contract Waste as calculated according to MBEAM and submitted by the Authority to DEFRA and the Environment Agency under Waste Data Flow (expressed as a percentage of Contract Waste). Where such a submission has not been made by the Authority, the deemed BMW content of municipal waste in England as determined by DEFRA and the Environment Agency<sup>1</sup>.

FI = Full Indexation Factor as defined in paragraph 13.

9.4 The calculation of the Interim Services Period Diversion Deduction  $V_A \times (A_D - (1 - C_{BMWD}))$  cannot exceed the Maximum Diversion Deduction Tonnage for the relevant Contract Year.

<sup>1</sup> A 2009 research paper determined this to be 66.71% ([http://randd.defra.gov.uk/Document.aspx?Document=WR0119\\_8662\\_FRP.pdf](http://randd.defra.gov.uk/Document.aspx?Document=WR0119_8662_FRP.pdf))

9.5 The Maximum Diversion Deduction Tonnage for each contract year will be calculated in accordance with the following formula:

[REDACTED]

where:

MDDT = Maximum Diversion Deduction Tonnage

LC = the capacity of the Interim Services Period Thermal Treatment Facility allocated for Interim Services being [REDACTED] tonnes per annum (prorated in a partial Contract Year)

AT = the actual throughput of waste at the Interim Services Period Thermal Treatment Facility in tonnes in the relevant Contract Year (prorated in a partial Contract Year)

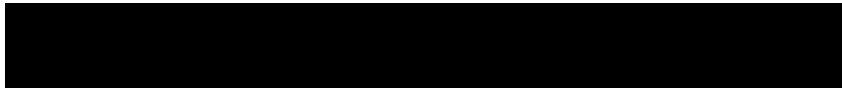
PC = [REDACTED]

9.6 Where the Interim Services Period Diversion Deduction is calculated as a negative number it shall be deemed to be zero.

**10 Interim Services Period Performance Deduction (ISPPD<sub>m-2</sub>)**

10.1 The Interim Services Period Performance Deduction (ISPPD<sub>m-2</sub>) is deducted from the Interim Services Period Monthly Unitary Charge (ISPUC<sub>m</sub>) for each Contract Month.

10.2 The Interim Services Period Performance Deduction for the relevant Contract Month shall be determined in accordance with the following formula:




where:

**NPP<sub>m-2</sub>** the number of Non Performance Points incurred by the Contractor in the calendar month occurring two months prior to the relevant Contract Month as calculated in accordance with Part 2 (Performance Management Framework) of Schedule 2 (Authority's Requirements).

**NPPR** equals 

**LSFD<sub>m-2</sub>** the number of Lump Sum Failure Deductions incurred by the Contractor in the calendar month occurring two months prior to the relevant Contract Month as calculated in accordance with Part 2 (Performance Management Framework) of Schedule 2 (Authority's Requirements).

**LSFDR** equals 

**FI** Full Indexation factor as defined in paragraph 13.

Provided that the sum of the Interim Services Period Performance Deductions within any Contract Year shall not exceed the Interim Services Period Performance Deduction Cap in the relevant Contract Year.

**11 Interim Services Period Mileage Deduction (ISPM<sub>m-2</sub>)**

- 11.1 The Interim Services Period Mileage Deduction is deducted from the Interim Services Period Monthly Unitary Charge (ISPUC<sub>m</sub>) for each Contract Month.
- 11.2 The Interim Services Period Mileage Deduction will reimburse the Authority's additional transport costs where the Contractor has required the Authority to divert Contract Waste from a Primary Delivery Point to a Contingency Delivery Point.
- 11.3 The Interim Services Period Mileage Deduction will apply from the Interim Services Commencement Date to the Key Facility Services Commencement Date.
- 11.4 The Interim Services Period Mileage Deduction will be calculated in accordance with the following formula:



where:

**TD<sub>m-2</sub>** The tonnage of Contract Waste diverted from a Primary Delivery Point to a Contingency Delivery Point during the calendar month two months prior to the relevant Contract Month.

**AD** DCD – DD

where:

DCD = The return distance (in miles) travelled by the Authority's vehicles to the Contingency Delivery Point (along the most direct adopted highway that provides a legal route suitable for the Authority's vehicles) during the calendar month two months prior to the relevant Contract Month (expressed as an average distance per tonne).

DD = The return distance (in miles) that would otherwise have been travelled by the Authority's vehicles to the Delivery Point (along the most direct adopted highway that provides a legal route suitable for the Authority's vehicles) during the calendar month two months prior to the relevant Contract Month (expressed as an average distance per tonne).

**MR** Mileage Rate

**FI** Full Indexation Factor as defined in paragraph 13

**12 Interim Services Period Non Acceptance Deduction (ISP<sub>m-2</sub>)**

- 12.1 The Interim Services Period Non Acceptance Deduction (ISP<sub>m-2</sub>) is deducted from the Interim Services Period Monthly Unitary Charge (ISPUC<sub>m</sub>) for each Contract Month.
- 12.2 The Interim Services Period Non Acceptance Deduction will reimburse the Authority additional costs incurred by the Authority as a result of the Contractor's failure to accept Contract Waste at any Delivery Point in accordance with the Waste Acceptance Protocol.
- 12.3 The Interim Services Period Non Acceptance Deduction will be calculated in accordance with the following formula:



where:

ISPAC<sub>m-2</sub> The actual costs reasonably and properly incurred by the Authority as a result of Contract Waste not being accepted by the Contractor at any Delivery Point in accordance with the Waste Acceptance Protocol during the calendar month two months prior to the relevant Contract Month.

Actual costs shall include (without limitation) the cost of alternative treatment, landfill gate fees, Landfill Tax at the prevailing rate and any additional transport costs incurred by the Authority in the disposal of Contract Waste Not Accepted.

ISPW<sub>m-2</sub> The Interim Services Payment withheld as a result of Contract Waste Not Accepted by the Contractor at any Delivery Point during the calendar month two months prior to the relevant Contract Month calculated as:



where:

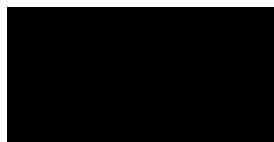
BT<sub>na</sub> means the amount in tonnes of Contract Waste Not Accepted during the calendar month two months prior to the relevant Contract Month.

ISPLGF is as defined in paragraph 4.3

- 12.4 In the event that in any Contract Month ISP<sub>m-2</sub> is a negative number, ISP<sub>m-2</sub> shall be deemed to be zero.

### 13 Indexation provisions

- 13.1 The Full Indexation Factor for the Contract Year  $y$  represents the increase or decrease in RPI $x$  over the period since the Base Date and shall be calculated as follows:



where:

- BI** the Full Indexation Factor for the relevant Contract Year;
- RPI $x_{y-1}$**  the value published for RPI $x$  in March for February in the immediately preceding Contract Year  $y$ ; and
- RPI $x_{base}$**  the value published for RPI $x$  for February in the immediately preceding April 2011, being 230.5.

#### 13.2 Changes to Indices Affecting any Indexation factor


- 13.2.1 If there is a material change in the nature or basis of any Index, or if any Index is discontinued, the Parties shall seek to agree upon an alternative to that Index which as closely replicates the relevant Index as is possible, and such consequential changes shall be made to the calculations provided for in this paragraph 13 as are necessary to ensure that all payments to be made pursuant to this Contract shall be the same as if such change had not occurred. Any dispute regarding changes to the Index and/or calculations may be referred by either Party to the Disputes Resolution Procedure.
- 13.2.2 If any error or mistake shall occur in the publication for the figures for the relevant Index which have been used at any time in any calculation pursuant to this Schedule which is subsequently duly acknowledged and corrected by the Office of National Statistics or the relevant body with responsibility for the publication of such Index, the calculations in which the incorrect figures were used for the adjustments of any part of the Monthly Unitary Charge shall be recalculated using the correct figures. Any dispute regarding the recalculations pursuant to this paragraph 13 may be referred at the request by either Party to the Disputes Resolution Procedure. Any overpayment or underpayment by either Party to the other which has occurred as a result of the incorrect figures shall be paid or repaid by the Party to the other within seven (7) Business Days of the recalculation being agreed or determined (as the case may be).



**14 Interim Services Period Overall Deduction Cap**

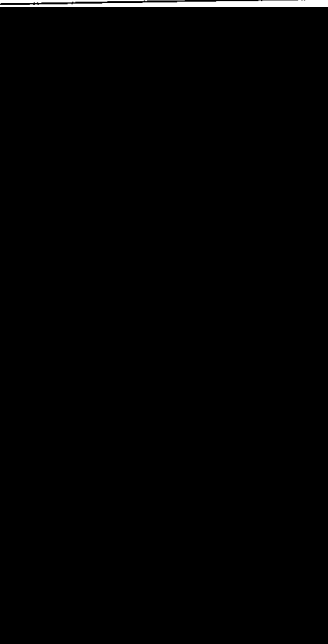
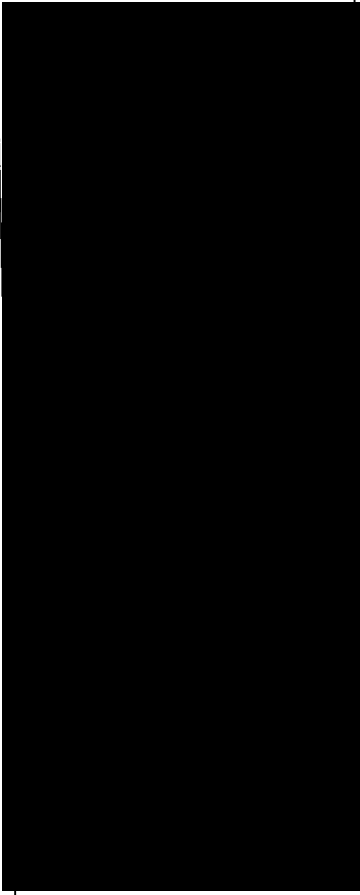


## APPENDIX 1 – Gate Fees

<b>Waste Stream</b>	<b>Gate Fee/tonne</b>
Interim Services Period Thermal Treatment Gate Fee	
Interim Services Period Landfill Gate Fee	
Commissioning Period Gate Fee	
Separately Collected Clinical Waste	
Dog Faeces	
Tyres	
Asbestos	

**APPENDIX 2 – NOT USED**

**APPENDIX 3 – Contract Diversion Rates**

<b>Financial Year Commencing</b>	<b>Contract Diversion Rate for Landfill Tax Risk Share (only for the purposes of calculation of ISPLC<sub>m-1</sub>)</b>	<b>Interim Services Period Contract Diversion Rate (for calculation of ISPDD<sub>Y</sub>)</b>
01-Apr-14		
01-Apr-15		
01-Apr-16		

**Schedule 4A – Payment Mechanism**

**SCHEDULE 5**  
**ANCILLARY DOCUMENTS**

Ancillary Document
the Construction Sub-Contract (but only those parts relating to the Waste Transfer Station Works)
the Leases

**SCHEDULE 6**  
**CONTRACTOR WARRANTED DATA**

**A. THE CONTRACTOR**

**1. Registered Name**

Viridor South London Limited

**2. Date and Place of Incorporation**

15<sup>th</sup> June 2012: England and Wales

**3. Registered Office of the Contractor**

Peninsula House  
Rydon Lane  
Exeter  
United Kingdom  
EX2 7HR

**4. Directors**

A M D Kirkman  
M Burrows Smith  
H T Ellard  
S Hodges  
R Ryan

**5. Joint Secretaries**

M L Heeley  
K D Woodier  
R C Zmuda

**6. Issued Share Capital**

100 shares issued to Viridor Waste Management Limited

**B. THE GUARANTOR**

**1. Registered Name**

Viridor Limited

**2. Date and Place of Incorporation**

2<sup>nd</sup> of June 1990: England and Wales

**3. Registered Office**

Peninsula House  
Rydon Lane  
Exeter  
United Kingdom  
EX2 7HR

**4. Directors**

K G Harvey  
R D Holden  
F J Schwager  
C I J H Drummond  
A M D Kirkman  
S Catford  
M Burrows Smith  
H T Ellard

**5. Joint Secretaries**

M L Heeley  
K D Woodier  
R C Zmuda

**6. Issued Share Capital**

197,015,898 shares issued to Pennon Group Plc

**SCHEDULE 7  
SITES INFORMATION**

**PART A - FIRST LEASE**



Schedule 7 – Sites Information

Dated \_\_\_\_\_ 2012

**THE MAYOR AND BURGESSES OF THE  
ROYAL BOROUGH OF KINGSTON UPON THAMES**

- to -

**VIRIDOR SOUTH LONDON LIMITED**

---

**LEASE**

- of -

land at Chapel Mill Road  
Kingston upon Thames  
in the Royal Borough of Kingston upon Thames

---

First Lease

**1. Particulars**

- 1.1.1 the Landlord: THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KINGSTON UPON THAMES of Guildhall High Street Kingston upon Thames Surrey KT1 1EU
- 1.1.2 the Tenant: VIRIDOR SOUTH LONDON LIMITED whose registered office is at Peninsula House, Rydon Lane, Exeter EX2 7HR company number 8106962
- 1.2 the Premises: ALL THAT piece or parcel of land situated at Chapel Mill Road Kingston upon Thames Surrey and more particularly shown coloured pink and crosshatched blue cross hatched green and cross hatched red on the Plan together with any buildings fixtures and fittings (except tenant's or trade fixtures or fittings ) erected thereon under or over the land as well as the boundary fences and the Shared Area
- 1.3 the Landlord's Site The extent of the Landlord's site at Kingston including the Premises as notified to the Tenant
- 1.4 the Green Land The land shown coloured green on the Plan
- 1.5 the HWRC site The land identified on the Plan as the Waste Disposal Centre
- 1.6 Term: a term of years commencing on 01April 2014 and expiring on 31 December 2018
- 1.7 Rent: ONE HUNDRED AND SIXTY TWO THOUSAND FOUR HUNDRED AND SIXTY NINE POUNDS (£162,469) per year

- 1.8 Rent Payment Dates: 25<sup>th</sup> March, 24<sup>th</sup> June, 29<sup>th</sup> September and 25<sup>th</sup> December in every year of the Term
- 1.9 Permitted Use: The receipt acceptance bulking and the transportation off the Premises of Contract Waste, Third Party Waste and Substitute Waste as defined in and in accordance with the provisions contained in the Contract
- 1.10 the Access Road: the roadway (known as Chapel Mill Road) shown (for identification purposes only) coloured brown on the Plan
- 1.11 the Shared Area: means all of the following where referred to together the "Shared Access" being:
- the "Blue Road" being the vehicular access area shown cross hatched blue (for identification purposes only)
- the "Green Land Shared Access" being the vehicular access to the Green Land area shown cross hatched red (for identification purposes only).
- The "HWRC Site Shared Access" being vehicular access to HWRC site shown cross hatched green (for identification purposes only).

## 2. Definitions

- 2.1 "Authority" means the Mayor and Burgesses of the London Borough of Croydon being the lead authority for the South London Waste Partnership
- 2.2 "Contract" means the Contract dated [ ] between the Authority and the Tenant

- 2.3 “Insured Risks” means risk of loss or damage by fire storm tempest flood earthquake lightening explosion impact aircraft and other aerial devices and articles accidentally dropped therefrom riot civil commotion malicious damage including impact or bursting overflowing of water tanks pipes apparatus or conduits subsidence heave and such other perils against which the Landlord may reasonably require from time to time and for which insurance is available to the Landlord in the UK insurance market with reputable insurers of good standing in respect of that risk
- 2.4 “the Insurance Policy” means the insurance policy insuring the Landlord’s Site against loss or damage by the Insured Risks for the sum which the Landlord considers to be its full reinstatement cost (taking inflation of building costs into account) effected in such insurance office of repute or with such underwriters and through such agency as the Landlord may decide and subject to such excesses exclusions limitations and conditions as the insurer or the Landlord may reasonably and properly negotiate and all the liability of the Landlord to third parties arising out of and in connection with any matter including or relating to the Premises.
- 2.5 ‘The Insurance Premium’ means a reasonable and proper proportion of the aggregate in each year of the gross cost of the premium paid for the Insurance Policy before any discount BUT the payment for the premium will include commission and administration cost for the Insurance Policy also including:
1. loss of rent, in accordance with his obligations contained in this Lease; and
  2. any insurance premium tax payable on the above.
- 2.6 “Interest” means interest both before and after any judgement at the Interest Rate the prevailing during the period beginning on the date on which the relevant payment is due and ending on the date on which the relevant payment is received by way of cleared funds

- 2.7 "Interest Rate" means four per cent above the lending rate from time to time in force of National Westminster Bank Plc or such other bank as the Landlord may from time to time nominate
- 2.8 "the 1954 Act" means the Landlord and Tenant Act 1954 and all other statutes statutory instruments regulations and orders included by virtue of sub-Clause 3.11
- 2.9 "Pipes" means all pipes sewers drains mains ducts conduits gutters watercourses wires cables optic fibres channels flues and all other conducting media ( including fixings louvres cowls and any other ancillary apparatus equipment or structure)
- 2.10 "the Planning Acts" means the Town and Country Planning Act 1990 and all other statutes statutory instruments regulations and orders included by virtue of sub-Clause 3.11
- 2.11 "Determination of the Term" means the determination of the Term by re-entry notice surrender termination of the Contract or otherwise
- 2.12 "Last Year of the Term" means the period of twelve (12) months immediately preceding the Determination of the Term
- 2.13 "Lease" means this lease as from time to time varied or supplemented whether by deed licence or otherwise
- 2.14 "Parties" means the Landlord and the Tenant
- 2.15 "Plan" means the plan numbered and annexed to this deed
- 2.16 "Title Matters" means the matters contained or referred to in the Property or Charges Register for title number SGL 679472 as at [date of Contract] "Partnership" means the South London Waste Partnership formed between the Authority, the London Borough of Merton The London Borough of Sutton and the Landlord
- 2.17 "VAT" means Value Added Tax or other tax of a similar nature or any tax supplemental thereto (and unless otherwise expressly stated all

references to monies payable by the Tenant are exclusive of any VAT charged or chargeable thereon)

### 3. Interpretation

3.1 The expressions "the Landlord" and "the Tenant" wherever the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant's successors in title respectively and any reference to a superior landlord includes the Landlord's immediate reversioner (and any superior landlords) at any time

3.2 Where the Landlord and Tenant for the time being are two or more persons obligations expressed or implied to be made by or with such party are deemed to be made by or with such persons jointly and severally

3.3 Words importing one gender include all other genders and words importing the singular include the plural and vice versa

3.4 The expression "Premises" includes:

3.4.1 all additions and improvements to the Premises;

3.4.2 all the buildings, fixtures and fittings (except tenant's fixtures and fittings) which shall from time to time be in or upon the Premises including the following which are at the Premises at the date hereof:

Two portacabins stacked as a two storey structure with external stair

A portacabin weighbridge office

A self bunded oil tank

3.4.3 all Pipes in on under or over the Premises or leading to them which exclusively serve them and do not form part of the public mains; and

3.4.4 weighbridges at the Premises;

3.4.5 the entire thickness of all walls and/or fences (whichever is appropriate) forming the boundaries of the Premises and references to the Premises in the absence of any provision to the contrary include references to any part of the Premises

For the avoidance of doubt the Premises do not include the canopy attached to the Premises which overhangs adjoining land owned by the Landlord.

- 3.5 References to any right of the Landlord to have access to the Premises shall be construed as extending to any superior landlord and any mortgagee of the Premises and to all persons authorised by the Landlord to have access to the Premises and to all persons authorised by the Landlord and any superior landlord or mortgagee (including agents professional advisers contractors workmen and others)
- 3.6 Any covenant by the Tenant not to do an act or thing shall be deemed to include a covenant not to knowingly permit or suffer such act or thing to be done by a third party
- 3.7 References to "consent of the Landlord" or words to similar effect mean a consent in writing signed by or on behalf of the Landlord and to "approved" and "authorised" or words to similar effect mean (as the case may be) approved or authorised in writing by or on behalf of the Landlord
- 3.8 A consent or approval by the Landlord under the Lease is deemed to be given in its capacity of owner of the reversionary interest in the Premises and not in any other capacity
- 3.9 "Development" has the meaning assigned thereto by the Town and Country Planning Act 1990
- 3.10 Any references to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute and any general



reference to "statute" or "statutes" includes any regulations or orders made under such statute or statutes

- 3.11 References in the Lease to any Clause sub-Clause or Schedule without further designation shall be construed as a reference to the clause sub-clause or schedule to the Lease so numbered
- 3.12 The clause paragraph and schedule headings do not form part of the Lease and shall not be taken into account in its construction or interpretation

#### 4. **Demise**

The Landlord demises with full title guarantee to the Tenant the Premises Together with the rights specified in Part I of the First Schedule EXCEPTING AND RESERVING to the Landlord the rights specified in Part II of the First Schedule TO HOLD the Premises to the Tenant for the Term SUBJECT to the Title Matters YIELDING AND PAYING to the Landlord the Rent payable during the Term and Secondly (where the Landlord insures and as rent) payment of the Insurance Premium and all amounts due and payable upon demand and in accordance with clause 5.1.2 below

#### 5. The Tenant's Covenants

The Tenant covenants with the Landlord:

##### 5.1 **Rent**

- 5.1.1 To pay the Rent quarterly in advance on the Rent Payment Dates
- 5.1.2 To pay the Insurance Premium within twenty eight days of demand

##### 5.2 **Outgoings**

5.2:1 To pay and to indemnify the Landlord against:

- 5.2:1.1 all rates, taxes including taxes arising as a result of the grant of this Lease, assessments, duties, charges, Uniform Business Rates impositions and outgoings

which are now or during the Term shall be charged assessed or imposed upon the Premises or upon the owner or occupier of them excluding any payable by the Landlord occasioned by receipt of the rents or by any disposition of dealing with or ownership of any interest reversionary to the interest created by the Lease

5.2:1.2 a registration fee of £30 for each document which the Lease requires the Tenant to register to be paid to the Landlord's solicitor when presenting the document for registration

5.2:1.3 a fair and reasonable proportion (taking into account the other sites which use the Access Road and calculated by reference to the RICS Code of Measuring Practice) of the cost reasonably incurred by the Landlord in repairing and maintaining the Access Road such contribution to be made within a reasonable time of demand PROVIDED THAT where use of the Access Road by the Tenant his servants or invitees results in damage to the Access Road (as distinct from the need for routine repair or planned refurbishment or renewal programme to be undertaken by the Landlord) the cost of remedial works required to the Access Road as a result of the damage will be at the sole cost of the Tenant. No contribution shall be payable by the Tenant in respect of remedial works required as a result of damage (as distinct from routine repair or planned refurbishment undertaken by the Landlord) caused solely by any occupier of any adjoining land.

5.2:2 To apply and use its reasonable endeavours to ensure that for the Premises are assessed as a separate hereditament for rating purposes.

### 5.3 VAT

5.3:1 Subject to the supply of a valid VAT invoice, to pay and keep the Landlord indemnified against all VAT chargeable in respect of any payment made by the Tenant under any of the terms of or in connection with the Lease or in respect of any payment made by the Landlord where the Tenant agrees in the Lease to reimburse the Landlord for such payment save to the extent that the Landlord may lawfully recover the same

5.3:2 If the Landlord has an option whether or not to charge VAT the Tenant hereby irrevocably consents to the Landlord freely exercising that option to the extent from time to time permitted by law

### 5.4 Electricity, Gas and other Services consumed

To pay to the suppliers and to indemnify the Landlord against all charges for the connection, use and disconnection of electricity, water, gas, drainage, telephone services, and all other services consumed or used at or in relation to the Premises (including meter rents (if any))

### 5.5 Commissioning Repair, Cleaning, Decoration, etc.

5.5:1 With effect from the commencement of the Term and throughout the Term:

5.5:1.1 to repair the Premises and keep them in good and tenable repair and condition, (including without limitation decoration condition) excepting (a) fair wear and tear; and (b) damage caused by an Insured Risk other than where the insurance money is irrecoverable in consequence of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's authority

5.5:1.2 to secure the Premises and to keep them secure throughout the Term

5.5:1.3 to clean the Premises regularly and keep them in a clean and tidy condition

5.5:1.4 not to deposit or permit to be deposited any waste rubbish or refuse on any part of the Access Road, or the Shared Area

5.5:1.5 not to keep or store on any part of the Access Road, or the Shared Area any caravan or movable dwelling

5.5:2 Where the use of the Pipes boundary walls fences or structures is common to the Premises and other property (but excluding the Access Road and Shared Area) to (a) be responsible for and to indemnify the Landlord against all sums reasonably and properly due from the lessee or occupier of the Premises in relation to maintaining those Pipes boundary walls fences or structures or (b) to undertake all work that is the responsibility of the lessee or occupier of the Premises in relation to maintaining those Pipes boundary walls fences or structures to the reasonable satisfaction of the Landlord.

## **5.6 Waste and alterations**

5.6:1 not at any time to

5.6:1.1 commit any waste (other than is consistent with the Permitted Use)

5.6:1.2 unite the Premises with any adjoining premises

5.6:1.3 make any addition or alteration to the Premises save where required for the carrying out of the Services under the Contract or otherwise permitted under the Contract

5.6.2 Not at any time to construct any buildings or other structures on or install any equipment at any part of the Premises or make any additions or alterations to the Premises except so far as reasonably required for the proper performance of the Permitted Use and permitted under the Contract ("Permitted Works")

5.6.2.2 In relation to Permitted Works the Tenant shall:

- (i) comply with the relevant provisions in the Contract in relation to any Permitted Works
- (ii) comply with the provision of clause 5.6.3.2(i); and
- (iii) provide to the Landlord drawings and specifications for such Permitted Works

5.6.3 Not at any time to construct any other buildings or structures or make any other alterations or additions (not being Permitted Works) without the Landlord's written consent which shall not be unreasonably withheld or delayed. The Tenant shall comply with the Conditions set out in clause 5.6.3.2.

5.6.3.2 "the Conditions" are:

- (i) obtaining and complying with the requisite planning permission Building Regulations approval and any other necessary consents of any competent authority and paying charges of any such authority in respect of such consents
- (ii) making an application supported by drawings and specifications in triplicate prepared by an architect or member of some other appropriate profession (who shall supervise the work throughout to completion) and which are acceptable to the Landlord (such acceptance not to be unreasonably withheld or delayed)
- (iii) paying the reasonable and proper fees of the Landlord any superior landlord any mortgagee and their respective professional advisers and
- (iv) entering into such covenants (by deed) as the Landlord may reasonably require as to the execution and reinstatement of the alterations.

## **5.7 Aerials Signs and Advertisements**

5.7:1 Not to erect any pole mast or wire (whether in connection with telegraphic telephonic radio or television communication or otherwise) upon the Premises without the consent of the Landlord (such consent not to be unreasonably withheld or delayed)

5.7:2 Not to affix to or exhibit on the Premises or to or through any placard sign notice fascia board or advertisement except to indicate the name and business of the Tenant in the Tenant's corporate or house style and provided that signage required by health and safety legislation may be erected

## **5.8 Statutory Obligations**

5.8:1 The Tenant shall comply with the provisions of clause 83 (Compliance with legislation) of the Contract.

5.8:2 Without prejudice to the generality of the above provisions in this sub-Clause 5.8 to comply with such reasonable rules and regulations as the Landlord may from time to time prescribe concerning the management and use of the Shared Areas in conjunction with the Landlord's land adjoining the Premises provided that such rules and regulations or the observance thereof do not materially hinder or fetter the carrying out of the Permitted Use in accordance with the Contract and shall not cause any material interference to the Tenant in exercising its rights under this Lease unless such interference is required to enable the Landlord to carry out its statutory function or in the case of an emergency.

## **5.9 Access of Landlord and Notice to Repair**

5.9:1 Provided the Authority has not exercised its right to Step in in accordance with clause 33.1 of the Contract to permit the Landlord upon no less than 48 hours prior written notice (save in case of emergency).

- 5.9:1.1 to enter upon and have full access to all parts of the Premises for the purpose of ascertaining the covenants and conditions of the Lease have been observed and performed and for the purpose of inspecting work being performed pursuant to the Contract
- 5.9:1.2 to review the state of repair and condition of the Premises
- 5.9:1.3 to enter the Premises to inspect, clean, repair, renew or alter neighbouring property or any Pipes serving neighbouring property
- 5.9:1.4 to give to the Tenant (or leave upon the Premises) a notice specifying any repairs cleaning maintenance or painting that the Tenant has failed to execute in breach of the terms of this Lease and to request the Tenant immediately to execute the same including the making good of such opening-up (if any) provided that any such opening-up shall be made good by and at the cost of the Landlord where such opening-up reveals no breaches of the terms of the Lease
- 5.9:1.5 to exercise any of the Landlord's rights reserved in Part II of the First Schedule
- 5.9:2 As soon as practicable or immediately in the case of an emergency to repair cleanse maintain and paint the Premises as required by such notice (pursuant to sub-Clause 5.9:1.4)
- 5.9:3 If within one month of the service of such notice (pursuant to sub-Clause 5.9:1.4) in respect of a breach which is substantial the Tenant shall not have commenced and be proceeding diligently with the execution of the work reasonably expected to be carried out referred to in that notice or shall fail to complete the work within 2 months or (provided that the relevant breach does not materially adversely affect the use of any neighbouring land or

cause a health and/or safety issue in relation to such neighbouring land) such other reasonable longer period as shall be consistent with the maintenance obligations in the Contract if in the Landlord's reasonable opinion the Tenant is unlikely to have completed the work within such period to permit the Landlord to enter the Premises to execute such work as may be necessary to comply with the notice and to pay to the Landlord the cost of so doing and all expenses incurred by the Landlord (including any legal costs and surveyor's fees) within 14 days of a written demand

#### **5.10 Alienation**

5.10:1 Not to hold on trust for another or part with or share the possession of the whole or any part or parts of the Premises or permit another to occupy the whole or any part or parts of the Premises

5.10:2 Not to assign or charge any part or parts (not comprising the whole) of the Premises

5.10:3 Not to assign the whole of the Premises except to any assignee or novatee of the Contract. Upon any assignment the Tenant and any guarantor shall be released from all liability for any future breach under the Lease and neither shall be required to enter into an Authorised Guarantee Agreement pursuant to the Landlord and Tenant (Covenants) Act 1995 Provided that such assignment to a novatee does not take place earlier than the Lock in Period as defined in the Contract

5.10.4 Provided that nothing in this Lease shall restrict the right of the Tenant to share the occupation of the Premises from time to time with any company that is a member of the same group (within the meaning of section 42 of the Landlord and Tenant Act 1954) ("Group Company") for as long as that company remains within that group and is performing services solely under the Contract and occupying the Premises solely for that purpose or to an



approved sub-contractor in accordance with clause 81.3.2 of the Contract Provided that:

- (i) The Tenant shall notify the Landlord in writing of the name and company number of the Group Company within 10 working days of the Group Company taking occupation
- (ii) no relationship of landlord and tenant shall be created or deemed to exist by this arrangement;
- (iii) the Group Company or Sub-Contractor shall not be permitted to have exclusive occupation of the whole or any part or parts of the Premises; and
- (iv) the Tenant will guarantee that the Group Company or Sub-Contractor shall vacate the Premises forthwith upon ceasing to perform the services to be performed under the Contract and/or on expiry or termination of the Contract

**5.11 Nuisance etc. and Residential Restrictions**

5.11:1 Not to do nor allow to remain upon the Premises anything which may be or become or cause a nuisance annoyance disturbance inconvenience injury or damage or cause to the Landlord or its tenants or the owners or occupiers of adjacent or neighbouring premises provided that the Permitted Use shall not be a breach of this covenant

5.11:2 Not to use the Premises other than for the Permitted Use

5.11:3 Not to use the Premises for any illegal or immoral act or purpose or cause anything to be done

5.11:4 Not to use the Premises as sleeping accommodation or for residential purposes nor to keep any animal fish reptile or bird anywhere on the Premises

## 5.12 Contamination

Subject to the Authority complying with the obligations of the Authority thereunder The Tenant shall in all respects comply with the provisions of clause 11 Site Conditions contained within the Contract (and for the avoidance of doubt the Tenant shall not be liable hereunder for any matter for which the Authority is liable under clause 11 of the Contract)

## 5.13 Landlord's Costs

To pay to the Landlord on an indemnity basis all reasonable costs fees charges disbursements and expenses properly incurred including without prejudice to the generality of the above

5.13:1 for every application made by the Tenant for a consent or licence required by the provisions of the Lease whether such consent or licence is granted or refused or proffered subject to any lawful qualification or condition or whether the application is withdrawn unless such refusal qualification or condition is unlawful whether because it is unreasonable or otherwise

5.13:1 the preparation and service of a notice under the Law of Property Act 1925 Section 146 or incurred by or in contemplation of proceedings under Section 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the court

5.13:2 any steps taken in contemplation of or in direct connection with the preparation and service of schedules of dilapidations or a notice of reinstatement of the Premises either during the Term or after the expiration of the Term

## 5.14 The Planning Acts

The Tenant shall comply with the provisions of Clause 12 and Schedule 26 of the Contract.

## 5.15 Plans, Documents and Information

If called upon to do so to produce to the Landlord or its duly appointed Surveyor all plans documents and other evidence as the Landlord may reasonably require in order to satisfy itself that the provisions of the Lease have been complied with

## 5.16 Indemnities

5.16:1 To be responsible for and to keep the Landlord fully indemnified against all damages losses costs expenses actions demands proceedings claims and liabilities made against suffered or incurred by the Landlord arising directly out of:

5.16:1.1 the state of repair and condition of the Premises in breach of the obligations in this Lease

5.16:1.2 any act omission or negligence of the Tenant or any persons at the Premises expressly or impliedly with the Tenant's authority and under the Tenant's control

5.16:1.3 any breach or non-observance of the covenants conditions or other provisions of the Lease to be observed and performed by the Tenant or any of the matters to which this demise is subject

5.16:2 This indemnity shall be subject to the same exclusions and limitations contained in clause 61 of the Contract Provided that the Tenant shall not be liable to the Landlord for any matter in respect of which it is liable to the Authority under the Contract

Provided always the Tenant shall not be responsible for

(a) the same loss under any other indemnity provision in this Lease and this clause 5.16; or

- (b) any loss to the extent caused by an Insured Risk and the policy of insurance of the Premises has not been vitiated by any act default negligence or omission of the Tenant;

5.16.3 The total aggregate liability of the Tenant under this Clause 5.16 and under Clause 61 of the Contract shall not exceed the limit of indemnity set out in Clause 62.7 of the Contract

Provided that notwithstanding clause 5.16.2 and 5.16.3 there shall be no limitation or exclusion of liability of the Tenant for death personal injury fraud or fraudulent misrepresentation

#### **5.17 Encroachments etc.**

5.17.1 Not to leave unattended any vehicle or store materials on any part of the Access Road or the Shared Area nor do anything likely to disrupt the free flow of traffic over and through those areas mentioned above or any other adjoining or neighbouring land

5.17.2 Not to stop up, darken or obstruct any window or light at the Premises

5.17.3 Not to permit and to take all reasonable steps to prevent any new window, light, opening, doorway, path, passage, pipe or other encroachment or easement being made or acquired in against out of or upon the Premises and to notify the Landlord immediately if any such encroachment or easement shall be made or acquired (or attempted to be made or acquired) and at the request and cost of the Landlord to adopt such means as shall reasonably be required to prevent such encroachment or the acquisition of any such easement

#### **5.18 Payment of Interest on late Rent**

5.18.1 If the Tenant shall fail to pay the Rents or insurance any other sum due pursuant to this lease within twenty eight days of the date on which payment was due whether formally demanded or

not the Tenant shall pay to the Landlord Interest at the Interest Rate from the due date.

5.18.2 Nothing in the preceding clause 5.19.1 shall entitle the Tenant to withhold or delay any payment of the Rents or any other sum due under this Lease after the date upon which they fall due or in any way prejudice affect or derogate from the rights of the Landlord in relation to such non-payment including (but not limited to) the proviso for re-entry contained in this lease.

### **5.19 Yield Up**

The provisions of this clause 5.19 shall not apply where pursuant to the Contract the Tenant shall be granted a further lease of the Premises.

Upon the Determination of the Term the Tenant shall be under a duty to comply with the Handback Requirements and obligations as set out in Schedule 2 of the Contract) and :

5.19:1 Should the Landlord so require to remove such buildings, structures (excluding fences) and equipment it may have constructed, installed or placed on the Premises as under sub-Clause 5.6:2 and 5.6:3, all signs and tenant's fixtures and fittings and effects in upon or near the Premises and immediately to make good any damage caused by such removal but for the avoidance of doubt the weighbridge or any other building or structure built by the Tenant on behalf of the Landlord shall not be referred to as tenant's fixtures and fittings;

5.19:2 to yield up the Premises in a state and condition consistent with due compliance by the Tenant with its covenants and obligations under the Lease and otherwise in accordance with the terms of the Lease

### **5.20 Statutory Notices etc.**

To give full particulars to the Landlord of any notice direction order or proposal for the Premises made given or issued to the Tenant by any

local or public authority within 14 days of receipt and if so required by the Landlord to produce it to the Landlord and at the cost of the Tenant to make or join with the Landlord in making such objection or representation against or in respect of any notice direction order or proposal as the Landlord shall deem expedient Provided that in so doing the Tenant will not be in breach of the Provisions of the Contract

#### 5.21 **Sale of Reversion etc.**

To permit upon reasonable prior written notice at any time during the Term prospective purchasers of or agents instructed in connection with the sale of the Landlord's reversion or of any other interest superior to the Term to view the Premises without interruption provided they are authorised in writing by the Landlord or its agents

#### 5.22 **Defective Premises**

To give notice to the Landlord of any defect in the Premises which might give rise to an obligation of the Landlord to do or refrain from doing any act or thing in order to comply with the provisions of the Lease or the duty of care imposed on the Landlord pursuant to the Defective Premises Act 1972 or otherwise and at all times to display and maintain all notices which the Landlord may from time to time reasonably require to be displayed at the Premises

5.23 To permit at all times during the Term the Landlord and those authorised by it to exercise without interruption or interference any of the rights reserved to it by virtue of the provisions of the lease provided that the Landlord and those authorised by it in exercising its rights shall cause as little interference to the Tenant's business and /or damage as possible and shall make good to the Tenant's reasonable satisfaction all damage caused

### 6. **The Landlord's Covenants**

The Landlord hereby covenants with the Tenant as follows:-

## 6.1 **Repair**

Subject to payment by the Tenant in accordance with clause 5.2.1.3 of this Lease the Landlord shall:

6.1.1 keep the Access Road in good repair (and if the Landlord shall fail to do so within eight weeks of the Tenant notifying the Landlord that such works are required or immediately in case of need to allow the Tenant to carry out such works only where the Landlord agrees in writing that the Access Road is in disrepair such agreement not to be unreasonably withheld or delayed) provided such works are carried out in a good and workmanlike manner as quickly as practicable and to the reasonable satisfaction of the Landlord; and,

6.1.2 To pay a fair and reasonable proportion (such proportion to be calculated by reference to the RICS Code of Measuring Practice) towards the cost of maintaining and repairing each of the the Blue Road, the Green Land Shared Access and the HWRC Site Shared Access and to pay a fair and reasonable proportion according to user towards the cost of maintaining and repairing any other shared utilities. Any dispute shall be referred to an expert and determined in accordance with Schedule 22 of the Contract.

6.1.3 if neighbouring premises shall take their supply of electricity from the Premises and the Tenant shall be billed for such supply then the Landlord shall reimburse to the Tenant the metered cost of supply of electricity from or through the Premises to neighbouring premises

## 6.2 **Quiet Possession**

Provided that the Tenant performs and observes the covenants on its part herein contained it may peaceably and quietly hold and enjoy the Premises without any interruption by the Landlord or any person claiming through under or in trust for it

### **6.3 Landlord's Insurance Covenants**

Where the Landlord elects to insure the Premises it shall give the Tenant no less than one month's prior written notice and shall insure the Premises in accordance with the provisions of the second schedule

## **7. Tenant's Insurance Covenants**

7.1 The Tenant shall comply with the insurance obligations contained within the Contract other than where the Landlord elects to insure under the terms of this Lease

### **7.2 Copy of Insurance Policies**

Where the Tenant insures pursuant to the Contract on reasonable request by the Landlord from time to time to produce to the Landlord a copy or summary of cover for the above insurance policies required in accordance with the terms of this lease and evidence that they are in force

### **7.3 Obstruction of Fire Escape**

The Tenant shall not obstruct the access to any fire equipment or the means of escape from the Premises while the Premises are occupied

## **8. Provisos**

### **8.1. Forfeiture/Landlord's right of re-entry**

If any event set out in sub-Clause 8.2 occurs, it shall be lawful for the Landlord at any time thereafter to re-enter upon the Premises or any part thereof in the name of the Landlord and thereupon this demise shall absolutely determine without prejudice to any rights of action of either party hereto in respect of any antecedent breach of any covenants by the other party herein contained

### **8.2 Events giving rise to the Landlord's right of re-entry**

8.2:1 There is a material breach of any of the Tenant's covenants in this Lease which has not been remedied within 4 months of the



Landlord having notified the Tenant in writing of such breach and its intention for forfeiting. Provided that if the Tenant (acting reasonably) believes that the relevant breach is likely to take more than 4 months to remedy it shall notify the Landlord in writing and the parties acting reasonably shall agree such reasonable longer period for the remedy of the relevant breach following the expiration of which if the breach has not been remedied the Landlord may re-enter in accordance with this provision.

8.2:2 The yearly rent or the insurance premium due under this Lease shall be in arrears for two months following the Landlord having notified the Tenant that such sum is due and outstanding

### **8.3 Termination of the Lease**

#### **8.3.1**

8.3.1.1 The Lease shall automatically determine in the event that the Contract determines (howsoever arising) but without prejudice to any rights of either party against the other for any antecedent breach of its obligations under this Lease

8.3.1.2 The Tenant shall forthwith deliver to the Landlord releases from any charge affecting the Premises and a direction to the Chief Land Registrar to cancel the registered title relating to the lease; and

8.3.1.3 the parties shall take all steps as may be proper and reasonable to cancel or assist the cancellation of all entries at HM Land Registry and the Land Charges Registry in relation to the lease.

8.3.2 Either party may terminate this Lease by giving to the other not less than five working days notice in writing to the other on or at any time after the Key Facility Services Commencement Date as

defined in the Contract as such date may be extended or varied from time to time pursuant to the contract.

#### **8.4 Expiry of Contract**

The Landlord's consent shall not be required for an assignment of this Lease required pursuant to clause 10.6 of the Contract. Upon any such assignment the Tenant and the Guarantor shall be released from all liability for any future breach under the Lease and neither shall be required to enter into an Authorised Guarantee Agreement pursuant to the Landlord and Tenant (Covenants) Act 1995.

#### **8.5 Exclusion of Use Warranty**

Nothing in the Lease or in any consent granted by the Landlord under this Lease shall imply or warrant that the Premises may lawfully be used under the Planning Acts for the purpose authorised in the Lease (or any purpose subsequently authorised)

#### **8.6 Party Walls**

The boundary wall dividing the Premises from the HWRC site shall be a party structure and shall be repaired and maintained accordingly

#### **8.7 Entire Understanding**

The Lease embodies the entire understanding of the parties relating to the Premises and to all the matters dealt with by any of the provisions of the Lease

#### **8.8 Representations**

The Tenant acknowledges that the Lease has not been entered into in reliance wholly or partly of any statement or representation made by or on behalf of the Landlord except any such statement or representation that is expressly set out in the Lease

#### **8.9 Licences etc. Under Hand**

Whilst the Landlord is a corporation all licences consents approvals and notices required to be given by the Landlord shall be sufficiently given if given under the hand of a duly authorised officer of the Landlord

#### **8.10 Tenant's Property**

This clause shall not apply where the Tenant takes a further lease of the Premises pursuant to the Contract.

If after the Tenant has vacated the Premises on the Determination of the Term any property belonging to the Tenant remains in or on the Premises and the Tenant fails to remove it within 14 days after being requested in writing by the Landlord to do so or if after using its best endeavours the Landlord is unable to make such a request to the Tenant within one month from the first attempt so made by the Landlord:

- 8.10:1 the Landlord may as the agent of the Tenant sell such property and the Tenant will indemnify the Landlord against any liability incurred by it to any third party whose property shall have been sold by the Landlord in the mistaken belief held in good faith (which shall be presumed unless the contrary be proved) that such property belonged to the Tenant
- 8.10:2 if the Landlord having made reasonable efforts is unable to locate the Tenant the Landlord shall be entitled to retain such proceeds of sale absolutely unless the Tenant shall claim them within 3 months of the date upon which the Tenant vacated the Premises; and
- 8.10:3 the Tenant shall indemnify the Landlord against any damage occasioned to the Premises and any actions claims proceedings costs expenses and demands made against the Landlord caused by or related to the presence of the property in or on the Premises

### 8.11 Service of Notices

Notices shall be served in accordance with clause 98 of the Contract. The address for service to the Landlord is the address set out in the Particulars as may be varied from time to time by written notice to the Tenant

### 8.12 Disputes

The provisions of clause 60 and Schedule 22 of the Contract (*mutatis mutandis*) shall apply in relation to any dispute under this Lease

### 8.13 Consequential Loss

(Without prejudice to the provisions of the Contract (including without limitation any indemnity, compensation or other claim or remedy thereunder) notwithstanding anything to the contrary in the Lease neither the Landlord nor the Tenant shall be liable to the other under the terms of this Lease for any loss of contract business opportunity profit production revenue or other consequential loss

### 8.14 Jurisdiction

The Lease shall be governed and construed in accordance with the laws of England and Wales

### 8.15 Exclusion of the 1954 Act, Sections 24 to 28 inclusive

8.15:1 The Parties confirm that before the Lease was entered into:

8.15:1.1 a notice complying with Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 which relates to this tenancy was served by the Landlord on the Tenant on 2012;

8.15:1.2 a declaration dated 2012 complying with the requirement of Schedule 2 to that Order was made

by the Tenant or a person duly authorised by the  
Tenant

8.15:2 The Parties agree and declare that the provisions of sections 24 to 28 (inclusive) of the 1954 Act shall not apply to the tenancy created by this deed

8.15:3 The Parties confirm that there is no agreement for lease which gives effect to the Lease

**8.16 Contracts (Rights of Third Parties) Act 1999**

Unless expressly stated nothing in the Lease will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

**9. New or Old Lease**

The Lease is a new tenancy for the purposes of section 1 of the Landlord and Tenant (Covenants) Act 1995

IN WITNESS of which this deed has been executed by the Landlord and the Tenant the day and year first above written

## FIRST SCHEDULE

### Part I

#### Rights Granted

1. The free passage for the Tenant (in common with the Landlord and all others having the like right) of water soil drainage gas electricity electronic signals communications and other services to and from the Premises by and through the Pipes that are now or are from time to time laid in the Landlord's neighbouring property and serve the Premises
2. The right upon the provision of reasonable prior written notice to the Landlord and the Landlord's tenant occupying the neighbouring property (save in case of emergency) for the Tenant to enter into the Landlord's neighbouring property and the Access Road to construct, lay, replace, renew, repair, maintain, inspect and clean, new or existing pipes serving the Premises and/or connect into existing pipes in a position approved by the Landlord (such approval not to be unreasonably withheld or delayed) and carry out works to the Access Road and shared Pipes pursuant to Clause 6.1.1 subject to works being carried out in a good and workmanlike manner with all diligence and speed, so far as reasonably practicable outside the usual business hours for the Landlord's Site causing as little damage or interference as possible to the tenants on the adjoining land the Tenant making good all damage caused to the reasonable satisfaction of the Landlord. The Tenant shall comply with the Landlord's reasonable requirements and (to the extent not inconsistent) those of any Tenant of the land on which such works are carried out as to times and means of access and the manner in which such works are carried out.
3. The right at all reasonable times upon giving prior written notice to the Landlord and the Landlord's tenant occupying the neighbouring property (except in the case of emergency) to enter upon the Landlord's neighbouring property in order to inspect the Premises or to carry out any repair renewal cleansing decoration or maintenance thereto which could not be carried out without entering the Landlord's neighbouring property the Tenant causing as little

damage or inconvenience as possible and making good to the reasonable satisfaction of the Landlord all damage thereby caused

4. Subject to complying with the rules and regulations mentioned in sub clause 5.8.2 the right for the Tenant its duly authorised officers visitors and invitees (in common with the Landlord and all others having the like right) to pass and repass to and from the Premises at all times with or without vehicles for all purposes connected with the proper and lawful use and enjoyment of the Premises but not further or otherwise over and along the Access Road .
5. In all cases the Tenant in exercising the rights granted by this Part of this Schedule shall cause as little damage as possible and shall make good to the Landlord's reasonable satisfaction all such damage caused

## Part II Rights Reserved

The following rights are excepted and reserved to the Landlord and where a person has a right to enter the Premises in order to carry out works then the right to enter the Premises is subject to that persons or persons (a) first giving reasonable notice to the Tenant (except in emergency) and (b) exercising the right in a manner which causes as little damage and inconvenience as is practicable in the circumstances and (c) making good any damage caused as soon as reasonably practicable:

1. Subject to compliance with the rules and regulations referred to in Clause 5.8.2:
  - 1.1 the right for the Landlord its servants and invitees to use the Shared Access to gain access to and egress from the Access Road and the Green Land and the HWRC Site with or without the use of vehicles
  - 1.2 The right for the Landlord its lessees of the Green Land and their respective servants and invitees to use the Green Land Shared Access with or without vehicles to gain access to and egress from the Green Land; and
  - 1.3 The right for the Landlord and its lessees of the HWRC Site and their respective servants and invitees to use the HWRC Site Shared Access with or without vehicles to gain access to and egress from the HWRC Site

In each case to enable the distribution of waste materials to their designated positions.

2. Right to free and uninterrupted passage and running of water, drainage, gas, electricity, communication and other services by any Pipe laid now or from time to time by the Landlord or the Tenant in or passing through the Premises and the right to enter the Premises in order to lay, inspect, clean, maintain, repair, renew, remove, divert, make connections with or construct, lay or install any new Pipe and exercise any of the rights and obligations granted to the Landlord by this Lease.
3. The right at any time during the Term at reasonable times and upon reasonable prior written notice:
  - 3.1 to enter the Premises to take schedules of inventories of fixtures and other items to be yielded up on the Determination of the Term and
  - 3.2 of access to the Premises for any purpose reasonably and of necessity required in connection with the management maintenance or repair of any part of the Landlord's adjoining or neighbouring land including the pipes running through or attached to the adjoining or neighbouring land
4. A right of support and protection for any adjoining property of the Landlord
5. Any existing right of light or air for adjoining property

The Landlord shall ensure that as little inconvenience loss and damage as is reasonably possible in the course of the exercise of such rights is caused and shall make good all damage caused

## SECOND SCHEDULE

### Landlord's Insurance Covenants

Where the Landlord shall insure the Premises and the Landlord's Site then the Landlord covenants with the Tenant that from and including the date hereof until Determination of the Term:

1. The Landlord will effect and maintain during the Term the Insurance Policy



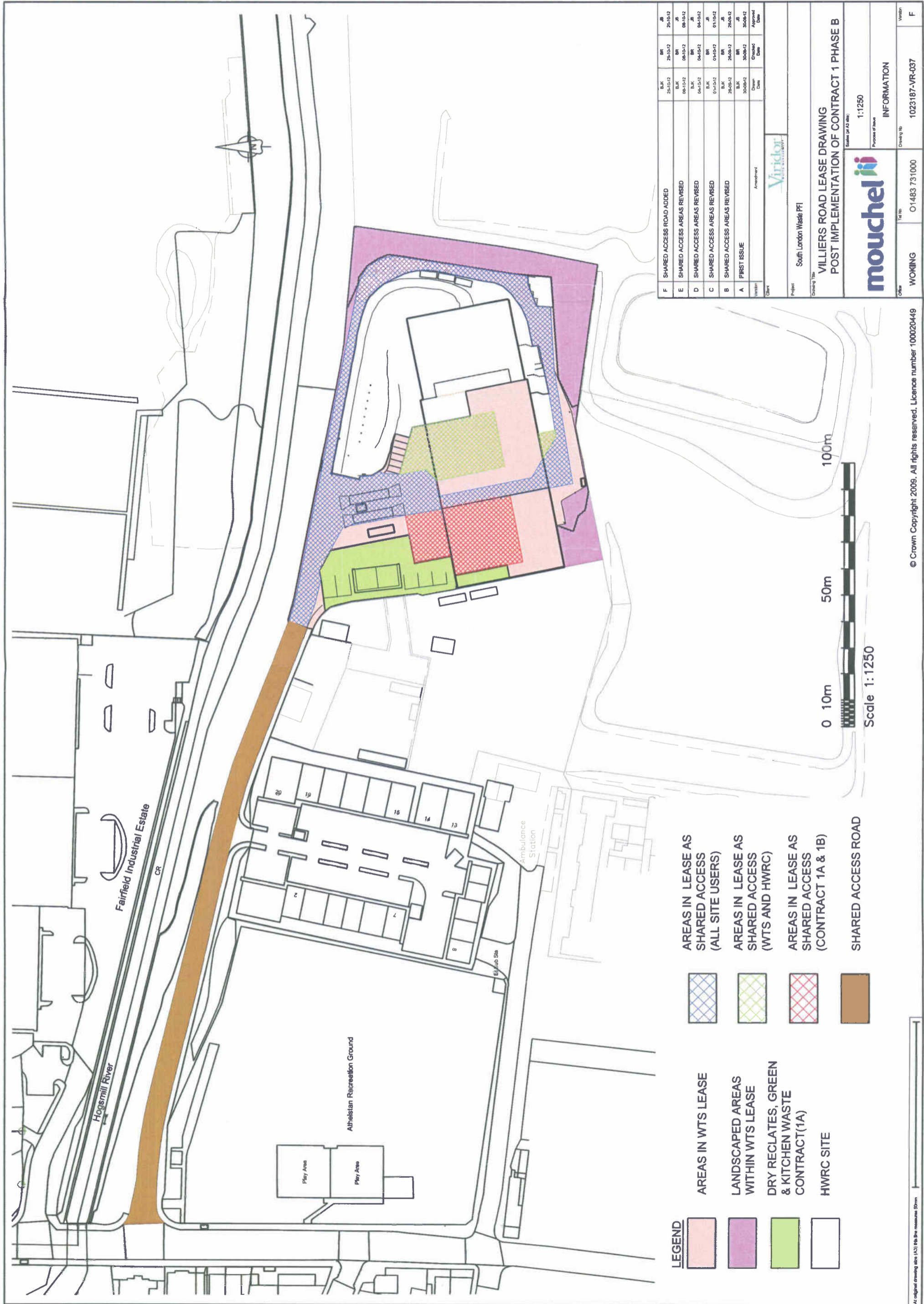
2. The Landlord will upon reasonable request from time to time produce to the Tenant a copy of full details of the Insurance Policy In the event of any loss or damage to the Premises caused by the Insured Risks the Landlord will apply all monies received from the insurer in making good such loss or damage as soon as practicable and in accordance with the relevant provision of the Contract making up any shortfall from its own moneys. Provided that the Tenant may by written notice elect to reinstate the Premises itself in accordance with the Contract. Within 5 working days of receipt of such notice the Landlord shall pay the Tenant the insurance proceeds and any shortfall and the Tenant shall thereafter reinstate in accordance with the Contract.
3. If and whenever the Premises or any part of them are damaged or destroyed by one or more of: the Insured Risks so that the Premises or any part of them or any access thereto are unfit for occupation or use and payment of the insurance money is not wholly or partly refused because of any act or default of the Tenant or anyone at the Premises expressly or by implication with his authority then the provisions of paragraph 4 below are to have effect.
4. In the circumstances mentioned in paragraph 3 above the Rents, or a fair proportion of them according to the nature and the extent of the damage sustained, is to cease to be payable until the Premises, or the affected part or any access thereto, have been rebuilt or reinstated so as to render the Premises, or the affected part and/or the access as the case may be, fit for occupation and use, or (subject to such Rents being reimbursed under the terms of the Contract) until the end of three years from the destruction or damage whichever period is the shorter, the proportion of the Rent suspended and the period of the suspension to be determined by the Surveyor acting as an expert and not as an arbitrator any dispute as to the proportion of the Rents suspended or the period of the suspension to be determined in accordance with the Arbitration Act 1996 by an arbitrator to be appointed by agreement between the Landlord and the Tenant or in default by the President or other proper officer for the time being of the Royal Institution of Chartered Surveyors on the application of either the Landlord or the Tenant

14558436v3

Executed as a Deed by )  
and signed )  
By a director/secretary in the presence )  
of: )

Director

Secretary/Director



**LEGEND**

[Pink Box]	AREAS IN WTS LEASE
[Purple Box]	LANDSCAPED AREAS WITHIN WTS LEASE
[Green Box]	DRY RECLATES, GREEN & KITCHEN WASTE CONTRACT(1A)
[White Box]	HWRC SITE

[Blue Hatched Box]	AREAS IN LEASE AS SHARED ACCESS (ALL SITE USERS)
[Green Hatched Box]	AREAS IN LEASE AS SHARED ACCESS (WTS AND HWRC)
[Red Hatched Box]	AREAS IN LEASE AS SHARED ACCESS (CONTRACT 1A & 1B)
[Brown Box]	SHARED ACCESS ROAD

AREAS IN LEASE AS SHARED ACCESS (ALL SITE USERS)

AREAS IN LEASE AS SHARED ACCESS (WTS AND HWRC)

AREAS IN LEASE AS SHARED ACCESS (CONTRACT 1A & 1B)

SHARED ACCESS ROAD



Version	Amendment	Drawn	Date	Checked	Date	Approved	Date
A	FIRST ISSUE	B.K	30/08/12	B.K	30/08/12		
B	SHARED ACCESS AREAS REVISED	B.K	26/09/12	B.K	26/09/12		
C	SHARED ACCESS AREAS REVISED	B.K	01/10/12	B.K	01/10/12		
D	SHARED ACCESS AREAS REVISED	B.K	04/10/12	B.K	04/10/12		
E	SHARED ACCESS AREAS REVISED	B.K	08/10/12	B.K	08/10/12		
F	SHARED ACCESS ROAD ADDED	B.K	25/10/12	B.K	25/10/12		

Client: South London Waste PFI

Project: Virekor

Scale of A3 size: 1:1250

Purpose of Issue: INFORMATION

Drawing No: 1023187-VR-037

Version: F

**PART B - SECOND LEASE**

**Schedule 7 – Sites Information**

Dated \_\_\_\_\_ 2012

**THE MAYOR AND BURGESSES OF THE  
ROYAL BOROUGH OF KINGSTON UPON THAMES**

- to -

**VIRIDOR SOUTH LONDON LIMITED**

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**LEASE**

- of -

land at Chapel Mill Road  
Kingston upon Thames  
in the Royal Borough of Kingston upon Thames

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Second Lease

LEASE: DATED \_\_\_\_\_ 2012

1. **Particulars**

- 1.1.1 the Landlord: THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KINGSTON UPON THAMES of Guildhall High Street Kingston upon Thames Surrey KT1 1EU
- 1.1.2 the Tenant: VIRIDOR SOUTH LONDON LIMITED whose registered office is at Peninsula House, Rydon Lane, Exeter EX2 7HR company number 8106962
- 1.2 the Premises: ALL THAT piece or parcel of land situated at Chapel Mill Road Kingston upon Thames Surrey and more particularly shown coloured pink and crosshatched blue cross hatched green and cross hatched red on the Plan together with any buildings fixtures and fittings (except tenant's or trade fixtures or fittings ) erected thereon under or over the land as well as the boundary fences and the Shared Area
- 1.3 the Landlord's Site The extent of the Landlord's site at Kingston including the Premises as notified to the Tenant
- 1.4 the Green Land The land shown coloured green on the Plan
- 1.5 the HWRC site The land identified on the Plan as the Waste Disposal Centre
- 1.6 Term: a term of years commencing on the date of this Lease and expiring on [date to be inserted 35 years from date of Contract- in line with Expiry Date under Contract-]

- 1.7 Rent: ONE HUNDRED AND SIXTY TWO THOUSAND FOUR HUNDRED AND SIXTY NINE POUNDS (£162,469 ) per year
- 1.8 Rent Payment Dates: 25<sup>th</sup> March, 24<sup>th</sup> June, 29<sup>th</sup> September and 25<sup>th</sup> December in every year of the Term
- 1.9 Permitted Use: The receipt acceptance bulking and the transportation off the Premises of Contract Waste, Third Party Waste and Substitute Waste as defined in and in accordance with the provisions contained in the Contract.
- 1.11 the Access Road: the roadway (known as Chapel Mill Road) shown (for identification purposes only) coloured brown on the Plan
- 1.12 the Shared Area: means all of the following where referred to together the "Shared Access" being:
- the "Blue Road" being the vehicular access area shown cross hatched blue (for identification purposes only)
- the "Green Land Shared Access" being the vehicular access to the Green Land area shown cross hatched red (for identification purposes only).
- The "HWRC Site Shared Access" being vehicular access to HWRC site shown cross hatched green (for identification purposes only).



## 2. Definitions

- 2.1 "Authority" means the Mayor and Burgesses of the London Borough of Croydon being the lead authority for the South London Waste Partnership
- 2.2 "Contract" means the Contract dated [ ] between the Authority and the Tenant
- 2.3 "Insured Risks" means risk of loss or damage by fire storm tempest flood earthquake lightening explosion impact aircraft and other aerial devices and articles accidentally dropped therefrom riot civil commotion malicious damage including impact or bursting overflowing of water tanks pipes apparatus or conduits subsidence heave and such other perils against which the Landlord may reasonably require from time to time and for which insurance is available to the Landlord in the UK insurance market with reputable insurers of good standing in respect of that risk
- 2.4 "the Insurance Policy" means the insurance policy insuring the Landlord's Site against loss or damage by the Insured Risks for the sum which the Landlord considers to be its full reinstatement cost (taking inflation of building costs into account) effected in such insurance office of repute or with such underwriters and through such agency as the Landlord may decide and subject to such excesses exclusions limitations and conditions as the insurer or the Landlord may reasonably and properly negotiate and all the liability of the Landlord to third parties arising out of and in connection with any matter including or relating to the Premises.
- 2.5 'The Insurance Premium' means a reasonable and proper proportion of the aggregate in each year of the gross cost of the premium paid for the Insurance Policy before any discount BUT the payment for the premium will include commission and administration cost for the Insurance Policy also including:
1. loss of rent, in accordance with his obligations contained in this Lease; and

2. any insurance premium tax payable on the above.
- 2.6 "Interest" means interest both before and after any judgement at the Interest Rate the prevailing during the period beginning on the date on which the relevant payment is due and ending on the date on which the relevant payment is received by way of cleared funds
- 2.7 "Interest Rate" means four per cent above the lending rate from time to time in force of National Westminster Bank Plc or such other bank as the Landlord may from time to time nominate
- 2.8 "the 1954 Act" means the Landlord and Tenant Act 1954 and all other statutes statutory instruments regulations and orders included by virtue of sub-Clause 3.11
- 2.9 "Pipes" means all pipes sewers drains mains ducts conduits gutters watercourses wires cables optic fibres channels flues and all other conducting media ( including fixings louvres cowls and any other ancillary apparatus equipment or structure)
- 2.10 "the Planning Acts" means the Town and Country Planning Act 1990 and all other statutes statutory instruments regulations and orders included by virtue of sub-Clause 3.11
- 2.11 "Determination of the Term" means the determination of the Term by re-entry notice surrender termination of the Contract or otherwise
- 2.12 "Last Year of the Term" means the period of twelve (12) months immediately preceding the Determination of the Term
- 2.13 "Lease" means this lease as from time to time varied or supplemented whether by deed licence or otherwise
- 2.14 "Parties" means the Landlord and the Tenant
- 2.15 "Plan" means the plan numbered and annexed to this deed
- 2.16 "Title Matters" means the matters contained or referred to in the Property or Charges Register for title number SGL679472 as at [date of

Contract] "Partnership" means the South London Waste Partnership formed between the Authority, the London Borough of Merton The London Borough of Sutton and the Landlord

2.18 "VAT" means Value Added Tax or other tax of a similar nature or any tax supplemental thereto (and unless otherwise expressly stated all references to monies payable by the Tenant are exclusive of any VAT charged or chargeable thereon)

### 3. Interpretation

3.1 The expressions "the Landlord" and "the Tenant" wherever the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the Term and the Tenant's successors in title respectively and any reference to a superior landlord includes the Landlord's immediate reversioner (and any superior landlords) at any time

3.2 Where the Landlord and Tenant for the time being are two or more persons obligations expressed or implied to be made by or with such party are deemed to be made by or with such persons jointly and severally

3.3 Words importing one gender include all other genders and words importing the singular include the plural and vice versa

3.4 The expression "Premises" includes:

3.4.1 all additions and improvements to the Premises;

3.4.2 all the buildings, fixtures and fittings (except tenant's fixtures and fittings) which shall from time to time be in or upon the Premises including the following which are at the Premises at the date hereof:-;

Two portacabins stacked as a two storey structure with external stair

A portacabin weighbridge office

A self banded oil tank

3.4.3 all Pipes in on under or over the Premises or leading to them which exclusively serve them and do not form part of the public mains; and

3.4.4 weighbridges at the Premises;

3.4.5 the entire thickness of all walls and/or fences (whichever is appropriate) forming the boundaries of the Premises and references to the Premises in the absence of any provision to the contrary include references to any part of the Premises

For the avoidance of doubt the Premises do not include the canopy attached to the Premises which overhangs adjoining land owned by the Landlord.

- 3.5 References to any right of the Landlord to have access to the Premises shall be constructed as extending to any superior landlord and any mortgagee of the Premises and to all persons authorised by the Landlord to have access to the Premises and to all persons authorised by the Landlord and any superior landlord or mortgagee (including agents professional advisers contractors workmen and others)
- 3.6 Any covenant by the Tenant not to do an act or thing shall be deemed to include a covenant not to knowingly permit or suffer such act or thing to be done by a third party
- 3.7 References to "consent of the Landlord" or words to similar effect mean a consent in writing signed by or on behalf of the Landlord and to "approved" and "authorised" or words to similar effect mean (as the case may be) approved or authorised in writing by or on behalf of the Landlord
- 3.8 A consent or approval by the Landlord under the Lease is deemed to be given in its capacity of owner of the reversionary interest in the Premises and not in any other capacity

- 3.9 "Development" has the meaning assigned thereto by the Town and Country Planning Act 1990
- 3.10 Any references to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute and any general reference to "statute" or "statutes" includes any regulations or orders made under such statute or statutes
- 3.11 References in the Lease to any Clause sub-Clause or Schedule without further designation shall be construed as a reference to the clause sub-clause or schedule to the Lease so numbered
- 3.12 The clause paragraph and schedule headings do not form part of the Lease and shall not be taken into account in its construction or interpretation

#### 4. **Demise**

The Landlord demises with full title guarantee to the Tenant the Premises Together with the rights specified in Part I of the First Schedule EXCEPTING AND RESERVING to the Landlord the rights specified in Part II of the First Schedule TO HOLD the Premises to the Tenant for the Term SUBJECT to the Title Matters YIELDING AND PAYING to the Landlord the Rent payable during the Term and Secondly (where the Landlord insures and as rent) payment of the Insurance Premium and all amounts due and payable upon demand and in accordance with clause 5.1.2 below

#### 5. The Tenant's Covenants

The Tenant covenants with the Landlord:

##### 5.1 **Rent**

5.1.1 To pay the Rent quarterly in advance on the Rent Payment Dates

5.1.2 To pay the Insurance Premium within twenty eight days of demand

##### 5.2 **Outgoings**

5.2:1 To pay and to indemnify the Landlord against:

5.2:1.1 all rates, taxes including taxes arising as a result of the grant of this Lease, assessments, duties, charges, Uniform Business Rates impositions and outgoings which are now or during the Term shall be charged assessed or imposed upon the Premises or upon the owner or occupier of them excluding any payable by the Landlord occasioned by receipt of the rents or by any disposition of dealing with or ownership of any interest reversionary to the interest created by the Lease

5.2:1.2 a registration fee of £30 for each document which the Lease requires the Tenant to register to be paid to the Landlord's solicitor when presenting the document for registration

5.2:1.3 a fair and reasonable proportion (taking into account the other sites which use the Access Road and calculated by reference to the RICS Code of Measuring Practice) of the cost reasonably incurred by the Landlord in repairing and maintaining the Access Road such contribution to be made within a reasonable time of demand PROVIDED THAT where use of the Access Road by the Tenant his servants or invitees results in damage to the Access Road (as distinct from the need for routine repair or planned refurbishment or renewal programme to be undertaken by the Landlord) the cost of remedial works required to the Access Road as a result of the damage will be at the sole cost of the Tenant. No contribution shall be payable by the Tenant in respect of remedial works required as a result of damage (as distinct from routine repair or planned refurbishment undertaken by the Landlord) caused solely by any occupier of any adjoining land.

5.2:2 To apply and use its reasonable endeavours to ensure that for the Premises are assessed as a separate hereditament for rating purposes.

### 5.3 VAT

5.3:1 Subject to the supply of a valid VAT invoice, to pay and keep the Landlord indemnified against all VAT chargeable in respect of any payment made by the Tenant under any of the terms of or in connection with the Lease or in respect of any payment made by the Landlord where the Tenant agrees in the Lease to reimburse the Landlord for such payment save to the extent that the Landlord may lawfully recover the same

5.3:2 If the Landlord has an option whether or not to charge VAT the Tenant hereby irrevocably consents to the Landlord freely exercising that option to the extent from time to time permitted by law

### 5.4 Electricity, Gas and other Services consumed

To pay to the suppliers and to indemnify the Landlord against all charges for the connection, use and disconnection of electricity, water, gas, drainage, telephone services, and all other services consumed or used at or in relation to the Premises (including meter rents (if any))

### 5.5 Commissioning Repair, Cleaning, Decoration, etc.

5.5:1 With effect from the commencement of the Term and throughout the Term:

to repair the Premises and keep the Premises them in good and tenantable repair and condition and in accordance with the Programme of Maintenance, as detailed in Schedule 2 of the Contract, (including without limitation decoration condition) excepting (a) fair wear and tear; and (b) damage caused by an Insured Risk other than where the insurance money is irrecoverable in

consequence of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's authority

5.5:1.2 to secure the Premises and to keep them secure throughout the Term

5.5:1.3 to clean the Premises regularly and keep them in a clean and tidy condition

5.5:1.4 not to deposit or permit to be deposited any waste rubbish or refuse on any part of the Access Road, or the Shared Area

5.5:1.5 not to keep or store on any part of the Access Road, or the Shared Area any caravan or movable dwelling

5.5:2 Where the use of the Pipes boundary walls fences or structures is common to the Premises and other property (but excluding the Access Road and Shared Area) to (a) be responsible for and to indemnify the Landlord against all sums reasonably and properly due from the lessee or occupier of the Premises in relation to maintaining those Pipes boundary walls fences or structures or (b) to undertake all work that is the responsibility of the lessee or occupier of the Premises in relation to maintaining those Pipes boundary walls fences or structures to the reasonable satisfaction of the Landlord.

## **5.6 Waste and alterations**

5.6:1 not at any time to

5.6:1.1 commit any waste (other than is consistent with the Permitted Use)

5.6:1.2 unite the Premises with any adjoining premises

5.6:1.3 make any addition or alteration to the Premises save where required for the carrying out of the Services under the Contract or otherwise permitted under the Contract



5.6.2 Not at any time to construct any buildings or other structures on or install any equipment at any part of the Premises or make any additions or alterations to the Premises except so far as reasonably required for the proper performance of the Permitted Use and permitted under the Contract ("Permitted Works")

5.6.2.2 In relation to Permitted Works the Tenant shall:

- (i) comply with the relevant provisions in the Contract in relation to any Permitted Works
- (ii) comply with the provision of clause 5.6.3.2(i); and
- (iii) provide to the Landlord drawings and specifications for such Permitted Works

5.6.3 Not at any time to construct any other buildings or structures or make any other alterations or additions (not being Permitted Works) without the Landlord's written consent which shall not be unreasonably withheld or delayed. The Tenant shall comply with the Conditions set out in clause 5.6.3.2.

5.6.3.2 "the Conditions" are:

- (i) obtaining and complying with the requisite planning permission Building Regulations approval and any other necessary consents of any competent authority and paying charges of any such authority in respect of such consents
- (ii) making an application supported by drawings and specifications in triplicate prepared by an architect or member of some other appropriate profession (who shall supervise the work throughout to completion) and which are acceptable to the Landlord (such acceptance not to be unreasonably withheld or delayed)

- (iii) paying the reasonable and proper fees of the Landlord any superior landlord any mortgagee and their respective professional advisers and
- (iv) entering into such covenants (by deed) as the Landlord may reasonably require as to the execution and reinstatement of the alterations.

## **5.7 Aerials Signs and Advertisements**

- 5.7:1 Not to erect any pole mast or wire (whether in connection with telegraphic telephonic radio or television communication or otherwise) upon the Premises without the consent of the Landlord (such consent not to be unreasonably withheld or delayed)
- 5.7:2 Not to affix to or exhibit on the Premises or to or through any placard sign notice fascia board or advertisement except to indicate the name and business of the Tenant in the Tenant's corporate or house style and provided that signage required by health and safety legislation may be erected

## **5.8 Statutory Obligations**

- 5.8:1 The Tenant shall comply with the provisions of clause 83 (Compliance with legislation) of the Contract.
- 5.8:2 Without prejudice to the generality of the above provisions in this sub-Clause 5.8 to comply with such reasonable rules and regulations as the Landlord may from time to time prescribe concerning the management and use of the Shared Areas in conjunction with the Landlord's land adjoining the Premises provided that such rules and regulations or the observance thereof do not materially hinder or fetter the carrying out of the Permitted Use in accordance with the Contract and shall not cause any material interference to the Tenant in exercising its rights under this Lease unless such interference is required to

enable the Landlord to carry out its statutory function or in the case of an emergency.

## **5.9 Access of Landlord and Notice to Repair**

5.9:1 Provided the Authority has not exercised its right to Step in in accordance with clause 33.1 of the Contract to permit the Landlord upon no less than 48 hours prior written notice (save in case of emergency).

5.9:1.1 to enter upon and have full access to all parts of the Premises for the purpose of ascertaining the covenants and conditions of the Lease have been observed and performed and for the purpose of inspecting work being performed pursuant to the Contract

5.9:1.2 to review the state of repair and condition of the Premises

5.9:1.3 to enter the Premises to inspect, clean, repair, renew or alter neighbouring property or any Pipes serving neighbouring property

5.9:1.4 to give to the Tenant (or leave upon the Premises) a notice specifying any repairs cleaning maintenance or painting that the Tenant has failed to execute in breach of the terms of this Lease and to request the Tenant immediately to execute the same including the making good of such opening-up (if any) provided that any such opening-up shall be made good by and at the cost of the Landlord where such opening-up reveals no breaches of the terms of the Lease

5.9:1.5 to exercise any of the Landlord's rights reserved in Part II of the First Schedule

- 5.9:2 As soon as practicable or immediately in the case of an emergency to repair cleanse maintain and paint the Premises as required by such notice (pursuant to sub-Clause 5.9:1.4)
- 5.9:3 If within one month of the service of such notice (pursuant to sub-Clause 5.9:1.4) in respect of a breach which is substantial the Tenant shall not have commenced and be proceeding diligently with the execution of the work reasonably expected to be carried out referred to in that notice or shall fail to complete the work within 2 months or (provided that the relevant breach does not materially adversely affect the use of any neighbouring land or cause a health and/or safety issue in relation to such neighbouring land) such other reasonable longer period as shall be consistent with the maintenance obligations in the Contract if in the Landlord's reasonable opinion the Tenant is unlikely to have completed the work within such period to permit the Landlord to enter the Premises to execute such work as may be necessary to comply with the notice and to pay to the Landlord the cost of so doing and all expenses incurred by the Landlord (including any legal costs and surveyor's fees) within 14 days of a written demand

## 5.10 Alienation

- 5.10:1 Not to hold on trust for another or part with or share the possession of the whole or any part or parts of the Premises or permit another to occupy the whole or any part or parts of the Premises
- 5.10:2 Not to assign or charge any part or parts (not comprising the whole) of the Premises
- 5.10:3 Not to assign the whole of the Premises except to any assignee or novatee of the Contract. Upon any assignment the Tenant and any guarantor shall be released from all liability for any future breach under the Lease and neither shall be required to enter into an Authorised Guarantee Agreement pursuant to the Landlord

and Tenant (Covenants) Act 1995 Provided that such assignment to a novatee does not take place earlier than the Lock in Period as defined in the Contract

5.10.4 Provided that nothing in this Lease shall restrict the right of the Tenant to share the occupation of the Premises from time to time with any company that is a member of the same group (within the meaning of section 42 of the Landlord and Tenant Act 1954) ("Group Company") for as long as that company remains within that group and is performing services solely under the Contract and occupying the Premises solely for that purpose or to an approved sub-contractor in accordance with clause 81.3.2 of the Contract Provided that:

- (i) The Tenant shall notify the Landlord in writing of the name and company number of the Group Company within 10 working days of the Group Company taking occupation
- (ii) no relationship of landlord and tenant shall be created or deemed to exist by this arrangement;
- (iii) the Group Company or Sub-Contractor shall not be permitted to have exclusive occupation of the whole or any part or parts of the Premises; and
- (iv) the Tenant will guarantee that the Group Company or Sub-Contractor shall vacate the Premises forthwith upon ceasing to perform the services to be performed under the Contract and/or on expiry or termination of the Contract

#### **5.11 Nuisance etc. and Residential Restrictions**

5.11:1 Not to do nor allow to remain upon the Premises anything which may be or become or cause a nuisance annoyance disturbance inconvenience injury or damage or cause to the Landlord or its tenants or the owners or occupiers of adjacent or neighbouring premises provided that the Permitted Use shall not be a breach of this covenant

5.11:2 Not to use the Premises other than for the Permitted Use

5.11:3 Not to use the Premises for any illegal or immoral act or purpose or cause anything to be done

5.11:4 Not to use the Premises as sleeping accommodation or for residential purposes nor to keep any animal fish reptile or bird anywhere on the Premises

## 5.12 **Contamination**

Subject to the Authority complying with the obligations of the Authority thereunder The Tenant shall in all respects comply with the provisions of clause 11 Site Conditions contained within the Contract (and for the avoidance of doubt the Tenant shall not be liable hereunder for any matter for which the Authority is liable under clause 11 of the Contract)

## 5.13 **Landlord's Costs**

To pay to the Landlord on an indemnity basis all reasonable costs fees charges disbursements and expenses properly incurred including without prejudice to the generality of the above

5.13:1 for every application made by the Tenant for a consent or licence required by the provisions of the Lease whether such consent or licence is granted or refused or proffered subject to any lawful qualification or condition or whether the application is withdrawn unless such refusal qualification or condition is unlawful whether because it is unreasonable or otherwise

5.13:1 the preparation and service of a notice under the Law of Property Act 1925 Section 146 or incurred by or in contemplation of proceedings under Section 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the court

5.13:2 any steps taken in contemplation of or in direct connection with the preparation and service of schedules of dilapidations or a

notice of reinstatement of the Premises either during the Term or after the expiration of the Term

**5.14 The Planning Acts**

The Tenant shall comply with the provisions of Clause 12 and Schedule 26 of the Contract.

**5.15 Plans, Documents and Information**

If called upon to do so to produce to the Landlord or its duly appointed Surveyor all plans documents and other evidence as the Landlord may reasonably require in order to satisfy itself that the provisions of the Lease have been complied with

**5.16 Indemnities**

5.16:1 To be responsible for and to keep the Landlord fully indemnified against all damages losses costs expenses actions demands proceedings claims and liabilities made against suffered or incurred by the Landlord arising directly out of:

5.16:1.1 the state of repair and condition of the Premises in breach of the obligations in this Lease

5.16:1.2 any act omission or negligence of the Tenant or any persons at the Premises expressly or impliedly with the Tenant's authority and under the Tenant's control

5.16:1.3 any breach or non-observance of the covenants conditions or other provisions of the Lease to be observed and performed by the Tenant or any of the matters to which this demise is subject

5.16:2 This indemnity shall be subject to the same exclusions and limitations contained in clause 61 of the Contract Provided that the Tenant shall not be liable to the Landlord for any matter in respect of which it is liable to the Authority under the Contract

Provided always the Tenant shall not be responsible for

- (a) the same loss under any other indemnity provision in this Lease and this clause 5.16; or
- (b) any loss to the extent caused by an Insured Risk and the policy of insurance of the Premises has not been vitiated by any act default negligence or omission of the Tenant;

5.16.3 The total aggregate liability of the Tenant under this Clause 5.16 and under the indemnity provisions of any previous lease under which the Tenant has held the Premises for the Permitted Use and under Clause 61 of the Contract shall not exceed the limit of indemnity set out in Clause 62.7 of the Contract

Provided that notwithstanding clause 5.16.2 and 5.16.3 there shall be no limitation or exclusion of liability of the Tenant for death personal injury fraud or fraudulent misrepresentation

#### 5.17 **Encroachments etc.**

5.17:1 Not to leave unattended any vehicle or store materials on any part of the Access Road or the Shared Area nor do anything likely to disrupt the free flow of traffic over and through those areas mentioned above or any other adjoining or neighbouring land

5.17.2 Not to stop up, darken or obstruct any window or light at the Premises

5.17:3 Not to permit and to take all reasonable steps to prevent any new window, light, opening, doorway, path, passage, pipe or other encroachment or easement being made or acquired in against out of or upon the Premises and to notify the Landlord immediately if any such encroachment or easement shall be made or acquired (or attempted to be made or acquired) and at the request and cost of the Landlord to adopt such means as shall reasonably be required to prevent such encroachment or the acquisition of any such easement



## **5.18 Payment of Interest on late Rent**

5.18.1 If the Tenant shall fail to pay the Rents or insurance any other sum due pursuant to this lease within twenty eight days of the date on which payment was due whether formally demanded or not the Tenant shall pay to the Landlord Interest at the Interest Rate from the due date.

5.18.2 Nothing in the preceding clause 5.19.1 shall entitle the Tenant to withhold or delay any payment of the Rents or any other sum due under this Lease after the date upon which they fall due or in any way prejudice affect or derogate from the rights of the Landlord in relation to such non-payment including (but not limited to) the proviso for re-entry contained in this lease.

## **5.19 Yield Up**

Upon the Determination of the Term the Tenant shall be under a duty to comply with the Handback Requirements and obligations as set out in Schedule 2 of the Contract) and :

5.19:1 Should the Landlord so require to remove such buildings, structures (excluding fences) and equipment it may have constructed, installed or placed on the Premises as under sub-Clause 5.6:2 and 5.6:3, all signs and tenant's fixtures and fittings and effects in upon or near the Premises and immediately to make good any damage caused by such removal but for the avoidance of doubt the weighbridge or any other building or structure built by the Tenant on behalf of the Landlord shall not be referred to as tenant's fixtures and fittings;

5.19:2 to yield up the Premises in a state and condition consistent with due compliance by the Tenant with its covenants and obligations under the Lease and otherwise in accordance with the terms of the Lease

## **5.20 Statutory Notices etc.**

To give full particulars to the Landlord of any notice direction order or proposal for the Premises made given or issued to the Tenant by any local or public authority within 14 days of receipt and if so required by the Landlord to produce it to the Landlord and at the cost of the Tenant to make or join with the Landlord in making such objection or representation against or in respect of any notice direction order or proposal as the Landlord shall deem expedient Provided that in so doing the Tenant will not be in breach of the Provisions of the Contract

**5.21 Sale of Reversion etc.**

To permit upon reasonable prior written notice at any time during the Term prospective purchasers of or agents instructed in connection with the sale of the Landlord's reversion or of any other interest superior to the Term to view the Premises without interruption provided they are authorised in writing by the Landlord or its agents

**5.22 Defective Premises**

To give notice to the Landlord of any defect in the Premises which might give rise to an obligation of the Landlord to do or refrain from doing any act or thing in order to comply with the provisions of the Lease or the duty of care imposed on the Landlord pursuant to the Defective Premises Act 1972 or otherwise and at all times to display and maintain all notices which the Landlord may from time to time reasonably require to be displayed at the Premises

5.23 To permit at all times during the Term the Landlord and those authorised by it to exercise without interruption or interference any of the rights reserved to it by virtue of the provisions of the lease provided that the Landlord and those authorised by it in exercising its rights shall cause as little interference to the Tenant's business and /or damage as possible and shall make good to the Tenant's reasonable satisfaction all damage caused

## 6. The Landlord's Covenants

The Landlord hereby covenants with the Tenant as follows:-

### 6.1 Repair

Subject to payment by the Tenant in accordance with clause 5.2.1.3 of this Lease the Landlord shall:

6.1.1 keep the Access Road in good repair (and if the Landlord shall fail to do so within eight weeks of the Tenant notifying the Landlord that such works are required or immediately in case of need to allow the Tenant to carry out such works only where the Landlord agrees in writing that the Road is in disrepair such agreement not to be unreasonably withheld or delayed) provided such works are carried out in a good and workmanlike manner with as quickly as practicable and to the reasonable satisfaction of the Landlord; and,

6.1.2 To pay a fair and reasonable proportion (such proportion to be calculated by reference to the RICS Code of Measuring Practice) towards the cost of maintaining and repairing each of the Blue Road, the Green Land Shared Access and the HWRC Site Shared Access and to pay a fair and reasonable proportion according to user towards the cost of maintaining and repairing any other shared utilities. Any dispute shall be referred to an expert and determined in accordance with Schedule 22 of the Contract.

6.1.3 if neighbouring premises shall take their supply of electricity from the Premises and the Tenant shall be billed for such supply then the Landlord shall reimburse to the Tenant the metered cost of supply of electricity from or through the Premises to neighbouring premises

## **6.2 Quiet Possession**

Provided that the Tenant performs and observes the covenants on its part herein contained it may peaceably and quietly hold and enjoy the Premises without any interruption by the Landlord or any person claiming through under or in trust for it

## **6.3 Landlord's Insurance Covenants**

Where the Landlord elects to insure the Premises it shall give the Tenant no less than one month's prior written notice and shall insure the Premises in accordance with the provisions of the second schedule]

## **7. Tenant's Insurance Covenants**

7.1 The Tenant shall comply with the insurance obligations contained within the Contract other than where the Landlord elects to insure under the terms of this Lease

### **7.2 Copy of Insurance Policies**

Where the Tenant insures pursuant to the Contract on reasonable request by the Landlord from time to time to produce to the Landlord a copy or summary of cover for the above insurance policies required in accordance with the terms of this lease and evidence that they are in force

### **7.3 Obstruction of Fire Escape**

The Tenant shall not obstruct the access to any fire equipment or the means of escape from the Premises while the Premises are occupied

## **8. Provisos**

### **8.1. Forfeiture/Landlord's right of re-entry**

If any event set out in sub-Clause 8.2 occurs, it shall be lawful for the Landlord at any time thereafter to re-enter upon the Premises or any part thereof in the name of the Landlord and thereupon this demise shall absolutely determine without prejudice to any rights of action of either

party hereto in respect of any antecedent breach of any covenants by the other party herein contained

## **8.2 Events giving rise to the Landlord's right of re-entry**

8.2:1 There is a material breach of any of the Tenant's covenants in this Lease which has not been remedied within 4 months of the Landlord having notified the Tenant in writing of such breach and its intention for forfeiting. Provided that if the Tenant (acting reasonably) believes that the relevant breach is likely to take more than 4 months to remedy it shall notify the Landlord in writing and the parties acting reasonably shall agree such reasonable longer period for the remedy of the relevant breach following the expiration of which if the breach has not been remedied the Landlord may re-enter in accordance with this provision.

8.2:2 The yearly rent or the insurance premium due under this Lease shall be in arrears for two months following the Landlord having notified the Tenant that such sum is due and outstanding

## **8.3 Termination of the Lease**

8.3.1 The Lease shall automatically determine in the event that the Contract determines (howsoever arising) but without prejudice to any rights of either party against the other for any antecedent breach of its obligations under this Lease

8.3.2 The Tenant shall forthwith deliver to the Landlord releases from any charge affecting the Premises and a direction to the Chief Land Registrar to cancel the registered title relating to the lease; and

8.3.3 the parties shall take all steps as may be proper and reasonable to cancel or assist the cancellation of all entries at HM Land Registry and the Land Charges Registry in relation to the lease.

#### **8.4 Expiry of Contract**

The Landlord's consent shall not be required for an assignment of this Lease required pursuant to clause 10.6 of the Contract. Upon any such assignment the Tenant and the Guarantor shall be released from for any future breach under the Lease and neither shall be required to enter into an Authorised Guarantee Agreement pursuant to the Landlord and Tenant (Covenants) Act 1995.

#### **8.5 Exclusion of Use Warranty**

Nothing in the Lease or in any consent granted by the Landlord under this Lease shall imply or warrant that the Premises may lawfully be used under the Planning Acts for the purpose authorised in the Lease (or any purpose subsequently authorised)

#### **8.6 Party Walls**

The boundary wall dividing the Premises from the HWRC site shall be a party structure and shall be repaired and maintained accordingly

#### **8.7 Entire Understanding**

The Lease embodies the entire understanding of the parties relating to the Premises and to all the matters dealt with by any of the provisions of the Lease

#### **8.8 Representations**

The Tenant acknowledges that the Lease has not been entered into in reliance wholly or partly of any statement or representation made by or on behalf of the Landlord except any such statement or representation that is expressly set out in the Lease

#### **8.9 Licences etc. Under Hand**

Whilst the Landlord is a corporation all licences consents approvals and notices required to be given by the Landlord shall be sufficiently given if given under the hand of a duly authorised officer of the Landlord

## 8.10 Tenant's Property

If after the Tenant has vacated the Premises on the Determination of the Term any property belonging to the Tenant remains in or on the Premises and the Tenant fails to remove it within 14 days after being requested in writing by the Landlord to do so or if after using its best endeavours the Landlord is unable to make such a request to the Tenant within one month from the first attempt so made by the Landlord:

- 8.10:1 the Landlord may as the agent of the Tenant sell such property and the Tenant will indemnify the Landlord against any liability incurred by it to any third party whose property shall have been sold by the Landlord in the mistaken belief held in good faith (which shall be presumed unless the contrary be proved) that such property belonged to the Tenant
- 8.10:2 if the Landlord having made reasonable efforts is unable to locate the Tenant the Landlord shall be entitled to retain such proceeds of sale absolutely unless the Tenant shall claim them within 3 months of the date upon which the Tenant vacated the Premises; and
- 8.10:3 the Tenant shall indemnify the Landlord against any damage occasioned to the Premises and any actions claims proceedings costs expenses and demands made against the Landlord caused by or related to the presence of the property in or on the Premises

## 8.11 Service of Notices

Notices shall be served in accordance with clause 98 of the Contract. The address for service to the Landlord is the address set out in the Particulars as may be varied from time to time by written notice to the Tenant.

## 8.12 Disputes

The provisions of clause 60 and Schedule 22 of the Contract (*mutatis mutandis*) shall apply in relation to any dispute under this Lease

## 8.13 Consequential Loss

(Without prejudice to the provisions of the Contract (including without limitation any indemnity, compensation or other claim or remedy thereunder) notwithstanding anything to the contrary in the Lease neither the Landlord nor the Tenant shall be liable to the other under the terms of this Lease for any loss of contract business opportunity profit production revenue or other consequential loss

## 8.14 Jurisdiction

The Lease shall be governed and construed in accordance with the laws of England and Wales

## 8.15 Exclusion of the 1954 Act, Sections 24 to 28 inclusive

8.15:1 The Parties confirm that before the Lease was entered into:

8.15:1.1 a notice complying with Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 which relates to this tenancy was served by the Landlord on the Tenant on 2012;

8.15:1.2 a declaration dated 2012 complying with the requirement of Schedule 2 to that Order was made by the Tenant or a person duly authorised by the Tenant

8.15:2 The Parties agree and declare that the provisions of sections 24 to 28 (inclusive) of the 1954 Act shall not apply to the tenancy created by this deed

8.15:3 The Parties confirm that there is no agreement for lease which gives effect to the Lease



**8.16 Contracts (Rights of Third Parties) Act 1999**

Unless expressly stated nothing in the Lease will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

**9. New or Old Lease**

The Lease is a new tenancy for the purposes of section 1 of the Landlord and Tenant (Covenants) Act 1995

IN WITNESS of which this deed has been executed by the Landlord and the Tenant the day and year first above written

## FIRST SCHEDULE

### Part I

#### Rights Granted

1. The free passage for the Tenant (in common with the Landlord and all others having the like right) of water soil drainage gas electricity electronic signals communications and other services to and from the Premises by and through the Pipes that are now or are from time to time laid in the Landlord's neighbouring property and serve the Premises
2. The right upon the provision of reasonable prior written notice to the Landlord and the Landlord's tenant occupying the neighbouring property (save in case of emergency) for the Tenant to enter into the Landlord's neighbouring property and the Access Road to construct, lay, replace, renew, repair, maintain, inspect and clean, new or existing pipes serving the Premises and/or connect into existing pipes in a position approved by the Landlord (such approval not to be unreasonably withheld or delayed) and carry out works to the Access Road and shared Pipes pursuant to Clause 6.1.1 subject to works being carried out in a good and workmanlike manner with all diligence and speed so far as reasonably practicable outside the usual business hours for the Landlord's Site, causing as little damage or interference as possible to the tenants on the adjoining land the Tenant making good all damage caused to the reasonable satisfaction of the Landlord. The Tenant shall comply with the Landlord's reasonable requirements and (to the extent not inconsistent) those of any tenant of the land on which such works are carried out as to times and means of access and the manner in which such works are carried out.
3. The right at all reasonable times upon giving prior written notice to the Landlord and the Landlord's tenant occupying the neighbouring property (except in the case of emergency) to enter upon the Landlord's neighbouring property in order to inspect the Premises or to carry out any repair renewal cleansing decoration or maintenance thereto which could not be carried out without entering the Landlord's neighbouring property the Tenant causing as little

damage or inconvenience as possible and making good to the reasonable satisfaction of the Landlord all damage thereby caused

4. Subject to complying with the rules and regulations mentioned in sub clause 5.8.2 the right for the Tenant its duly authorised officers visitors and invitees (in common with the Landlord and all others having the like right) to pass and repass to and from the Premises at all times with or without vehicles for all purposes connected with the proper and lawful use and enjoyment of the Premises but not further or otherwise over and along the Access Road .
5. In all cases the Tenant in exercising the rights granted by this Part of this Schedule shall cause as little damage as possible and shall make good to the Landlord's reasonable satisfaction all such damage caused

## Part II Rights Reserved

The following rights are excepted and reserved to the Landlord and where a person has a right to enter the Premises in order to carry out works then the right to enter the Premises is subject to that persons or persons (a) first giving reasonable notice to the Tenant (except in emergency) and (b) exercising the right in a manner which causes as little damage and inconvenience as is practicable in the circumstances and (c) making good any damage caused as soon as reasonably practicable:

1. Subject to compliance with the rules and regulations referred to in Clause 5.8.2:
  - 1.1 the right for the Landlord its servants and invitees to use the Shared Access to gain access to and egress from the Access Road and the Green Land and the HWRC Site with or without the use of vehicles
  - 1.2 The right for the Landlord its lessees of the Green Land and their respective servants and invitees to use the Green Land Shared Access with or without vehicles to gain access to and egress from the Green Land; and
  - 1.3 The right for the Landlord and its lessees of the HWRC Site and their respective servants and invitees to use the HWRC Site Shared Access with or without vehicles to gain access to and egress from the HWRC Site

In each case to enable the distribution of waste materials to their designated positions.

2. Right to free and uninterrupted passage and running of water, drainage, gas, electricity, communication and other services by any Pipe laid now or from time to time by the Landlord or the Tenant in or passing through the Premises and the right to enter the Premises in order to lay inspect, clean, maintain, repair, renew, remove, divert, make connections with or construct lay and install any new Pipe and exercise any of the rights and obligations granted to the Landlord by this Lease.
3. The right at any time during the Term at reasonable times and upon reasonable prior written notice:
  - 3.1 to enter the Premises to take schedules of inventories of fixtures and other items to be yielded up on the Determination of the Term and
  - 3.2 of access to the Premises for any purpose reasonably and of necessity required in connection with the management maintenance or repair of any part of the Landlord's adjoining or neighbouring land including the pipes running through or attached to the adjoining or neighbouring land
4. A right of support and protection for any adjoining property of the Landlord
5. Any existing right of light or air for adjoining property

The Landlord shall ensure that as little inconvenience loss and damage as is reasonably possible in the course of the exercise of such rights is caused and shall make good all damage caused

## SECOND SCHEDULE

### Landlord's Insurance Covenants

Where the Landlord shall insure the Premises and the Landlord's Site then the Landlord covenants with the Tenant that from and including the date hereof until Determination of the Term:

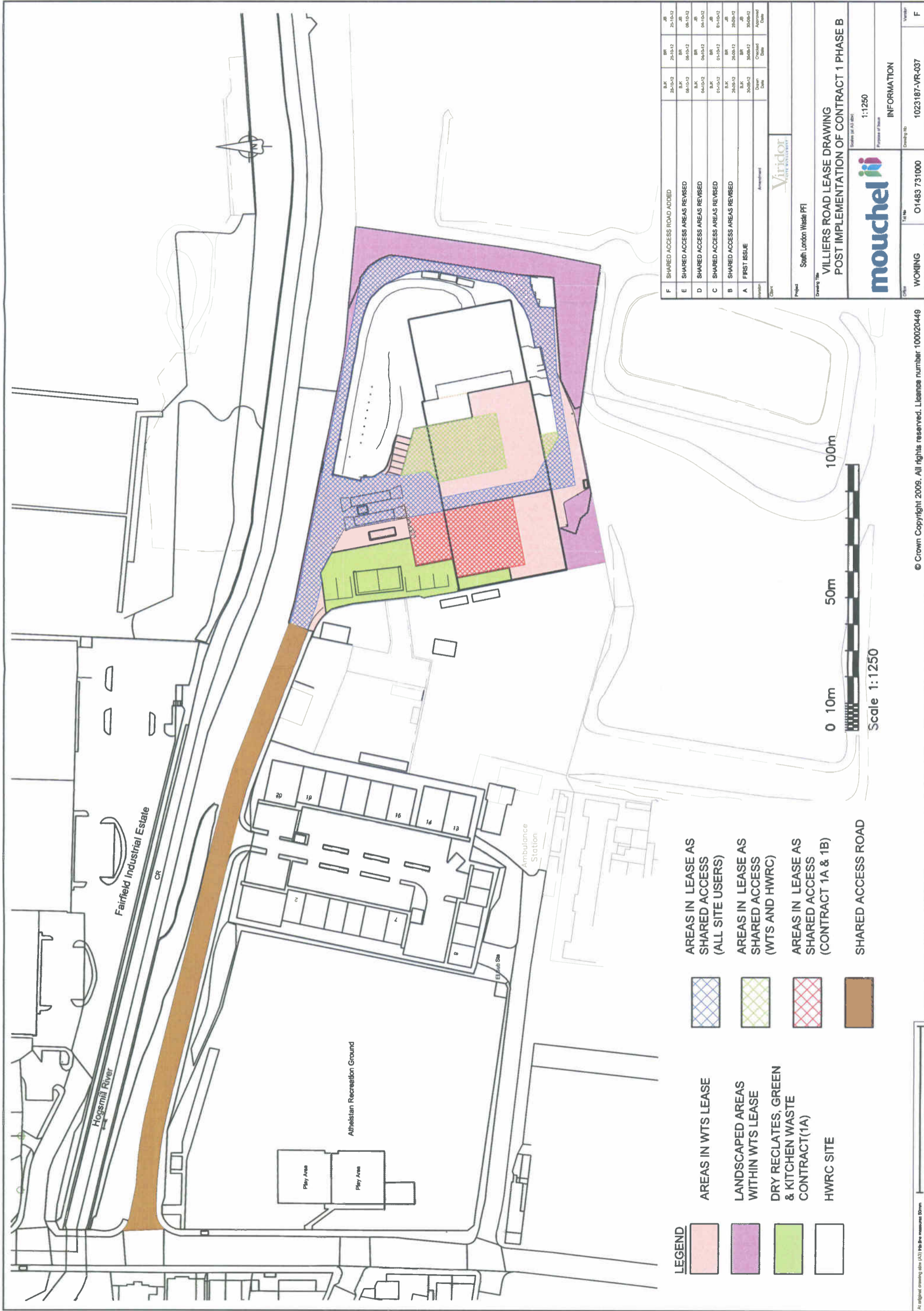
1. The Landlord will effect and maintain during the Term the Insurance Policy

2. The Landlord will upon reasonable request from time to time produce to the Tenant a copy of full details of the Insurance Policy In the event of any loss or damage to the Premises caused by the Insured Risks the Landlord will apply all monies received from the insurer in making good such loss or damage as soon as practicable and in accordance with the relevant provision of the Contract making up any shortfall from its own moneys. Provided that the Tenant may by written notice elect to reinstate the Premises itself in accordance with the Contract. Within 5 working days of receipt of such notice the Landlord shall pay the Tenant the insurance proceeds and any shortfall and the Tenant shall thereafter reinstate in accordance with the Contract.
3. If and whenever the Premises or any part of them are damaged or destroyed by one or more of: the Insured Risks so that the Premises or any part of them or any access thereto are unfit for occupation or use and payment of the insurance money is not wholly or partly refused because of any act or default of the Tenant or anyone at the Premises expressly or by implication with his authority then the provisions of paragraph 4 below are to have effect.
4. In the circumstances mentioned in paragraph 3 above the Rents, or a fair proportion of them according to the nature and the extent of the damage sustained, is to cease to be payable until the Premises, or the affected part or any access thereto, have been rebuilt or reinstated so as to render the Premises, or the affected part and/or the access as the case may be, fit for occupation and use, or (subject to such Rents being reimbursed under the terms of the Contract) until the end of three years from the destruction or damage whichever period is the shorter, the proportion of the Rent suspended and the period of the suspension to be determined by the Surveyor acting as an expert and not as an arbitrator any dispute as to the proportion of the Rents suspended or the period of the suspension to be determined in accordance with the Arbitration Act 1996 by an arbitrator to be appointed by agreement between the Landlord and the Tenant or in default by the President or other proper officer for the time being of the Royal Institution of Chartered Surveyors on the application of either the Landlord or the Tenant

Executed as a Deed by )  
and signed )  
By a director/secretary in the presence )  
of: )

Director

Secretary/Director



**LEGEND**

[Pink Box]	AREAS IN WTS LEASE
[Purple Box]	LANDSCAPED AREAS WITHIN WTS LEASE
[Green Box]	DRY RECLATES, GREEN & KITCHEN WASTE CONTRACT(1A)
[White Box]	HWRC SITE

[Blue Hatched Box]	AREAS IN LEASE AS SHARED ACCESS (ALL SITE USERS)
[Green Hatched Box]	AREAS IN LEASE AS SHARED ACCESS (WTS AND HWRC)
[Red Hatched Box]	AREAS IN LEASE AS SHARED ACCESS (CONTRACT 1A & 1B)
[Brown Box]	SHARED ACCESS ROAD

F	SHARED ACCESS ROAD ADDED	BLK 25/10/12	25/10/12	25/10/12	25/10/12												
E	SHARED ACCESS AREAS REVISED	BLK 08/10/12	08/10/12	08/10/12	08/10/12												
D	SHARED ACCESS AREAS REVISED	BLK 04/10/12	04/10/12	04/10/12	04/10/12												
C	SHARED ACCESS AREAS REVISED	BLK 01/10/12	01/10/12	01/10/12	01/10/12												
B	SHARED ACCESS AREAS REVISED	BLK 28/09/12	28/09/12	28/09/12	28/09/12												
A	FIRST ISSUE	BLK 30/08/12	30/08/12	30/08/12	30/08/12												
Version	Author	Checked	Drawn	Approved	Issue Date												
Sheet	Amplified																
Project: South London Waste PFI																	
Drawing Title: VILLIERS ROAD LEASE DRAWING POST IMPLEMENTATION OF CONTRACT 1 PHASE B																	
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<table border="1"> <tr> <td>Contract No</td> <td>1023187-VR-037</td> </tr> <tr> <td>Version</td> <td>F</td> </tr> <tr> <td>City</td> <td>WORKING</td> </tr> <tr> <td>Tel No</td> <td>01483 731000</td> </tr> <tr> <td>Project No</td> <td>1023187-VR-037</td> </tr> <tr> <td>Information</td> <td>INFORMATION</td> </tr> </table>						Contract No	1023187-VR-037	Version	F	City	WORKING	Tel No	01483 731000	Project No	1023187-VR-037	Information	INFORMATION
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## SCHEDULE 8

## KEY DATES

Milestone	Start Date	End Date
Interim Services Commencement Date	1 <sup>st</sup> April 2014	
Planning Permission Longstop Date		31 <sup>st</sup> January 2014
Planned Notice to Proceed Date	31 <sup>st</sup> July 2013	
Key Facility Planned Works Commencement Date	14 <sup>th</sup> August 2013	
Key Facility Planned Readiness Date	10 <sup>th</sup> May 2016	
Key Facility Readiness Longstop Date	10 <sup>th</sup> May 2017	
Key Facility Planned Service Commencement Date		2 <sup>nd</sup> August 2016
Waste Transfer Station Planned Practical Completion Date	Six (6) months prior to the Key Facility Planned Service Commencement Date	



## SCHEDULE 9

### REVIEW PROCEDURE

#### 1. SUBMITTED ITEMS

1.1 The provisions of this Schedule shall apply whenever any item, document or course of action is required to be reviewed, approved or otherwise processed in accordance with Schedule 9 (Review Procedure).

1.2 Subject to any express provision of this Contract, the manner, form and timing of any submission to be made by the Contractor to the Authority for review under the Review Procedure shall be a matter for the Contractor to determine. Each submission under the Review Procedure shall be accompanied by a copy of the document to be reviewed (including, where applicable, any Reviewable Design Data) or a statement of the proposed course of action (the entire contents of a submission being referred to in the Schedule as a "Submitted Item"). In relation to each Submitted Item, the following procedure shall apply:

1.2.1 as soon as reasonably practicable and, if the Submitted Item comprises an item of Reviewable Design Data, within fifteen (15) Business Days (or such shorter period as is set out in paragraph 7 (Reviewable Design Data) below or, in the case of a re-submission where the Contractor has provided all relevant information, seven (7) Business Days or, in either case, such other time period as may be agreed in writing between the Parties) of the date of receipt of a submission (or a re-submission, as the case maybe) of the Submitted Item by the Authority's Representative, the Authority's Representative shall return one (1) copy of the relevant Submitted Item to the Contractor endorsed "no comment" (or, in the case of Reviewable Design Data, endorsed "Level A - no comment") or (subject to and in accordance with paragraph 3 (Grounds of Objection)) "comments" (or, in the case of Reviewable Design Data, endorsed "Level B - comments") as appropriate; and

1.2.2 other than where the Submitted Item is an item of Reviewable Design Data, in which circumstance paragraph 7 (Reviewable Design Data) shall apply, if the Authority's Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with paragraph 1.2.1, then the Contractor shall issue a notice to the Authority and the Authority's Representative requiring the Authority's Representative to return a copy of the relevant Submitted Item duly endorsed within fifteen (15) Business Days. If the Authority's Representative fails to do so, it shall be deemed to have returned the Submitted Item to the Contractor endorsed "no comment".

1.3 If the Authority's Representative raises comments on any Submitted Item in accordance with paragraph 3 (Grounds of Objection) he shall state the ground upon which such comments are based and shall provide to the Contractor the evidence or other information necessary to substantiate that ground and provide as much detail as he is reasonably able in order to explain the reason(s) and/or ground(s) for such comments. To the extent that the Authority's Representative comments on a Submitted Item other

than on the basis set out in this Schedule, or fails to comply with the provisions of this paragraph, the Contractor may, in its discretion, either:

- 1.3.1 request written clarification of the basis for such comments and, if clarification is not received within five (5) Business Days of such request by the Contractor, refer the matter for determination in accordance with Schedule 22 (Dispute Resolution Procedure); or
- 1.3.2 at its own risk, and without prejudice to Clause 15 (Design Development), proceed with further design or construction disregarding such comments.

## 2. FURTHER INFORMATION

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

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

## 3. GROUNDS OF OBJECTION

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

- 3.1 in relation to any Submitted Item if:
  - 3.1.1 the Contractor's ability to perform its obligations under this Contract would be materially and adversely affected by the implementation of the Submitted Item; or
  - 3.1.2 the implementation of the Submitted Item would materially and adversely affect any right of the Authority under this Contract or its ability to enforce any such right; or
  - 3.1.3 such Submitted Item is not in accordance with the Authority's Requirements and/or the Contractor's Proposals;

- 3.2 in relation to Reviewable Design Data submitted pursuant to Clause 15 (Design Development) if the Contractor's ability to perform its obligations under this Contract would be materially and adversely affected;
- 3.3 in relation to the submission of any proposed revision or substitution for the Commissioning Plans or any part of any Commissioning Plans (as the case may be) pursuant to Clause 21.2.1 (Testing and Commissioning), on the grounds that the proposed revision or substitution would materially and adversely affect the Contractor's ability to perform its obligations under this Contract; and
- 3.4 in relation to the submission of any Schedule of Programmed Maintenance, any revision to any Schedule of Programmed Maintenance pursuant to Clause 26.4 (Programmed Maintenance) on the grounds that the Contractor's ability to perform its obligations under this Contract would be materially and adversely affected.

4. **EFFECT OF REVIEW**

- 4.1 Any Submitted Item which is returned or deemed to have been returned by the Authority's Representative endorsed "no comment" (and in the case of Reviewable Design Data, endorsed "Level A - no comment") shall be complied with or implemented (as the case may be) by the Contractor.
- 4.2 In the case of any Submitted Item other than Reviewable Design Data, if the Authority's Representative returns the Submitted Item to the Contractor endorsed "comments", the Contractor shall comply with such Submitted Item after amendment in accordance with the comments or withdraw the Submitted Item unless the Contractor disputes that any such comment is on grounds permitted by this Contract, in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with Schedule 22 (Dispute Resolution Procedure) and if the Contractor acts on the Submitted Item prior to such matter being determined or otherwise agreed it shall do so entirely at its own risk. For the avoidance of doubt, where the Contractor has withdrawn the Submitted Item in accordance with this paragraph 4.2, nothing shall prevent the Contractor from submitting an alternative item and/or document for review, providing always that in such circumstances any such alternative item and/or document shall be deemed to be a new item and/or document submitted for the purposes of this Schedule 9 (Review Procedure) and the provisions of this Schedule 9 (Review Procedure) shall apply to any such alternative item and/or document in full.
- 4.3 In the case of a Submitted Item comprising Reviewable Design Data, if the Authority's Representative returns the Submitted Item endorsed other than "Level B - comments", the Contractor shall either:
  - 4.3.1 not act upon the Submitted Item and shall amend the Submitted Item in accordance with the Authority's Representative's comments and re-submit the same to the Authority's Representative in accordance with paragraph 1.2; or
  - 4.3.2 withdraw the Submitted Item,

unless the Contractor disputes that any such comment is on grounds permitted by this Contract, in which case the Contractor or the Authority's Representative may refer the matter for determination in accordance with Schedule 22 (Dispute Resolution Procedure) and if the Contractor acts on the Submitted Item prior to such matter being determined or otherwise agreed it shall do so at its own risk. For the avoidance of doubt, where the Contractor has withdrawn the Submitted Item in accordance with this paragraph 4.3, nothing shall prevent the Contractor from submitting an alternative item and/or document for review, providing always that in such circumstances any such alternative item and/or document shall be deemed to be a new item and/or document submitted for the purposes of this Schedule 9 (Review Procedure) and the provisions of this Schedule 9 (Review Procedure) shall apply to any such alternative item and/or document in full.

**5. DOCUMENTATION MANAGEMENT**

- 5.1 The Contractor shall issue three (3) copies of all Submitted Items to the Authority's Representative and compile and maintain a register of the date and contents of the submission of all Submitted Items.
- 5.2 The Contractor shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by the Authority's Representative.
- 5.3 Save as expressly provided in this Contract, no review, comment or approval by the Authority or Authority's Representative shall operate to exclude or limit the Contractor's obligations or liabilities under the Contract (or the Authority's rights under the Contract).

**6. AUTHORITY CHANGE**

- 6.1 No approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute an Authority Change save to the extent provided in this Schedule.
- 6.2 If, having received comments from the Authority's Representative, the Contractor considers that compliance with those comments would amount to an Authority Change, the Contractor shall, before complying with the comments, notify the Authority of the same and the Parties shall seek to agree whether any such comments would amount to an Authority Change failing which either Party may refer the matter to be determined in accordance with Schedule 22 (Dispute Resolution Procedure).
- 6.3 If it is agreed between the Parties or determined in accordance with Schedule 22 (Dispute Resolution Procedure) that an Authority Change would arise if the comments were complied with, the Authority may, if it wishes, within five (5) Business Days of the comments having been agreed by the Parties as amounting to an Authority Change or being determined as such in accordance with Schedule 22 (Dispute Resolution Procedure), implement the Authority Change and it shall be dealt with in accordance with Schedule 21 (Change Protocol).
- 6.4 Not used.

6.5 Any failure by the Contractor to notify the Authority that it considers compliance with any comments of the Authority's Representative would amount to an Authority Change shall constitute an irrevocable acceptance by the Contractor that any compliance with the Authority's comments shall be without cost to the Authority and without any extension of time.

6.6 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall be construed or regarded as an Authority Change.

**7. REVIEWABLE DESIGN DATA**

7.1 The documents listed in the table below shall be Reviewable Design Data and shall be reviewed by the Authority within the time periods set out in the fourth column or such other time period as may be agreed in writing between the Parties.

7.2 A failure by the Authority to respond within the time periods set out in the fourth column or any such other time period as agreed between the Parties in relation to Reviewable Design Data shall result in the Authority deeming to have returned the items "Level A - no comment".

## Schedule 9 – Review Procedure

Reviewable Design Data	Key Facility	Waste Transfer Station	Review Period- Business Days
Planning application and associated reports	Yes	Yes	10 (in relation to the Key Facility) 20 (in relation to the Waste Transfer Station)
3D dimensional depiction of the Facility	No	Yes	10
Site plan and general layout, including weighbridge locations (and location of CHP pipe work to Beddington Site boundary)	Yes	Yes	10
Main building floor plans and general layout	No	Yes	10
Building elevations	No	Yes	10
Site landscaping layouts	No	Yes	10
Specification of building finishes	No	Yes	10
Security CCTV camera layout	No	Yes	10
ANPR camera layout and CCTV Camera Layout to which the Authority Representative has remote live access as defined in the Authority Requirements PR1-1.28 and PR3 -3.86	Yes	Yes	10
External lighting plan	No	Yes	10
Highways plan and traffic management schematic, and tracking diagrams for Contract Waste vehicles during the Commissioning and Services Periods	Yes	Yes	10
Fencing and gateway plan	No	Yes	10
Fencing and gateway specification	No	Yes	10
Site signage details and location plan	No	Yes	10

**SCHEDULE 10**  
**REQUIRED INSURANCES**

This Schedule 10 comprises five Parts-

- PART 1:** Policies to be taken out by the Contractor and maintained during the Works Period
- PART 2:** Policies to be taken out by the Contractor and maintained during the Interim Services Period and the Services Period
- PART 3:** Policies to be taken out by the Contractor and maintained during the Works Period
- PART 4:** Endorsements
- PART 5:** Broker's Letter of Undertaking
- PART 6:** Insurance Premium Risk Sharing

**SCHEDULE 10  
REQUIRED INSURANCES**

**PART 1**

**POLICIES TO BE TAKEN OUT BY THE CONTRACTOR AND MAINTAINED DURING THE  
WORKS PERIOD**

Common to each policy in Part I (unless stated otherwise):

**Insureds:**

1. Authority;
2. The Royal London Borough of Kingston(as landlord in relation to the Villiers Road Site);
3. Contractor;
4. Construction Sub-Contractor;
5. Construction sub-contractors of any tier;
6. Consultants and advisors to Insureds 3 and 4 - for their site activities only,  
each for their respective rights and interests in the Project.



**1. CONTRACTORS' 'ALL RISKS' INSURANCE (CAR)**

**1.1 Insured Property**

The permanent and temporary works, materials, goods, plant and equipment for incorporation in the Works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Construction Sub-Contractor or the Construction Sub-Contractor's sub-contractors) and all other property used or for use in connection with works associated with the Project.

**1.2 Coverage**

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

**1.3 Sum Insured**

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

**1.4 Maximum Deductible**

Three hundred fifty thousand pounds (£350,000) each and every loss in respect of claims for defective design, materials, workmanship (LEG03/06) and during testing, commissioning and maintenance period reducing to One hundred thousand (£100,000) each and every loss in respect of fire, water damage, subsidence, collapse, earth movement, storm, tempest, windstorm and flood and fifty thousand pounds (£50,000) any loss for all other claims.

**1.5 Territorial Limits**

United Kingdom including offsite storage and during inland transit.

**1.6 Period of Insurance**

From the date on which the Works commence at the Beddington Lane Site until the Key Facility Services Commencement Date and thereafter in respect of defects liability until expiry of the twenty-four (24) months defects liability period or such extended defects liability period as may be agreed in accordance with the Construction Sub-Contract and thereafter for the duration of the Waste Transfer Station Refurbishment Works at the Villiers Road Site.

**1.7 Cover Features & Extensions**

1.7.1 Terrorism.

1.7.2 Munitions of war clause.

1.7.3 Additional costs of completion clause.

1.7.4 Professional fees clause.

- 1.7.5 Debris removal clause.
- 1.7.6 72 hour clause.
- 1.7.7 European Union local authorities clause.
- 1.7.8 Free issue materials clause.
- 1.7.9 10% escalation clause.
- 1.7.10 Automatic reinstatement of sum insured clause.
- 1.7.11 Loss minimisation.
- 1.7.12 Extended maintenance.
- 1.7.13 Plans and documents.
- 1.7.14 Marine 50 / 50 clause.
- 1.7.15 Payments on account.
- 1.7.16 Computer data reinstatement.
- 1.7.17 Testing and commissioning.
- 1.7.18 Fire Joint Code of Practice.
- 1.7.19 Temporary repairs.
- 1.7.20 Increased costs of constructing incomplete or unbuilt works.
- 1.7.21 Offsite storage and repairs.
- 1.7.22 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.
- 1.7.23 Expediting expenses.

**1.8 Principal Exclusions**

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 LEG03/06 design exclusion.

- 1.8.8 Refractory linings exclusion.
- 1.8.9 Fuel quality exclusion clause.
- 1.8.10 Piling clause.

**2. DELAY IN START UP INSURANCE (DSU)**

**2.1 Insureds**

- 2.1.1 Contractor.

**2.2 Indemnity**

In respect of:

- 2.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Works as a result of loss or damage covered under the Contractors' All Risks' Insurance effected in accordance with Item 1 of Part 1 of this Schedule, including physical loss or damage which would be indemnifiable but for the application of any deductible;
- 2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place, during the Minimum Indemnity Period;
- 2.2.3 additional increased costs of working.

**2.3 Sum Insured**

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

**2.4 Maximum Excess**

60 days.

**2.5 Minimum Indemnity Period**

Thirty-six (36) months.

**2.6 Period of Insurance**

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

**2.7 Cover Features & Extensions**

- 2.7.1 Denial of access.
- 2.7.2 Utilities.
- 2.7.3 Terrorism.

- 2.7.4 Automatic Reinstatement of sum insured.
- 2.7.5 Professional Fees.
- 2.7.6 Payments on account.
- 2.7.7 Specified suppliers extension.
- 2.7.8 Waiver of subrogation rights against the Authority, the Construction Sub-Contractor and its sub-contractors.
- 2.7.9 Repayment of liquidated damages clause.

## 2.8 Principal Exclusions

- 2.8.1 The exclusions under the Contractors' 'All Risks' Insurance, other than for consequential financial losses.
- 2.8.2 Delayed response by a public body or state authority.

## 3. CONSTRUCTION THIRD PARTY LIABILITY INSURANCE

### 3.1 Interest

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

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

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

### 3.2 Limit of Indemnity

Not less than fifty million pounds (£50,000,000), in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of products liability and pollution liability.

### 3.3 Maximum Deductible

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

### 3.4 Territorial Limits

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

**3.5 Jurisdiction**

Worldwide excluding USA, Canada and Australia.

**3.6 Period of Insurance**

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

**3.7 Cover Features & Extensions**

3.7.1 Munitions of war.

3.7.2 Cross liability clause.

3.7.3 Contractual liability.

3.7.4 Contingent motor.

3.7.5 Liability arising from CDM Regulations.

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

3.7.7 Costs in addition to limit.

3.7.8 Data Protection Act clause.

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

3.7.10 Consumer Protection Act 1987.

3.7.11 Libel and slander.

3.7.12 Infringement of privacy or wrongful arrest.

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

3.7.14 Defective Premises Act.

**3.8 Principal Exclusions**

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

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

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

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

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

- 3.8.6 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured.
- 3.8.7 Events more properly covered under a professional indemnity policy.
- 3.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.10 Liability arising from asbestos.
- 3.8.11 Liability arising from toxic mould.
- 3.8.12 Losses indemnified under the CAR policy or DSU policy.
- 3.8.13 Cyber risks and data recognition.

#### **4. MARINE CARGO INSURANCE**

##### **4.1 Insured Property**

All property and interest of every description, for all transits by sea or air of all goods intended for the Works where such items are carried for the account and interest of the Insured from risk attachment at factory premises to Site(s), including offsite storage.

##### **4.2 Coverage**

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

##### **4.3 Limit to Indemnity**

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

##### **4.4 Maximum Deductible**

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

##### **4.5 Territorial Limits**

Worldwide.

##### **4.6 Period of Insurance**

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

##### **4.7 Cover Features and Extensions**

- 4.7.1 Terrorism.
- 4.7.2 Institute Cargo Clauses (A).
- 4.7.3 Institute War Clauses (Cargo).
- 4.7.4 Institute Strikes Clauses (Cargo).
- 4.7.5 Overland transit to the extent it is not covered under the Contractor's "All Risks" Insurance specified in Item 1 of Part 1 of this Schedule 10.
- 4.7.6 Institute Classification Clauses.
- 4.7.7 Institute War Cancellation Clauses, other non-cancellable.
- 4.7.8 Accumulation Clause, 200%.
- 4.7.9 Pre-shipment risks.

**4.8 Principal Exclusions**

- 4.8.1 As per Institute Cargo Clauses (A).
- 4.8.2 Ordinary leakage ordinary loss in weight or volume or ordinary wear and tear of the subject matter insured.
- 4.8.3 Inherent vice or nature of the subject matter insured.
- 4.8.4 Insolvency or financial default of the owners managers charterers or operators of the vessel or aircraft, unless not material to the claim.
- 4.8.5 Un-seaworthiness of the vessel or craft, etc but only where the Insured is aware of the un-seaworthiness.
- 4.8.6 Insufficiency or unsuitability of packaging.
- 4.8.7 Delay.
- 4.8.8 Vessel not ISM Code certified/SOLAS Convention.
- 4.8.9 War and Radioactivity on Land.

**5. MARINE CARGO DELAY IN START UP INSURANCE**

**5.1 Insureds**

- 5.1.1 Contractor.

**5.2 Indemnity**

In respect of:

- 5.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period, arising from a delay in completion of the Works as a result of loss or damage covered under the Marine Cargo Insurance

specified at Item 4 of Part 1 of this Schedule 10, including loss or damage which would be indemnifiable but for the application of any deductible;

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

5.2.3 additional increased costs of working.

**5.3 Sum Insured**

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

**5.4 Maximum Excess**

5.4.1 Sixty (60) days.

**5.5 Minimum Indemnity Period**

5.5.1 Twenty-four (24) months).

**5.6 Period of Insurance**

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

**5.7 Cover Features and Extensions**

5.7.1 As per Marine Cargo Insurance specified at Item 4 of Part 1 of this Schedule 10.

5.7.2 Payments on account.

5.7.3 Waiver of subrogation rights against the Authority, the Construction Sub-Contractor and its sub-contractors.

5.7.4 Repayment of liquidated and ascertained damages clause.

**5.8 Principal Exclusions**

As per Marine Cargo Insurance specified at Item 4 of Part 1 of this Schedule 10 other than for consequential financial losses.



**SCHEDULE 10  
REQUIRED INSURANCES**

**PART 2**

**POLICIES TO BE TAKEN OUT BY THE CONTRACTOR AND MAINTAINED DURING THE  
INTERIM SERVICES PERIOD AND SERVICES PERIOD**

Common to all policies in Part II (unless stated otherwise):

**Insureds:**

1. Authority;
2. The Royal London Borough of Kingston(as landlord in relation to the Villiers Road Site); and
3. Contractor,

each for their respective rights and interests in the Project.

**1. PROPERTY DAMAGE INSURANCE**

**1.1 Insured Property**

Any real and personal property of whatsoever nature and description which is the subject matter of the Project and which is the property of the Contractor or for which the Contractor may be responsible and/or has care, custody and/or control of from time to time including but not limited to the new facilities, unless more specifically insured under the Contractors' "All Risks" Insurance specified in Item 1 of Part 1 of this Schedule 10.

**1.2 Coverage**

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

**1.3 Sum Insured**

At all times an amount not less than the total reinstatement or replacement value of the Insured Property, plus provision to include Cover Features and Extensions as appropriate.

**1.4 Maximum Deductible**

Five hundred thousand pounds (£500,000) each and every claim (escalated periodically as appropriate)

**1.5 Territorial Limits**

United Kingdom plus elsewhere whilst in inland transit.

**1.6 Period of Insurance**

From the Interim Services Commencement Date or as otherwise specified in the Contract for the duration of the Contract and renewable on an annual basis unless agreed otherwise by the Parties.

**1.7 Cover Features & Extensions**

1.7.1 Terrorism

1.7.2 Automatic reinstatement of sum insured.

1.7.3 Capital additions clause.

1.7.4 72 hour clause.

1.7.5 European Union local authorities clause.

1.7.6 Professional fees.

1.7.7 Debris removal.

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

- 1.7.9 Expediting expenses.
- 1.7.10 Temporary offsite storage.
- 1.7.11 Plans and documents.
- 1.7.12 Reinstatement of computer data.
- 1.7.13 Temporary repairs.
- 1.7.14 Waiver of subrogation rights against the Construction Sub-Contractor and its sub-contractors.
- 1.7.15 Engineering breakdown.

**1.8 Principal Exclusions**

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Pollution and contamination to the insured property other than arising from an event which itself is not otherwise excluded.
- 1.8.5 Wear, tear and gradual deterioration.
- 1.8.6 Consequential financial losses.
- 1.8.7 Cyber risks.
- 1.8.8 Losses recovered under the CAR policy.
- 1.8.9 Refractory linings exclusion.
- 1.8.10 Fuel quality clause exclusion.
- 1.8.11 Motor vehicles.
- 1.8.12 Toxic mould.

**2. BUSINESS INTERRUPTION INSURANCE**

**2.1 Insureds**

- 2.1.1 Contractor.

**2.2 Indemnity**

In respect of:

- 2.2.1 loss of Revenue during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Project as a result of loss or damage covered under Property

Damage Insurance effected in accordance with Item 1 of Part 2 of this Schedule including physical loss or damage which would be indemnifiable but for the application of any deductible;

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

2.2.3 additional increased costs of working.

**2.3 Sum Insured**

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

**2.4 Maximum Excess**

Forty-five (45) days.

**2.5 Minimum Indemnity Period**

Thirty Six (36) months reducing to twenty four (24) months for engineering breakdown.

**2.6 Period of Insurance**

As per the Property Damage Insurance in Paragraph 1 of Part 2 of this Schedule 10.

**2.7 Cover Features & Extensions**

2.7.1 Denial of access.

2.7.2 Terrorism.

2.7.3 Utilities.

2.7.4 Accountants Clause.

2.7.5 Automatic reinstatement of sum insured.

2.7.6 Payments on account.

2.7.7 Specified suppliers extension.

2.7.8 Customers extension.

2.7.9 Professional fees.

2.7.10 Engineering breakdown.

2.7.11 Waiver of subrogation rights against the Authority, the Construction Sub-Contractor and its sub-contractors.

**2.8 Principal Exclusions**

- 2.8.1 Exclusions under the Property Damage Insurance, other than for consequential financial losses.
- 2.8.2 Delayed response by a public body or state authority.
- 2.8.3 Others as policy.

**3. THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

**3.1 Interest**

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

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

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Interim Services and the Services.

**3.2 Limit of Indemnity**

Not less than fifty million pounds (£50,000,000), (indexed but only to be applied to the next whole amount insurable in the insurance market at renewal), in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

**3.3 Maximum Deductible**

Fifty thousand pounds (£50,000) for each and every occurrence (escalated periodically as appropriate).

**3.4 Territorial Limits**

UK and elsewhere in the world in respect of non manual visits.

**3.5 Jurisdiction**

Worldwide excluding USA, Canada and Australia.

**3.6 Period of Insurance**

As per the Property Damage Insurance in Paragraph 1 of Part 2 of this Schedule 10.

**3.7 Cover Features & Extensions**

- 3.7.1 Munitions of war.
- 3.7.2 Cross liability clause.
- 3.7.3 Contingent motor.
- 3.7.4 Legal defence costs.
- 3.7.5 Contractual liability.
- 3.7.6 Health and Safety at Works Act.
- 3.7.7 Costs in addition to limit.
- 3.7.8 Data Protection Act clause.
- 3.7.9 Insured to include directors, officers and employees of the insured parties.
- 3.7.10 Consumer Protection Act 1987.
- 3.7.11 Libel and slander.
- 3.7.12 Infringement of privacy and wrongful arrest.
- 3.7.13 Defence, appeal and prosecution costs relating to the Corporate Manslaughter and Corporate Homicide Act 2007.
- 3.7.14 Defective Premises Act.

**3.8 Principal Exclusions**

- 3.8.1 War and related perils (UK market agreed wording).
- 3.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 3.8.3 Liability for death, illness, disease or bodily injury sustained by employees of the insured.
- 3.8.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.
- 3.8.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.
- 3.8.6 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party.
- 3.8.7 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.

- 3.8.8 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 3.8.9 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 3.8.10 Losses under the property damage policy or business interruption policy.
- 3.8.11 Cyber risks and data recognition.
- 3.8.12 Liability arising from toxic mould.
- 3.8.13 Liability arising from asbestos.
- 3.8.14 Others as policy.

#### **4. ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE**

##### **4.1 Interest**

To indemnify the Insureds in respect of all sums that they may become legally liable to pay following action by a relevant authority (including but not limited to Local Authority, the Environment Protection Agency or a judicial authority) or a third party, consequent to a pollution incident at the Site, and resulting in a claim or claims first made against the Insureds and reported to the Insurer during the period of insurance.

##### **4.2 Period of Insurance**

From the Services Commencement Date for the duration of the Contract.

##### **4.3 Limits of Indemnity**

Fifteen million pounds (£15,000,000) - Each loss

Fifteen million pounds (£15,000,000) - in the aggregate for all losses in the three (3) year policy period.

Sub-limits as per policy apply in respect of odour related claims and biodiversity damage.

##### **4.4 Maximum Deductible**

Five hundred thousand pounds (£500,000) for each and every loss.

##### **4.5 Cover Features and Extensions**

4.5.1 Third party claims for on-site bodily injury and property damage.

4.5.2 Third party claims for off-site clean-up resulting from pre-existing conditions.

4.5.3 Third party claims for off-site clean-up resulting from new conditions.

- 4.5.4 Third party claims for off-site bodily injury and property damage.
- 4.5.5 Third party and regulatory claims for on-site clean-up of new conditions (sudden and accidental basis for landfill sites).
- 4.5.6 Third party and regulatory claims for on-site clean-up of pre-existing conditions (not applicable to landfill sites).

**4.6 Principal Exclusions**

- 4.6.1 War and related perils (UK market agreed wording).
- 4.6.2 Nuclear/radioactive risks (UK market agreed wording).
- 4.6.3 Known conditions that can be reasonably foreseen as likely to result in a claim.
- 4.6.4 Others as policy.



**SCHEDULE 10  
REQUIRED INSURANCES**

**PART 3**

**POLICY TO BE TAKEN OUT BY THE CONTRACTOR AND MAINTAINED DURING THE  
WORKS PERIOD**

**1. CONTRACTOR'S POLLUTION LIABILITY INSURANCE (CPL)**

**1.1 Insureds:**

1.1.1 Authority;

1.1.2 The Royal London Borough of Kingston(as landlord of the Villiers Road Site)

1.1.3 Contractor;

1.1.4 Construction Sub-Contractor;

1.1.5 Sub-contractors of the Construction Sub-Contractor; and

1.1.6 Consultants and advisors of Insureds 1.1.2 and 1.1.3 - for site activities only,

each for their respective rights and interests in the Project.

**1.2 Interest**

To indemnify the Insureds in respect of all sums that they may become legally liable to pay consequent to a pollution incident and/or action by a relevant authority (including but not limited to a Local Authority or the Environment Agency or a judicial authority) or a third party and resulting in a claim or claims first made against the Insureds and reported to the insurer during the policy period. A pollution incident relates to either pre-existing pollution (at the Commencement Date) exacerbated by the Contractor and/or its Sub-contractors or pollution caused subsequent to the Commencement Date by the Contractor and/or its Subcontractors in connection with the execution of the Works.

**1.3 Limit of Indemnity**

Not less than five million pounds (£5,000,000) in respect of any one loss, the number of losses being unlimited and not less than fifteen million pounds (£15,000,000) in the aggregate during the policy period, the policy period not to exceed three years unless agreed otherwise by the Parties.

**1.4 Maximum Deductible**

One hundred thousand pounds (£100,000) for each and every loss.

**1.5 Territorial Limits**

The Site(s) and off site migration of contamination from the Site(s).

**1.6 Jurisdiction**

English law and jurisdiction.

**1.7 Period of Insurance**

From the date on which Works commence at the Beddington Lane Site until the Key Facility Services Commencement Date and thereafter until expiry of the twenty-four (24) month defects liability period or such extended liability period as may be agreed in accordance with the Construction Sub-Contract.

**1.8 Cover Features and Extensions**

1.8.1 Regulatory claims or third party claims for on-site clean-up of pre-existing and new conditions following completion of site remediation to the satisfaction of the insurer.

1.8.2 Regulatory or third party claims for off-site clean-up of pre-existing and new conditions.

1.8.3 Third party claims for on-site and off-site property damage from pre-existing and new conditions.

1.8.4 Third party claims for on-site and off-site bodily injury from pre-existing and new conditions.

1.8.5 Legal costs.

1.8.6 Retroactive date of policy inception.

1.8.7 Liability arising from the Works.

**1.9 Principal Exclusions**

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

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

1.9.3 Asbestos (exclusion not to extend to asbestos remediation costs with regard to soil and groundwater).

1.9.4 Intentional, wilful or deliberate non-compliance with any EU Authority decision or any UK or EU regulation.

1.9.5 Criminal fines and penalties.

1.9.6 Known conditions that can be reasonably foreseen as likely to result in a claim.

1.9.7 Terrorism.

**SCHEDULE 10**  
**REQUIRED INSURANCES**

**PART 4**  
**ENDORSEMENTS**

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Contract.

**Endorsement 1**

**Cancellation**

This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.

The insurer shall by written notice advise the Authority:

- (a) at least thirty (30) days before any such cancellation or termination is to take effect;
- (b) at least thirty (30) days before any reduction in limits or coverage or any increase in deductibles is to take effect; and
- (c) of any act or omission or any event of which the insurer has knowledge and which might invalidate or render unenforceable in whole or in part this policy.

**Endorsement 2**

**Multiple Insured/Non-Vitiation Clause**

Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.

It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.

Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "Vitiating Act") committed by that insured party save where such

misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured who has an insurable interest and who has not committed the Vitiating Act.

Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:

- (a) no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;
- (b) where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Contract) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
- (c) save as set out in a request from insurers to the Authority in accordance with (c) above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

### **Endorsement 3**

#### **Communications**

All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered;
- (b) if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.

The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Contractor at the relevant time. The initial address and facsimile number of the Authority are as follows:

The Authority:

Address: London Borough of Croydon  
Taberner House  
Park Lane  
Croydon, CR9 3JS.  
Facsimile No: Email: [Malcolm.Kendall@croydon.gov.uk](mailto:Malcolm.Kendall@croydon.gov.uk)

Attention: The contract manager from time to time of the Authority (as at the date of this Contract being Malcolm Kendall, Head of Environmental & Leisure)

It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

**Endorsement 4**

**Loss Payee (applicable only to the Physical Damage Policies)**

Subject to the provision of Clause 56.2 all proceeds of this policy shall be payable without deduction or set-off to the Joint Insurance Account.

**Endorsement 5**

**Primary Insurance**

For the insurances in Parts 1 and 2 of Schedule 10;

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

For the insurances in Part 3 of Schedule 10;

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

**Endorsement 6**

**Ringfencing**

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

**SCHEDULE 10  
REQUIRED INSURANCES**

**PART 5**

**BROKER'S LETTER OF UNDERTAKING**

**PART 5A: BROKER'S LETTER OF UNDERTAKING APPLICABLE TO THE POLICIES IN  
PART 1 AND PART 3 OF THIS SCHEDULE 10.**

DATE

Authority

Dear Sirs

Agreement dated on or around 2012 entered into between Viridor South London Limited (the "Contractor") and the Mayor and Burgesses of the London Borough of Croydon (the "Authority") (the "Project Agreement")

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
2. We act as insurance broker to the Contractor in respect of the insurances (which are defined in the Agreement) evidenced by the cover notes attached hereto ("Required Insurances") and in that capacity we confirm that the Required Insurances:-
  - a. where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
  - b. are, to the best of our knowledge and belief (after making all reasonable enquiries), as at today's date, in full force and effect; and that
  - c. all premiums due as at today's date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
  - d. the endorsements set out in Schedule 10 of the Agreement are to the best of our knowledge and belief as at today's date in full force and effect.
3. We further confirm that the cover notes confirm this position.
4. Pursuant to instructions received from the Contractor and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Required Insurances, we hereby undertake in respect of the interests of the Authority in relation to the Required Insurances:-

a. Notification Obligations

- i. to notify you at least thirty (30) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor to negotiate renewal and in the event of our receiving instructions to renew, to advise you as soon as reasonably practicable, and in any event within three (3) working days, of the details thereof;
- ii. to notify you at least thirty (30) days prior to ceasing to act as brokers to the Contractor unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as reasonably practicable and in any event within three (3) working days; and
- iii. to pay into the Joint Insurance Account, but always in accordance with the Agreement, without set off or deduction of any kind or for any reason, all payments in respect of claims received by us from insurers in relation to the Required Insurances specified;

b. Advisory Obligations

- i. to notify you as soon as reasonably practicable, and in any event within three (3) working days, of any default in the payment of any premium by the Contractor to us for any of the Required Insurances;
- ii. to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least thirty (30) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than thirty (30) days before it is to take effect;
- iii. to notify you as soon as reasonably practicable of any act or omission, breach or default of the Contractor of which those of our employees directly involved with the placement or administration of the Required Insurances becomes actually aware in their capacity as brokers to the Contractor which acting reasonably they consider may invalidate or render unenforceable in whole or in part any of the Required Insurances or which may otherwise materially impact on the extent of cover provided under the Required Insurances; and
- iv. in accordance with our duty to the Contractor, to advise the Contractor of its duties of disclosure to insurers including:-
  - the types of facts, circumstances and beliefs that should generally be disclosed to insurers; and
  - the obligation not to misrepresent any facts, matters or beliefs to insurers;

c. Disclosure Obligations

- i. subject to the prior written consent of the Contractor (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information made available to those of our employees directly involved with the placement of the Required Insurances in their capacity as brokers to the Contractor and any fact, change of circumstances or occurrence made known to such employees which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers (in accordance with the Contractor's duty of disclosure to insurers) as soon as practicable after we are in receipt of such information; and become aware of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and
- ii. to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Contractor or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances in discharge of our obligation set out at paragraph c.i of this letter. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

d. Administrative Obligations

- i. to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;
- ii. subject to our lien over the Policies for premiums and/or commissions due, to supply to the Authority and/or its insurance advisers (or the Authority's authorised representatives) as soon as reasonably practicable, on written request copies of the documents set out in paragraph d.i of this letter, and to the extent available, to make available to such persons as soon as reasonably practicable, upon the Authority's request the originals of such documents;
- iii. to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate cleared funds from the Contractor, all such premiums shall be



paid to insurers in accordance with the terms of the Required Insurances;

- iv. to administer the payment of claims from insurers in respect of the Insurances (the “Insurance Claims”) including:-
  - negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
  - collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and
  - insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout the settlement, payment and administration of such Insurance Claims;
- v. to advise the Authority as soon as reasonably practicable upon receipt of notice of any material changes from the Contractor which we are instructed to make in the terms of the Required Insurances and which, if effected, in our reasonable opinion as insurance brokers would result in any material reduction in limits or coverage or in any material increase in deductibles, exclusions or exceptions; and
- vi. to advise the Authority in advance, to the extent we are actually aware of in advance, of any material change to the terms of, or any lapse, non-renewal and/or cancellation of Required Insurances.

e. Insurance Cost Reporting Procedures

- i. to prepare following request, at the expense of the Contractor, a Joint Insurance Cost Report on behalf of both the Contractor and the Authority in accordance with the Insurance Review Procedure as set forth in paragraph 2 of Part 6 of Schedule 10(Insurance) of the Project Agreement. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

**5. Notification Details**

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

The contract manager from time to time of the Authority (as at the date of this Contract being Malcolm Kendall, Head of Environmental & Leisure)

London Borough of Croydon  
Taberner House  
Park Lane

Croydon  
CR9 3JS

6. The undertakings given and obligations set out in this letter are given subject to any liability we may incur to you arising out of or in connection with this letter whether in contract, tort (including but not limited to negligence) or otherwise being limited in aggregate to five million pounds (£5,000,000).
7. All liability we may incur to you, whether in contract, tort (including but not limited to negligence) or otherwise for loss of profit, loss of savings, loss of opportunity or any indirect or consequential loss is hereby expressly excluded.
8. No limit of liability shall apply in the case of death or personal injury caused by our negligence, or in respect of any loss caused by our fraud.
9. The undertakings given and obligations set out in this letter are given subject to insurers right to cancel the Required Insurances, are given solely in our capacity as broker to the Contractor, relate only to the Required Insurances and are subject to our continuing appointment as broker to the Contractor. Following termination of such appointment, we are, for the avoidance of doubt and without prejudice to your accrued rights, released from all our ongoing obligations set out in this letter.
10. You may not rely on any advice which we have given to the Contractor and we do not represent that any of the Required Insurances are suitable or sufficient to meet your needs and you must take steps and advice of your own as you consider necessary in order to protect your own position.
11. In the event that this letter is disclosed to any third party, any and all liability howsoever arising to such third party is hereby expressly excluded to the extent permitted in law.
12. No person, except you, has any rights arising out of this letter under the Contract (Rights of Third Parties) Act 1999.
13. This letter shall be governed by and construed in all respects in accordance with the laws of England and Wales.
14. This letter is given by us at the request of the Contractor and with the Contractor's full knowledge and consent as to its terms, who confirms that we are authorised to give and comply with the undertakings and acknowledges that compliance with the undertakings may be in conflict with the interests of the Contractor, as evidenced by the Contractor's signature below.

Yours faithfully

---

For and on behalf of Willis Limited

Accepted for and on behalf of the Contractor

**PART 5B: BROKER'S LETTER OF UNDERTAKING APPLICABLE TO THE POLICIES IN PART 2 OF THIS SCHEDULE 10.**

**BROKER'S LETTER OF UNDERTAKING**

To: The Authority

Dear Sirs

Agreement dated on or around 2012 entered into between Viridor South London Limited (the "Contractor") and the Mayor and Burgesses of the London Borough of Croydon (the "Authority") (the "Project Agreement")

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter.
2. We act as insurance broker to the Contractor in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to Clause 55 (Required Insurances) and Schedule 10 (Required Insurances) of the Agreement:
  - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
  - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect; and that
  - 2.3 all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not, however, make any representations regarding such insurers' current or future solvency or ability to pay claims; and that
  - 2.4 the endorsements set out in Schedule 10 (Required Insurances) of the Agreement are as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Contractor and in consideration of your approving our appointment as brokers in connection with the Required Insurances, we hereby undertake in relation to the Required Insurances:
  - 4.1 Notification Obligations
    - 4.1.1 to notify you at least thirty (30) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;

- 4.1.2 to notify you at least thirty (30) days prior to ceasing to act as brokers to the Contractor unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and
- 4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Required Insurances specified at Clause 118 of the Agreement.

#### 4.2 Advisory Obligations

- 4.2.1 to notify you as soon as reasonably practicable of any default in the payment of any premium for any of the Required Insurances;
- 4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances, at least thirty (30) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than thirty (30) days before it is to take effect;
- 4.2.3 to notify you as soon as reasonably practicable of any act or omission, breach or default of which we have been notified which in our reasonable opinion may either invalidate or render unenforceable in whole or in part any of the Required Insurances or which may otherwise materially impact on the extent of cover provided under the Required Insurances;
- 4.2.4 in accordance with our duty to the Contractor to notify the Contractor of its pre-contractual duties of disclosure to insurers, including the duty to disclose all information that would be considered material in the context of such duty.

#### 4.3 Disclosure Obligations

- 4.3.1 Subject to the prior written consent of the Contractor (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information provided to those of our employees directly involved in 2 above in our capacity as insurance broker to the Contractor, including any fact, change of circumstances or occurrence notified to such employees, which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers, or in accordance with the policy terms and conditions of the Required Insurances, as soon as reasonably practicable after we are in receipt of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise; and

4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Contractor or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

4.4 Administrative Obligations

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

4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set out in Clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;

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

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

- (a) negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
- (b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and
- (c) insofar as it is relevant and practicable, liaising with and reporting to each Authority throughout

the settlement, payment and administration of such Insurance Claims.

- 4.4.5 to advise the Authority promptly upon receipt of notice of any material changes which we are instructed by the Contractor to make in the terms of the Required Insurances and which, if effected, in our reasonable opinion as insurance brokers would result in any material reduction in limits or coverage or in any increase in deductibles, exclusions or exceptions;
- 4.4.6 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Schedule 10 (Required Insurances) of the Agreement.

#### 4.5 Insurance Cost Reporting Procedures

To prepare, at the expense of the Contractor, a Joint Insurance Cost Report on behalf of both the Contractor and the Authority in accordance with the Insurance Review Procedure as set forth in Schedule 10 (Required Insurances) of the Agreement. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

### 5. NOTIFICATION DETAILS

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

The contract manager from time to time of the Authority (as at the date of this Contract being Malcolm Kendall, Head of Environmental & Leisure)

London Borough of Croydon  
Taberner House  
Park Lane  
Croydon  
CR9 3JS

- 6. Save insofar as we have given agreements or representations in this letter, it is to be understood by the Authority that they may not rely on any advice which we have given to the Contractor, and we do not represent that the Required Insurance are suitable or sufficient to meet the needs of the Authority which must take steps and advice of its own as it considers necessary in order to protect its own position.
- 7. The representations and obligations set out in this letter are subject to our continuing appointment as insurance brokers to the Contractor in relation to the Required Insurances, and following termination of such appointment our immediate release from all our obligations set out in the letter to the extent those obligations arise on or after the termination, and subject to any right of

lien we may have over the policy and policy documents regarding the Required Insurances, arising through common law or otherwise.

8. Our aggregate liability to any persons companies or organisations who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Required Insurances, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £5,000,000, even if we are negligent. We do not limit our liability for personal injury or fraud.
9. This letter is given by us on the instructions of the Contractor and with their full knowledge and consent to its terms.

Yours faithfully

-----

For and on behalf of Contractor's broker

We consent to the giving of this Letter of Undertaking by our insurance brokers.

For and on behalf of

The Contractor



**SCHEDULE 10**  
**REQUIRED INSURANCES**

**PART 6**

**INSURANCE PREMIUM RISK SHARING**

**1. DEFINITIONS**

For the purposes of this Part 6 of this Schedule 10 (Required Insurances), the following words and expressions shall bear the following meanings:

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

**Base Cost** means seven hundred and fifty thousand pounds (£750,000) being the amount as agreed at the Bid Date and set out in the Financial Model which represents the insurance costs (which excludes amounts in respect of insurance premium tax and all brokers' fees and commissions) which are proposed to be incurred to maintain the Relevant Insurance in each year following the Services Commencement Date, expressed in real terms as at the Bid Date;

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

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

- (a) the amount by which the Base Relevant Insurance Cost would have been a lesser amount had such a risk been Uninsurable or such a term or condition been unavailable at the Bid Date (which amount, for the avoidance of doubt, can be £0); or
- (b) if it is impossible to determine an amount pursuant to paragraph (a) above, an amount that is reasonable to be deducted from the Base Relevant Insurance Cost having due regard to:
  - (i) the amount by which the Actual Relevant Insurance Cost is less than it would have been as a result of the risk becoming Uninsurable, or the term or condition becoming unavailable (the "Actual Reduction");
  - (ii) the size of the Actual Reduction as a percentage of the Actual Relevant Insurance Cost immediately prior to the risk becoming Uninsurable, or the term or condition becoming unavailable; and
  - (iii) the effects of RPIX since the Bid Date;

<b>Business Interruption Cover</b>	shall bear the meaning ascribed to it in Schedule 10 (Required Insurances);
<b>Construction Insurance</b>	<b>Period</b> means the Required Insurance in Parts 1 and 3 of this Schedule 10(Required Insurances);
<b>Contract Period</b>	means the period from and including the date of this Contract to the Expiry Date, or if earlier, the Termination Date;
<b>Exceptional Cost</b>	means, for an Insurance Review Period, the extent to which there is an Insurance Cost Increase which exceeds in amount 30% of the Base Relevant Insurance Cost for that Insurance Review Period;
<b>Exceptional Saving</b>	means, for an Insurance Review Period, the extent to which there is an Insurance Cost Decrease which exceeds in amount 30% of the Base Relevant Insurance Cost for that

		Insurance Review Period;
<b>First Insurance Review Date</b>		means the first Business Day following the first anniversary of the Relevant Insurance Inception Date;
<b>Insurance Cost Decrease</b>		means the Insurance Cost Differential if the value thereof is less than zero, multiplied by minus one;
<b>Insurance Cost Differential</b>		shall, subject to the Insurance Review Procedure, be determined as follows:  $\text{Insurance Cost Differential} = (\text{ARIC} - \text{BRIC}) - (\text{+/- PIC})$ <p>where:</p> <p>ARIC is the Actual Relevant Insurance Cost</p> <p>BRIC is the Base Relevant Insurance Cost</p> <p>PIC is the Project Insurance Change;</p>
<b>Insurance Cost Increase</b>		means the Insurance Cost Differential if the value thereof is greater than zero;
<b>Insurance Cost Index</b>		means any index introduced by the United Kingdom Government or the Office of National Statistics after the date of this Contract and which is anticipated to be published annually to provide an independent and objective measure of changes in prevailing market insurance costs;
<b>Insurance Review Date</b>		means the First Insurance Review Date and, thereafter, each date falling on the second anniversary of the previous Insurance Review Date, except where such date lies beyond the end of the Contract Period, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance Prior to the end of the Contract Period;
<b>Insurance Procedure</b>	<b>Review</b>	means the procedure set out in paragraph 2 of this Part 6;
<b>Insurance Review Period</b>		means a two year period from the Relevant Insurance Inception Date and each subsequent two year period commencing on the second anniversary of the Relevant Insurance Inception Date except where the end of such period lies beyond the end of the Contract Period, in which case the Insurance Review Period shall be the period from the end of the

penultimate Insurance Review Period to the last day of the Contract Period;

<b>Joint Insurance Cost Report</b>	shall bear the meaning ascribed to it in paragraph 2.2 of this Part 6;
<b>PPP Insurance Market</b>	means the insurance market which insures the majority of all PPP projects across all PPP sectors (as determined by the number of PPP projects, but excluding all waste PPP projects). At the date of this Contract the PPP Insurance Market is in the United Kingdom;
<b>Portfolio Cost Saving</b>	means any insurance cost saving which arises from the Contractor changing the placement of the Required Insurances from being on a standalone project specific basis assumed at Financial Close and reflected in the Base Cost, to being on the basis of a policy (or policies) also covering risks on other projects or other matters which are outside the scope of the Project so as to benefit from portfolio savings a Portfolio Cost Saving is defined to be a positive sum and cannot be less than zero;
<b>Power and Engineering Insurance Market</b>	means the insurance market that insures or reinsures the majority of all European Based Relevant Assets and at the date of this Contract the Power and Engineering Insurance Market is in Europe;
<b>Project Insurance Change</b>	<p>means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:</p> <ul style="list-style-type: none"> <li>(a) the claims history or re-rating of the Contractor or any Contractor Related Party;</li> <li>(b) the effect of any change in deductible unless the following applies: <ul style="list-style-type: none"> <li>(i) such change is attributable to circumstances generally prevailing in the Relevant Insurance Market; and</li> <li>(ii) the deductible, further to such change, is either greater than or equal to the maximum in Part 2 of this Schedule 10 (Required Insurances);</li> </ul> </li> </ul>

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

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

**Relevant Assets**

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

- (a) municipal solid waste technology and other renewable technology;
- (b) coal fired plants;
- (c) oil fired plants;
- (d) gas turbine power plants;
- (e) coal/oil refineries;
- (f) chemical plants;
- (g) petrochemical plants;
- (h) gas plants; and
- (i) overhead transmission lines and underground cabling;

**Relevant Insurance**

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

- (a) Construction Period Insurance; and
- (b) Business Interruption Cover except to the extent that it relates to Unavoidable Fixed Costs.

**Relevant Insurance Inception Date**

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

**Relevant Insurance Market**

means the PPP Insurance Market and the Power and Engineering Insurance Market, weighted respectively as to 5% and 95%;

<b>Required Insurance</b>	shall bear the meaning ascribed to it in the Contract;
<b>RPIX</b>	shall bear the meaning ascribed to it in the Contract;
<b>Revenue</b>	is defined as the projected Unavoidable Fixed Costs of the Contractor;
<b>Unavoidable Fixed Costs</b>	shall mean the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during the period of indemnity but excluding: <ul style="list-style-type: none"><li>(a) costs which could have reasonably been mitigated or avoided by the Contractor;</li><li>(b) payments to the Contractor's Associated Companies (save for the Construction Sub-Contractor);</li><li>(c) payments which are not entirely at arm's length;</li><li>(d) payments to holders of equity in the Contractor;</li><li>(e) indirect losses suffered or allegedly suffered by any person;</li><li>(f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;</li><li>(g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in respect of the same liability;</li><li>(h) payments representing any profits of the Project (to the extent not already excluded in (e) above).</li></ul>

**2. INSURANCE REVIEW PROCEDURE**

- 2.1 This procedure shall be used to determine whether the Authority shall bear any increase or benefit from any decrease in Relevant Insurance costs.
- 2.2 The Contractor's insurance broker shall prepare a report on behalf of both the Contractor and the Authority (the "Joint Insurance Cost Report"). The Joint Insurance Cost Report is to be prepared at the Contractor's expense and should, as a minimum, contain the following information for the relevant Insurance Review Period:

- 2.2.1 A full breakdown of the Actual Relevant Insurance Cost;
- 2.2.2 A full breakdown of the Base Relevant Insurance Cost;
- 2.2.3 A spreadsheet (the "Insurance Summary Sheet") detailing separately:
  - (i) the sum(s) insured/limit of indemnity (i.e. rateable factor) for each of the Relevant Insurances;
  - (ii) the premium rate for each of the Relevant Insurances;
  - (iii) the net premium paid (or to be paid) for each of the Relevant Insurances (i.e. excluding both insurance premium tax and brokers fees and commissions);
  - (iv) the deductible(s) for each Relevant Insurance;
  - (v) details of any claims (paid or reserved) (including incident date, type and quantum) in excess of one hundred thousand pounds (£100,000), being the amount stated in Clause 55.10.
- 2.2.4 An assessment and quantification of each Project Insurance Change together with reasons therefore;
- 2.2.5 Full details of any Portfolio Cost Saving;
- 2.2.6 Any other reasons that the Contractor believes may have caused a change (by way of increase or decrease relative to the Base Relevant Insurance Costs) in the Actual Relevant Insurance Cost;
- 2.2.7 The opinion of the Contractor's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor specified above. To the extent such information is available and having used all reasonable endeavours to obtain such information, the insurance broker's assessment should include:
  - (i) an assessment of the magnitude of, and reasons for, insurance rate movement generally prevailing in the Power and Engineering Insurance Market, including full details of the information underpinning the assessment. This should include:
    - (i) feedback received further to discussions with at least three lead underwriters at each insurance renewal or placement during the relevant Insurance Review Period;
    - (ii) premium rate change information broadly corresponding to the same period further to a review of insurance cost data for a representative sample of Relevant Assets in various European Union Member States for which the Relevant Insurance has been renewed by the Contractor's insurance broker during the six (6) months prior to the relevant Insurance Review Date; and

- (iii) all additional available evidence of any changes to circumstances generally prevailing in the Power and Engineering Insurance Market that are deemed to have contributed to any Insurance Cost Differential. This should include details of movements in any other index which both Parties agree is relevant to the Power and Engineering Market which is or becomes available.
- (ii) an assessment of the magnitude of, and reasons for insurance rate movements generally prevailing in the PFI Insurance Market, including all available evidence of changes to circumstances generally prevailing in the PFI Insurance Market that are deemed to have contributed to any Insurance Cost Differential. This should include details of movements in the CBS Private Capital non-marine index, plus, if available from other appropriate sources, details of changes in insurance cost across the PFI market as a whole; and
- (iii) the calculation of the Insurance Cost Differential and any Exceptional Cost or Exceptional Saving arising from this calculation.

2.2.8 The Contractor shall, as soon as is reasonably practicable, notify the Authority if the Contractor's insurance broker is unable to obtain any of the information required under paragraph 2.2.7 this Part 6 of this Schedule 10 (Required Insurances). The Authority shall be entitled to provide the Contractor's insurance broker with any such information for inclusion in the Joint Insurance Cost Report and the Contractor shall reimburse the Authority's costs that have been reasonably and properly incurred in obtaining and providing such information.

2.3 The Contractor shall procure that the broker, no later than the date which is twenty five (25) Business Days after the Insurance Review Date, delivers to the Authority at the same time as it delivers to the Contractor at least two copies of the Joint Insurance Cost Report. At the same time the Contractor should send a copy of its Insurance Summary Sheet to HM Treasury private finance unit or its nominee. Following receipt of the Joint Insurance Cost Report the Authority shall notify the Contractor in writing within twenty five (25) Business Days whether or not it accepts the Joint Insurance Cost Report including full details of any disagreement. If the Authority does not provide such notification and/or details of any disagreement to the Contractor within twenty five (25) Business Days, the Authority shall be deemed to have accepted the Joint Insurance Cost Report. If the Authority disagrees with any item in the Joint Insurance Cost Report, the Parties shall use their respective reasonable endeavours acting in good faith to agree the contents of the Joint Insurance Cost Report. If the Parties fail to agree the contents of the Joint Insurance Cost Report within forty five (45) Business Days from the date it was delivered to the Authority, the matter shall be resolved in accordance with Schedule 22 (Dispute Resolution Procedure), provided always that references in Schedule 22 (Dispute Resolution Procedure) to an expert shall be construed as references to an independent insurance expert agreed by the Parties or, in the absence of agreement, appointed by the President for the time being of the Chartered Institute of Arbitrators.



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

**3. SHARING OF EXCEPTIONAL COST AND EXCEPTIONAL SAVING**

- 3.1 If, following the implementation and completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Cost, the Authority shall, subject to Clause 51.3, within twenty (20) Business Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Contractor equal to the Authority's share of the Exceptional Cost determined in accordance with paragraph 3.3 below.

- 3.2 If, following the implementation and completion of the Insurance Review Procedure, it is agreed or determined that there is an Exceptional Saving, the Contractor shall within twenty (20) Business Days of completion of the Insurance Review Procedure make a one-off lump-sum payment to the Authority equal to the Authority's share of the Exceptional Saving determined in accordance with paragraph 3.3 below.

- 3.3 The amount of the Authority share of the Exceptional Cost or Exceptional Saving shall reflect the Authority's usage of the Facilities during the Insurance Review Period and shall be determined by the Authority's average annual tonnage of Contract Waste treated in the Facilities during the Insurance Review Period as a percentage of the annual maximum design capacity of the Facilities during such period.

- 3.4 Following the completion of the Insurance Review Procedure, if it is agreed or determined that there is neither an Exceptional Cost nor an Exceptional Saving, any Insurance Cost Differential shall be borne by or benefit the Contractor.

**4. INSURANCE COST INDEX**

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

## SCHEDULE 11

### TESTS

#### PART 1

#### READINESS TEST

##### Key Facility

1. Prior to undertaking the Readiness Tests of the Key Facility, the following tasks shall be performed by the Contractor to demonstrate to the Independent Certifier's reasonable satisfaction that the construction of the Key Facility has been completed, in material respects, in accordance with Schedule 3 (Contractor's Proposals):
  - a. The Contractor shall procure that the Independent Certifier certifies for the benefit of the Contractor and the Authority that the Key Facility complies with the following:
  - b. The Key Facility is lawfully able to exist - demonstrated by obtaining and maintaining of a valid Planning Permission and compliance with the conditions of such Planning Permission that are reasonably practicable as at the time of testing.
  - c. The Key Facility is entitled to operate lawfully and accept relevant types of Contract Waste - demonstrated by obtaining and maintaining an appropriate Environmental Permit and compliance with the conditions of such Environmental Permit that are reasonably practicable as at the time of testing and issue of a building control certificate.
  - d. The Key Facility is properly secure from intrusion or uncontrolled public access by lockable gates contained within a fence (which has been installed so as to deter casual intruders).
  - e. The Key Facility is safe to operate and that all safety signage and road safety markings are in place.
  - f. The weighbridges are lawfully authorised in accordance with Section 11 of the Weights and Measures Act 1985.
  - g. Hard standings, on site roads, parking areas and pedestrian areas which are necessary for the safe acceptance and processing of waste are complete.
  - h. The ability of the Key Facility to receive and/or transfer waste delivered from authorised vehicles in accordance with the Contractor's Delivery Plan has been successfully demonstrated.
  - i. Health and safety checks (that are relevant to this stage of testing) consistent with the requirements of Legislation and as required by the

Contractor's insurance certificates have been undertaken to ensure safe operation of the Key Facility.

- j. The Contractor has a draft Health and Safety File (as defined in the CDM Regulations) that includes the designer's residual hazards and risks.
2. During Readiness Tests, the Contractor shall test individual plant and Key Facility items by running them, where reasonably practicable, without any feedstock material, to demonstrate the functionality of the individual elements of the plant and the Key Facility. The scope of individual tests shall be consistent with the requirements of Annex 14 of the Construction Sub-Contract technical specification.
  3. The Contractor shall carry out, satisfactorily complete, and record the following tests and activities:
    - a. testing of weighbridge and automatic vehicle number plate recognition systems functioning including electronic recording of weighbridge data;
    - b. testing of security CCTV system including electronic recording of CCTV data;
    - c. testing of all mechanical handling equipment;
    - d. pressure testing of all relevant parts including pipe work;
    - e. testing and verification of the functionality of all process loops, including control system, electrical interlocks, emergency stops and sequencing;
    - f. testing of all data recording and reporting equipment including the distributed control systems (DCS);
    - g. completion of all mechanical and electrical tests;
    - h. loop testing, motor testing and end-to-end testing for all electrical installations;
    - i. fire fighting and detection systems testing;
    - j. testing and ensuring operational availability of all utility services to the Key Facility;
    - k. all emergency stop circuits testing shall be complete;
    - l. testing of all water, reagent and chemical dosing systems as far as reasonably practicable;
    - m. all refractories are cured according to the manufacturer's instructions;
    - n. sufficient staff are in place to operate the Key Facility under the direction and control of the Construction Sub-Contractor; and



**SCHEDULE 11**  
**TESTS**  
**PART 2**  
**ACCEPTANCE TESTS**

**Key Facility**

1. Prior to the Key Facility Services Commencement Date, the Contractor shall carry out the Acceptance Tests in accordance with Schedule 2 (Authority Requirements) and Schedule 3 (Contractor's Proposals) to the Independent Certifier's reasonable satisfaction.
2. The Contractor shall ensure that raw materials, utilities and necessary services are available in the quantities and quality as required to perform the Acceptance Tests.
3. During the period of testing, the Key Facility shall be operated without parallel operation of standby equipment and without undue overflow from any process unit. No interlock bridging or manual overriding of safety systems shall be permitted.
4. In performing the Acceptance Tests, the Contractor shall bear all costs associated with the transport of samples, use of consultants, laboratory testing, instrument calibration and communication of results.
5. The Contractor shall ensure that the Acceptance Tests for the Key Facility shall commence as soon as reasonably practicable after the issue of the Readiness Test Certificate of the Key Facility, provided that the Key Facility has been operating in a steady-state condition for a consecutive period acceptable to the Independent Certifier after the issue of Readiness Test Certificate.
6. In performing the Key Facility Acceptance Tests, the Contractor shall:
  - a. ensure that all necessary samples and measurements are taken in accordance with the requirements of the tests;
  - b. procure that analyses are undertaken at an accredited laboratory; and
  - c. collate and store recorded information resulting from such analyses.
  - d. ensure the Key Facility is lawfully able to exist - demonstrated by compliance with the conditions of the Key Facility Planning Permission that are reasonably practicable as at the time of testing; and
  - e. ensure the Key Facility is entitled to operate lawfully and accept relevant types of Contract Waste - demonstrated by the maintenance of an appropriate Environmental Permit and compliance with the conditions of such Environmental Permit that are reasonably practicable as at the time of testing.

7. During the Acceptance Test period all mechanical processing elements shall operate within their normal design range, using the facility control system in automatic mode, ensuring material flows correctly at all points and in readiness for the subsequent tests, and all waste shall be mixed as required by the Construction Sub-Contract technical specification. The scope, duration and conduct of individual tests shall be consistent with the requirements of the Construction Sub-Contract technical specification.
8. During the Acceptance Tests the Contractor must demonstrate that the following performance requirements have been demonstrated for the Key Facility:
  - a. operation at the Maximum Continuous Rating (MCR) of the Key Facility, as defined in the firing diagram contained within the Construction Sub-Contract technical specification Annex 20A;
  - b. the continuous waste throughput at MCR, averaged over an eight (8) hour period;
  - c. cold start-up of the Key Facility and systems (this requirement applies to the thermal cycle and flue gas treatment systems and may be fulfilled at any time in the commissioning programme. It is acknowledged that it may not be practical to include the air-cooled condenser in a cold start demonstration.);
  - d. normal shut-down and restart of the Key Facility;
  - e. emergency procedures and emergency shut-down;
  - f. operation at maximum turn-down to demonstrate that the Key Facility can operate at the level in the specified firing diagram for a minimum of eight (8) hours;
  - g. Key Facility operates within all Industrial Emissions Directive 2010/75/EU or Environmental Permit emission limits as evidenced by CEMS instrumentation at up to 110% heat release, due to control fluctuation, as shown on the firing diagram. The boiler control set point shall be set at 100% with peaks not exceeding 110% due to variations in the calorific value of waste;
  - h. that the combustion chamber temperature is maintained at or above 850°C for at least two seconds after the last injection of combustion air. To be demonstrated by readings taken by the Key Facility control system over a 24 hour period at or above 90% MCR. The location of the furnace thermocouples shall be agreed by the Independent Certifier as being based on the Construction Sub-Contractor's computational fluid dynamics (CFD) model;
  - i. operation of the Key Facility at or above 90% MCR with the turbine in operation with no bypass for a period of not less than fourteen (14) days. A maximum of one boiler stop per stream due to the Key Facility (or one turbine bypass event) is allowed during this period with any stoppage time or time of lost power output being added on to the duration of the test;

- j. operation at or above 90% MCR using the turbine bypass in the event of a turbine trip, and the procedure for bringing the turbine back on-line;
  - k. turbine load rejection test;
  - l. island mode operation with the boiler operating at MCR for a minimum of four (4) hours;
  - m. trip to emergency generator;
  - n. compliance with noise limits set out in the Key Facility Planning Permission during operation of the Key Facility at or above 90% MCR with the turbine in operation for a minimum of 24 hours;
  - o. that the incinerator bottom ash does not exceed 5% loss on ignition or 3% total organic carbon both as specified in the Industrial Emissions Directive 2010/75/EU (only one of the two criteria need to be complied with and the Independent Certifier shall choose which one);
  - p. the Key Facility reliability, by achieving an availability to process waste equal to or greater than 91% over a continuous period of fourteen (14) days. Availability test shall be conducted as defined in the Construction Sub-Contract's technical specification; and
  - q. the Key Facility meets or exceeds the R1 (Recovery Operations) of Annex II to the Waste Framework Directive 2008/98/EC (R1) energy efficiency threshold of 0.65 based on design data and using the actual boiler efficiency as measured by the Key Facility control system (Environment Agency Stage 2 requirement).
9. All measurement results shall be used without any adjustments for measurement tolerances, except for parameters where the application of measurements are set out in Legislation, Consents and/or mandatory guidance.
10. Upon successful completion of all of these tests and activities at the Key Facility, a copy of the Acceptance Test Certificate shall be issued by the Independent Certifier to the Authority.

#### **Initial Waste Transfer Station Works Tests**

1. A separate series of Acceptance Tests for the Villiers Road Waste Transfer Station (WTS) shall be proposed by the Contractor for the approval of the Independent Certifier prior to commencement of any works at the WTS. The tests shall include but not be limited to demonstrating the following:
  - a. the WTS is lawfully able to exist - demonstrated by compliance with the conditions of the Planning Permission that are reasonably practicable as at the time of testing;

- b. the WTS is entitled to operate lawfully and accept relevant types of Contract Waste - demonstrated by the maintenance of an appropriate Environmental Permit and compliance with the conditions of such Environmental Permit that are reasonably practicable as at the time of testing;
  - c. the WTS is properly secure from intrusion or uncontrolled public access by lockable gates contained within a fence (which has been installed so as to deter casual intruders);
  - d. the WTS is safe to operate and that all safety signage and road safety markings are in place;
  - e. the weighbridges are lawfully authorised in accordance with Section 11 of the Weights and Measures Act 1985;
  - f. hardstandings on site roads, parking areas and pedestrian areas which are necessary for the safe acceptance and processing of waste are complete;
  - g. the ability of the WTS to receive and/or transfer waste delivered from authorised vehicles in accordance with the Contractor's Delivery Plan has been successfully demonstrated;
  - h. health and safety checks (that are relevant to this stage of testing) consistent with the requirements of Legislation and as required by the Contractors Insurance Certificates have been undertaken to ensure safe operation of the WTS;
  - i. testing of the weighbridge systems functioning including recording of weighbridge data; and
  - j. testing of security CCTV system including electronic recording of CCTV data.
2. Upon successful completion of all of these tests and activities at the Key Facility and the WTS, a copy of the Acceptance Test Certificate shall be issued by the Independent Certifier to the Authority.