

SCHEDULE 12

INDEPENDENT CERTIFIER'S DEED OF APPOINTMENT

INDEPENDENT CERTIFIER'S DEED OF APPOINTMENT

THIS DEED OF APPOINTMENT dated 2012

BETWEEN

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** of Taberner House, Park Lane, Croydon, CR9 3JS (the "Authority");
- (2) **VIRIDOR SOUTH LONDON LIMITED** a company incorporated under the laws of England and Wales (Company No. 8106962) whose registered office is at Peninsula House, Rydon Lane, Exeter, Devon EX2 7HR (the "Contractor"); and
- (3) **[THE INDEPENDENT CERTIFIER]** of [] (Company No. []) whose registered office is at [] (the "Independent Certifier").

each a Party and together the Parties to this Deed.

1. BACKGROUND

- (A) The Contractor and the Authority have entered into an agreement for the design, development, construction, operation, maintenance and financing of residual waste treatment facilities (the "Project") under the terms of which the Contractor and the Authority have agreed to appoint an Independent Certifier (the "Contract").
- (B) The Contractor has entered into or will enter into a Construction Sub-Contract with CNIM Lagan (South London) Limited (the "Construction Sub-Contractor").
- (C) The Independent Certifier is an independent adviser willing to provide services to the Contractor and the Authority.
- (D) The Contractor and the Authority have agreed jointly to engage the Independent Certifier upon the terms of this deed of appointment (this "Appointment") to carry out the duties and obligations ascribed to the Independent Certifier in the Contract.

2. DEFINITIONS AND INTERPRETATIONS

2.1 Definitions

In this Appointment unless the context otherwise requires, words and expressions defined in the Contract shall have the same meanings in this Appointment and the following expressions shall have the following meanings:

"Fee"

means the sum or sums referred to in Schedule 2 payable in relation to the performance of the Services subject to any adjustment in accordance with this Appointment;

"Key Personnel"

means those persons named in Schedule 3;

"Professional Indemnity Insurance"

means professional indemnity insurance in an amount of not less than ten million pounds (£10,000,000) for any occurrence or series of occurrences arising out of any one event other than for:

- (a) pollution and contamination;
- (b) and asbestos;

where in both cases the cover is an annual aggregate amount of not less than ten million pounds (£10,000,000) and provided further that no terrorism cover will be required; and

"Services"

means the services to be provided by the Independent Certifier as described in Clause 3 and Schedule 1 as may be amended in accordance with this Appointment (including, without limitation, any such services carried out prior to the date of this Appointment).

2.2 Interpretation

In the event of any ambiguity or inconsistency between the provisions of this Appointment and the provisions of the Contract, the provisions of the Appointment shall prevail.

Notwithstanding the date of this Appointment, it shall have effect as if it had been executed and delivered upon the date of actual commencement of the Services by the independent Certifier.

2.3 Documents comprising the Appointment and priority of documents

This Appointment shall incorporate by reference all documents attached to it and shall together comprise the exclusive terms and conditions of the Appointment of the Independent Certifier by the Contractor and the Authority. The Independent Certifier acknowledges and agrees that the terms and conditions of this Appointment will prevail over all other terms and conditions whatsoever put forward by the Independent Certifier. In the event of any conflict or inconsistency between the terms of this Appointment document and any documents incorporated by reference, the former shall prevail.

2.4 Successors

References to "the Authority" and "the Contractor" shall include any person or persons for the time being entitled to the benefit of this Appointment as a successor to such entities from time to time.

2.5 Joint liability

Where two or more persons are included in the expression "Independent Certifier", the term "Independent Certifier" shall include the plural numbers and any obligation expressed to be made by or with such Party shall be deemed to be made and undertaken by such persons jointly and severally.

2.6 Headings

The headings in this Appointment are inserted for convenience only and shall be ignored in construing its terms.

2.7 Notices

All notices or other communications required in connection with this Appointment shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number of the Authority and the Contractor as set out in the Contract and to the address set out above in respect of the Independent Certifier or to such other address or facsimile number as a Party to this Appointment may notify to another Party to this Appointment in writing.

2.8 Legislation and regulations

Reference to any statute or regulation or code of practice or standard includes the reference to the same as amended or extended or re-enacted from time to time.

2.9 Good Faith

The Authority and the Contractor shall act in good faith towards each other at all times.

3. DUTIES OF THE INDEPENDENT CERTIFIER

3.1 The Contractor and the Authority hereby jointly appoint the Independent Certifier and the Independent Certifier agrees to carry out and complete the obligations and tasks which are ascribed to the Independent Certifier under the Contract (and as set out at Schedule 1 to this Deed of Appointment) exercising the level of reasonable skill care and diligence to be expected from a competent and properly qualified professional Independent Certifier experienced in providing services of a similar scope, type, scale and complexity to the Services and in accordance with all current UK standards and codes of practice and any other approved criteria and standards or code and in compliance with all applicable statutes and regulations. The Independent Certifier acknowledges that the Contractor and the Authority are relying on, and shall continue to rely upon, the professional skill and judgement of the Independent Certifier in the performance of the Services.

- 3.2 The Independent Certifier shall carry out the Services (including without limitation the exercise of any discretion in the performance of the Services) independently fairly and impartially to and as between the Contractor and the Authority at such times and in such locations as the Parties shall agree from time to time. Whilst the Independent Certifier may take account of any representations made by the Contractor, or the Authority the Independent Certifier shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgement.
- 3.3 The Independent Certifier shall procure that the Key Personnel shall be employed throughout the duration of this Appointment to direct and control the overall performance and delivery of the Services. Changes to any of the Key Personnel shall only be made with the consent of the Contractor and the Authority, such consent not to be unreasonably withheld or delayed.
- 3.4 The Independent Certifier shall comply with all reasonable instructions given to it by the Contractor or the Authority, except and to the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary the Services or its authority or responsibilities under this Appointment or prejudice or might prejudice the exercise by the Independent Certifier of its professional judgement in accordance with Clauses 3.1 and 3.2. All instructions to the Independent Certifier shall be given in writing by the Contractor or the Authority, as the case may be, and such person shall provide a copy of the same to the other Parties, immediately following issue.
- 3.5 The Contractor and the Authority agree to co-operate with, and provide reasonable assistance to, the Independent Certifier to familiarise the Independent Certifier with all necessary aspects of the Works to enable the Independent Certifier to carry out its obligations under this Appointment.
- 3.6 Subject to the Contractor and the Authority complying with their respective obligations under Clause 3.5, the Independent Certifier shall familiarise himself with and shall be deemed to have full knowledge of the provisions of the Contract and the Construction Sub-Contract as attached in Schedule 5 and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of the Contractor and the Authority which are set out in the attached extracts of the Contract. The Independent Certifier shall perform the Services in such manner and at such times that no act, omission or default of the Independent Certifier shall constitute or cause any breach by the Contractor and/or the Authority of any requirements and/or obligations in the Contract and/or the Construction Sub-Contract as attached in the extracts in Schedule 5.
- 3.7 The Independent Certifier shall promptly and efficiently perform the Services as soon as reasonably practicable consistent with the standards specified in Clauses 3.1 and 3.2.
- 3.8 The Independent Certifier acknowledges that the performance of its duties under this Appointment is necessary for the purposes of the Project. The Independent Certifier will use such skill and care as is referred to in Clauses 3.1 and 3.2 to supply information and other documents by the dates required by the Authority, the Contractor, the Construction Sub-Contractor, the

Professional Team and/or other parties in sufficient time (as notified to the Independent Certifier or as it may reasonably be expected to infer is required) to enable them to perform their obligations in relation to the Project without the need for programmes or timetables to be extended, and will keep the Authority and the Contractor informed of progress in the provision of the Services.

3.9 The Independent Certifier shall comply with:

- 3.9.1 the CDM Regulations or any replacement or amendment of them;
- 3.9.2 the Approved Code of Practice "Managing Construction for Health & Safety" produced by the Health and Safety Executive as amended from time to time; and
- 3.9.3 all legal requirements including but not limited to the requirements of any relevant planning permission, building regulations or other consent, licence, approval or authority of which the Independent Certifier is or should be aware,

and shall comply with all lawful and reasonable directions, instructions or requests relating to or in pursuance of the same given or made by and/or on behalf of the Authority, the Contractor or the Construction Sub-Contractor whilst the Independent Certifier is present on any of the Sites.

- 3.10 Notwithstanding compliance or otherwise by the Contractor of its respective obligations under Clause 3.5, the Independent Certifier will perform the Services in accordance with and (where appropriate) so as to enable the Authority and the Contractor to fulfil their obligations under the Contract as attached in the extracts in Schedule 5 and (subject to Clause 5) such variations to them or further agreements or documents as the authority and the Contractor may provide to the Independent Certifier.
- 3.11 No approvals, comments, instructions, consents, or advice, or indication of satisfaction given by the Authority or the Contractor nor any enquiry or inspection which the Authority or the Contractor may make or have carried out for its benefit or on its behalf at any time will operate to reduce, extinguish, exclude, limit or modify the Independent Certifier's obligation to fulfil its duties and obligations under this Appointment.
- 3.12 The Independent Certifier acknowledges that the Authority, the Contractor and the Construction Sub-Contractor are relying and will continue to rely on the professional skill and care of the Independent Certifier required under Clauses 3.1 and 3.2 in the performance of the Services and that it owes a duty of care to the Authority, the Contractor and the Construction Sub-Constructor in relation to all aspects of such performance.
- 3.13 The Authority and the Contractor acknowledge that nothing in this Appointment shall affect their respective rights, remedies, responsibilities and obligations under the Contract.
- 3.14 Where, in the performance of the Services, the Independent Certifier is required or entitled to exercise a discretion as between the Parties, the Independent Certifier shall at all times act objectively and impartially and

shall in no circumstances place the interests of any one Party above those of any other Party including any third party.

- 3.15 The Independent Certifier must notify the Authority and the Contractor immediately if it becomes aware of any proposed or actual use within the Project of any hazardous materials.
4. FEE
- 4.1 The Contractor shall pay to the Independent Certifier, in full satisfaction of its performance of the Services, the Fee in the instalments and at the intervals set out in Schedule 2.
- 4.2 The Independent Certifier shall submit to the Contractor VAT invoices (together with all supporting documentation reasonably requested by the Contractor and/or the Authority) in respect of the instalments of the Fee due in accordance with Schedule 2. Subject to the Contractor taking reasonable steps to satisfy itself that the relevant instalment or instalments is, or are, so due, the Contractor shall make payment against each invoice within 20 Business Days of the later of:
- 4.2.1 the date of the Contractor's receipt of the Independent Certifier's VAT invoice; or
- 4.2.2 the date when the relevant instalment of the Fee was properly due in accordance with Schedule 2.
- 4.3 Payment by the Contractor shall be subject to Clause 15 and shall be without prejudice to any claims or rights which the Contractor may have against the Independent Certifier and shall not constitute any admission by the Contractor as to performance by the Independent Certifier of its obligations under this Appointment.
- 4.4 All sums stated in this Appointment are exclusive of Value Added Tax unless stated otherwise.
- 4.5 For the purposes of the Housing Grants, Construction and Regeneration Act 1996 (as amended), payment shall become due on the later of the dates identified in Clauses 4.2.1 and 4.2.2 and the final date for payment shall be 20 Business Days thereafter and the Independent Certifier's VAT invoice shall be the payment notice.
- 4.6 Subject to the provisions of Clauses 4.7 to 4.9 the Authority shall have no liability whatsoever for payment of the Fee or any other fee charged by the Independent Certifier.
- 4.7 In the event of non payment of the Fee by the Contractor by the final date for payment set out in Clause 4.5, the Independent Certifier agrees that it will not exercise any right it may have to terminate this Appointment or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any duties to be performed by the Independent Certifier by reason of non payment of fees by the Contractor without first serving a notice on the Authority (a "Default Notice").

- 4.8 Subject to this Clause 4 the Authority shall have a right to serve notice on the Independent Certifier (a "Pre-Emption Notice") at any time within 10 Business Days of receipt of the Default Notice.
- 4.9 Upon receipt of a Pre-Emption Notice:-
- 4.9.1 the Independent Certifier's right to terminate this Appointment or to treat the same as having been repudiated or to discontinue performance shall cease;
- 4.9.2 upon the issue of the Pre-Emption Notice the Authority will within a reasonable time pay any amounts due to the Independent Certifier under this Appointment that remain unpaid.

5. ALTERATIONS TO THIS APPOINTMENT AND INSTRUCTIONS

No alteration shall be made to this Appointment or to any of the Services without the written consent of each of the Authority and the Contractor and the Independent Certifier.

5A INTELLECTUAL PROPERTY RIGHTS

- 5A.1 Subject to the following provisions of this Appointment, all Intellectual Property in the documents created by or on behalf of the Independent Certifier in connection with this Appointment will remain vested in the Independent Certifier. For the purposes of this Clause 5A, "Intellectual Property" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 5A.2 The Independent Certifier grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authority and the Contractor, with effect from the date of this Appointment or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Independent Certifier's obligations or the termination of this Appointment or the determination of the Independent Certifier's engagement under this Appointment or any dispute under this Appointment) to use and to reproduce all Documents for any purpose whatsoever connected with the Project including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 5A.3 The Independent Certifier will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under this Appointment.

- 5A.4 The Independent Certifier will not be liable for any use the Authority and the Contractor may make of the Documents for any purpose other than the purposes set out in Clause 5A.2.
- 5A.5 The Independent Certifier warrants that the Documents (save to the extent that duly authorised sub-consultants have been used to prepare the same) are the Independent Certifier's own original work and that in any event their use in connection with the Project will not infringe the rights of any third party. The Independent Certifier further warrants that where duly authorised sub-consultants are used their work will be original and that the Independent Certifier will obtain the necessary consents in relation to Clause 5A.2.
- 5A.6 The Independent Certifier agrees on reasonable request at any time and following reasonable prior written notice to give to the Authority and the Contractor, access to the Documents and to provide copies of the Documents to the Authority and the Contractor at their own expense.

5B CERTIFICATION

The Independent Certifier warrants that the Authority and the Contractor may:

- 5B.1 rely on any certificate which the Independent Certifier may issue and any approvals which the Independent Certifier may give in relation to the Project; and
- 5B.2 assume that the work or services to which such certificates or approvals relate has or have been carried out and completed or supplied (as the case may be) in accordance with the terms of the relevant agreement, contract or Appointment.

6. CONFIDENTIAL INFORMATION

The Independent Certifier shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of any unpublished information relating to the Contractor's, or the Authority's technology or other know-how business plans or finances or any such information relating to a subsidiary, supplier, customer or client of the Contractor or the Authority where the information was received during the period of this Appointment. Upon termination of this Appointment for whatever reason the Independent Certifier shall deliver up to the Contractor or the Authority (as appropriate) all working papers, computer disks and tapes or other material and copies provided to or prepared by the Independent Certifier pursuant either to this Appointment or to any previous obligation owed to the Contractor or the Authority.

7. OBLIGATIONS OF THE CONTRACTOR

- 7.1 Throughout the period of this Appointment, during normal business hours and on reasonable prior notice, the Independent Certifier shall be entitled to reasonable access to the Contractor's and the Construction Sub-Contractor's relevant sites and any relevant information and other written material in the possession of the Contractor and the Construction Sub-Contractor as the Independent Certifier shall reasonably require to carry out the Services.

7.2 The Contractor shall appoint one or more appropriate personnel to liaise with the Independent Certifier.

8. **LIMITATIONS ON THE AUTHORITY OF THE INDEPENDENT CERTIFIER**

8.1 The Independent Certifier shall not:

8.1.1 make or purport to make any alteration or addition to or omission from the design of the Works (including without limitation, the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Works; or

8.1.2 consent or agree to any waiver or release of any obligation of the Contractor or the Authority or the Construction Sub-Contractor under the Contract or under the Construction Sub-Contract (as the case may be) or of any contractor or professional consultant employed or engaged in connection with the Works.

8.2 For the avoidance of doubt, the Independent Certifier shall not express an opinion on and shall not interfere with or make any advice, opinion or representation in relation to any matters which are beyond its role and responsibilities under this Appointment.

9. **TERMINATION**

9.1 In addition to any other rights and remedies which the Authority and the Contractor may have the Authority and the Contractor may at any time upon thirty (30) days' joint written notice to the Independent Certifier terminate the Independent Certifier's engagement in relation to the Project or any divisible part of the Services.

9.2 The Authority and the Contractor may by joint written notice to the Independent Certifier suspend all or any of the Independent Certifier's duties under this Appointment. If such notice is given and the Authority and the Contractor have not served the notice within six months requesting the Independent Certifier to resume the duties suspended, the Independent Certifier may serve 30 days' written notice on the Authority and the Contractor requiring an end to the suspension.

9.3 The Contractor and the Authority may by joint notice in writing (a "**Joint Notice**") immediately terminate this Appointment if the Independent Certifier:

9.3.1 is in breach of any of the terms of this Appointment which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Certifier within 15 Business Days of receipt by the Independent Certifier of a Joint Notice specifying the breach and requiring its remedy;

9.3.2 is incompetent, guilty of gross misconduct and/or any material negligence or delay in the provision of the Services;

9.3.3 fails or refuses after written warning to provide the Services reasonably and properly required; or

- 9.3.4 ceases for any reason to carry on its business or is unable to pay its debts as they fall due or if any distress or execution is levied or threatened upon the Independent Certifier's property or assets or if the Independent Certifier makes or offers to make any arrangement or composition with its creditors (including taking any step with a view to a moratorium) or commit any act of bankruptcy or if any petition, application or receiving order in bankruptcy is presented or made against it or (if it is a limited company) any resolution or petition to wind up the Independent Certifier's business or other proceeding is made, passed or presented (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency and provided that in the case of a winding up proceeding such proceedings has not been withdrawn, dismissed, set aside or revoked within twenty (20) Business Days) or the Independent Certifier petitions or applies for or arranges for the appointment of, or has an order made appointing to it, a trustee, liquidator, administrator, receiver or manager of the Independent Certifier's undertaking property or assets or any part of them.
- 9.4 If the Contract is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this Appointment may be terminated by Joint Notice and with immediate effect.
- 9.5 Following any termination of this Appointment, but subject to any set-off or deductions which the Contractor may be entitled properly to make as a result of any breach of this Appointment by the Independent Certifier, the Independent Certifier shall be entitled to be paid by the Contractor in full and final settlement of any claim which the Independent Certifier may have in consequence thereof, any fees due under Clause 4 in respect of Services carried out in accordance with this Appointment prior to the date of termination. For the avoidance of doubt, neither the Contractor nor the Authority shall have any liability to the Independent Certifier for loss of profit, loss of contracts or other costs, losses and/or expenses (in each case, whatsoever howsoever) arising out of or in connection with such termination.
- 9.6 Following any termination of the Independent Certifier's engagement howsoever arising, the Independent Certifier will immediately take all necessary steps to end, in an orderly manner, the provision by it of the Services, such steps to be taken with all reasonable speed and economy, and the Independent Certifier shall deliver to the Authority and the Contractor or any person nominated by them copies, in such form as they may reasonably require, of all Documents, and other documents (whether in the course of preparation or completed) which the Independent Certifier holds in relation to the Project together with the originals and any copies which the Independent Certifier may hold of all documents provided to it by the Authority and the Contractor or by others in connection with the Project.
- 9.7 Termination of this Appointment shall be without prejudice to any accrued rights and obligations under this Appointment as at the date of termination (including the right of the Contractor and the Authority to recover damages from the Independent Certifier).

- 9.8 If this Appointment is terminated in accordance with this Clause 9.3, the Contractor and the Authority shall use reasonable endeavours to engage an alternative independent certifier within twenty-five (25) Business Days, subject to any relevant legal requirements and public procurement rules. The costs incurred in procuring such an alternative appointment shall be borne by the Contractor except in the event of termination pursuant to Clause 9.3.2 in which case the costs shall be borne by the Independent Certifier. If within such period the Contractor and the Authority are unable to procure the appointment of an alternative independent certifier on reasonable commercial terms and termination is caused by the Independent Certifier's default of this Appointment, the Independent Certifier shall pay the Contractor and/or the Authority, as the case may be, any reasonable additional loss, damage or extra costs suffered by each of them.
- 9.9 Termination of this Appointment shall not affect the continuing rights and obligations of the Parties under Clauses 6 (Confidential Information), 12 (Professional Indemnity Insurance), 14 (Limitation of Liabilities), 17 (Dispute Resolution Procedure) and this clause or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10. ASSIGNMENT BY INDEPENDENT CERTIFIER

The Independent Certifier shall not assign, transfer or sub-contract the benefits or obligations of this Appointment or any part thereof without the prior written consent of the Contractor and the Authority.

11. ASSIGNMENT BY THE CONTRACTOR

- 11.1 Subject to Clause 11.2 below, the Contractor and/or the Authority may assign or transfer any of their rights and obligations under this Appointment to any other person, firm, corporate body or company provided that it gives notice in writing of such assignment or transfer as soon as possible thereafter to the other Parties to this Appointment.
- 11.2 While the Independent Certifier is still providing services under this Appointment no such assignment or transfer by the Contractor (other than by way of security) shall be permitted without the consent of the Authority and the Independent Certifier (such consent not to be unreasonably withheld or delayed).

11A SUB-CONTRACTING

- 11A.1 Without limitation, if the Independent Certifier sub-contracts to any person the performance of any of the Services under this Clause 11A:
- 11A.1.1 the Independent Certifier shall be responsible for the breaches, acts, omissions, negligence or other default of any sub-consultant appointed by the Independent Certifier and its agents or employees as fully as if they were the breaches, acts omissions, negligence or other defaults of the Independent Certifier, its agents or employees. Such sub-contracting shall not modify, release, diminish or in any way affect the liabilities and/or obligations of the Independent Certifier under this Appointment and/or at law or otherwise; and

11A.1.2 the remuneration payable to the Independent Certifier in accordance with Clause 4 shall not be increased by any amount payable by the Independent Certifier to its sub-consultants.

12. PROFESSIONAL INDEMNITY INSURANCE

- 12.1 The Independent Certifier shall at its own cost take out and maintain Professional Indemnity Insurance.
- 12.2 The Independent Certifier shall maintain such Professional Indemnity Insurance with reputable insurers carrying on business in the European Union who are acceptable to the Contractor and the Authority (such acceptance not to be unreasonably withheld or delayed) for a period of not less than 12 years from the date of the completion of the Independent Certifier’s duties under this Appointment, provided that such insurance is available at reasonable commercial rates.
- 12.3 Any increased or additional premium required by insurers by reason of the Independent Certifier’s own claims record or other acts or omissions particular to the Independent Certifier shall be deemed to be within commercially reasonable rates.
- 12.4 The Independent Certifier shall provide to the Contractor and the Authority at their reasonable request, written confirmation by an independent company of insurance brokers that it has the Professional Indemnity Insurance in force for the ensuing twelve (12) months.
- 12.5 The Independent Certifier shall immediately inform the Contractor and the Authority if the Professional Indemnity Insurance ceases to be available at commercially reasonable rates in order that the Independent Certifier and the Contractor and the Authority can discuss means of best protecting their respective positions in the absence of such insurance.

13. COLLATERAL WARRANTIES

Within 14 days of receipt of a written request from time to time from the Contractor, the Independent Certifier shall execute as a deed one or more collateral warranties in the form annexed as Schedule 4 in favour of the Construction Sub-Contractor and any other person having an interest in, or providing funding in respect of the, Works or any part of the Works.

14. LIMITATION OF LIABILITIES

Save in respect of death or personal injury or fraud, the maximum liability of the Independent Certifier shall be for ten million pounds (£10,000,000) for each and every occurrence other than for claims in respect of:

- 14.1 pollution and contamination; and
- 14.2 asbestos;

Where, in each case, the liability shall be an annual aggregate amount of ten million pounds (£10,000,000) for each of 14.1 and 14.2. The maximum aggregate liability of the Independent Certifier to each of the Contractor and the Authority pursuant to this Appointment shall be for ten million pounds (£10,000,000) and the overall

aggregate liability of the Independent Certifier to all parties shall not exceed twenty million pounds (£20,000,000).

15. SET-OFF

15.1 Nothing contained elsewhere in this Appointment shall in any way limit or exclude the Contractor's rights and entitlements at common law to deduct or to set-off any monies due to it or which may become due to it from the Independent Certifier (whether by reason of the provisions of this Appointment or in consequence of any negligence, omission or default of the Independent Certifier in the performance of its obligations under this Appointment) from or against any monies otherwise due to the Independent Certifier under this Appointment.

15.2 For the purpose of the Housing Grants, Construction and Regeneration Act 1996 (as amended), any notice of intention to pay less shall be given to the Independent Certifier not less than 2 days before the final date for payment in accordance with Clause 4.5.

16. ENTIRE APPOINTMENT

This Appointment sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Appointment. None of the Parties shall be entitled to rely on anything which is not stated in this Appointment or which cannot be implied as being reasonably required to give it business efficacy and is not otherwise inconsistent herewith.

17. DISPUTE RESOLUTION PROCEDURE

17.1 All disputes shall be resolved in accordance with terms equivalent (mutatis mutandis) to the Dispute Resolution Procedure set out in the Contract.

17.2 The Contractor, the Authority, and the Independent Certifier shall cooperate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Appointment.

18. CUMULATIVE RIGHTS AND ENFORCEMENT

Any rights and remedies provided for in this Appointment whether in favour of the Contractor, the Authority or the Independent Certifier are cumulative and in addition to any further rights or remedies which may otherwise be available to the Parties.

19. WAIVER

The failure of any Party at any one time to enforce any provision of this Appointment shall in no way affect its right thereafter to require complete performance by any other Party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

20. SEVERABILITY

In the event that any term, condition or provision contained in this Appointment shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition

or provision shall, to that extent, be omitted from this Appointment and the rest of this Appointment shall stand, without affecting the remaining clauses.

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The Parties agree that, notwithstanding any other provision of this Appointment, this Appointment shall not purport to confer on any third party any right to enforce any term of this Appointment for the purposes of the Contracts (Rights of Third Parties) Act 1999 save that (for the avoidance of doubt) nothing contained herein shall prejudice any claim under any collateral warranty given pursuant to this Appointment.

22. JURISDICTION AND LAW

The laws applicable to this Appointment and any non-contractual obligations arising out of or in connection with it shall be the laws of England.

IN WITNESS whereof the parties hereto have executed this Appointment as a deed on the day and year first before written.

EXECUTED AS A DEED by the
INDEPENDENT CERTIFIER acting by:

Name:

Director

Name:

Director/Company Secretary

EXECUTED AS A DEED by the
CONTRACTOR acting by:

Name:

Director

Name:

Director/Company Secretary

The **COMMON SEAL** of

Schedule 12- Independent Certifier's Deed of Appointment

The MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF CROYDON)
was hereunto affixed in the presence of:)

Authorised Signatory

Seal Number

SCHEDULE 1 - SERVICES

Capitalised terms not defined in this Appointment shall have the meaning given to them in the Contract.

The scope of services to be undertaken by the Independent Certifier includes the following, to be carried out in accordance with the Contract:

1. review the Construction Sub-Contract and the Contract and clarify any issues arising with the Authority and the Contractor, taking into account the specific circumstances where the Construction Sub-Contractor will have already undertaken some design and ordering as identified in the EPC Programme (as defined in the Construction Sub-Contract);
2. review the Authority's Requirements and the Method Statements to gain an understanding of the items that are to be provided, their key operational requirements, and the commissioning procedures;
3. review the proposed the Commissioning Plan;
4. check that the major plant and equipment items of the Key Facility have detailed commissioning and testing plans (as set out in the Commissioning Plan) and that this is consistent with the Contractor's obligations pursuant to the Contract;
5. outline any additional requirements that are considered necessary to ensure that sufficient testing is undertaken and documentation provided for the certification assessments;
6. confirm that the Readiness Tests have been undertaken and reported;
7. confirm that health and safety (H&S) checks consistent with the requirements of Legislation have been undertaken to ensure safe operation of the Key Facility and Waste Transfer Station (including emissions monitoring and operation of abatement equipment) and that the draft health and safety file, as defined in the Construction (Design and Management) Regulations 2007, contains the appropriate information;
8. undertake site visits to the Key Facility and Waste Transfer Station to:
 - 8.1 inspect the Sites and check the presence of key plant and equipment items is in accordance with the Construction Sub-Contract and confirm that the Key Facility and Waste Transfer Station have generally been provided in accordance with the Technical Specification in the Construction Sub-Contract and drawings as set out in the Construction Sub-Contract;
 - 8.2 sample audit the commissioning records to demonstrate compliance with specified operating parameters; and
 - 8.3 sample audit the commissioning and operational practices, performances and adherence to the regulatory approval requirements;
9. carry out inspections and witness tests as set out in the Contract and Technical Specification in the Construction Sub-Contract;
10. confirm that the Acceptance Tests have been undertaken and reported;
11. write a brief report outlining the findings of the above activities;

Schedule 12– Independent Certifier's Deed of Appointment

12. confirm the completion of the Acceptance Tests;
13. issue the appropriate certificates, notices and other documents (including Snagging Lists) in accordance with the Construction Sub-Contract and the Contract; and
14. review and monitor the Snagging Programmes prepared by the Contractor.

SCHEDULE 2 - FEE

Fee, PA Role

Project Period	Tasks Covered	Monthly Fee, £, Excl VAT (during period specified)	Total Fee, £, Excl VAT
Months 1 to 27 incl (27mths)	<ul style="list-style-type: none"> • Review of contracts and quality procedures • Works Inspection Phase • Review Key Facility Commissioning Plan • Inspection, Certification and snagging of new access road, Waste Transfer Station (WTS) and Dry Recyclables Building (DRB) Phase 1 • WTS Acceptance Test 	█	█
Months 28 to 35 incl (8mths)	<ul style="list-style-type: none"> • Inspection and snagging of Dry Recyclables Building (DRB) Phase 2 • Key Facility Readiness Test • Key Facility Acceptance Test and brief report 	█	█

Notes to the PA role:

- Rates are inclusive of expenses
- Rates shown are valid until 1st April 2013, rates will be increased annually thereafter by RPI
- Additional work can be carried out by agreement at the rates shown below

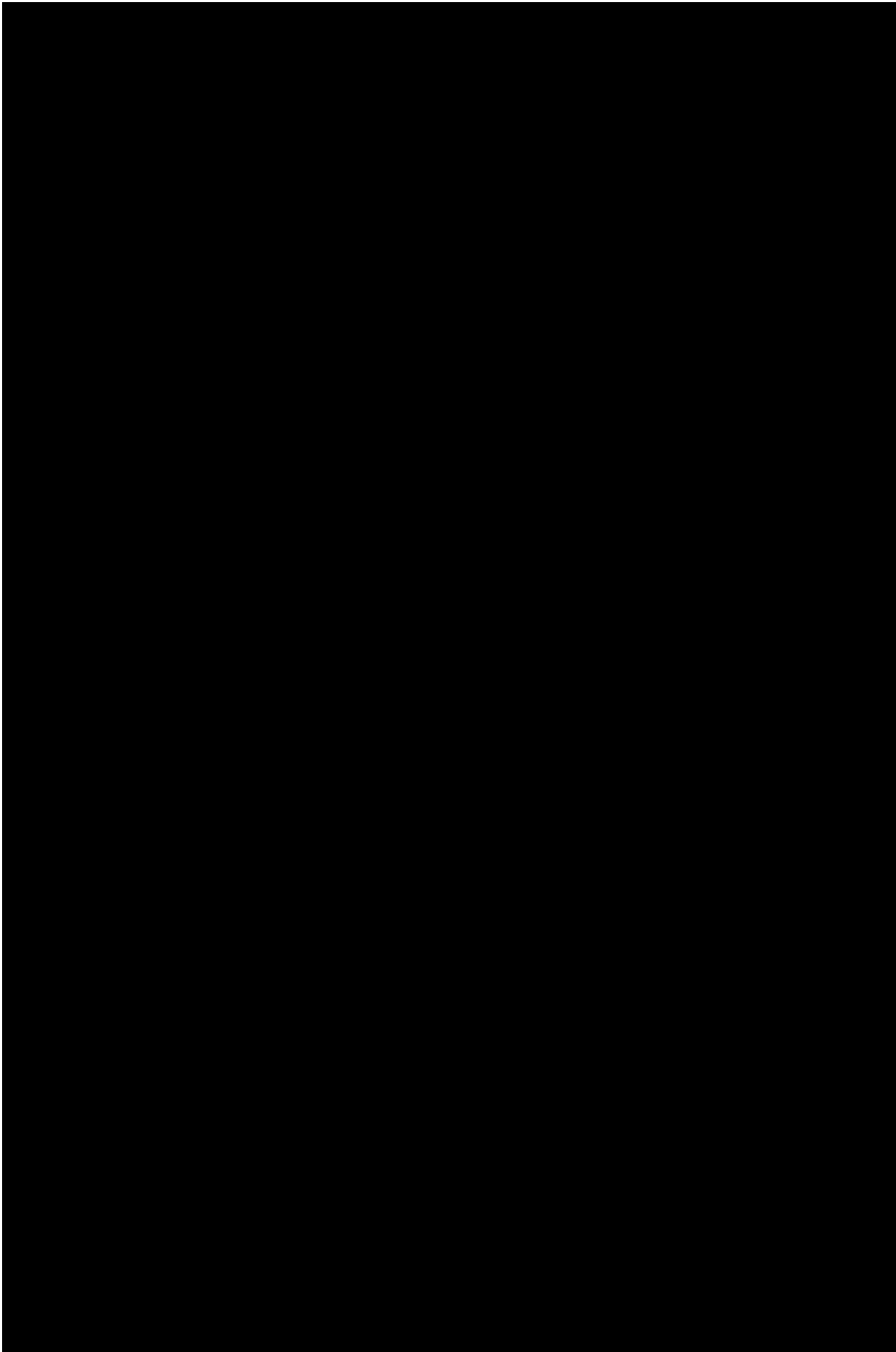
Day rates applicable to Variant IC Services

The table below provides the rates applicable for various grades of consultants as of April 2012. Rates shown are valid until 1st April 2013, rates will be increased annually thereafter by RPI.

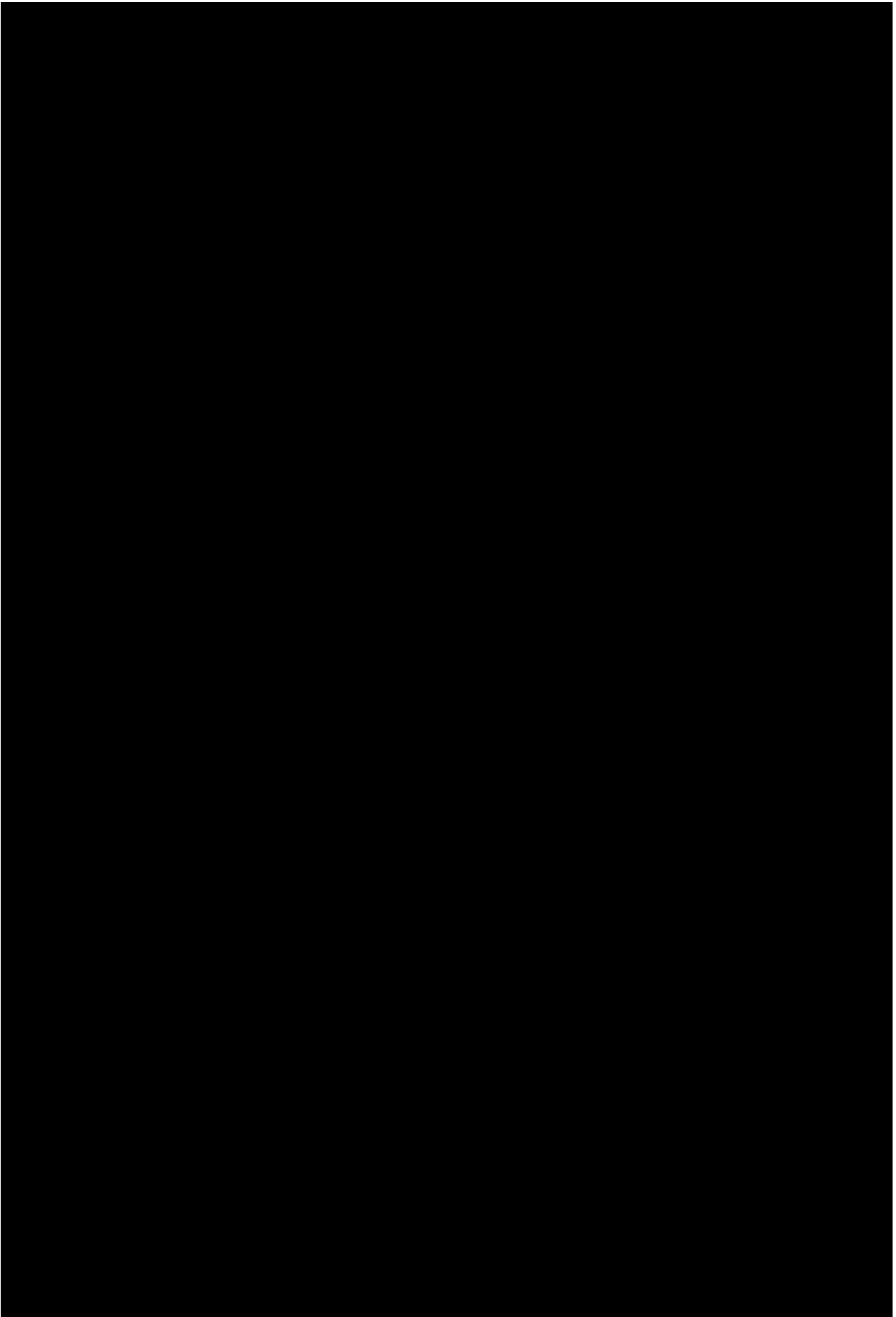
Project grade	Consultant	Day rate (£, excl VAT)
Project Director		████
Project Manager		████
Senior Specialist	Technical	████
Independent Certifier		████
General Advisor	Technical	████
EfW Specialist		████
Consultant		████
Technical Assistant		████

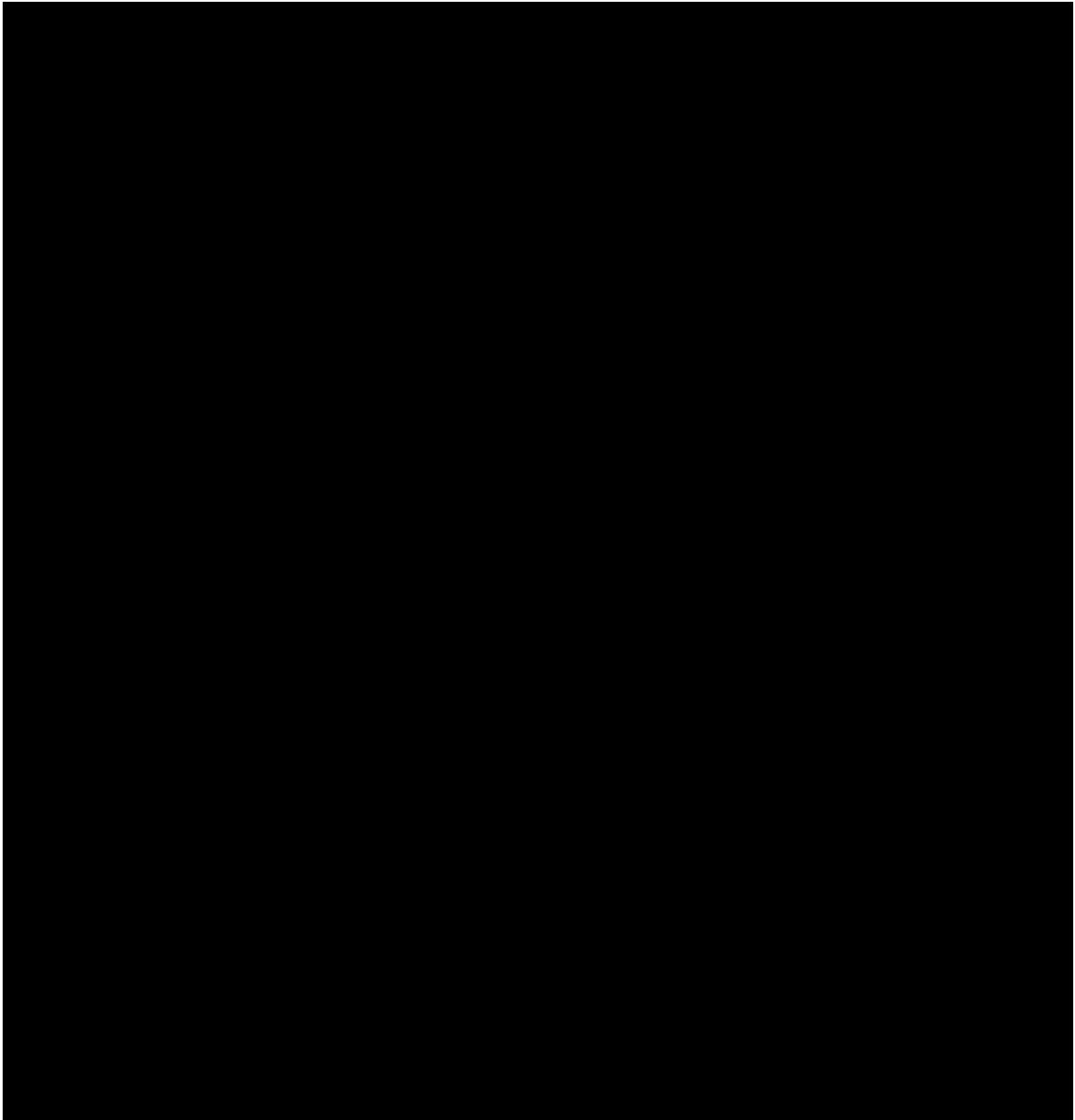
Table 1 Waste to Energy Technical Advisory Rates (7.5 hour day) - excluding expenses. Disbursements charged at cost.

SCHEDULE 3 - KEY PERSONNEL



Schedule 12- Independent Certifier's Deed of Appointment





SCHEDULE 4 - COLLATERAL WARRANTY

THIS DEED dated [] 20[]

BETWEEN

- (1) [BENEFICIARY] (registered in England under company number [insert number]) whose registered office is at [insert address] ("the **Beneficiary**");
and
- (2) [INDEPENDENT CERTIFIER] (registered in [] under company number [insert number]) whose registered office is at [insert address] ("the **Independent Certifier**");

23. DEFINITIONS AND INTERPRETATION

23.1 Definitions

In this deed unless the context otherwise requires; the following expressions shall have the following meanings:

"Appointment"

means an agreement made between the Authority, the Contractor and the Independent Certifier for services to be carried out by the Independent Certifier on behalf of the Contractor in connection with the Works;

"Authority"

means the Mayor and Burgesses of the London Borough of Croydon;

"Contract"

means the contract entered into between the Authority and the Contractor for the design, development, construction, operation, maintenance and financing of residual waste treatment facilities in [];

"Contractor"

means [] a company registered in England (registration number []) whose registered offices is at [];

"Construction Sub-Contract"

means the subcontract entered into by the Contractor and the Construction Sub-Contractor for the design, construction and commissioning of the whole or part of the Works;

"Professional Indemnity Insurance"

means professional indemnity insurance in an amount of not less than [ten million pounds (£10,000,000)] for any occurrence or series of occurrences arising out of any one event other than for:

- (a) pollution and contamination;
- (b) and asbestos;

where in both cases the cover is an annual aggregate amount of not less than ten million pounds (£10,000,000) and provided further that no terrorism cover will be required;

"Services"

means the general and specific duties and obligations of the Independent Certifier under the Appointment; and

"Works"

means the design, construction and commissioning of the works by the Contractor as more particularly described in the Contract.

23.2 Successors

Reference to the Beneficiary shall include the person or persons for the time being entitled and subject to the benefit duties and obligations of this deed.

23.3 Joint liability

Where there are two or more persons included in the expressions "Independent Certifier", the term Independent Certifier shall include the plural numbers and any obligation expressed to be made by or with such party hereunder or pursuant hereto shall be deemed to be made and undertaken by such persons jointly and severally.

23.4 Headings

The headings in this deed are inserted for convenience only and shall be ignored in construing the terms.

23.5 Notices

All notices under this deed shall be in writing and shall be delivered personally or addressed to the respective address of the parties set out in this deed or to the registered office or principal business address of either party for the time being, and if sent by post shall be deemed to have been received on the second working day after the same shall have been posted.

23.6 References to statutes, etc

Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

23.7 Genders and numbers

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

24. DUTY OF CARE

24.1 The Independent Certifier warrants and undertakes that it has exercised and will continue to exercise in the performance and discharge of the Services and all its obligations and duties pursuant to the Appointment with the reasonable skill, care and diligence to be expected from a competent and properly qualified Independent Certifier experienced in providing services in relation to projects of a similar scope, type, scale and complexity to the Works as those comprised in the Works in the performance of its duties and obligations under the Appointment.

24.2 For the avoidance of doubt the Independent Certifier shall owe no obligation or liability to the Beneficiary by virtue of this deed which is greater or of longer duration than it would owe to the Beneficiary under the Appointment if the Beneficiary had been named as joint employer under the Appointment and the Independent Certifier shall be entitled in any action or proceedings by the Beneficiary under this agreement to raise equivalent rights in defence

of liability (but excluding set offs or counterclaims) as it would have had if the Beneficiary had been named as the Contractor under the Appointment.

- 24.3 Notwithstanding clause 2.2, the Independent Certifier acknowledges it has received a copy of and is familiar with the extracts of the Construction Sub-Contract as in Schedule 5 to the Appointment including the terms and extent of any damages liquidated or otherwise which may become payable in the event of any delay in the issue or the wrongful failure to issue of the Certificates thereunder and recognises that such payment of such damages to the Beneficiary may be a direct and foreseeable result of any failure of the Independent Certifier to issue certificates in breach of the Appointment.

25. PROFESSIONAL INDEMNITY INSURANCE

The Independent Certifier covenants:

- 25.1 to take out and maintain Professional Indemnity Insurance for a period of 12 years from the date of completion of the Independent Certifier's duties under the Appointment provided such insurance is available in the market at commercially reasonable rates;
- 25.2 to inform the Beneficiary or its assignees in writing immediately if any failure or inability to maintain such professional indemnity insurance cover in accordance with clause 3.1 above in order that the parties can discuss means of best protecting their respective positions in the absence of such insurance; and
- 25.3 when requested by the Beneficiary (but not more often than is reasonable) to produce written evidence of the Professional Indemnity Insurance cover and confirmation from the Professional Indemnity Insurance provider that the last premium has been paid.

26. ASSIGNMENT

- 26.1 The benefit of this deed may be assigned by the Beneficiary to any other person who takes over the Beneficiary's interest in the Works without the consent of the Independent Certifier.
- 26.2 The benefit of this deed may also be assigned by the Beneficiary to any other person having an interest in respect of the Works provided that:
- 26.2.1 the number of assignments under this clause is limited to two only;
- 26.2.2 the Independent Certifier shall be entitled to receive notice of such assignment in writing upon the assignment taking place; and
- 26.2.3 the Independent Certifier shall at the reasonable cost and expense of the Beneficiary do all things as may be reasonably necessary to effect any such assignment.
- 26.3 The Independent Certifier will not contend that any assignee is precluded from recovering any loss from any breach of this agreement (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediary beneficiary escaped any loss resulting from such breach

by reason of the disposal of any interest in the Works or that that original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

27. INDEPENDENT ENQUIRY CLAUSE

The liability of the Independent Certifier under this deed shall not be modified released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Works nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary provided always that nothing in this clause shall modify or affect any rights which the Independent Certifier might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

28. NON WAIVER

The Contractor and the Independent Certifier agree with the Beneficiary not to vary or waive or agree to vary or waive the terms of the Appointment in any respect which may have a material effect on the benefit of this deed without the prior written consent of the Beneficiary such consent not to be unreasonably withheld or delayed.

29. PARTNERSHIP

If the Independent Certifier is a partnership each partner including any other person or persons taken into the partnership during the currency of this deed shall be jointly or severally liable for any breach of this deed.

30. JURISDICTION AND LAW

The laws applicable to this deed and any non-contractual obligations arising out of or in connection with it shall be the laws of England.

31. WARRANTY IN RESPECT OF CERTIFICATES

The Independent Certifier warrants and undertakes that it has and will continue to act fairly, reasonably, impartially and in a timely matter as between all interested parties in the issuing of any Certificates.

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

EXECUTED AS A DEED by the
INDEPENDENT CERTIFIER acting by:

Name:

Director

Name:

Director/Company Secretary

EXECUTED AS A DEED by the BENEFICIARY
acting by:

Name:

Director

Name:

Director/Company Secretary

SCHEDULE 5

- Appendix A - Extracts from the Construction Sub-Contract (Clause 16.8, Clause 18 and Clause 20A)
- Appendix B - Extracts from the Contract (Clause 18 and Clause 21)
- Appendix C - Extracts from the Construction Sub-Contract Technical Specification (Annex 13, Annex 14, Annex 15 and Annex 16)
- Appendix D - Extract from the Contract (Schedule 11)

SCHEDULE 14

WASTE LAW LIST

- 1 Commission communication of 21 December 2005 on a thematic strategy on the prevention and recycling on waste (COM (2005) 666) and Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions on the Thematic Strategy on the Prevention and Recycling of Waste COM/2011/0013 final.
- 2 HM Treasury Consultation: Modernising Landfill Tax Legislation April 2009, in relation to any changes to existing legislation which results in reclassification of IBA.
- 3 Industrial Emission (Integrated Pollution Prevention and Control) Directive (recast) 2010, to the extent that this Directive introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 4 EC Communication on Future Steps in Bio-waste Management in the European Union (COM 2010) 235 final, to the extent that any new provisions arising as a consequence of this communication require the extraction of biowaste by waste management companies prior to treatment in energy from waste plants.
- 5 EU Directive 2008/98/EC on waste and repealing certain Directives and associated EU Guidance on the interpretation of the R1 energy efficiency formula, to the extent that this Directive and associated Guidance introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 6 Waste electrical and electronic equipment WEEE (repeal. Directive 2002/96/EC) recast, to the extent that the recast Directive introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 7 Amendments to Commission Decision 2000/532/EC (European Waste List) replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 74/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (notified under document number C(2000) 1147), to the extent that the amendments introduce new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 8 Amendments to the Persistent Organic Pollutants Regulations 2007 N03106 and EU Regulation 850/2004 (amending Directives 79/117/EEC), to the extent that amendments introduce new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.

- 9 Environmental Agency Consultations (listed below) on and revisions to Permit/Licence charges and subsistence fees insofar as there are extraordinary future increases in such fees or charges above a predicted annual rate of increase at 5%. The specific Consultation is “Consultation on our charges for 2012 to 2015”.
- 10 Periodic Revisions of the EU Technical Working Groups to IPPC BREF Notes insofar as they affect the waste management industry specifically relating to:
 - 10.1 Waste Treatment Industries, August 2006;
 - 10.2 Emissions from Storage, July 2006;
 - 10.3 Reference document on the General Principles of Monitoring, July 2003;
 - 10.4 Reference documents on the Best Available Techniques for Waste Incineration, August 2006;
 - 10.5 Energy Efficiency, February 2009,to the extent that the above listed consultations introduce new provisions not yet enacted and in force, in domestic UK legislation at the date of Financial Close.
- 11 DEFRA Planning and Pollution Control: Improving the way the regimes work together in delivering new development (Sept 2007).
- 12 Communication from the Commission to the Council and the European Parliament: Thematic Strategy on Air Pollution (COM (2005) 446) and Defra document on Air Pollution: Action in a Changing Climate, to the extent that this communication and/or document leads to new legislation not yet enacted and in force in domestic UK legislation at the date of Financial Close.
- 13 DEFRA Consultation dated 14 May 2008 on the guidelines for metals and metalloids in ambient air for the protection of human health but only to the extent that further improvements beyond those required by the Waste Incineration Directive are introduced.
- 14 Climate Change Act 2008, Part 2, the UK Low Carbon Transition Plan, UK Low Carbon Industrial Strategy and the DECC Carbon Plan (published December 2011) to the extent that these introduce new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 15 DEFRA consultation on the implementation proposals of the Carbon Reduction Commitment Efficiency Scheme dated 26 June 2007 and consultations on its subsequent simplification, to the extent that these proposals introduce new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.

- 16 The final report of the Transmission Access Review published on 26 June 2008 and consultations on Improving Grid Access and Enhanced Transmission Investment Incentives in relation to any future changes not finalised as at the date of Financial Close.
- 17 Kyoto Protocol (approved by Decisions 2002/358 of 25/04/02) and Directive 2003/87/EC (as amended by Directive 2004/101/EC and Directive 2009/29) together with associated EU Decisions and guidance to the extent that these directives decisions and guidance introduce new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 18 Communication from the Commission on Biomass Action Plan (COM (2005) 628 Final) of December 2005 and the UK 2012 Bioenergy Strategy.
- 19 UK Government Review of Waste Strategy, July 2010, to the extent it introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 20 7th Environment Action programme - Technical guidance on LCA/LCT applied to the waste sector; and EU Consultation on the EU environment policy priorities for 2020: Towards a 7th EU Environment Action Programme.
- 21 DECC and Treasury consultation on Electricity Market Reform, December 2010 and the draft Energy Bill 2012.
- 22 DEFRA's consultation on the revised Waste Duty of Care Code of Practice, dated 30 April 2009 to the extent that this consultation introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 23 DEFRA Waste Review of Waste Policy in England published in June 2011, to the extent it introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close together with the DEFRA Wood waste landfill restrictions in England - Call for evidence dated 31 July 2012.
- 24 Water Framework Directive (2000/60/EC) including the proposed 'daughter directives' Directives (as well as proposals for a Surface Water Directive) and the related DEFRA consultations and the UK Technical Advisory Group's various sets of proposal related to implementation to the extent they introduce new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 25 EU thematic strategy for soil protection (COM (2006) 231 Final), including Communication of the Commission "Towards a Thematic Strategy on Soil Protection" (COM (2002) 179), Communication of the Commission on a Thematic Strategy for Soil Protection (COM (2006) 231 final), and proposals for a Soil Framework Directive (COM (2006) 232 final) including recent reports on revising the directive.
- 26 DEFRA Consultation on draft "Safeguarding our Soils, A Strategy for England" dated September 2009.

- 27 Discussions or proposals regarding the classification of incinerator bottom ash as hazardous waste including without limitation: Environment Agency note on Classification of Incinerator Bottom Ash, Environment Agency consultation on Pulverised Fuel Ash and Furnace Bottom Ash dated September 2008 and revision of Waste Management Guidance WM2 on Hazardous Waste and Environment Agency Regulatory Position Statement update on the Management of Hazardous Waste (June 2008). A Strategy for Hazardous Waste Management in England published by DEFRA in March 2010.
- 28 Environment Agency Consultation on Soil screening values for assessing ecological risks which closed on 31 March 2009.
- 29 Any measures resulting from the Commission's final warning to the UK on 3 May 2010 that it is breaching EU air quality standards to the extent not enacted prior to Financial Close.
- 30 Energy Act 2008 to the extent it introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 31 Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings to the extent it introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 32 The European Commission's "Energy Efficiency Plan 2011" adopted on 8 March 2011 and "Energy 2020 - A strategy for competitive, sustainable and secure energy" adopted 10 November 2010.
- 33 The UK Renewable Energy Strategy 2009 published in July 2009 and DECC Renewable Energy Roadmap dated July 2011.
- 34 OFGEM Consultation Project Discovery Options for delivering secure and sustainable energy supplies dated February 2010
- 35 Consultation on Draft Guidance on the Groundwater (England and Wales) Regulations 2009 dated December 2009 to the extent it introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.
- 36 DCLG consultation on Consultation on a Planning Policy Statement: Planning for a Low Carbon Future in a Changing Climate dated March 2010.
- 37 DCLG consultation on Consultation paper on a new Planning Policy Statement: Planning for a Natural and Healthy Environment dated March 2010. Joint DCLG/DEFRA Consultation: Draft government circular on biodiversity and geological conservation - Statutory obligations and their impact within the planning system which closed on 1 June 2010.
- 38 Review of Local Air Quality Management - A report to DEFRA and the devolved administrations published in March 2010.
- 39 The UK Government's (the coalition) programme for government published on 20 May 2010, in respect of waste, planning, energy and climate change to

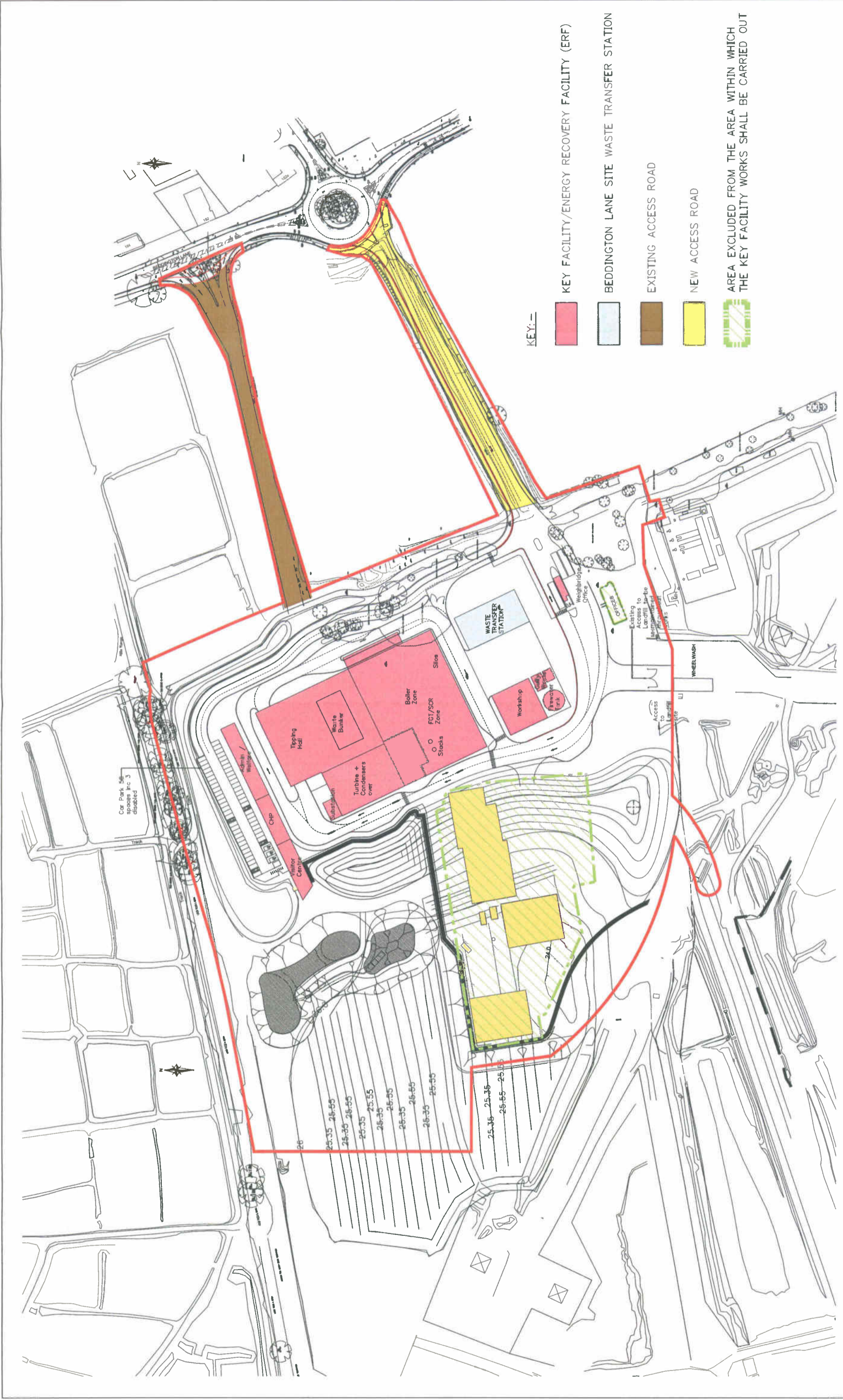
the extent it introduces new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.

- 40 European Commission consultation on the development of a new Energy Strategy for Europe 2011-2020.
- 41 Amendments to PPS 25, Development and Flood Risk - Impact Assessment, dated 29 March 2010.
- 42 The Environment Agency Waste Protocol Project (and related consultations) and the Environment Agency Regulatory Position Statement on "The Regulation of Materials being considered for development of an end of waste Quality Protocol." Issued September 2011.
- 43 Any review of the existing temporary Waste Acceptance Criteria derogations regarding the acceptance of Air Pollution Control residues at landfill (which are, at Financial Close, applied in the UK pursuant to Council Decision 2003/33EC).
- 44 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Roadmap to a Resource Efficient Europe COM/2011/ 571 final
- 45 Draft Commission Decision of 18 November 2011 establishing rules and calculation methods for verifying compliance with the targets set in Article 11 (2) of Directive 2008/98/EC of the European Parliament and of the Council D010816/03
- 46 The ROC Banding review published October 2011 and the Draft Renewables Obligation (Amendment) Order 2012.
- 47 DECC consultation on The European Commission's proposal for an Energy Efficiency Directive dated 03 August 2011.
- 48 EA consultation to revise the Environment Agency's Pollution Inventory dated 30 January 2012.
- 49 DEFRA consultation into the draft Hazardous Waste National Policy Statement dated 14 July 2011.
- 50 DEFRA consultation on Amending the Waste Regulations 2011 on the separate collection of recycling dated 23 February 2012.
- 51 DEFRA consultation on Amending the powers of local authorities regarding presentation of waste for collection dated 16 January 2012.
- 52 Any amendments to legislation resulting from the red tape challenge being conducted in 2011 and 2012 by DECC and DEFRA.
- 53 The Mayor's Municipal Waste Management Strategies: London's Wasted Resource: The Mayor's Municipal Waste Management Strategy and Making Business Sense of Waste: The Mayor's Business Waste Management Strategy. Dated November 2011.

- 54 Localism Act 2011 in so far as subordinate legislation results in new provisions not yet enacted in domestic UK Legislation or new Guidance not published at the date of Financial Close.

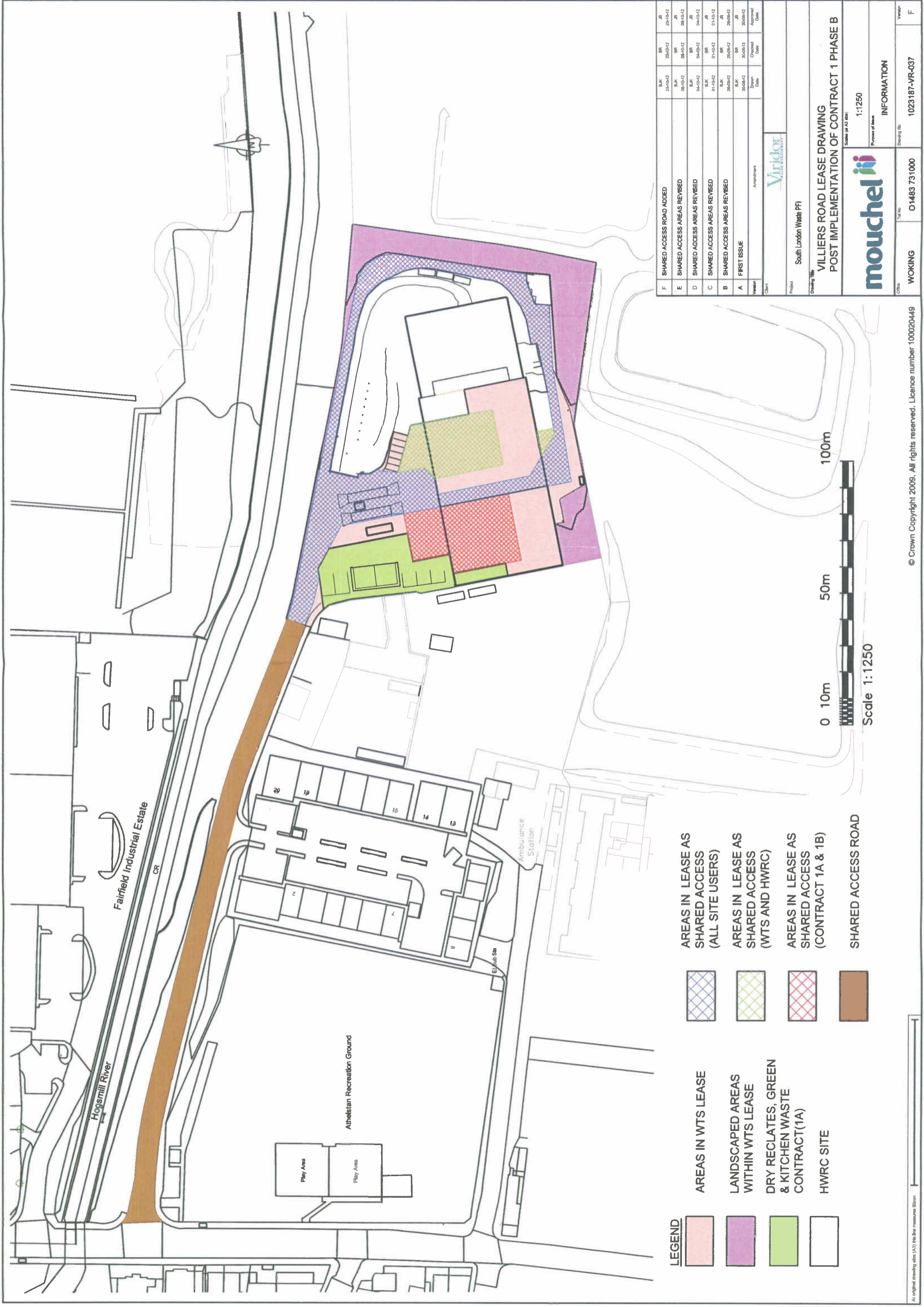
SCHEDULE 15

SITE PLANS



- KEY:—**
- KEY FACILITY/ENERGY RECOVERY FACILITY (ERF)
 - BEDDINGTON LANE SITE WASTE TRANSFER STATION
 - EXISTING ACCESS ROAD
 - NEW ACCESS ROAD
 - AREA EXCLUDED FROM THE AREA WITHIN WHICH THE KEY FACILITY WORKS SHALL BE CARRIED OUT

Scale: 1:2000 DO NOT SCALE	Rev. A1 PRELIMINARY A2 GEN. UPDATE. PRELIMINARY A3	Amendment	By RK NPG RK NPG	Date 01.11.12 01.11.12	KEY:— AREA WITHIN WHICH THE KEY FACILITY WORKS SHALL BE CARRIED OUT/ BEDDINGTON LANE SITE
Drawn By: RK	Date: 01.11.12				
Checked By: NPG	Date: 01.11.12				
CAD Ref.: 1190-032-A2					
Client VIRIDOR		Site BEDDINGTON LANE		Client FICHTNER	
Project SLWP PROJECT		Title BEDDINGTON LANE SITE PLAN		CONSULTING ENGINEERS LIMITED Kingsgate, Wellington Road North Stockport, Cheshire SK4 1LW Tel: 0161-476 0032 Fax: 0161-474 0618	
Office of Issue STOCKPORT		Telephone No. 0161-476 0032		Drawing No. 1190-032 <small>shr. 1 of 1</small>	
				Revision A2	



LEGEND

[Pink Box]	AREAS IN LEASE AS SHARED ACCESS (ALL SITE USERS)
[Purple Box]	AREAS IN LEASE AS SHARED ACCESS (WTS AND HWRC)
[Green Box]	AREAS IN LEASE AS SHARED ACCESS (CONTRACT 1A & 1B)
[White Box]	SHARED ACCESS ROAD
[Light Green Box]	AREAS IN WTS LEASE
[Dark Green Box]	LANDSCAPED AREAS WITHIN WTS LEASE
[Light 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	BR	25/10/12	JB	25/10/12
E	SHARED ACCESS AREAS REVISED	BLK	08/10/12	BR	08/10/12	JB	08/10/12
D	SHARED ACCESS AREAS REVISED	BLK	04/10/12	BR	04/10/12	JB	04/10/12
C	SHARED ACCESS AREAS REVISED	BLK	01/10/12	BR	01/10/12	JB	01/10/12
B	SHARED ACCESS AREAS REVISED	BLK	26/09/12	BR	26/09/12	JB	26/09/12
A	FIRST ISSUE	BLK	30/08/12	BR	30/08/12	JB	30/08/12
Version		Drawn	Date	Checked	Date	Approved	Date
Client							

Viridor
SOUTH LONDON WASTE PFI

Project: South London Waste PFI

Client: Viridor

Scale (A3 Size): 1:1250

Scale of Area: 1:1250

mouchel

Office: WOKING

Tel No: 01483 731000

Drawing No: 1023187-VR-037

Version: F

Project Title: VILLIERS ROAD LEASE DRAWING POST IMPLEMENTATION OF CONTRACT 1 PHASE B

Information

SCHEDULE 16
REPORTING REQUIREMENTS

		Weekly Service Report (each week of the Contract)	Monthly Service Report (Contract Month)	Annual Service Report (Contract Year)
1	SERVICE UPDATE			
1.1	Summary Commentary			
	Summary commentary on the Services - changes, current initiatives, overall progress or general issues.		Y	Y
1.2	Outstanding Actions		Y	
	The status of any actions from the previous report / contract meeting(s).		Y	N
	Details of any outstanding information and actions required by the Authority and/or the Contractor in connection with the Contract, including an agreed deadline for resolution of the same.		Y	N
	A summary statement of any Changes pursuant to Schedule 21 (Change Protocol) requested by the Authority or by the Contractor and agreed by the Authority in the case of material changes.		Y	Summary
1.3	Timetable / Milestones			
	Progress on meeting the key dates set out in Schedule 8 (Key Dates) of the Contract.		Y	Y
	Reasons for any delay in the provision of the Interim Services or the Services together with details of the actions and timetable to be taken to mitigate delays.		Y	Y
2	CONSTRUCTION UPDATE			
2.1	Works reporting			
	Monthly construction progress report to include progress on meeting its obligations under the Works Requirements.	N	Y	N
	Dates of forthcoming works meetings concerning the Waste Transfer Station.	N	Y	N
3	SERVICE PERFORMANCE			
3.1	Contract Waste Management			
	Details of vehicles and tonnage or estimated tonnage of Contract Waste that have not met	Y	Y	Summary - per month

Schedule 16 – Reporting Requirements

	Weekly Service Report (each week of the Contract)	Monthly Service Report (Contract Month)	Annual Service Report (Contract Year)
the Waste Acceptance Criteria or vehicle acceptance criteria set out in Method Statement MS5.1.			and total annual
Details of all Contract Waste and Third Party Waste Accepted by the Contractor including but not limited to:	Y	Y	Summary
➤ Tonnage of each category of Contract Waste (A, B, C) and of Third Party Waste by Partnership borough, and sum total	Y	Y	Y
➤ Incoming weighbridge data in accordance with Schedule 2 (Authority's Requirements)	Y	N	N
Details of all Contract Waste and Third Party Waste sent for treatment or disposal by the Contractor including but not limited to:	Y	Y	Summary (per month and total annual)
➤ Tonnage of each category of Contract Waste (A, B, C) and of Third Party Waste by destination (name and location)	Y	Y	Y
➤ Outgoing weighbridge data in accordance with Schedule 2 (Authority's Requirements)	Y	N	N
Details of Contract Waste management:	Y	Y	Summary (per month and total annual)
➤ Tonnage and percentage of total Contract Waste sent for recovery, and technology type(s)	Y	Y	Y
➤ Tonnage and percentage (of process inputs) of metal and bottom ash recovery	Y	Y	Y
➤ Tonnage and percentage (of process inputs) of treatment process residues for onward disposal	Y	Y	Y
➤ Tonnage and percentage of each category of Contract Waste (A or B (but not C)) sent directly to disposal	Y	Y	Y

		Weekly Service Report (each week of the Contract)	Monthly Service Report (Contract Month)	Annual Service Report (Contract Year)
	(without thermal treatment)			
	A graphical chart and a data base table showing the tonnage of Contract Waste received in each Contract Month of the relevant Contract Year to date and the cumulative total for the Contract Year to date and showing the Minimum Tonnage and Maximum Tonnage and accompanied by a commentary on trends in arisings of Contract Waste.	N	Y	Summary
	Submission of the relevant monthly and/or quarterly waste data requirements as agreed with the Authority from time to time.	N	Y (as relevant)	Y
3.2	Contract Waste Performance Targets			
	Commentary on overall Service performance	N	Y	Y
	The Actual Diversion Rate (expressed as percentage with underlying calculation) for the relevant period. A graphical chart and a data table showing the Actual Diversion Rate and the Target Diversion Rate for each Contract Month of the relevant Contract Year to date, and the average for the relevant Contract Year to date.	N	Y	Y
4	FINANCIAL			
4.1	Payment Mechanism calculation			
	A detailed breakdown of the Unitary Charge payable in respect of the relevant Contract Month, including the calculation of each element of the Unitary Charge set out at paragraph 3.1 of the Payment Mechanism.	N	Y	Y
	Any supporting information reasonably requested by the Authority to verify the Contractor's calculation of the Unitary Charge.	N	Y	Y
	A detailed breakdown of all Third Party Income received by the Contractor in the relevant period including but not limited to: <ul style="list-style-type: none"> • Third Party Waste volume and gate fee(s) received. • Volume of electricity generated, unit price(s) and LEC income received. • Details of any income received for the 	N	Y	Y

		Weekly Service Report (each week of the Contract)	Monthly Service Report (Contract Month)	Annual Service Report (Contract Year)
	handling of Third Party Waste at the transfer station.			
	Any supporting information reasonably requested by the Authority to verify the Contractor's calculation of Third Party Income received.	N	Y	Y
5	ENVIRONMENTAL PERFORMANCE			
5.1	Monitoring			
	Performance against the Mayor's Emissions Performance Standard ('EPS'), including an appended EPS spreadsheet in the form required by the Greater London Authority	N	Quarterly	Y
	Annual carbon footprint report as required by the Contractor's corporate reporting methodologies and in accordance with carbon reporting for this Project.	N	N	Summary
5.2	Regulators			
	Emissions data and performance as reported to the Environmental Agency, and copies of any facility Environment Agency compliance assessment reports (or equivalent).	N	Y	Y
	Details of any breaches of legislation or any Consents.	N	Y	Y
	Details of any log entries, inspections or letters from all Relevant Authorities.	N	Y	Y
5.3	Consents			
	A statement of the status of all Consents and any applications for new or amended Consents, including but not restricted to outstanding planning conditions, road freight licences ('O' licences), environmental permits, consents to discharge.	N	Quarterly	Y
	Details of any non-compliance with planning permissions at each Site.	N	Y	Y
	Details of all relevant information supplied by the Contractor to any Relevant Authorities in relation to the Consents.	N	Y	Y
5.4	Other			
	Details of gross and net electrical power produced / sold and if relevant heat supplied / sold (megawatt hours).	N	Y	Y

		Weekly Service Report (each week of the Contract)	Monthly Service Report (Contract Month)	Annual Service Report (Contract Year)
	An annual review of the utilisation and future potential of sustainable transport	N	N	Y
	Information to demonstrate that as far as is practicable, the export of recoverable materials out of south London, the wider Greater London area, the United Kingdom and the European Union has been minimised.	N	N	Y
6	GENERAL CONTRACT MANAGEMENT			
6.1	Service deductions			
	Statement of performance against the Performance Management Framework, including details of each instance of the events or circumstances resulting in Performance Deductions	N	Y	Summary
	Details of each instance of the events or circumstances resulting in Non-Acceptance Deductions or Mileage Deductions under the Payment Mechanism.	N	Y	Summary
	The total number of Non-Performance Points incurred in the previous 15 Months including the Month to which the report refers.	N	Y	Summary
6.2	Customer Care			
	Details of any feedback and complaints received from any source in relation to the Contract, the response provided, timeframes against contractual targets, lessons learned and mitigating actions undertaken.	N	Y	Summary
6.3	Stakeholder Engagement			
	Details of any relevant media enquiries and press releases related to the Contract.	Y	Y	Summary
	Details (number/name of groups and timing/duration) of any community involvement including liaison activities undertaken, meetings held with community group representatives in respect of the Contract.	N	Y	Summary
	Number of hits / visits to the Project website.	N	Y	Summary
	Key Facility visitor centre visits (if relevant) (number visitors, dates etc.)	N	Y	Summary
6.4	Human Resources			
	Any changes to key senior staff at the Sites.	N	Y	Summary (with team)

		Weekly Service Report (each week of the Contract)	Monthly Service Report (Contract Month)	Annual Service Report (Contract Year)
				structure chart)
6.5	Health and Safety			
	<ul style="list-style-type: none"> The status of any actions identified in the previous monthly service report; A list of actions to be undertaken within the forthcoming months; Details of any reported breaches of Legislation, enforcement notices or necessary Consents; Details of any health, safety or welfare related issues and lessons learned including any Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995 reportable incidents; Details of any reported near misses; Details of any fires and the reasons for the fire's occurrence along with the Contractor's proposals to prevent future reoccurrence; Any relevant training initiatives undertaken or planned; Results of any audits or inspections undertaken as part of the Business Management System or by any Relevant Authority; and Any security breaches. 	N	Y	Summary
6.6	Maintenance			
	Annual schedule of programmed maintenance (outages) for the Key Facility	N	N	Y
	Details of structural assessments and planned and reactive maintenance inspections undertaken in the previous Contract Month, including details of findings and maintenance action undertaken as a result, the scope to include both operational plant and equipment, structures and environmental control systems.	N	Y	Summary
	Monthly schedule of Programmed Maintenance for the next Contract Month	N	Y	N
6.7	Continuous Improvement			
	Performance against internal performance measures in MS 5.5: Continuous Improvement	N	Y	Summary

Schedule 16 – Reporting Requirements

		Weekly Service Report (each week of the Contract)	Monthly Service Report (Contract Month)	Annual Service Report (Contract Year)
	Details of any identified or implemented efficiency improvements in the Service.	N	Y	Y
6.8	Legislative Issues			
	Details of any non-conformities, warnings or breaches of Legislation or Consents by the Contractor in relation to the provision of the Interim Services or the Services.	Y	Y	Y
	Details of any Changes in Law which may have financial consequences for the Authority as soon as those changes are reasonably anticipated.	Y	Y	Y
6.9	Management Systems			
	Details of the results of any internal or external Integrated management system audits and status of any resulting actions in accordance with MS 6.7 'Management Arrangements'.	N	Y	Summary
	Details of the results of any internal or external Quality Management System audits and status of any resulting actions in accordance with MS 6.7 'Management Arrangements'.	N	Y	Summary
	Details of the results of any internal or external Environmental Management System audits and status of any resulting actions in accordance with MS 6.7 'Management Arrangements'.	N	Y	Summary
7	OTHER			
	Proposed amendments to the Service Delivery Plan.	N	Y	N
	Any other matter reasonably required by the Authority in relation to the Project.	N	Y	Y

SCHEDULE 17

COMPENSATION ON TERMINATION

PART 1

DEFINITIONS

In each part of this Schedule 17 (Compensation on Termination) the following expressions (in addition to those specified in Schedule 1 (Definitions)), shall save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Authority Compensation Cap means the sum equivalent to the sum calculated in accordance with paragraph 1 (Compensation on Termination for limb (a) of the definition of Authority Default) in paragraph 1.1 of part 2 (Compensation Following Authority Default or Authority Voluntary Termination) of this Schedule 17 (Compensation on Termination);

Authority Default Termination Sum means (as applicable) the sum calculated in accordance with either:

- (a) paragraph 1.1 (Compensation on Termination for limb (a) of the definition of Authority Default); or
- (b) paragraph 2.1 (Compensation on Termination for limbs (b), (c) and (d) of the definition of Authority Default and Authority Voluntary Termination) of Part 2 (Compensation Following Authority Default or Authority Voluntary Termination) of this Schedule 17 (Compensation on Termination);

Contractor Default Termination Sum means, subject to full mitigation by the Authority (and, for the avoidance of doubt, assuming all amounts are calculated on the basis that the [REDACTED]

(a) [REDACTED]

(b) [REDACTED]



Force Majeure Planning Sum means the sum calculated in accordance with Part 5 (Compensation Following Planning Failure) of this Schedule 17 (Compensation on Termination);

Notice Date means the later of the Termination Date and (if applicable) the date that the relevant Termination Sum is either agreed between the Parties pursuant to:

- (a) Part 2 (Compensation following Authority Default or Authority Voluntary Termination); or
- (b) Part 3 (Compensation on Termination for Contractor Default, Corrupt Gifts and Fraud and Breach of Refinancing Provisions); or
- (c) Part 4 (Compensation on Termination for Uninsurability); or
- (d) Part 5 (Compensation following Planning Failure), or

is otherwise determined under clause 60 (Dispute Resolution);

Project Pre- Tax Nominal IRR means [redacted] %;

Replacement Third Party Income Sum (RTPI) means the [redacted] which [redacted] (by virtue of the termination of this Contract arising from limbs (b), (c) or (d) of the definition of Authority Default or pursuant to Clause 73 (Voluntary Termination by the Authority)) taking into account the circumstances relevant at the Termination Date, and which shall include but not be limited to:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sub-Contractor Breakage Costs

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

- (a) the Losses are incurred in connection with the Project and in respect of the provision of the Interim Services, the Services or completion of Works, including:
 - i any materials or goods ordered or Sub-Contracts placed that cannot be cancelled without such Losses being incurred;
 - ii any expenditure incurred in anticipation of the provision of the Interim Services, the Services or the completion of Works in the future;
 - iii the cost of demobilisation including the cost of any relocation of Equipment used in connection with the Project; and
 - iv redundancy payments; and

- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Contractor and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

Losses as referred to in this definition (i) may, without prejudice to the generality of the other provisions of this definition, include Losses which relate to the breakage or cancellation of Off-Take Contracts or Third Party Waste Contracts but only to the extent that the Contractor has complied with its obligations under clause 51 (Offtake Contracts and Third Party Waste Contracts) and such contracts cannot be cancelled without incurring such Losses



Termination Sum

means any compensation payable by the Authority to the Contractor on an early termination of this Contract under:

- (a) Part 2 (Compensation Following Authority Default or Authority Voluntary Termination) of this Schedule 17 (Compensation on Termination); or
- (b) Part 3 (Compensation on Termination for Contractor Default, Corrupt Gifts and Fraud and Breach of Refinancing Provisions); or

- (c) Part 4 (Compensation on Termination for Uninsurability) of this Schedule 17 (Compensation on Termination); or
- (d) Part 5 (Compensation Following Planning Failure) of this Schedule 17 (Compensation on Termination);

**Uninsurability Termination
Sum**

means the sum calculated in accordance with paragraph 1.1.1 of Part 4 (Compensation on Termination for Uninsurability) of this Schedule 17(Compensation on Termination).

SCHEDULE 17

COMPENSATION ON TERMINATION

PART 2

COMPENSATION FOLLOWING AUTHORITY DEFAULT OR AUTHORITY VOLUNTARY TERMINATION

1 Compensation on Termination for limb (a) of the definition of Authority Default

1.1 On termination of this Contract under Clause 65 (Termination for Authority Default) pursuant to limb (a) of the definition of Authority Default, [REDACTED]

[REDACTED]

the Authority shall pay the Contractor the Authority Default Termination Sum in accordance with paragraph 3 of Part 6 (General) of this Schedule 17 (Compensation on Termination). The Authority Default Termination Sum for the purposes of this paragraph 1.1 shall be an amount equal to the aggregate of:

1.1.1 not used,

1.1.2 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs, and

1.1.3

(a) the aggregate of:

i all amounts of Unitary Charge shown in the Base Case as payable by the Authority from the Termination Date to the Expiry Date, and

ii all amounts of [REDACTED] modelled in the Base Case from the Termination Date to the Expiry Date as set out in sheet "Operations", row 762 of the Base Case, and

iii all amounts shown in Appendix 6 to Schedule 4 (Payment Mechanism),

each amount discounted back at the Project Pre-Tax Nominal IRR from the date on which it is shown to be

payable or modelled in the Base Case to the Termination Date, less

- (b) the aggregate of all Capital Expenditure and all operating costs shown in the Base Case to be incurred from the Termination Date to the Expiry Date discounted back at the Project Pre-Tax Nominal IRR from the date on which such expenditure is shown to be incurred in the Base Case to the Termination Date.

1.2 On termination of this Contract under Clause 65 (Termination for Authority Default) pursuant to limb (a) of the definition of Authority Default, where paragraph 1.1 above does not apply, but the Authority

the Parties shall negotiate in good faith to agree an equitable and appropriate level of compensation for the Contractor which shall take into account, amongst other things:

1.2.1

1.2.2

1.2.3

1.2.4

1.3 On payment of the Authority Default Termination Sum, the Contractor shall transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

2 Compensation on Termination for limbs (b), (c) and (d) of the definition of Authority Default or Authority Voluntary Termination

2.1 On termination of this Contract under Clause 65 (Termination for Authority Default) pursuant to limbs (b), (c) or (d) of the definition of Authority Default or under Clause 73 (Voluntary Termination by the Authority), the Authority shall pay the Contractor the Authority Default Termination Sum in accordance with paragraph 1 of Part 6 (General) of this Schedule 17 (Compensation on Termination). The Authority Default Termination Sum for the purposes of this paragraph 2.1 shall be an amount equal to the aggregate of:

(a) redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs;

(b) costs to be incurred by the Contractor in replacing arrangements available at the Waste Transfer Station which impacts on the use of capacity at the Key Facility being [REDACTED] (indexed) per annum as indicated in the Financial Model in reference "Sheet FA Costs Row 3624";

(c) the following amount:

i the aggregate of:

A all amounts of Unitary Charge shown in the Base Case as payable by the Authority from the Termination Date to the Expiry Date, and

B all amounts of [REDACTED] modelled in the Base Case from the Termination Date to the Expiry Date as set out in sheet "Operations", row 762 of the Base Case,

C all amounts shown in Appendix 6 to Schedule 4 (Payment Mechanism),

each amount discounted back at the Project Pre-Tax Nominal IRR from the date on which it is shown to be payable or modelled in the Base Case to the Termination Date, less

ii the aggregate of:

A all Capital Expenditure and all operating costs shown in the Base Case (to be incurred from the Termination Date to the Expiry Date) discounted back at the Project Pre-Tax Nominal IRR from the date on which such expenditure is shown to be incurred in the Base Case to the Termination Date, and

B the [REDACTED] (less the forecast Capital Expenditure and operating costs between the Termination Date and the Expiry Date) discounted back at the Project Pre-Tax Nominal IRR;

PROVIDED ALWAYS that the Authority Default Termination Sum under this paragraph 2.1 cannot exceed the Authority Compensation Cap.

2.2 Upon receipt of the payment of the Authority Default Termination Sum, the Contractor shall transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority in accordance with Clause 80 (Consequences of Termination or Expiry).

SCHEDULE 17

COMPENSATION ON TERMINATION

PART 3

COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT, CORRUPT GIFTS AND FRAUD AND BREACH OF REFINANCING PROVISIONS

1 Payment of Compensation

The following provisions of this Part 3 (Compensation on Termination for Contractor Default, Corrupt Gifts and Fraud and Breach of Refinancing Provisions) shall apply on termination of the Contract pursuant to Clause 67 (Termination for Contractor Default), Clause 71 (Termination on Corrupt Gifts and Fraud) and Clause 75 (Termination for Breach of Refinancing Provisions) and any compensation payable to the Authority by the Contractor shall be determined accordingly.

2 Entitlement to Damages

2.1 Subject to clause 62.7(Maximum Liability), on termination of this Contract pursuant to:

2.1.1 Clause 67 (Termination for Contractor Default);

2.1.2 Clause 71 (Termination on Corrupt Gifts and Fraud); or

2.1.3 Clause 75 (Termination for Breach of Refinancing Provisions),

the Contractor shall pay to the Authority the Contractor Default Termination Sum.

2.2 The Contractor Default Termination Sum payable pursuant to this Part 3 (Compensation on Termination for Contractor Default, Corrupt Gifts and Fraud and Breach of Refinancing Provisions) shall be paid in accordance with paragraph 3 of Part 6 (General) of this Schedule 17 (Compensation on Termination).

2.3 On termination, the Contractor shall transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority in accordance with Clause 80 (Consequences of Termination and Expiry).

2.4 In the event that the Contractor Default Termination Sum cannot be agreed then either party may refer the matter for resolution in accordance with Schedule 22 (Dispute Resolution Procedure).

SCHEDULE 17

COMPENSATION ON TERMINATION

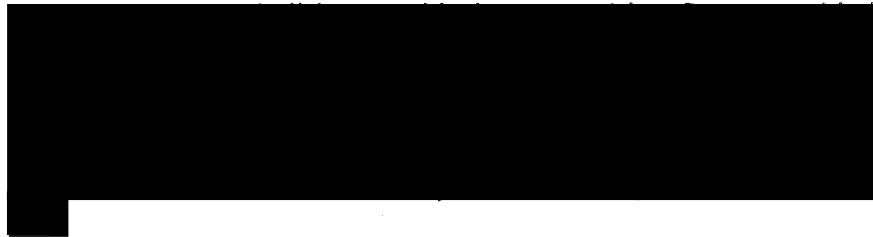
PART 4

COMPENSATION ON TERMINATION FOR UNINSURABILITY

1 Amount

On termination of this Contract pursuant to Clauses 57.3.1(a) or 57.3.1(b) (Consequences):

1.1.1



1.1.2 the Authority may require the Contractor to transfer its title, interest and rights in and to the Assets to the Authority.

2 Payment

The Uninsurability Termination Sum payable pursuant to this Part 4 (Compensation on Termination for Uninsurability) shall be paid in accordance with paragraph 3 of Part 6 (General) of this Schedule 17 (Compensation on Termination).

SCHEDULE 17

COMPENSATION ON TERMINATION

PART 5

COMPENSATION FOLLOWING PLANNING FAILURE

1 Calculation of Compensation

On termination of this Contract pursuant to paragraph 3.5 (Termination as a result of Planning Failure) of Schedule 26 (Planning), the Authority shall pay to the Contractor the Force Majeure Planning Sum which shall be the



SCHEDULE 17

COMPENSATION ON TERMINATION

PART 6

GENERAL

1 Gross Up of Termination Payments

1.1 If:

1.1.1 any amount of compensation payable by the Authority under:

- (a) Part 2 (Compensation following Authority Default or Authority Voluntary Termination); or
- (b) Part 3 (Compensation on Termination for Contractor Default, Corrupt Gifts and Fraud and Breach of Refinancing Provisions); or
- (c) Part 4 (Compensation on Termination for Uninsurability); or
- (d) Part 5 (Compensation following Planning Failure),

is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Party paying compensation shall pay to the other Party such additional amount as will put the receiving Party in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the receiving Party to reduce the Tax to which the payment is subject.

2 Exclusivity of Remedy

2.1 Any payment of compensation (or (as applicable) damages) shall be in full satisfaction of any claim which can be made by one Party against the other Party in relation to termination of this Contract or any Project Document.

2.2 The compensation payable under:

- 2.2.1 Part 2 (Compensation following Authority Default or Authority Voluntary Termination); or
- 2.2.2 Part 3 (Compensation on Termination for Contractor Default, Corrupt Gifts and Fraud and Breach of Refinancing Provisions); or
- 2.2.3 Part 4 (Compensation on Termination for Uninsurability); or
- 2.2.4 Part 5 (Compensation following Planning Failure),

shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract.

3 Method of Payment of Compensation on Termination

3.1 Termination Sum

The Authority shall pay to the Contractor any Termination Sum on or before the date falling forty five (45) Business Days following the Notice Date.

SCHEDULE 18

LIAISON PROCEDURE

1. LIAISON COMMITTEE

- 1.1 The Authority and the Contractor shall establish and maintain throughout the Contract Period a joint liaison committee (the “Liaison Committee”), consisting of three (3) representatives from the Authority, three (3) representatives from the Contractor, a chairman appointed in accordance with paragraph 8 (the “Chairman”), and, where a majority of the Project Liaison Group so determines, additional representatives being properly qualified to participate in discussions relating to any particular matter, these members having no voting rights, which shall have the functions described below.
- 1.2 The Contractor and the Authority agree that for the duration of the Works the Contractor shall procure the attendance of the Construction Sub-Contractor during such parts of meetings of the Liaison Committee as the Parties shall agree for the purpose of discussing the progress of the Construction Programme.
- 1.3 Should the Authority and the Contractor agree that the best interests of the Project would be served by the removal of one or more members of the Liaison Committee, they may so direct in writing and the Authority or the Contractor, as the case may be, will put forward to the Authority and Contractor the name of a substitute member of the Liaison Committee.
- 1.4 The relevant person shall with the consent of the other Party, such consent not to be unreasonably withheld or delayed, become a member of the Liaison Committee as from the date of its next meeting.

2. FUNCTIONS

- 2.1 The functions of the Liaison Committee shall be:
 - 2.1.1 to provide a means for the joint review of all aspects of the performance of this Contract;
 - 2.1.2 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Contract; and
 - 2.1.3 consideration of issues relating to:
 - (i) Consents, Planning Applications and Environmental Permits;
 - (ii) the Construction Programme;
 - (iii) provision of the Services, including transition between the phases; and
 - (iv) Authority Changes.

3. **ROLE**

The role of the Liaison Committee is to make recommendations to the Authority and to the Contractor, which the Authority and the Contractor may accept or reject at their complete discretion. Neither the Liaison Committee itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Contract or to make any decision binding on the Parties. The Authority and the Contractor shall not rely on any act or omission of the Liaison Committee, or any members of the Liaison Committee acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of the Authority or of the Contractor under this Contract. No discussion, review or recommendation by the Liaison Committee shall relieve the Authority or the Contractor of any liability or vary any such liability or any right or benefit.

4. **REPRESENTATIVES**

The Authority and the Contractor may appoint their representatives on the Liaison Committee and remove those representatives and appoint replacements, by written notice delivered to the other at any time. A representative on the Liaison Committee may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other Parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

5. **PRACTICES AND PROCEDURES**

Subject to the provisions of this Schedule, the members of the Liaison Committee may adopt such procedures and practices for the conduct of the activities of the Liaison Committee as they consider appropriate, from time to time, provided that the quorum for a meeting of the Liaison Committee shall be four (4) (with at least two (2) members of the Authority and two (2) members of the Contractor present).

6. **RECOMMENDATIONS**

Recommendations and other decisions of the Liaison Committee must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative of the Authority and not less than one (1) representative of the Contractor.

7. **VOTING**

Each member of the Liaison Committee shall have one (1) vote.

8. **CHAIRMAN**

The Chairman of the Liaison Committee shall be nominated by the Authority and by the Contractor alternately every six (6) months during the Contract Period (commencing with the Authority). The Chairman shall be in addition to each party's representatives on the Liaison Committee. The Chairman shall not have a vote.

9. FREQUENCY OF MEETINGS

The Liaison Committee shall meet at least once every month during the Works Period. The Construction Sub-Contractor shall only be required to attend the Liaison Committee once every two (2) months. The Liaison Committee shall meet at least once every quarter in the Service Period.

10. CONVENING OF MEETINGS

Subject to paragraph 11, any member of the Liaison Committee may convene a meeting of the Liaison Committee at any time.

11. NOTICES OF MEETINGS

Not less than ten (10) Business Days notice (identifying the agenda items to be discussed at the meeting) shall be given to convene a meeting of the Liaison Committee, except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

12. ATTENDANCE AT MEETINGS

Meetings of the Liaison Committee should normally involve the attendance (in person or by alternative) of representatives at the meeting. Where the representatives of the Liaison Committee consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one (1) representative of the Authority and one (1) representative of the Contractor) meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

13. MINUTES

Minutes of all decisions (including those made by telephone or other telecommunication form) and meetings of the Liaison Committee shall be kept by the Contractor and copies circulated promptly to the Authority and the Contractor, normally within ten (10) Business Days of the making of the decision or the holding of the meeting. A full set of minutes shall be kept by the Contractor and shall be open to inspection by the Authority and the Contractor at any time, upon request.

SCHEDULE 19

REVISION OF BASE CASE AND CUSTODY

1. DEFINITIONS

In each part of this Schedule 19 the following expression (in addition to those specified in Schedule 1 (Definitions) shall, save where the context or express provisions of this Contract otherwise requires or admits, have the following meaning:

Base Case Change Date means the date that any revisions to the Base Case are made and shall be the date that the Relevant Event becomes operative as set out in this Contract, or if no date is specified, the date agreed by the Parties pursuant to paragraph 4.2 of this Schedule 19.

2. APPLICATION - PURPOSE OF THIS SCHEDULE 19

This Schedule 19 describes the arrangements agreed by the Parties in relation to:

2.1 The custody of the Base Case; and

2.2 where it is required by this Contract, determined in accordance with the Dispute Resolution Procedure or agreed between the Parties that the financial consequences of any Relevant Event or the payment of or release from any sum shall be addressed through an adjustment to the Unitary Charge (or any component thereof) and that this shall be facilitated by an adjustment to the Base Case.

3. CUSTODY ARRANGEMENTS FOR THE BASE CASE

3.1 The Contractor shall no later than ten (10) Business Days after the date of this Contract deliver two (2) electronic copies on CD-Rom in Microsoft Excel 2007 compatible format of the Base Case to the Authority (for the Authority to hold on its own behalf).

3.2 The Contractor shall lodge with the Authority one (1) electronic copy on CD-Rom in Microsoft Excel 2007 compatible format (or any media/software that replaces this) of each Base Case as may be revised from time to time pursuant to this Schedule 19 no later than ten (10) Business Days after any revisions have been effected and agreed with the Authority.

3.3 Any amendments to the Base Case shall reflect, be consistent with and be made only in accordance with the provisions of this Contract.

3.4 Either party shall have the right to inspect and audit the Base Case at their own cost at all reasonable times.

4. REVISIONS TO THE BASE CASE

4.1 Where the Parties agree that the financial consequences of any Relevant Event or the payment of or release from any sum are best dealt with without a revision to the Base Case, they shall agree to make such revision to the Monthly Payment as necessary on a one-off or recurrent basis. Such change shall, on next occasion that there is a revision to the Base Case in accordance with this Schedule 19 be consolidated as an update to the Unitary Charge and Base Case.

4.2 Prior to making any changes to the Base Case (subject to any express provision of this Contract to the contrary), the Parties shall agree the Base Case Change Date for the change and the basis of the revision to the Base Case.

4.3 Except for revisions due to:

4.3.1 a Qualifying Refinancing (in which case the provisions of clause 52 (Refinancing) shall apply);

4.3.2 a Contractor Change which results in costs savings (and such costs saving are shared in accordance with paragraph 4 of Part 5 of Schedule 21 (Change Protocol),

the Unitary Charge shall be revised so as to ensure that the Contractor is in no better and no worse position (as defined by paragraph 5.3) than it was prior to the Base Case Change Date and the event which gave rise to the need for the revision. In no circumstances shall any revision provide compensation to the Contractor for any deviation in performance from that predicted in the latest Base Case as agreed between the Parties or determined in accordance with the Dispute Resolution Procedure.

4.4 In calculating the Estimated Change in Project Costs and in assessing other adjustments to be made to the Base Case arising from a Relevant Event, the Contractor shall be entitled to take into account, inter alia:

4.4.1 any Change in Costs and Change in Revenue;

4.4.2 reasonable economic assumptions prevailing at the time; and

4.4.3 changes in the prospective technical performance of the Project arising as a result of the Relevant Event, provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the terms of this Contract, including (to the extent so borne by the Contractor under this Contract) changes in VAT rates, taxation rates, RPIX and the impact of adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism).

4.5 The Contractor shall take all reasonable and appropriate steps to mitigate the effects of any revision including, in particular but without limitation, mitigating any adverse impact upon the Authority.

4.6 If the Base Case is to be revised, then the Contractor shall make appropriate electronic amendments to it to effect such revisions made in accordance with this Schedule 19.

4.7 Where a revision to the Unitary Charge is required, the Contractor shall, at its own cost, save as otherwise expressly provided, revise the Base Case and submit to the Authority a revised Base Case reflecting such adjustments.

5. PRINCIPLES OF ADJUSTMENT

5.1 The following guidelines shall be followed in revising the Base Case:

5.1.1 wherever possible the revision shall be carried out without altering the logic, formulae, inputs and assumptions incorporated in the Base Case in any way whatsoever and only data such as costs incurred by the Contractor and the timing and amounts of drawdowns of funding shall be changed;

5.1.2 where it is necessary to amend the logic, formulae, inputs and assumptions incorporated in the Base Case to permit revisions to be made, this shall be carried out to the minimum extent necessary and in accordance with generally accepted accounting principles;

5.1.3 where any amendment is made to the logic, formulae, inputs and assumptions incorporated in the Base Case, the Base Case, as amended shall first be run with the data included in the Base Case immediately prior to amendment to ensure that the outputs (including but not limited to loan life cover and debt service ratios) from the Base Case as amended correspond to the outputs immediately prior to amendment and the difference in the real pre-tax Project IRR after and immediately prior to amendment does not differ by more than five (5) basis points (being zero point zero five percent (0.05%)) as shown in the resulting figure); and

5.1.4 the Parties may only agree changes or additions to the guidelines set out in this paragraph 5.1.4 where they are required in relation to circumstances not dealt with by the assumptions in the Base Case; and

5.1.5 unless otherwise agreed by the Parties in writing, the Contractor shall not be permitted to backdate any increase in the Unitary Charge as a result of an Authority Change.

5.2 Any amendment to the logic, formulae, inputs and assumptions incorporated in the Base Case shall be fully recorded so that the manner in which the revised Unitary Charge is calculated can be readily verified.

5.3 Any reference in this Contract to "no better and no worse" and to leaving the Service Provider being in a "no better and no worse position", shall be construed as to ensure that:

5.3.1 on comparing the output of the Base Case (as at the Base Case Change Date) before and after entering into the required Base Case revisions, such comparison of the output from such Base Case shows that:

- (i) the Real Post Tax Project IRR shall be unchanged (assessed to two decimal places); and
- (ii) the Contractor shall be in a position which is unchanged in relation to the minimum and average debt service cover ratio; and
- (iii) the Contractor is left in a position which is unchanged in relation to inflation hedging of the Unitary Charge as set out in paragraph 19 of the Payment Mechanism; and

5.3.2 the ability of the Contractor to comply with this Contract is not adversely affected or improved as a consequence of the Relevant Event.

5.4 If any material change in the risk profile of the Project arises from the revision, taking account of similar projects exposed to similar risks to those arising out of the circumstances giving rise to the revision, the Parties may agree that the Real Post Tax Project IRR may be adjusted and such revision may only be an upwards adjustment.

5.5 In adjusting the Base Case the individual prices and rates which make up the Unitary Charge should reflect the drivers and methodology used to determine those prices and rates as shown in the original Base Case at the Commencement Date.

6. [Redacted]

6.1 [Redacted]

6.2 [Redacted]

6.2.1 [Redacted]

6.2.2 [Redacted]

(i) [Redacted]

(ii) [Redacted]

6.3 [Redacted]

6.4 [Redacted]

6.4.1 [Redacted]

6.4.2 [Redacted]

(i) [Redacted]

(ii) [Redacted]

6.5 [Redacted]

6.6 [Redacted]

6.7 [Redacted]

6.7.1 [Redacted]

6.7.2

[REDACTED]

(i)

[REDACTED]

(ii)

[REDACTED]

7. PROCEDURE

7.1 The Base Case shall be revised by the Contractor in accordance with the provisions of this Schedule 19 within fifteen (15) Business Days of the Base Case Change Date.

7.2 If the Base Case is to be revised:

7.2.1 not used;

7.2.2 the Contractor shall at its own cost, save as otherwise expressly provided, revise the Base Case and submit to the Authority the revised Base Case for approval (such approval not to be unreasonably withheld).

7.3 The revised Base Case produced pursuant to paragraph 7.2 shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

7.4 The Contractor shall ensure that each iteration of the Financial Model is provided with a unique reference number and date.

7.5 The costs of undertaking a revision of the Base Case shall be treated as a project cost in respect of all Relevant Events and (for the avoidance of doubt) shall be incorporated within the revised inputs associated with the revisions to the Financial Model as a result of such Relevant Event.

7.6 Where practicable, the Contractor shall use all reasonable endeavours to carry out revisions to the Unitary Charge at the end of a Contract Year in order that the revised Unitary Charge may take effect at the beginning of the next Contract Year.

7.7 Following agreement of the revised Base Case, the Contractor shall:

7.7.1 promptly deliver a copy of the revised Base Case to the Authority in accordance with the provisions of paragraph 3.2;

7.7.2 return a copy of the revised Base Case to the Authority, having observed the necessary version control in accordance with paragraph 7.4 and the necessary revisions to the Unitary Charge to be made in accordance with this Schedule 19; and

7.7.3 the necessary adjustments to the Unitary Charge shall be made from the Base Case Change Date but any upward revisions of the Unitary

Charge shall not be due and payable until the copies of the revised Base Case have been returned to the Authority.

7.8 Unless otherwise agreed by the Parties in writing, the Contractor shall not be permitted to backdate any increase in the Unitary Charge as a result of a Change.

7.9 If the Contractor does not perform the revisions required by, and in accordance with this Schedule 19, the Authority may do so and determine the revised Unitary Charge accordingly. All costs incurred by the Authority in doing so shall be paid by the Contractor.

8. UPDATING THE BASE CASE ON THE WORKS COMMENCEMENT DATE

8.1 Where the date of obtaining a Satisfactory Planning Permission in accordance with Schedule 26 (Planning) is on or after the Planned Notice to Proceed Date, the Monthly Unitary Charge Payment shall be adjusted in accordance with this paragraph 8 of Schedule 19 (Revision of Base Case and Custody), to reflect a change to the capital expenditure.

8.2 Where the date of obtaining a Satisfactory Planning Permission in accordance with Schedule 26 (Planning) is before the Planned Notice to Proceed Date, the Monthly Unitary Charge Payment shall be adjusted to reflect an increase or decrease in the Euro exchange rate between the rate included in the Base Case Financial Model Misc worksheet cell C78 and the rate determined at Notice to Proceed in accordance with Schedule 24 (Foreign Exchange).

8.3 The capital expenditure shall be increased or decreased to reflect the changes identified in paragraph 8.3 below and any delay between the Planned Notice to Proceed Date in the Base Case Financial Model and the revised Planned Works Commencement Date determined in accordance with paragraph 3.6.1 of Schedule 26 (Planning).

8.4 The change shall be calculated taking into account:

8.4.1 The increase or decrease in the Euro exchange rate between the rate included in the Base Case Financial Model Misc worksheet cell C78 and the rate determined at Notice to Proceed in accordance with Schedule 24 (Foreign Exchange);

8.4.2 The increase or decrease in the insurance premium, Insurance Premium Tax and broker fee relating to the Works Period between the Base Case Financial Model Costs Inputs (M) worksheet cells F157, F158, and F159 and the same when recalculated at Notice to Proceed in accordance with the agreed schedule of rates and cost calculation in Part 6 in Schedule 10 (Required Insurances);

8.4.3 The capital expenditure profile in the financial model will be moved forward from the Planned Works Commencement Date by the period of delay. If the delay includes a part month period, the capital expenditure shall be apportioned on a pro-rated basis between each monthly period of the financial model, provided that:

- (i) The indexation adjustments set out in the Base Case Financial Model Cost Inputs (M) worksheet row 7 will apply to the revised capital expenditure profile to be incurred up to and including 31st December 2016. Where expenditure is to be incurred after 31st December 2016, the Contractor will provide updated indexation forecasts for those periods, prepared on a consistent basis with those already included in the Base Case Financial Model;
- (ii) Any capital expenditure incurred prior to the Planned Works Commencement Date in the Base Case at Financial Close will remain unchanged, both in respect of its quantum and its timing.

8.5 The Base Case shall then be updated in accordance with the procedures set out in this Schedule 19 (Revision of Base Case).

8.6 After the Base Case Financial Model has been updated to reflect the revised Planned Works Commencement Date then Schedule 4 (Payment Mechanism) shall be updated to reflect the changes calculated in accordance with this Schedule 19 (Revision of Base Case and Custody) and Schedule 4 (Payment Mechanism) Appendix 4 shall be updated to reflect the changes calculated in Schedule 32.

9. DISPUTES

9.1 Where the Contractor and the Authority are unable to agree the revisions to the Base Case (including the actual version of the Base Case to be used prior to the required changes being made) within twenty (20) Business Days of submission of the revised Base Case Financial Model by the Contractor to the Authority (or such other time period as is agreed between the Parties), then the matter shall be determined in accordance with the Dispute Resolution Procedure. Where the Adjudicator so requires, he shall have the assistance of an independent auditor appointed by agreement between the Contractor and the Authority or failing such agreement by the appropriate institution to be named.

9.2 Without prejudice to paragraph 9.1, where the Parties are unable to agree any matter arising under this Schedule 19, either party may refer matters for determination pursuant to the Dispute Resolutions Procedure.

SCHEDULE 20

EMPLOYMENT AND PENSIONS

1. DEFINITIONS

In this Schedule 20 (Employment and Pensions) the following expressions (in addition to those specified in Schedule 1 (Definitions)) shall save where the context or the express provisions of this Contract otherwise requires or admits have the following meanings:

Admission Body	means a transferee admission body for the purposes of regulation 5A of the LGPS Regulations;
Assigned Employees	has the meaning set out in paragraph 2.A.16.1;
Authority Existing Employee	means in relation to any service equivalent to any of the Interim Service or the Services all these persons employed by the Authority under a contract of employment (but excluding any person engaged by the Authority as an independent contractor or persons employed by any sub-contractor engaged by the Authority) who are wholly or substantially engaged in the provision of that service as at the Service Transfer Date;
Code	means the Code of Practice on Workforce Matters in Local Authority Service Contracts as contained in DCLG Circular 3/03 Annex D which was withdrawn with effect from 23 rd March 2011;
Directive	means the EC Council Directive 2001/23/EC;
Employee Liability Information	means the employee liability information to be provided pursuant to Regulation 11 of TUPE;
Equal Pay Legislation	all and any anti-discrimination and equal pay opportunities laws, including but not limited to the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Equal Treatment Directive (Recast) Directive 06/54/EC), Article 117 of the Treaty of Rome, the Disability Discrimination Act 1995, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2002), the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006 and the Equality Act 2006 and for equality of terms

under s120 and s127 of the Equality Act 2010;

Equal Pay Ruling

- (a) a determination by an employment tribunal or court of competent jurisdiction or the settlement or compromise to which the Authority shall have consented in either case relating to any claim brought by any Transferring Employee on before or after the relevant Service Transfer Date under Equal Pay Legislation that the terms and conditions of employment of the Transferring Employee relating to Pay contravene the Equal Pay Legislation; and/or
- (b) in relation to any Transferring Employee (in relation to their period of employment until the Service Transfer Date) any alteration to the salaries and paycales prescribed by the NJC terms and conditions in order to settle, address or compromise threatened or extant claim under the Equal Pay Legislation against local authority employers and/or employers engaged as at the date of this Contract or substantially engaged in the provision of services to local authority employers;

First Employee List

has the meaning given to it in paragraph 2.A.5;

Final Employee List

has the meaning given to it in paragraph 2.A.6;

Future Service Provider

has the meaning given to it in paragraph 2.A.13

Local Government Pension Scheme or LGPS

means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under Sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;

New Employee

means those new employees employed by the Contractor and/or any Sub-Contractor to provide the Interim Services or the Services (including any Relevant Employee) who will be working alongside the Transferring Employees;

Pay

the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a Transferring Employee receives either directly or indirectly in respect of his or her employment with the Authority;

Proposed Workforce	has the meaning set out in paragraph 2.A.8 (Workforce Information);
Relevant Employees	means the employees who are the subject of a Relevant Transfer;
Relevant Transfer	means a relevant transfer for the purposes of TUPE;
Remuneration Costs	has the meaning set out in paragraph 2.A.8 (Workforce Information);
Reorganisation Costs	has the meaning set out in paragraph 2.A.8 (Workforce Information);
Retendering Information	has the meaning set out in paragraph 2.A.16;
Returning Employees	has the meaning set out in paragraph 2.A.17;
Service Transfer Date	the transfer on a date agreed by the Parties to the Contractor of responsibility for provision of (or procuring the provision by Sub-Contractors of) the Interim Services or the Services in accordance with the Contract;
Transferring Employee	means an employee of the Authority (excluding without limitation any person engaged by the Authority as an independent contractor or persons employed by any subcontractor engaged by the Authority) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract between the Authority and the Contractor, a contract of employment with someone other than the Authority;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the Directive into English law.

2.A EMPLOYMENT MATTERS

2.A.1 Relevant Transfers

The Authority and the Contractor agree that the following events:

- (i) the occurrence of the Service Transfer Date; and
- (ii) where the identity of a provider (including the Authority) of any service which constitutes or which will constitute one of the Interim Service or Services is changed whether in anticipation of changes pursuant to this Contract or not,

shall constitute a Relevant Transfer and that the contracts of employment (together with any collective agreements) of any Relevant Employees shall have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those employees and the new provider except insofar as such contracts relate to any benefits for old age, invalidity or survivors under any occupational pension scheme (save as required under sections 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of this Contract) the Contractor shall procure that the former and any new sub-contractor shall comply with their obligations under TUPE.

2.A.2 Compliance by Authority

The Authority shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this Contract and the Contractor shall comply and shall procure that each Sub-Contractor shall comply with its/their obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and each of the Authority and the Contractor shall indemnify the other against any Direct Losses sustained as a result of any breach of this paragraph 2.A.2 by the Party in default.

2.A.3 Offer of Employment

2.A.3.1 If TUPE does not apply to any person who is an Authority Existing Employee, the Contractor shall offer to or shall procure the offer by the relevant Sub-Contractor to each and every such employee a new contract of employment commencing on the Service Transfer Date under which the terms and conditions including full continuity of employment shall not differ from those enjoyed immediately prior to the Service Transfer Date (except insofar as such terms and conditions relate to an occupational pension scheme) and the offer shall be in writing, shall be open to acceptance for a period of not less than ten (10) Business Days and shall be made:

- (i) not less than ten (10) Business Days before the Service Transfer Date, if it is believed that TUPE shall not apply to a person; or
- (ii) if it is believed that TUPE applies to a person but it is subsequently decided that TUPE does not so apply as soon as is practicable and in any event no later than ten (10) Business Days after that decision is known to the Contractor;

2.A.3.2 Where any offer as referred to in paragraph 2.A.3.1 is accepted, the Authority shall indemnify, and keep indemnified in full, the Contractor on the same terms and conditions as those set out in paragraph 2.A.11 as if there had been a Relevant Transfer in respect of each and every Authority Existing Employee who has accepted any such offer and the provisions of paragraphs 2.A.5 to 2.A.8 (inclusive) shall apply in the event of any resulting increase or decrease in the Remuneration Costs and Reorganisation Costs;

2.A.3.3 Where any such offer as referred to in paragraph 2.A.3.1 is accepted, the Contractor shall act, and shall procure that each relevant Sub-Contractor shall act in all respects as if TUPE had applied to each and every Authority

Existing Employee who has accepted any such offer and shall comply with paragraph 3 (Pensions) of this Contract in respect of each and every such employee who was immediately before the Service Transfer Date, an Authority Existing Employee;

2.A.3.4 Where any such offer as referred to in paragraph 2.A.3.1 is not accepted and TUPE does not apply, the Authority Existing Employee shall remain an employee of the Authority.

2.A.4 Emoluments and Outgoings

2.A.4.1 The Authority shall be responsible for or shall procure that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees/Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date, and the Authority shall be liable for or shall procure that any other employer of a Relevant Employee is liable for funding pension benefits accrued before a Relevant Employee's Service Transfer Date and shall be liable for any debt in respect of pension benefits incurred as a consequence of the cessation of a Relevant Employee's employment as at the Service Transfer Date, whether arising as a result of statute (including without limitation Section 75 of the Pensions Act 1995) or as a consequence of provisions within the relevant pension scheme's governing documentation or otherwise; and

2.A.4.2 the Contractor shall be responsible or shall procure that any relevant Sub-Contractor is responsible, for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Interim Services or the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Transfer Date, except that the Contractor and any relevant Sub-Contractor shall not be liable for funding pension benefits accrued before a Relevant Employee's Service Transfer Date and shall not be liable for any debt in respect of pension benefits incurred as a consequence of the cessation of a Relevant Employee's employment as at the Service Transfer Date, whether arising as a result of statute (including without limitation Section 75 of the Pensions Act 1995) or as a consequence of provisions within the relevant pension scheme's governing documentation or otherwise.

2.A.5 Employment Costs

The Authority has supplied to the Contractor the information, as at the date of this Contract contained in Appendix 1 to this Schedule 20 (the "First Employee List") regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of, and other matters affecting each of those employees of the Authority and of any sub-contractor of the Authority who it is expected, if they remain in the employment of the Authority or of any relevant sub-contractor of the Authority as the case may be until immediately before the Service Transfer

Date, would be Relevant Employees, but the Authority gives no warranty as to the accuracy or completeness of this information.

2.A.6 Final Employee List

The Authority shall supply to the Contractor an update of the First Employee List at three (3) monthly intervals from the date of this Agreement and an updated list ten (10) Business Days before the Service Transfer Date. The Authority shall also supply to the Contractor within five (5) Business Days after the Service Transfer Date information, which was correct as at the Service Transfer Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list is the Final Employee List and where there is more than one Service Transfer Date the Final Employee List means each list so prepared in respect of each Service and at each Service Transfer Date. The Authority gives and shall give no warranty as to the accuracy or completeness of any information contained in any update of the First Employee List or in the Final Employee List.

2.A.7 Without prejudice to paragraphs 2.A.5, 2.A.6 and 2.A.10 (Union Recognition) the Authority shall or shall procure if it has contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Authority shall:

- (a) provide the Employee Liability Information to the Contractor at such time or times as are required by TUPE; and
- (b) update the Employee Liability Information to take account of any changes as required by TUPE.

The Authority gives and shall give no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Authority or any of its relevant sub-contractors.

2.A.8 Workforce Information

The Contractor has provided to the Authority and the Authority has agreed the details set out in Appendix 1 (First Employee List and Workforce Information) of this Schedule 20 which shows in respect of each of the Interim Services or the Services, the following information:

- (i) the workforce which the Contractor proposes to establish to provide the Interim Services or the Services (the "Proposed Workforce") classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- (ii) the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Interim Services or the Services. These costs (the "Remuneration Costs") have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- (iii) the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation

which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce (including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment). These costs (the “Reorganisation Costs”) have been calculated by the Contractor and the Sub-Contractors on the basis of (amongst other things) the information contained in the First Employee List.

2.A.9 Adjustment of Reorganisation and Remuneration Costs

If at any time (including after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs are required to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to the remainder of this paragraph 2.A.9) there shall be a revision of the Unitary Charge to compensate for any difference:

If the circumstances described in paragraph 2.A.9 arise:

- (a) in circumstances where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the provision of Interim Services or the Services; and
- (b) the Contractor and the relevant Sub-Contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Unitary Charge shall be calculated as if they had done so.
- (c) In calculating any adjustment to be made to the Unitary Charge pursuant to this paragraph 2.A.9:
 - (i) no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after the Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;
 - (ii) to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be compensated as a result of any indexation of the Unitary Charge under this Contract;
 - (iii) to avoid doubt, any changes in costs which fall to be dealt with under this paragraph 2.A.9 and which arise from a Change in Law shall be dealt with in accordance with the provisions of this paragraph 2.A.9 and shall not be taken into account for the purposes of Clause 44 (Change in Law);

- (iv) no downwards adjustments under this paragraph 2.A.9 shall be made in respect of overpayments made by the Contractor (or a Sub-Contractor) to any Relevant Employees which arise from reliance on the Final Employee List to the extent that the Contractor (or the Sub-Contractor) is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;
 - (v) if there are underpayments by the Contractor or a Sub-Contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Unitary Charge in respect of all such liabilities of the Contractor or the Sub-Contractor or for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to the Service Transfer Date shall be dealt with in accordance with paragraph 2.A.4 or 2.A.12) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs; and
 - (vi) in order to prevent duplication, no adjustment shall be made under this paragraph 2.A.9 if any indemnity given by the Authority under any other provision of this Contract would apply.
- (iv) Either Party may propose an adjustment to Unitary Charge pursuant to paragraph 2.A.9 by giving not less than ten (10) Business Days notice to the other. Each Party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other Party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to this paragraph 2.A.9.
 - (v) In relation to all matters described in paragraphs 2.A.9(a), 2.A.9(b) and 2.A.9(c) the Contractor and the Authority shall, and the Contractor shall procure that the relevant Sub-Contractor shall, cooperate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.
 - (vi) The Authority shall and the Contractor shall, and shall procure that each Sub-Contractor shall, take all reasonable steps, including cooperation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the activities of the Authority (including the Interim Services or the Services) and to the employees who transfer.

2.A.10 Union Recognition

The Authority shall, and shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Authority shall, supply to

the Contractor no later than five (5) Business Days prior to the Service Transfer Date true copies of its trade union recognition agreement(s) and the Contractor shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE, recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor or) after the transfer to the same extent as they were recognised by the Authority or the relevant sub-contractor before the Service Transfer Date.

2.A.11 Replacement Sub-Contractor

The Contractor shall procure that, on each occasion on which a Sub-Contractor is replaced pursuant to this Contract, in the event that there is a Relevant Transfer, the new Sub-Contractor shall, in accordance with TUPE, recognise the trade unions representing the employees whose contracts of employment transfer to the new Sub-Contractor to the same extent as they were recognised before the appointment of the Sub-Contractor in respect of the provision of the Interim Services or the Services at the Authority's premises.

2.A.12 Indemnities

The Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Direct Losses incurred by the Contractor (or any relevant Sub-Contractor) in connection with or as a result of:

- (a) a breach by the Authority of its obligations under paragraph 2.A.4.1;
- (b) subject to paragraph 2.A.13 (Contractor Indemnities) any claim or demand by (i) any Transferring Employee or (ii) by any trade union or staff association or employee representative in respect of all or any of the Transferring Employees, in either case that arises out of the employment of any such Transferring Employee provided that this arises from any act, fault or omission of the Authority in relation to any such employee prior to the date of the Relevant Transfer including any act, fault or omission that leads to an Equal Pay Ruling;
- (c) where the costs of an Equal Pay Ruling are to be borne by the Authority pursuant to the provisions of paragraph 2.A.12(b) in respect of all future payments to the Transferring Employees and/or New Employees following the decision date then the Unitary Charge shall immediately be adjusted in respect of all such future payments to the Transferring Employees and/or New Employees by adding the costs of such Equal Pay Ruling to the Unitary Charge as are appropriate on an ongoing basis until the date of any benchmarking or Market Testing. For the avoidance of doubt, in respect of all payments relating to the period prior to the decision date the Authority shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Direct Losses incurred by the Contractor in connection with or as a result of or in connection with the Equal Pay Ruling.

- (d) where any liability in relation to any Transferring Employee, in respect of his or her employment by the Authority or its termination which transfers in whole or part in accordance with TUPE and/or the Directive arises partly as a result of any act or omission occurring on or before the Service Transfer Date and partly as a result of any act or omission occurring after the Service Transfer Date the Authority shall indemnify and keep indemnified in full the Contractor or the relevant Sub-Contractor against only such part of the Direct Losses sustained by the Contractor or any Sub-Contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before the relevant Service Transfer Date;
- (e) the provisions of Council Directives 77/187/EEC and 2001/23/EEC and any other applicable provision of law affecting the transfer of employees as a result of which transfer the Contractor or any Sub-Contractor has a liability to provide to any Transferring Employee a retirement benefit which is not old-age, invalidity or survivor's benefit,

and the indemnities contained in paragraphs 2.A.12(a) and 2.A.12(b) shall apply as if references in those paragraphs to any Transferring Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the Authority also included a reference to the relevant Third Party Contractor employer of the Relevant Employee prior to the Service Transfer Date to the extent that the Authority recovers any sum in respect of the subject matter of those indemnities under any indemnity or other legal entitlement it has against such Third Party Contractor. The Authority shall use all reasonable endeavours to recover any such sums under any such entitlement as mentioned in paragraphs 2.A.12(a) and 2.A.12(b).

2.A.13 Contractor Indemnities

The Contractor shall indemnify and keep indemnified in full, the Authority, and at the Authority's request each and every service provider who shall provide any service equivalent to any of the Interim Services or Services immediately after expiry or earlier termination of this Contract (a Future Service Provider) against:

- (a) all Direct Losses incurred by the Authority or any Future Service Provider in connection with, or as a result of, any claim or demand against the Authority or any Future Service Provider by (i) any person who is, or has been, employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Interim Services or the Services or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor after the Service Transfer Date but on or before the expiry or early termination of this Contract;
- (b) all Direct Losses incurred by the Authority or any Future Service Provider in connection with or as a result of a breach by the Contractor of its obligations under paragraph 2.A.4.2; and

- (c) all Direct Losses incurred by the Authority or any Future Service Provider in connection with, or as a result of, any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from, or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation to inform and consult such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Service Transfer Date;
- (d) The Contractor shall indemnify and keep indemnified in full the Authority, against all Direct Losses incurred by the Authority in connection with or as a result of:
 - (i) any claim by any Relevant Employee that any proposed or actual substantial change by the Contractor or any Sub-Contractor to the Relevant Employees' working conditions, or any proposed measures of the Contractor or the relevant Sub-Contractor are to that employee's detriment whether such claim arises before or after the Service Transfer Date; and
 - (ii) any claim arising out of any misrepresentation or misstatement whether negligent or otherwise made by the Contractor or a Sub-Contractor to the Relevant Employees or their representatives whether before, on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.

The indemnities in this paragraph 2.A.13 shall not apply in respect of any sum for which the Authority is to indemnify the Contractor or a relevant Sub-Contractor pursuant to paragraph 2.A.12 or as a result of any adjustment to the Unitary Charge in accordance with paragraph 2.A.9 or to the extent that the claim arises from a wrongful act or omission of the Authority or any Future Service Provider.

2.A.14 Provision of Details and Indemnity

The Contractor shall as soon as reasonably practicable and in any event within five (5) Business Days following a written request by the Authority, provide to the Authority details of any measures which the Contractor or any Sub-Contractor envisages it or they will take in relation to any employees who are or who will be the subject of a Relevant Transfer, and if there are no measures, confirmation of that fact, and shall indemnify the Authority against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.

2.A.15 Compliance with Code Obligations

The Authority and the Contractor shall comply with any code, guidance or statement of good practice introduced which replaces or addresses the same issues as the Code.

2.A.16 Retendering

2.A.16.1 The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) Months immediately preceding the expiry of this Contract or following the service of a Termination Notice or as a consequence of the Authority notifying the Contractor of its intention to retender this Contract:

- (a) on receiving a written request from the Authority provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Interim Services or the Services (the "Assigned Employees") full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor (or of any Sub-Contractor) until immediately before the Termination Date, would be Returning Employees (the "Retendering Information");
- (b) provide the Retendering Information promptly and at no cost to the Authority provided that the Contractor and Sub-Contractor shall not be required to provide Retendering Information any more regularly than once every three (3) months and in any case immediately prior to the expiry or earlier termination of this Contract;
- (c) notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed);
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed); and
- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Interim Services or the Services to provide the Interim Services or the Services (as the case maybe) save with the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

2.A.16.2 The Contractor shall, and shall keep indemnified in full, the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Contractor (or Sub-

Contractor) failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority, with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in, or omission, from the Retendering Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Authority and was materially inaccurate or incomplete when provided.

2.A.17 Termination of Contract

2.A.17.1 On the expiry or earlier termination of this Contract, the Authority and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Interim services or the Services but the position shall be determined in accordance with the law at the date of expiry or termination as the case may be and this paragraph 2.A.17 is without prejudice to such determination.

2.A.17.2 For the purposes of this paragraph 2.A.17 "Returning Employees" shall mean those employees wholly or mainly engaged in the provision of the Interim Services or the Services as the case may be immediately before the expiry or termination of this Contract whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon expiry or earlier termination of this Contract for whatever reason (such date being termed the "Return Date"), the provisions of this paragraph 2.A.17 will apply.

- (a) the Contractor shall, or shall procure that, all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor or any Sub-Contractor who had been engaged in the provision of the Interim Services or the Services and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor (or Sub-Contractor) up to the Return Date are satisfied;
- (b) without prejudice to paragraph 2.A.17.2(a):
 - (i) the Contractor shall remain (and procure that any Sub-Contractor shall remain) responsible for all the Contractor's (or Sub-Contractor's) employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever, whether arising before, on or after the Return Date by or on behalf of any of the Contractor's or Sub-Contractors' employees who do not constitute the Returning Employees.
 - (ii) the Authority shall ensure or shall procure that all wages, salaries and other benefits of the Returning Employees (who had been engaged in the provision

of the Interim Services or the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees on and after the Return Date are satisfied;

- (iii) in respect of those employees who constitute Returning Employees, the Contractor shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period after the relevant Service Transfer Date but on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor (or any Sub-Contractor) to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Authority or any Future Service Provider;
- (iv) the Authority shall be entitled to assign the benefit of this indemnity to any Future Service Provider.

2.A.17.3 The Authority shall indemnify the Contractor (for itself and for the benefit of each relevant Sub-Contractor) in respect of those employees who constitute Returning Employees against all Direct Losses incurred by the Contractor or any relevant Sub-Contractor in connection with or as a result of any failure by the Authority or any Future Service Provider to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact so apply save to the extent that any such failure arises as a result of any act or omission of the Contractor or any relevant Sub-Contractor.

2.A.17.4 The Authority shall indemnify and keep indemnified in full the Contractor against all Direct Losses incurred by the Contractor in connection with or as a result of:

- (vii) any claim by any Returning Employee that any proposed or actual substantial change by the Authority or any Future Service Provider to the Returning Employee's working conditions, or any proposed measures of the Authority or the relevant Future Service Provider are to that Returning Employee's detriment whether such claim arises before on or after the Return Date; and
- (viii) any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Authority or Future Service Provider to the Returning Employees or their representatives whether before, on or after the termination of this

Contract and whether liability for any such claim arises before on or after the Return Date.

2.A.18 Offer of Employment on Expiry or Termination

If TUPE does not apply on the expiry or earlier termination of this Agreement, the Authority shall procure that each Future Service Provider (including the Authority) shall offer employment to the persons employed by the Contractor or a Sub-Contractor in the provision of the Interim Services or the Services immediately before the Return Date.

- (a) If an offer of employment is made in accordance with this paragraph 2.A.18, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with paragraph 3 (Pensions)) as applied immediately before the expiry or earlier termination of this Agreement including full continuity of employment, except that the Authority or Future Service Provider may, at its absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of paragraph 2.A.16;
- (b) Where any such offer as referred to in paragraph 2.A.18(a) is accepted, the Contractor shall indemnify and keep indemnified in full the Authority and/or any Future Service Provider on the same terms and conditions as those set out in paragraph 2.A.13 as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this paragraph 2.A.18 each and every such employee shall be treated as if they were a Returning Employee;
- (c) Where any offer as referred to in paragraph 2.A.18(a) is not accepted and TUPE does not apply, the relevant employee shall remain an employee of the Contractor or Sub-Contractor as appropriate, subject to termination of employment by the Contractor or Sub-Contractor.

2.A.19 Sub-Contractors

In the event that the Contractor enters into any Sub-Contract in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this paragraph 2A, paragraph 2 (Pensions) and Clause 37 (Contractor Employees) and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of, or in connection with, any failure on the part of the Contractor to comply with such terms.

2. PENSIONS

2.1 No Employee Transfer

The Authority undertakes to the Contractor that no Relevant Employees are or will be employed by the Authority or by Kingston or any existing third

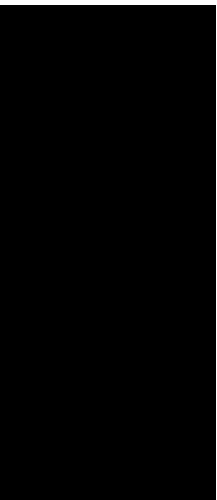
party contractor to the Authority or Kingston or by any sub-contractor of any such contractor who are or will be, or who are or will be eligible to be, prior to the Relevant Transfer which applies to such Relevant Employees, members of the Local Government Pension Scheme (“LGPS”). The Authority shall indemnify and keep indemnified in full the Contractor for itself and for the benefit of each relevant Sub-Contractor from and against the cost of providing all and any pension, retirement, disability and death benefits under the LGPS (including, without limitation, any other liability to the LGPS) to or in respect of any such Relevant Employees following a Relevant Transfer in excess of the cost to the Contractor (or any Sub-Contractor) of the benefits which the Contractor or, as the case may be, Sub-Contractor would have provided for such Relevant Employees had the Relevant Employees not been members of LGPS. In this clause, “Kingston” means the Royal Borough of Kingston upon Thames.

2.2 Co-operation on Termination

On the termination or expiry of this Contract (for whatever reason) for a reasonable period both before and after such termination, the Contractor undertakes to co-operate fully with the Authority (and any successor which provides to the Authority services in the nature of any of or any part of the Interim Services or the Services) in order to achieve a smooth transfer of the ongoing pension liabilities for future service whereby any employee transferring to such successor are at the time of the transfer provided with pension benefits for service after such termination which are broadly similar to or better than those with which they were provided under this Contract, subject to the requirements of TUPE, the Transfer of Employment (Pension Protection) Regulations 2005 and any relevant government guidance.

3.A NOT USED

SCHEDULE 20
EMPLOYMENT AND PENSIONS
APPENDIX 1
FIRST EMPLOYEE LIST AND WORKFORCE INFORMATION



SCHEDULE 20
EMPLOYMENT AND PENSIONS
APPENDIX 2
NOT USED

**SCHEDULE 20
EMPLOYMENT AND PENSIONS**

APPENDIX 3

NOT USED

SCHEDULE 20
EMPLOYMENT AND PENSIONS
APPENDIX 4
NOT USED

SCHEDULE 21

CHANGE PROTOCOL

PART 1

GENERAL PROVISIONS

1. DEFINITIONS

In each part of this Schedule 21, the following expressions (in addition to those specified in Schedule 1 (Definitions)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Agreed Abatement means:

- (a) in the case of a Low Value Change twenty pounds (£20) Indexed;
- (b) in the case of a Medium Value Change fifty pounds (£50) Indexed; and
- (c) in the case of a High Value Change and/or a Planning Change eighty pounds (£80) Indexed;

Approval Criteria means the criteria against which any Contractor Stage 2 Response will be evaluated by the Authority (which must be capable of objective assessment) and which will be specified by the Authority in the Authority Change Notice and which shall be based on:

- (a) compliance with the Authority's specifications for the Change;
- (b) evidencing value for money in terms of development of the final price of a Change under this Schedule 21(Change Protocol);
- (c) affordability to the Authority provided that the Authority shall not be entitled to claim that a Qualifying Change in Law is not affordable; and
- (d) compliance with all relevant Legislation, Guidance and Consents;

and such Approval Criteria shall be reasonable and achievable taking into account Good Industry Practice and the scope and price of the required High Value Change;

Authority Change	means a Change that is initiated by the Authority by submitting an Authority Change Notice to the Contractor;
Authority Change Notice	means a written notice submitted by the Authority requiring a Change and setting out the information specified in the relevant paragraph of this Change Protocol;
Authority Initial Confirmation	has the meaning given in paragraph 2.3 of Part 4 (High Value Changes and/or Planning Changes);
Authority Stage 1 Confirmation	has the meaning given in paragraph 3.2(a) of Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol;
Authority Stage 2 Confirmation	has the meaning given in paragraph 6.1(a) of Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol;
Benchmarking Process	means the process set out in paragraph 8 of Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol;
Benchmarking Report	means the report produced by the Contractor in accordance with the requirements of paragraph 8 of Part 4 (High Value Changes and/or Planning Changes) (which shall, for the avoidance of doubt, include the information required by paragraph 8.2 of Part 4 (High Value Change and/or Planning Changes) of this Change Protocol;
Change	means: <ul style="list-style-type: none">(a) any change, variation, extension or reduction in:<ul style="list-style-type: none">(i) the Initial Waste Transfer Station Works requested a maximum of twenty five (25) Business Days following the commencement of such Works; and/or(ii) the Waste Transfer Station Refurbishment Works; and/or(iii) the Interim Services; and/or(iv) the Services,requested by the Contractor; and/or(b) any change, variation, extension or reduction in:

- (i) the Initial Waste Transfer Station Works requested a maximum of twenty five (25) Business Days following the commencement of such Works; and/or
 - (ii) the Waste Transfer Station Refurbishment Works; and/or
 - (iii) the Interim Services; and/or
 - (iv) the Services,
requested by the Authority; and/or
- (c) a Planning Change; and/or
 - (d) any Change deemed to be an Authority Change by virtue of an express provision of the Contract.

For the avoidance of doubt, nothing in this Schedule 21 (Change Protocol) shall permit the Authority to request any change, variation, extension or reduction in the Key Facility except in relation to a Planning Change or a Qualifying Change in Law.

Change Notice	means an Authority Change Notice and/or Contractor Change Notice as the context shall require;
Change in Project Costs	means a fixed and final price for carrying out the relevant Change;
Change Protocol	means the protocol for agreeing Changes as set out in this Schedule 21 (Change Protocol);
Confirmation Notice	means a written notice issued by the Authority pursuant to the relevant provision of this Change Protocol setting out the agreed details of the Change, including the agreed cost, method of payment and the times of its implementation;
Contractor Change	means a Change that is initiated by the Contractor by submitting a Contractor Change Notice to the Authority;
Contractor Change Notice	means a written notice submitted by the Contractor requesting a Change and setting out the information required by the relevant paragraph of this Change Protocol;
Contractor Initial Response	means the written response of the Contractor referred to in paragraph 2.1 of Part 4 (High Value Changes and/or Planning Changes) of this

Change Protocol;

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

Contractor Stage 1 Response shall have the meaning given in paragraph 2.5 of Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol;

Contractor Stage 2 Response shall have the meaning given in paragraph 4.1 of Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol;

Dispute Resolution Procedure means the procedure set out in Schedule 22 (Dispute Resolution) of the Contract;

High Value Change means a Change which, in the reasonable opinion of the Authority, is likely to cost more than [REDACTED] (Indexed) to implement;

Independent Technical Advisor means a person who:

- (a) is independent of the Authority or any Contractor Related Party;
- (b) has not less than five (5) years experience in PFI funded projects (and/or equivalent PPP projects);
- (c) has expertise in pricing works and/or services of the type required by the relevant High Value Change / Planning Change; and
- (d) has relevant experience in the waste PPP/PFI management sector,

provided always that in respect of any High Value Change/Planning Change which shall take place during the Works Period, the Parties shall appoint the Independent Certifier to carry out this role;

Insurance Broker means the person who at the relevant time is required to provide the broker's letter of undertaking in the form set out in part 5 of Schedule 10 (Required Insurances);

Low Value Change means:

- (a) works or a series of related works of a minor nature, having a cost, in the

reasonable opinion of the Authority, not exceeding [REDACTED] (Indexed); or

- (b) any change to the Waste Transfer Station, having an individual cost, or series of changes to the Waste Transfer Station having an aggregate cost, in the reasonable opinion of the Authority, not exceeding [REDACTED] (Indexed) and which change, either by itself or when aggregated with any other change(s) to the Waste Transfer Station, does not affect achievement of the Key Facility Planned Service Commencement Date; or
- (c) any change or amendment (or series of related changes or amendments, and whether temporary or permanent) of the Interim Services or the Services or any of them where the cost, in the reasonable opinion of the Authority, of the implementation does not exceed [REDACTED] (Indexed); or
- (d) provision of plant or equipment by the Contractor, the cost of which (including installation) in respect of an individual item of plant or equipment or a series of items, in the reasonable opinion of the Authority, does not exceed [REDACTED] (Indexed) and which, either by itself or when aggregated with the provision of any other plant or equipment, does not affect achievement of the Key Facility Planned Service Commencement Date;

Low Value Change Request	means a request for a Low Value Change in the form set out in Appendix 3 (Low Value Change Request) to this Change Protocol;
Medium Value Change	means a Change, which is not a Low Value Change, and which, in the reasonable opinion of the Authority, is likely to cost less than [REDACTED] (Indexed) to implement;
Planning Change	any change, variation or extension to the Key Facility and or the Services required pursuant to paragraph 3.1.8(a) of Schedule 26 (Planning);
Project Management	means a fee in respect of project management

Fee	services calculated in accordance with paragraph 2.4 of Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol;
Reference Price	means a high level price calculated by the Independent Technical Advisor which is his estimate of the cost of implementing a proposed High Value Change and which shall include and show separately the information specified in paragraph 10.3 of 4 (High Value Changes) of this Change Protocol;
Tendering Report	means a report prepared by the Contractor which shall include the information required by paragraph 7.5 of Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol;
Third Party Costs	means the costs incurred by a third party which shall include but not be limited to any sub-contractor, consultant or advisor;
Whole Life Cost	means, in relation to any High Value Change, the estimated and (to the extent that such information is available) the actual cost of operating and maintaining such High Value Change over its intended design life (consistent with the Contractor Response).

2. LIMITS ON CHANGES

2.1 Neither Party may propose or be obliged to implement a Change:

- (i) which requires the Interim Services or the Services to be performed or the Works carried out in a way that infringes any Legislation or Guidance or is inconsistent with Good Industry Practice;
- (ii) which would cause any Consent to be revoked (or a new Consent required to implement the relevant Change to be unobtainable);
- (iii) which would materially and adversely affect the Contractor's ability to deliver the Interim Services or the Services or the Works carried out (except for that part of the Service or the Works which has been specified as requiring to be amended in the Change Notice) in a manner not compensated pursuant to this Change Protocol;
- (iv) which would materially and adversely affect the health and safety of any person;
- (v) which would require the Contractor to implement the Change in an unreasonable period of time;
- (vi) which would (if implemented) materially and adversely change the nature of the Project (including its risk profile); and/or

- (vii) whereby the Authority does not have the legal power or capacity to require the implementation of such Change.

2.2 The Contractor may, within:

- (a) ten (10) Business Days of receipt of an Authority Change Notice in respect of a Low Value Change; or
- (b) twenty (20) Business Days of receipt of an Authority Change Notice in respect of a Medium Value Change; or
- (c) thirty (30) Business Days of receipt of an Authority Change Notice in respect of a High Value Change or a Planning Change;

state in writing whether it objects to the Authority Change Notice on any of the grounds set out in paragraph 2.1. The Authority shall, within ten (10) Business Days of receipt of such notice provide written confirmation that either:

- (i) the Authority Change Notice is withdrawn (and where the Change was required as a result of a Qualifying Change in Law, the Authority shall submit a new Authority Change Notice); or
- (ii) the objection by the Contractor shall be referred for determination in accordance with the Dispute Resolution Procedure.

2.3 In the event that the Authority requires an Authority Change to the Waste Transfer Station Works or a Planning Change, then the Authority shall, with the Authority Change Notice, submit a confirmation that the Change required by the Authority is necessary and that, in the event that the Contractor cannot obtain funding pursuant to paragraph 4 of this Part 1, the Authority will fund such Change.

2.4 For the avoidance of doubt, the Authority has an absolute discretion to accept or reject any Contractor Change unless such Change is required as a result of a Qualifying Change in Law.

2A. CONSENTS FOR AUTHORITY CHANGES

2A.1. The Parties agree that where the implementation of any Authority Change involves a requirement for the Contractor to obtain new Consents or the modification of existing Consents, the following overriding principles shall apply to the development and implementation of the relevant Change:

- (a) the Parties shall from time to time (as may be necessary) agree the estimated costs (if any) or (as may be appropriate) the revised estimated costs likely to be incurred in obtaining the relevant new Consents or the modification of the existing Consents and in relation to such relevant Change;
- (b) the Authority shall be entitled to withdraw that Change at any time on the basis that the estimated costs (or revised estimated costs as may be appropriate) are too high subject to payment of any costs already incurred in accordance with paragraph (d);
- (c) the Contractor shall not be obliged to proceed with that Change (including the preparation of any Contractor Stage 1 Response or Contractor Stage 2 Response) if at any time, there is no agreement on costs;
- (d) the relevant Change shall establish a longstop date for obtaining of the relevant new Consents or the modification of the existing Consents and a definition of a satisfactory consent;
- (e) the Contractor shall be obliged to use all reasonable endeavours to obtain a satisfactory consent or the modification of the existing Consents by the longstop date. All reasonable endeavours having the same meaning as All Reasonable Endeavours in Schedules 26 (Planning);
- (f) subject to compliance with paragraph (c) and provided that the Parties have agreed an estimate of such costs in accordance with paragraph (a), any additional costs and expenses (or any required modifications to the Change) arising from any delay in obtaining the relevant new Consent or the modification or any existing Consent or any deviation in the terms of the relevant Consent from the assumed terms shall be for the account of the Authority;

the Contractor shall not be required to implement the relevant Change in the event that, despite using reasonable endeavours the satisfactory Consents or the modification of the existing Consents cannot be obtained.

2A.2. This paragraph 2A (Consents for Authority Changes) shall not apply to Contractor Changes (in respect of which Consents are a Contractor risk).

3. CHANGE PROCESS

3.1 Either Party may serve a Change Notice proposing a Change and such Change Notice shall be processed in accordance with the following sections of this Change Protocol:

- (i) an Authority Change to the Waste Transfer Station and/or the Interim Services or the Services which is a Low Value Change shall

be processed in accordance with Part 2 (Low Value Changes) of this Change Protocol;

- (ii) an Authority Change to the Waste Transfer Station and/or the Interim Services or the Services which is a Medium Value Change shall be processed in accordance with Part 3 (Medium Value Changes) of this Change Protocol;
- (iii) an Authority Change to the Waste Transfer Station and/or the Interim services or the Services which is a High Value Change shall be processed in accordance with Part 4 (High Value Changes) of this Change Protocol;
- (iv) a Planning Change shall be processed in accordance with Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol;
- (v) a Contractor Change to the Waste Transfer Station and/or the Interim Services or the Services shall be processed in accordance with Part 5 of this Change Protocol;
- (vi) a Qualifying Change in Law which is to be applied in accordance with Clause 44 and this Schedule 21 (Change Protocol) shall be addressed in the appropriate section of this schedule according to the likely capital value of the Qualifying Change in Law.

3.2 For the avoidance of doubt, the Authority shall not be entitled to request a change to the Key Facility unless such Change is a Planning Change or is required in order to comply with a Qualifying Change in Law.

4. FUNDING

- 4.1 In the case of a Medium Value Change or a High Value Change (including in any case Changes which arise from a Qualifying Change in Law), or a Planning Change, the Authority may request in the Authority Change Notice that the Contractor shall use its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to the Authority. Where a Qualifying Change in Law occurs then the Contractor shall provide the loan rate as set out in Clause 44.3 in respect of any intra group loan obtained for the benefit of the Authority.
- 4.2 If the Contractor has used its reasonable endeavours to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within forty (40) Business Days of the date that the Authority issued an Authority Change Notice making such request the Contractor shall inform the Authority in writing of what funding (if any) it has managed / may be able to obtain. The Contractor shall have no obligation to carry out the Authority Change, which shall be deemed to be withdrawn, unless the Authority confirms in writing within twenty (20) Business Days of receipt of such notice by the Contractor, that it will pay the Capital Expenditure for which funding is not available.
- 4.3 The Authority may, at any time notify the Contractor in writing that it will meet all or, to the extent the Contractor has obtained funding for part of the Capital Expenditure, the remaining part of the Capital Expenditure.

4.4 For the avoidance of doubt, subject to Clause 44 (Change in Law), the Authority shall pay the Capital Expenditure incurred in carrying out any Low Value Change required by the Authority.

4.5 In the case of a Contractor Change, any funding shall (unless otherwise agreed) be provided by the Contractor except to the extent a Qualifying Change in Law applies in which case the provisions of Clause 44 (Change in Law) shall apply.

5. DUE DILIGENCE

The Contractor shall promptly notify the Insurance Broker of any material Change (materiality being judged in relation to the size and nature of the scope of the Change and any necessary authorisation obtained).

6. IMPLEMENTATION

6.1 Where the Authority has issued a Confirmation Notice in respect of a Change:

- (i) where applicable, the Parties shall execute any deed of amendment to this Contract;
- (ii) the Contractor shall promptly implement any Change within the timescales set out in the Confirmation Notice and shall do so in a manner which minimises, so far as is reasonably practicable, any inconvenience to the Authority;
- (iii) the Contractor shall notify the Authority when it believes the Change has been completed;
- (iv) the Unitary Charge shall be revised in accordance with Schedule 19 (Revision of Base Case and Custody).

6.2 No amendments of this Contract shall be made as a result of a Low Value Change, unless otherwise agreed between the Parties (acting reasonably).

6.3 If the Contractor does not:

- (i) respond to a Low Value Change Request, an Authority Change Notice (in the case of a High Value Change either at Stage 1 or Stage 2); or
- (ii) complete or implement the Change within the specified timescales,

then the Unitary Charge shall be abated at the rate of the Agreed Abatement for every day of delay from the date the Contractor Response should have been submitted or the Change should have been completed or implemented until the date the Contractor Response is submitted or the Change is completed or implemented (as the case may be), provided that the operation of this paragraph will be the sole financial remedy of the Authority, and without prejudice to the Authority's rights under Clause 68 (Compensation on Termination for Contractor Default), in respect of such non-compliance, and provided further that this paragraph will not apply where the cause of such non-compliance was the act or omission of the Authority or an Authority Related Party.

6.4 All Changes shall be implemented under the terms of this Contract and in particular all provisions applying to the Waste Transfer Station Works shall apply to the carrying out of any additional works or changes to the Waste Transfer Station Works.

6.5 The Contractor shall keep a record of all Changes (both completed and outstanding) and provide the Authority with these records whenever reasonably required by the Authority.

7. NOT USED

8. PAYMENT

8.1 The Authority shall pay the Contractor the agreed cost for carrying out or implementing any Authority Change:

- (i) which is a Low Value Change, in accordance with paragraph 5 (Payment) of Part 2 (Low Value Changes); or
- (ii) which is a Medium Value Change or a High Value Change or a Planning Change either by way of:
 - (i) an adjustment to the Unitary Charge, by incorporating the Change in Project Costs in accordance with Schedule 19 (Revision of Base Case); or
 - (ii) in accordance with paragraph 8.2, within twenty (20) Business Days of receipt of an invoice submitted by the Contractor for the agreed amount;

the means of payment shall be agreed by the Parties acting reasonably.

8.2 Where the Authority agrees to pay any Change in Project Costs which arises in relation to the Waste Transfer Station Works, a Planning Change, a Qualifying Change in Law or any Capital Expenditure incurred in carrying out a Change:

- (i) the Authority and Contractor shall agree:
 - (i) a payment schedule in respect of the payment of the Capital Expenditure or such Change in Project Costs reflecting the amount and timing of the costs to be incurred by the Contractor in carrying out the Authority Change, to the extent borne by the Authority; and

- (ii) where payment for part of the Authority Change reflects the carrying out of, or specific progress towards, an element within the Authority Change, an objective means of providing evidence confirming that the part of the Authority Change corresponding to each occasion when payment is due under the payment schedule has been duly carried out,

and such payment schedule and evidence shall be determined in accordance with the Dispute Resolution Procedure in the event of the Authority and Contractor failing to agree its terms;

- (ii) the Authority shall make a payment to the Contractor within twenty (20) Business Days of receipt by the Authority of invoices presented to the Authority (complete in all material respects) in accordance with the agreed payment schedule (as may be varied by agreement from time to time) accompanied by the relevant evidence (where applicable) that the relevant part of the Authority Change has been carried out; and
- (iii) if payment is not made in accordance with paragraph 8.2(b), the Authority shall pay interest at the Prescribed Rate to the Contractor on the amount unpaid from the date twenty (20) Business Days after receipt of the relevant invoice until the date of payment.

8.3 Not Used.

8.4 Notwithstanding any other provision of this Change Protocol:

- (a) the provisions of Schedule 19 (Revision of Base Case and Custody) shall apply to ensure that the Contractor is in a no better no worse position as defined therein and in relation to the principles of Third Party Income and nothing in this Schedule 21 (Change Protocol) nor in any estimate or cost calculated herein shall take precedence over the principles of Schedule 19 (Revision of Base Case and Custody);
- (b) the provisions of Clause 44 (Change in Law) and Schedule 19 (Revision of Base Case and Custody) shall apply to the payment of any costs incurred or any savings made in carrying out or implementing any change which is required as a result of a Qualifying Change in Law.

9. QUALIFYING CHANGES IN LAW

9.1 Where a change resulting from a Qualifying Change in Law is referred to this Change Protocol through the application of Clause 44 (Change in Law), the provisions relating to an Authority Change in this Change Protocol shall apply save that:

- (a) notwithstanding anything to the contrary elsewhere in this Schedule 21 (Change Protocol), the Authority Change relating to the Qualifying Change in Law may not be withdrawn by the Authority;
- (b) the provisions of Clause 44.2 shall be taken into account and shall apply to the Contractor Response (Medium Value Changes) or the Contractor Stage 2 Response (High Value Changes);

- (c) the provisions of Clause 44 (and the Contractor's Share) shall apply to funding of any Capital Expenditure; and
- (d) changes to the Key Facility may be requested by the Authority in order to comply with a Qualifying Change in Law.

10. **DISPUTES**

Any dispute arising in respect of this Change Protocol will be resolved in accordance with the Dispute Resolution Procedure.

SCHEDULE 21
CHANGE PROTOCOL
PART 2
LOW VALUE CHANGES

1. NOTIFICATION AND SPECIFICATION

- 1.1 Subject to paragraphs 2, 3, 4.4, 6, 8, 9 and 10 of Part 1 (General Provisions), the Contractor shall carry out any Low Value Change requested by the Authority.
- 1.2 If a Low Value Change is required by the Authority, it shall submit to the Contractor a Low Value Change Request.

2. CONTRACTOR RESPONSE

- 2.1 Within ten (10) Business Days of receipt of the Low Value Change Request, the Contractor shall in writing (having regard to paragraphs 2.2, 2.3 and 2.4) provide a fixed price for implementing the required Low Value Change which shall be calculated in accordance with paragraph 2.2 of this Part 2 of this Change Protocol together with a period for completion or implementation.
- 2.2 The cost of implementing any Low Value Change shall be calculated on the basis that:
- (a) wherever reasonably practicable the Contractor shall procure that such works are carried out by an existing on-site and suitably qualified employee of the Contractor or a Sub-Contractor and no labour element shall be charged to the Authority in respect of such works. Where it is not reasonably practicable for the Low Value Change to be carried out by an existing on-site and suitably qualified employee of the Contractor or a Sub-Contractor (without overtime being payable), the cost of the labour element shall be calculated on the basis of market prices available to the Contractor at the time; and
 - (b) the materials element shall be charged at the cost of materials to the Contractor or to the Sub-Contractor carrying out the work (net of all discounts) and there shall be no management fee, margin, overhead, contingency or other cost applied to such costs; and
 - (c) in respect of Low Value Changes to:
 - i the Initial Waste Transfer Works where such change is requested within twenty five (25) Business Days following the commencement of such Works; or

ii the Waste Transfer Station Refurbishment Works,

the Contractor shall procure that any Low Value Changes are carried out by the relevant Sub-Contractor and the Contractor shall be entitled to recover from the Authority any reasonably and properly incurred Third Party Costs charged by the a Sub-Contractor to the Contractor carrying out the works.

2.3 The Contractor shall make no additional charge to the Authority for processing, implementing or managing a Low Value Change over and above that set out in paragraph 2.2 above unless the number of Low Value Changes in any Contract Year exceeds six (6). Any Low Value Changes in excess of this limit, shall be charged at a fee to be agreed between the Parties (acting reasonably and without any undue delay) at the time for each subsequent Change.

2.4 The Authority may, within five (5) Business Days of receipt, object in writing to the Contractor's response given pursuant to paragraph 2.1 of this Part 2 of this Change Protocol and in such circumstances the Parties shall act reasonably to agree, as soon as practicable, how the Low Value Change is to be priced and/or implemented. If the Parties cannot agree the Low Value Change, the Authority may withdraw the Low Value Change Request or either Party may refer the matter to the Dispute Resolution Procedure in which case paragraph 4.3 of this Part 2 of this Change Protocol shall apply.

3. **NOT USED**

4. **IMPLEMENTATION**

4.1 If the Authority has not objected pursuant to paragraph 2.4 of this Part 2 of this Change Protocol within ten (10) Business Days of its receipt of the Low Value Change Request, the Contractor shall implement the required Low Value Change within the period specified in the Contractor Response or within such other period agreed between the Parties (acting reasonably).

4.2 The Contractor shall implement the required Low Value Change so as to minimise any inconvenience to the Authority and shall notify the Authority when it believes the Low Value Change has been completed.

4.3 Paragraph 6 of Part 1 of this Change Protocol shall apply and any dispute pursuant to this Part 2 of this Change Protocol may be referred by either party to the Dispute Resolution Procedure provided that the Contractor shall, where such dispute concerns the cost of the Low Value Change and if instructed so to do by the Authority, carry out or implement the Low Value Change within the prescribed timescales notwithstanding the dispute.

5. **PAYMENT**

5.1 Following the implementation of a Low Value Change, the Contractor shall include the costs of any Low Value Change in the next payment report pursuant to Clause 45.2.1 of the Contract following completion or implementation of the relevant Low Value Change and the Authority shall pay such agreed costs as part of the following monthly Unitary Charge unless paragraph 5.2 applies.

- 5.2 No adjustment of the Unitary Charge shall be made as a result of any Low Value Change unless agreed between the Parties. Where it is agreed that an adjustment of the Unitary Charge is required, the Base Case shall be adjusted to give effect to such Low Value Changes once each Contract Year and all relevant Low Value Changes that have occurred in the preceding Contract Year shall be aggregated together into a single cumulative adjustment and the adjustment as set out in Schedule 19 (Revision of Base Case and Custody).
- 5.3 Paragraph 4.4 of Part 1 (General Provisions) shall apply to any Capital Expenditure.

SCHEDULE 21

CHANGE PROTOCOL

PART 3

MEDIUM VALUE CHANGES

1. NOTIFICATION AND SPECIFICATION

- 1.1 Subject to the provisions of Part 1 (General Provisions) of this Change Protocol, if a Medium Value Change is required by the Authority, it shall serve an Authority Change Notice on the Contractor.
- 1.2 The Authority Change Notice shall, where applicable, include, but not be limited to, the following information:
- (i) a statement that it is a Medium Value Change and whether or not the Change is required as a result of a Qualifying Change in Law;
 - (ii) a description of any works (or change to the Waste Transfer Station Works) required in sufficient detail to allow the design and pricing of the Medium Value Change by the Contractor;
 - (iii) whether, in respect of any additional works, the Contractor is expected to provide maintenance and lifecycle services in respect of such additional works;
 - (iv) the location for the works or services required;
 - (v) the timing of the works or services required together with any adjustments required to any fixed dates in the Contract;
 - (vi) in respect of additional or varied services or works, a description of such service or works or variation to the Service or Waste Transfer Station Works (as appropriate) together with the anticipated date of implementation of the variation or commencement of the new service or works (as appropriate) in sufficient detail to allow the pricing of the Medium Value Change by the Contractor;
 - (vii) either confirmation that the Authority will fund the Medium Value Change itself and its proposals for payment (whether in stages or otherwise) or a request that the Contractor raises finance for the Authority Change as required by paragraph 8.1 (Payment) of Part 1 of this Change Protocol; and
 - (viii) the date by which the Contractor shall provide the Contractor Response to the Authority (which shall be appropriate to the complexity of the Change required and shall not be less than ten (10) Business Days (or forty (40) Business Days if the Authority requests that the Contractor obtain funding of the Capital Expenditure under paragraph 4.1 of Part 1) from the date of the Authority Change Notice).

2. **CONTRACTOR RESPONSE**

2.1 Subject to paragraph 2 (Limits on Changes) of Part 1 (General Provisions) of this Change Protocol, within the period specified in the Authority Change Notice (or such other period as the Parties may agree), the Contractor shall provide the Authority with a Contractor Response which shall include (where applicable) the following information:

- (i) a detailed programme for the design, Authority review of the design, construction and/or installation of the Medium Value Change relating to Waste Transfer Station Works (including the procuring of any Consents). For the avoidance of doubt, the Authority shall not be permitted to comment upon any design element relating the Key Facility which may be required in respect of a Qualifying Change in Law;
- (ii) a detailed programme for commissioning and implementing any change in, or addition to the Interim Services or the Services, including the provision and/or training of any staff;
- (iii) the proposed method of certification of any construction or operational aspects of the Medium Value Change if not covered by the procedures set out in this Contract.
- (iv) the proposed consultants, sub-contractors and suppliers the Contractor intends to appoint to process the Medium Value Change;
- (v) details of any impact of the Medium Value Change on the carrying out of the Waste Transfer Station Works or the provision of the Interim Services or the Services and in particular, details of any relief from compliance with any obligations of this Contract required during the implementation of the Medium Value Change;
- (vi) any Estimated Change in Project Costs that result from the Medium Value Change, taking into account any Capital Expenditure that is required or no longer required as a result of the Medium Value Change;
- (vii) where the Authority has specified in the Authority Change Notice that the Contractor shall raise finance for the Authority Change, the steps the Contractor has or will take to secure such finance;
- (viii) any loss of or increase in third party revenue (including third-party income) that may result from the Medium Value Change;
- (ix) an estimate of any Third Party Costs and the details of the third-party activity that will be incurred in providing the Contractor Response together with a proposed process for approval of such costs by the Authority before they are incurred; and
- (x) any amendment to this Contract or any Project Document required as a result of the Medium Value Change.

2.2 The value of any Medium Value Change (including any professional fees) shall be calculated by reference to fair, reasonable and comparable market rates.

Agreement of Contractor Response

- 2.3 As soon as practicable and in any event no later than ten (10) Business Days after the Authority receives the Contractor Response, the Parties shall discuss and endeavour to agree the issues set out in the Contractor Response, and the Contractor shall:
- (i) provide evidence that the Contractor has used reasonable endeavours (including, where reasonably practicable, and without prejudice to the provisions of paragraph 7 (Competitive Tendering) of Part 4 (High Value Changes and/or Planning Changes) of this Change Protocol, (the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
 - (ii) demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, reasonably foreseeable Changes in Law at that time would be taken into account by the Contractor; and
 - (iii) demonstrate that any expenditure that has been avoided, which was anticipated to be incurred that has been affected by the Authority Change, has been taken into account in the Estimated Change in Project Costs.
- 2.4 If the Contractor fails to provide the information required by paragraph 2.1 of this Part 3 of this Change Protocol or satisfy the provisions of paragraphs 2.3(a) - 2.3(c) (inclusive) of this Part 3 of this Change Protocol the Authority may (in writing) reject the Contractor Response, in which event the Parties shall meet within ten (10) Business Days of the notice of rejection to discuss the reason for the Authority's rejection of the Contractor Response. The Contractor shall act in good faith and diligently to address the Authority's concerns about the quality and content of the Contractor Response. In particular, the Contractor shall provide any additional information or documentation that the Authority shall reasonably require which relates to the contents of the Authority Change Notice and/or the Contractor Response and/or the information required by paragraphs 2.3(a) - 2.3(c) (inclusive) of this Part 3 of this Change Protocol. The Authority may require the Contractor to resubmit the Contractor Response amended to take account of, and address, the Authority's concerns and the Contractor shall submit such revised Contractor Response within twenty (20) Business Days of such request.
- 2.5 If the Parties cannot agree on the contents of the Contractor Response (as may be amended pursuant to paragraph 2.4 of this Part 3 of this Change Protocol), then either Party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue an Authority Confirmation in respect of the disputed Medium Value Change.

Authority Confirmation

- 2.6 The Authority shall, in writing, either confirm or withdraw the Authority Change Notice or reject the Contractor Response and in the event that the Authority:

- (i) confirms the Authority Change Notice then the Authority shall issue a Confirmation Notice which shall set out the Change in Project Costs and agreed timescales for implementation and attach the agreed Contractor Response amended as agreed; or
- (ii) withdraws an Authority Change Notice, paragraph 2.8 of this Part 3 of this Change Protocol shall apply; or
- (iii) rejects the Contractors Response, paragraph 2.9 of this Part 3 of this Change Protocol shall apply.

2.7 If the Authority does not issue a written notice pursuant to paragraph 2.6 of this Part 3 of this Change Protocol within twenty (20) Business Days of the contents of the Contractor Response having been agreed in accordance with paragraph 2.4 of this Part 3 of this Change Protocol or determined pursuant to paragraph 2.5 of this Part 3 of this Change Protocol then the Authority Change Notice shall be deemed to have been withdrawn.

2.8 Where an Authority Change Notice is withdrawn pursuant to paragraph 2.6 of this Part 3 of this Change Protocol or deemed to have been withdrawn pursuant to paragraph 2.7 of this Part 3 of this Change Protocol or paragraph 4.2 (Funding) of Part 1 (General Provisions), the Authority shall pay to the Contractor the additional Third Party Costs reasonably and properly incurred by the Contractor in preparing such Contractor Response provided that:

- (i) the Contractor has acted reasonably in submitting a priced Contractor Response;
- (ii) the Contractor included in the Contractor Response a cost breakdown of the estimate of Third Party Costs to be incurred by the Contractor in preparing the Contractor Response and the Authority has, acting reasonably:
 - (i) approved such estimate of Third Party Costs and the type of third-party prior to any Third Party Costs being incurred; and
 - (ii) agreed that, given the nature of the proposed Medium Value Change, it was reasonable for the relevant third-party to incur costs in preparing the Contractor Response on the basis of the extent of the proposed Medium Value Change and the work required in submitting an accurate Contractor Response in compliance with this Change Protocol;
 - (iii) been provided with such evidence as it may reasonably require in order to verify such Third Party Costs; and
 - (iv) confirmed that no capped or fixed fee given by the Contractor (whether in the Contractor Response or otherwise) in respect of any Third-Party Cost has been exceeded.

2.9 The Authority shall not be responsible for payment of any costs incurred by the Contractor in preparing the Contractor Response where the Authority has

rejected the Contractor Response on the grounds of material non-compliance with the requirements of this Change Protocol.

3. DUE DILIGENCE

The provisions of paragraph 5 (Due Diligence) of Part 1 (General Provisions) of this Change Protocol shall apply.

4. IMPLEMENTATION

4.1 The provisions of paragraph 6 of Part 1 (General Provisions) of this Change Protocol shall apply.

4.2 Where the Medium Value Change:

- (i) is implemented at the Waste Transfer Station at a reasonable period before the Acceptance Tests for the Initial Waste Transfer Station Works are completed and constitutes additional or varied Initial Waste Transfer Station Works, the procedure set out at Clause 21 (Completion of the Works) shall apply to the Waste Transfer Station Works which are subject to the Medium Value Change at the same time as the Waste Transfer Station is subject to that procedure.
- (ii) is implemented at the Waste Transfer Station and constitutes works, the procedure set out and agreed in the Contractor Response for certifying the completion of the Medium Value Change shall apply to determine whether the Medium Value Change has been completed appropriately;
- (iii) constitutes additional or varied Interim Services or Services, the Interim Payment Mechanism or Payment Mechanism (as the case may be) shall apply to determine whether the Medium Value Change has been properly implemented.

5. PAYMENT

The provisions of paragraph 8 of Part 1 (General Provisions) of this Change Protocol shall apply.

6. CHANGE IN LAW

Where the Medium Value Change process set out herein is required to be followed where a Qualifying Change in Law occurs then references to Waste Transfer Station Works shall be deemed to be references to Key Facility Works where the context so requires.

**SCHEDULE 21
CHANGE PROTOCOL**

PART 4

HIGH VALUE CHANGES AND/OR PLANNING CHANGES

1. NOTIFICATION AND SPECIFICATION

1.1 The Authority and the Contractor shall co-operate and collaborate to ensure that each Party has early notification of the prospect of a High Value Change and/or a Planning Change. Without prejudice to paragraph 1.2 of this Part 4 of this Change Protocol, the Authority shall involve the Contractor as early as is practicable in the specification of the High Value Change and/or a Planning Change to ensure that the developed specifications reflect input from the Contractor and/or the relevant Contractor Parties.

1.1A Notwithstanding any other provision of this Schedule 21 (Change Protocol), the provisions of paragraph 3.3 of Schedule 26 (Planning) shall apply to the agreement between the Parties of any Revised Project Plan.

1.2 Subject to the provisions of Part 1 (General Provisions) of this Change Protocol and provided that the Authority shall have no input into any design element of the Key Facility which may require variation following a Planning Change or the occurrence of a Qualifying Change in Law, the Authority may, at any time, issue an Authority Change Notice which shall state:

- (i) that it is a High Value Change and whether it is required as a result of a Qualifying Change in Law; or
- (ii) that the High Value Change and/or a Planning Change shall be valued either
 - iii by means of valuation by the Competitive Tendering Process; or
 - iv by means of the Benchmarking Process and whether input should be obtained from an independent reputable source; or
 - v by means of valuation by an Independent Technical Adviser;
- (iii) if applicable, affordability thresholds for the proposed works or services comprising the relevant High Value Change and/or a Planning Change;
- (iv) if applicable, an output specification of any proposed works, in the same format and with similar detail as that provided in the Works Requirements wherever possible, and where not possible, in sufficient detail to allow the design and pricing of a solution to the High Value Change and/or a Planning Change;

- (v) if applicable, a specification of the proposed services (or any change to the Services), in the same format with similar detail as that provided in the Service Requirements wherever possible and, where not possible, in sufficient detail to allow the pricing of the required works and/or additional services (or change to a Service);
- (vi) the location for the works or services required;
- (vii) the timing of the works or services required;
- (viii) whether the Contractor is expected to provide maintenance and/or lifecycle services in respect of any additional works;
- (ix) an outline risk allocation matrix setting out the Authority's preferred risk profile in respect of the High Value Change and/or a Planning Change;
- (x) a time period for submission of the Contractor Stage 1 Response which shall be reasonable, taking into account the complexity of the High Value Change and/or a Planning Change and, in any event, shall not be less than sixty (60) Business Days from the date of the issue of the Authority Change Notice; and
- (xi) in the event that the Authority Change will require Capital Expenditure, whether the Authority intends to pay the Capital Expenditure involved in implementing the Change and its proposals for payment (whether in stages or otherwise) or whether the Authority requires the Contractor to use its reasonable efforts to obtain funding in accordance with paragraph 4 (Funding) of Part 1 (General Provisions) of this Change Protocol.

2. CONTRACTOR INITIAL RESPONSE

- 2.1 Subject to paragraph 2 (Limits on Changes) of Part 1 (General Provisions) within ten (10) (Business Days) of receipt of the Authority Change Notice the Contractor shall provide the Authority with a Contractor Initial Response which shall comprise:
- (i) an indication of the Estimated Change in Project Costs that will result from the implementation of the Authority Change
 - (ii) the Third Party Costs as a firm or capped sum;
 - (iii) the details of the third-party activity that will be incurred in providing (and discussing with the Authority) the Contractor Stage 1 Response;
 - (iv) where applicable pursuant to paragraph 5 (Due Diligence) of Part 1 (General Provisions), (the anticipated cost of the insurers carrying out due diligence) (which shall be capped or a firm sum); and
 - (v) the Project Management Fee which shall be a capped sum, calculated in accordance with paragraph 2.4 that will be incurred in providing (and discussing with the Authority) the Contractor Stage 1 Response.

- 2.2 The Authority shall consider in good faith the Contractor Initial Response. If the Authority finds that any material aspects of the Contractor Initial Response are unsatisfactory, it shall notify the Contractor of the same, giving reasons, and offer reasonable assistance to the Contractor to enable it to address such deficiencies and resubmit the Contractor Initial Response as soon as reasonably practicable.
- 2.3 The Authority shall, within ten (10) Business Days of receipt of the Contractor Initial Response (as may be amended pursuant to paragraph 2.2), confirm in writing (an “Authority Initial Confirmation”) to the Contractor that either:
- (i) the Contractor should proceed with developing a Contractor Stage 1 Response and the Authority shall confirm in the Authority Initial Confirmation:
 - (i) the agreed Project Management Fee in relation to the development of the Contractor Stage 1 Response and a reasonable period within which to discuss the same with the Authority pursuant to paragraph 3.1;
 - (ii) the agreed Third Party Costs in relation to the development of the Contractor Stage 1 Response and a reasonable period within which to discuss the same with the Authority pursuant to paragraph 3.1; and
 - (iii) the agreed date by which the Contractor Stage 1 Response shall be submitted which date shall reflect the complexity of the High Value Change and, where not agreed by the Parties (each acting reasonably) shall be not more than sixty (60) Business Days from the date of the Authority Initial Confirmation; or
 - (iv) subject to paragraph 2.3A below, the Authority withdraws the Authority Change Notice.
- 2.3A Notwithstanding paragraph 2.3(a) above, the Authority shall not be permitted to withdraw an Authority Change Notice in respect of a Planning Change.
- 2.4 The Contractor may charge a Project Management Fee for the time incurred by its employees or the employees of the Construction Sub-Contractor in project managing the development, procurement and implementation of the High Value Change. The Project Management Fee shall:
- (i) be based on actual time spent (validated by timesheet records);
 - (ii) be calculated at daily rates demonstrated by the Contractor and/or the Construction Sub-Contractor to be reasonable market rates but capped at the sum set out in the Contractor Authority Stage 1 Confirmation;
 - (iii) not include the time of any person who is not an employee of the Contractor or the Construction Sub-Contractor;
 - (iv) not include any mark-up or profit cost or additional overheads;

- (v) where the fee relates to employees of the Construction Sub-Contractor, not include any further or additional fee from the Contractor in relation to the same tasks; and
- (vi) be paid in two stages as follows:
 - (i) on the Authority issuing an Authority Stage 1 Confirmation pursuant to paragraph 3.2; and
 - (ii) on the Authority issuing an Authority Stage 2 Confirmation pursuant to paragraph 6.1 (a) or withdrawing the High Value Change pursuant to paragraph 6.1(b),

and at each stage, the Contractor shall charge (subject to the applicable cap) only for the time incurred by its staff or the Construction Sub-Contractor's staff up to completion of that stage.

2.5 Subject to paragraph 2 of Part 1 (Limits on Changes) of this Change Protocol, within the period specified in the Authority Initial Confirmation (or if no time is specified within thirty (30) Business Days) the Contractor shall submit a report (a "Contractor Stage 1 Response"), which shall (where applicable) include, but not be limited to, the following information which shall contain sufficient detail to enable the Authority to make an informed decision pursuant to paragraph 3 and shall take account of the Authority's affordability thresholds set out in the Authority Change Notice:

- (i) an outline programme for implementation of the Change including time periods for design development, Authority review of the design, anticipated dates of any applications for Consents (including planning applications) and time periods for the provision and training of staff;
- (ii) a broad indication of the impact of carrying out and implementing of the High Value Change and/or a Planning Change on the provision of the Waste Transfer Station Works and/or the Services and in particular whether relief from compliance with any obligations set out in this Contract is likely to be required, including the obligations of the Contractor to meet the performance regime during the implementation of the High Value Change and/or a Planning Change;
- (iii) an outline of the Estimated Change in Project Costs that will result from implementing the High Value Change and/or a Planning Change, taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change and/or a Planning Change;
- (iv) any Capital Expenditure that is required or no longer required as a result of the High Value Change and where the Authority has specified in the Authority Change Notice that the Contractor shall use its reasonable endeavours to raise financing for the Authority Change, the steps the Contractor has or will take to secure such financing;

- (v) an estimate of any loss of, or increase in, third-party revenues that may result from the High Value Change and/or a Planning Change;
- (vi) the proposed Project Management Fee to develop a Contractor Stage 2 Response which shall be a capped fee calculated in accordance with paragraph 2.4 of this Part 4 of this Change Protocol;
- (vii) a budget (or budgets) together with a capped or fixed fee (subject to reasonably necessary assumptions) for Third Party Costs and details of the third party activity likely to be incurred by the Contractor, such as, third party advice, the carrying out of surveys, obtaining Consents, together with a proposed process for approval of such costs by the Authority before they are incurred;
- (viii) a summary of any amendments required to this Contract or any Ancillary Document as a result of the Change;
- (ix) excluding in respect of Planning Changes or a Change required to implement a Qualifying Change in Law, a value for money assessment explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost; and
- (x) an estimate of the time period required by the Contractor to develop a Contractor Stage 2 Response for the High Value Change should the Authority notify the Contractor pursuant to paragraph 3.2(a) of its requirements for a Contractor Stage 2 Response.

2.6 In preparing the outline Estimated Change in Project Costs, including the calculation of any Capital Expenditure, the Contractor shall, as specified by the Authority in the Authority Change Notice) either comply with the:

- (i) provisions of paragraph 7 of this Part 4 of this Change Protocol if the Competitive Tendering Process is to apply;
- (ii) provisions of paragraph 8 of this Part 4 of this Change Protocol if the Benchmarking Process is to apply; or
- (iii) provisions of paragraph 9 of this Part 4 of this Change Protocol if an Independent Technical Advisor has been or will be appointed.

2.7 The Contractor shall ensure that the performance risk involved in implementing the High Value Change and/or a Planning Change and any interface risks involved in linking new facilities or services with the Facilities and/or the Services are reflected (depending on the risk profile of the High Value Change and/or a Planning Change) in the Estimated Change in Project Costs and not priced separately over and above the Estimated Change in Project Costs. The Contractor shall not include any separate charge or fee payable to the Contractor or any sub-contractor of the Contractor in the costs included in the Estimated Change in Project Costs.

2.8 In developing a Contractor Stage 1 Response the Contractor shall liaise with the Authority. The Authority shall provide to the Contractor such information as to its requirements as the Contractor may reasonably require

and in respect of Waste Transfer Station Works only, shall assist the Contractor in the review of any draft designs in relation to the Contractor Stage 1 Report. Any and all information and other input or feedback provided by the Authority to the Contractor shall, unless expressly stated otherwise by the Authority, be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.

3. AUTHORITY STAGE 1 CONFIRMATION

3.1 The Authority shall consider in good faith, the Contractor Stage 1 Response. If the Authority finds that any material aspects of the Contractor Stage 1 Response are unsatisfactory to it, it shall notify the Contractor of the same and offer reasonable assistance to the Contractor to enable it to address such deficiencies and resubmit the Contractor Stage 1 Response as soon as reasonably practicable.

3.2 The Authority shall, within thirty (30) Business Days (or such longer period as the Parties may agree) of receipt of the Contractor Stage 1 Response (as may be amended pursuant to paragraph 3.1 of this Part 4 of this Change Protocol), confirm in writing to the Contractor that either:

(i) the Contractor should proceed with developing a Contractor Stage 2 Response and shall confirm the agreed Project Management Fee, specify the Approval Criteria and set out the date by which the Contractor Stage 2 Response shall be submitted (which date shall reflect the complexity of the High Value Change and/or a Planning Change and shall not be less than sixty (60) Business Days) (an "Authority Stage 1 Confirmation"); or

(ii) the Authority withdraws the Authority Change Notice (and paragraph 3.3 shall apply),

and in the event the Authority does not give such written confirmation within the specific time period then the Authority Change Notice shall be deemed withdrawn and paragraph 3.3 shall apply.

3.3 The Authority shall pay the Contractor the Project Management Fee and the Third Party Costs as submitted to the Authority in accordance with paragraph 2.5(g) above) within twenty (20) Business Days of receipt of an invoice for the agreed sum submitted by the Contractor.

4. CONTRACTOR STAGE 2 RESPONSE

4.1 Within the time period specified in the Authority Stage 1 Confirmation (or if no time period is specified within sixty (60) Business Days of receipt of the Authority Stage 1 Confirmation), the Contractor shall submit a report (a Contractor Stage 2 Response) which shall where applicable, include but not be limited to the following information:

(i) where applicable in relation to the Waste Transfer Station a detailed design solution (at the minimum to RIBA Stage D);

(ii) the proposed consultants, sub-contractors and suppliers which the Contractor intends to appoint to process the High Value Change and/or a Planning Change;

- (iii) details of any Consents required in order to implement the High Value Change and/or a Planning Change;
- (iv) details of any impact (stoppage or changes) on the carrying out of the Works and/or the provision of the Services and in particular whether (and what) relief from compliance with obligations set out in this Contract is required, including the obligations to meet the performance regime during the implementation of the High Value Change and/or a Planning Change and the duration of such relief;
- (v) the proposed method of certification of any construction or operational aspects of the High Value Change if not covered by the procedures in this Contract;
- (vi) a detailed timetable for implementation of the High Value Change and/or a Planning Change including details of revised Key Dates and an Expiry Date (so as to ensure, subject to procurement requirements, that the Contractor is provided with a twenty-five year operating phase);
- (vii) any surveys and investigations and associated reports that are reasonably necessary to ascertain (in relation to a High Value Change and/or a Planning Change which involves the construction of additional buildings) information as to the nature, location and condition of the relevant land (including hydrological, geological, geotechnical and sub-surface conditions (where relevant)) together with information relating to archaeological finds, areas of archaeological, scientific or natural interest and (in relation to the refurbishment of any existing buildings) information on the condition and quality of existing structures and, in particular, the presence of any latent defects;
- (viii) a completed risk register showing the potential risks identified in relation to the delivery of the High Value Change and/or a Planning Change the occurrence of which are capable of adversely affecting the time for completion, cost and/or quality of the Project, the probability of such risks occurring and a financial estimate of the most likely consequences of each risk occurring together with the prioritisation of all continuing risks and an action plan in respect of, and risk owners for, all risks prioritised as serious risks;
- (ix) any approval required from the insurers together with details of the fixed or capped sum for the due diligence costs incurred or to be incurred in obtaining the same;
- (x) details of any Third Party Costs incurred in preparing the Contractor Stage 2 Response and/or to be incurred in implementing the High Value Change and/or a Planning Change together with details of Authority approvals given to sums already expended and confirmation that costs to be incurred are included in the Change in Project Costs;
- (xi) a draft deed of amendment setting out any amendment(s) required to this Contract and/or any Ancillary Document required as a result of the High Value Change and/or a Planning Change;

- (xii) the amount of any loss of or increase in third-party revenues (including third party income) that may result from the High Value Change and/or a Planning Change;
- (xiii) if requested by the Authority, details of any funding obtained and the adjustments required to the Unitary Charge together with a proposed revised financial model including the detailed price estimates;
- (xiv) a final Change in Project Costs that result from the High Value Change and/or a Planning Change, taking into account any Capital Expenditure that is required or no longer required as a result of the High Value Change and/or a Planning Change, all reasonable Third Party Costs incurred or likely to be incurred by the Contractor and any increase or decrease in operating costs and any loss of or increase in third-party revenue (including third party income) that results from the High Value Change and/or a Planning Change;
- (xv) evidence that the Contractor has used reasonable endeavours (including, where practicable, and without prejudice to the provisions of paragraph 7.4 of this Part 4 of this Change Protocol, the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
- (xvi) subject to Clause 44 (Change in Law), a demonstration of how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Contractor;
- (xvii) a demonstration that any expenditure that is reasonably likely to be or has been avoided, which was previously anticipated to be incurred but is reasonably likely to be or has been affected by the High Value Change and/or a Planning Change, has been taken into account in the Capital Expenditure and/or Estimated Change in Project Costs;
- (xviii) a value for money assessment of the Contractor's proposal explaining why the Contractor's proposals represent value for money taking into account both the proposed Capital Expenditure and Whole Life Cost. For the avoidance of doubt, the Authority shall not require the Contractor to justify why a High Value Change, a Planning Change or a Qualifying Change in Law itself should represent value for money; and
- (xix) an explanation (together with appropriate supporting evidence) as to why the Contractor Stage 2 Response meets the Approval Criteria provided that the Contractor shall not be required to demonstrate that a High Value Change, a Planning Change or a Qualifying Change in Law represents an affordable position for the Authority as compared to continuing the Project without the proposed change.

4.2 The Contractor shall also include in the Contractor Stage 2 Response the following information:

- (i) if the Authority specified in the Authority Change Notice that paragraph 7 of this Part 4 of this Change Protocol will apply, the Tendering Report;
- (ii) if the Authority specified in the Authority Change Notice that paragraph 8 of this Part 4 of this Change Protocol will apply, a Benchmarking Report demonstrating that the unit rates for construction, lifecycle and maintenance services used to calculate the Change in Project Costs fall within reasonable ranges compared to industry benchmarks obtained from a reputable, independent source (provided that appropriate confidentiality arrangements always apply in respect of the pricing and information provided by the Contractor and its Sub-Contractors); or
- (iii) if the Authority specified in the Authority Change Notice that paragraph 9 will apply, the Reference Price with details of how the Reference Price was used to calculate the Change in Project Costs and any comments made by the Independent Technical Adviser on the Change in Project Costs.

4.3 In developing a Contractor Stage 2 Response, the Contractor shall continue to liaise with the Authority.

4.4 Without prejudice to paragraph 4.3 of this Part 4 of this Change Protocol, the Authority shall co-operate with the Contractor in relation to any Contractor Stage 2 Response being developed by the Contractor, including (without limitation) promptly providing:

- (i) written confirmation of any change to the affordability thresholds and any amendment to the Authority's requirements both as set out in the Authority Change Notice;
- (ii) changes to funding which the Authority receives or to the way in which funding may be applied, either or both of which may affect whether a High Value Change and/or a Planning Change is affordable;
- (iii) any information reasonably required by the Contractor to enable the Contractor to submit a full and complete Contractor Stage 2 Response and any such other information as the Contractor may reasonably require and shall assist the Contractor in the review of any draft designs and in the development of other aspects of the Contractor Stage 2 Response (but not where this would involve the Authority incurring additional material expense); and
- (iv) reasonable assistance to the Contractor in relation to procurement by the Contractor of all relevant Consents

provided that any and all information and other input or feedback provided by the Authority to the Contractor shall be provided without warranty and shall be without prejudice to the Authority's rights under this Change Protocol.

4.5 The Contractor shall notify the Authority as soon as it becomes aware of any matter which may have a reasonably foreseeable material adverse effect on

the viability of any High Value Change and/or a Planning Change including any planning issues likely to cause a material delay in the anticipated programme for the High Value Change and/or a Planning Change or material cost increases.

5. AGREEMENT OF CONTRACTOR STAGE 2 RESPONSE

5.1 As soon as practicable and in any event not more than twenty (20) Business Days after the Authority receives the Contractor Stage 2 Response, the Parties shall discuss and endeavour to agree the issues set out in the Contractor Stage 2 Response. The Authority may require (and the Contractor shall provide) any further information that it reasonably requires to enable the Authority to evaluate the Contractor Stage 2 Response and, in particular, decide whether the Contractor Stage 2 Response meets the Approval Criteria. In particular, where so requested by the Authority the Contractor shall (to the extent not already provided in its Contractor Stage 2 Response) use reasonable endeavours to:

- (i) provide further evidence that the Contractor has used reasonable endeavours (including, where reasonably practicable (and without prejudice to the provisions of paragraph 5.4 of this Part 4 of this Change Protocol), the use of competitive quotes) to oblige sub-contractors and suppliers to minimise any increase in costs and maximise any reduction in costs;
- (ii) further demonstrate how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time would be taken into account by the Contractor; and
- (iii) further demonstrate that any expenditure that has been avoided or anticipated to be avoided, which was anticipated to be incurred that has been or is likely to be affected by the High Value Change and/or a Planning Change, has been taken into account in the Change in Project Costs,

and reply promptly and fully to all requests by the Authority for further information.

5.2 The Authority may modify the Authority Change Notice (which modification shall be in writing). The Contractor shall, as soon as practicable and in any event not more than ten (10) Business Days or such longer period as the Parties may agree after receipt of such modification (as is reasonable in all the circumstances and taking account of the nature of any such modifications), notify the Authority that either:

- (a) any such modification is sufficiently material as to amount to a new Authority Change Notice (and demonstrate why this is the case) or otherwise;
- (b) any consequential changes to the Contractor Stage 2 Response (which shall be deemed accordingly amended).

- 5.3 If acting reasonably, the Authority is of the view that any material aspect of the Contractor Stage 2 Response fails to meet the Approval Criteria, the Authority shall notify the Contractor of the same and shall specify in writing and explain to the Contractor in what respects the Contractor Stage 2 Response does not meet the Approval Criteria. The Contractor shall, within twenty (20) Business Days (or such other period as is agreed by the Parties) of such notification, revise and re-submit the Contractor Stage 2 Response.
- 5.4 If the Authority considers (acting reasonably) that the revised Contractor Stage 2 Response does not address the shortcomings notified by the Authority pursuant to paragraph 5.3 and the revised Contractor Stage 2 Response does not satisfy the Approval Criteria then paragraph 6.1(c) of this Part 4 of this Change Protocol shall apply.
- 5.5 If the Parties cannot agree on the contents of the Contractor Stage 2 Response, or if there is a disagreement over whether a Contractor Stage 2 Response meets the Approval Criteria then either Party may refer the dispute to the Dispute Resolution Procedure, provided that no determination shall oblige the Authority to issue a Stage 2 Confirmation in respect of the disputed High Value Change. If it is subsequently determined that the Approval Criteria has been met but the Authority has rejected the Contractor Stage 2 Response then the Authority shall pay the Project Management Fee together with any reasonable Third Party Costs incurred by the Contractor in preparing the Contractor Stage 2 Response (provided details of such costs were submitted to the Authority in accordance with paragraph 4.1(j) of this Part 4).

6. AUTHORITY STAGE 2 CONFIRMATION

- 6.1 As soon as reasonably practicable after the receipt of the Contractor Stage 2 Response or the revised Contractor Stage 2 Response (as the case may be) the Authority shall either:
- (i) issue written confirmation (an **Authority Stage 2 Confirmation**) and shall pay the Contractor the Project Management Fee due at Stage 2 together with any Third Party Costs reasonably and properly incurred by the Contractor (provided that details of such costs were submitted to the Authority in accordance with paragraph 4.1(j) of this Part 4) in preparing the Contractor Stage 2 Response, within twenty (20) Business Days of the date of issue of the Authority Stage 2 Confirmation or, if later, receipt of a valid invoice for the agreed amount; or
 - (ii) issue a written notice withdrawing the Authority Change Notice in which case the provisions of paragraph 6.3 of this Part 4 of this Change Protocol shall apply; or
 - (iii) issue a written notice rejecting the Contractor Stage 2 Response in which case (subject to paragraph 5.5 above) the Authority shall not be responsible for any costs incurred by the Contractor in preparing the Contractor Stage 2 Response (including any outstanding part of the Project Management Fee) provided that the Authority may only reject the Contractor Stage 2 Response on the grounds that the Contractor Stage 2 Response has materially failed to meet one or more of the Approval Criteria and further provided that where the

Approval Criteria is not met due to affordability concerns under a Planning Change then the parties shall pursue a Revised Project Plan in accordance with Schedule 26 (Planning).

- 6.2 If the Authority does not issue a written notice pursuant to paragraph 6.1 of this Part 4 of this Change Protocol within twenty (20) Business Days of receipt of a written notice served by the Contractor (which notice may only be served after expiry of a period of three (3) Months from the date the Authority receives the Contractor Stage 2 Response) requiring the Authority either to confirm the Contractor Stage 2 Response or withdraw the Authority Change Notice then the Authority Change Notice shall be deemed to have been withdrawn and the provisions of paragraph 6.3 below shall apply.
- 6.3 Where an Authority Change Notice is withdrawn pursuant to paragraph 6.1(b) of this Part 4 of this Change Protocol or deemed to have been withdrawn pursuant to paragraph 6.2 of this Part 4 of this Change Protocol, the Authority shall pay to the Contractor within twenty (20) Business Days of receipt of an invoice for such amount, the reasonable Third Party Costs incurred by the Contractor in preparing the Contractor Stage 2 Response together with the outstanding balance of the Project Management Fee provided that:
- (i) the Contractor has satisfied the Approval Criteria;
 - (ii) the Contractor has included in the Contractor Stage 1 Response a cost breakdown of the estimate of Third Party Costs to be incurred by the Contractor in preparing the Contractor Stage 2 Response and the Authority has (acting reasonably):
 - (i) approved such estimate of Third Party Costs and the type of third-party prior to any Third Party Costs being incurred;
 - (ii) agreed that, given the nature of the proposed High Value Change and/or a Planning Change, it was reasonable for the relevant third-party to incur costs in preparing the Contractor Stage 2 Response on the basis of the extent of the proposed High Value Change and/or a Planning Change and the work required in submitting an accurate Contractor Stage 2 Response in compliance with this Change Protocol;
 - (iii) been provided with such evidence as it may reasonably require in order to verify such Third Party Costs;
 - (iv) provided always that where a capped or fixed fee has been given by the Contractor (whether in the Contractor Stage 1 Response or otherwise) in respect of any Third Party Costs the Parties agree that the Authority will not be liable for such costs in excess of such capped or fixed fee unless otherwise agreed between the Parties.

7. COMPETITIVE TENDERING

- 7.1 Where this paragraph 7 applies, the Contractor shall, in preparing the Contractor Stage 2 Response, as far as practicable structure the works and/or services required by the High Value Change and/or a Planning Change

into a number of discrete work packages (which may include the procurement of items of equipment only or be labour only package of works), and shall invite at least three (3) competitive tenders for each work package provided that where the Contractor continues to work with the Construction Sub-Contractor (as at the Commencement Date) or a group company thereof in respect of a Planning Change or High Value Change, then the requirement to competitively tender work packages in accordance with this paragraph shall not apply.

7.2 The Contractor and the Authority shall agree:

- (i) the work packages to be priced through competitive tendering based on what is judged to provide best value for money;
- (ii) the evaluation criteria;
- (iii) any additional interface risks between the carrying out of any additional works and/or services by a third party, and/or carrying out of the Waste Transfer Station Works and/or the delivery of the Services; and
- (iv) that the preferred tenderer shall be selected on the basis of the most economically advantageous tender.

7.3 The Contractor shall be responsible for:

- (i) running the competition for the work packages;
- (ii) evaluating and selecting the preferred tenderers;
- (iii) negotiating and finalising appointment of the preferred tenderers; and
- (iv) managing the implementation of the works and services required as part of the High Value Change and/or a Planning Change,

provided that the Authority shall approve the preferred tenderer(s) acting reasonably within twenty (20) Business Days following the conclusion of the tendering process either appoint or object to the preferred tenderer(s) but no sub-contractor shall be appointed, until or unless, an Authority Stage 2 Confirmation is issued.

7.4 On conclusion of the tendering process, the Contractor shall submit with the Contractor Stage 2 Response a Tendering Report and the Change in Project Costs shall be based on the prices determined through the tendering process.

7.5 The Tendering Report shall include, but not be limited to, the following information.

- (i) details of the companies which were asked to tender for each work package, indicating whether a compliant bid was in fact submitted;
- (ii) the basis upon which each company was invited to tender including their appropriate experience and expertise;

- (iii) how details of how the evaluation process was carried out including the scoring for each tenderer;
- (iv) the basis of the recommendation of the successful tenderer for each work package;
- (v) confirmation that the tendered price is a fixed price which includes all costs, overheads, risks and contingencies and will not be liable to change or adjustment; and
- (vi) any other relevant information.

8. BENCHMARKING PROCESS

8.1 Where this paragraph 8 applies, the Contractor shall benchmark all construction, facilities management and lifecycle costs (including professional fees, contingencies, overheads and profit margins) using benchmarks available from a reputable independent source that is generally recognized in the industry.

8.2 The Contractor shall submit with the Contractor Stage 2 Response a detailed Benchmarking Report which shall set out details of how the benchmarking exercise was carried out and providing evidence that the construction costs, operating costs and financing costs (if any) included in the Change in Project Costs is supported by actual input from a reputable independent source as specified in the Authority Change Notice. In particular the Benchmarking Report shall include full supporting evidence of the assumptions, source of market price and information's and conclusions reached including:

- (i) the methodology and all assumptions by which the Estimated Change in Project Costs was determined;
- (ii) full details of sources of the information used including evidence as to reputation and independence of such sources;
- (iii) such other details as the parties may agree.

9. INDEPENDENT TECHNICAL ADVISER

Joint Appointment of Independent Technical Adviser

9.1 Where this paragraph 9 applies, upon issue of an Authority Change Notice or the Parties agreeing that an Authority Change Notice will shortly be issued in respect of a High Value Change and/or a Planning Change, the Authority and the Contractor shall jointly appoint an Independent Technical Adviser to assist in the processing of the High Value Change. The terms of reference for the Independent Technical Adviser shall include:

- (i) developing a Reference Price; and
- (ii) commenting on the Estimated Change in Project Costs and the Change in Project Costs.

9.2 Upon appointment of the Independent Technical Adviser (or if later, upon service of the Authority Change Notice pursuant to paragraph 1.2), the

Authority and the Contractor shall instruct the Independent Technical Adviser to develop a Reference Price.

- 9.3 The Independent Technical Adviser shall develop a Reference Price in consultation with the Contractor and the Authority. The Reference Price shall include (as applicable) all finance, design development, construction, lifecycle, maintenance and operating costs and savings (including professional fees and charges, overheads, profits and contingencies and explicitly including the pricing for any performance risks associated with implementing the change based on the outline risk allocation matrix included in the Authority Change Notice). The Parties agree that the Reference Price shall include the pricing of performance risk and that no separate Contractor mark up should be included in the Estimated Change in Project Costs or the Change in Project Costs.
- 9.4 The Independent Technical Adviser shall provide to the Contractor and the Authority the Reference Price. The Contractor shall use the Reference Price to produce the Estimated Change in Project Costs and, subsequently, the Change in Project Costs. The Independent Technical Adviser shall comment on the Estimated Change in Project Costs and the Change in Project Costs within the time periods to be agreed by the Contractor and the Authority and specified in the appointment of the Independent Technical Adviser.
- 9.5 The Authority shall be responsible for the payment of all fees payable to the Independent Technical Adviser. For the avoidance of doubt, any costs incurred by the Contractor pursuant to this paragraph 9 shall form part of the Project Management Fee or Third Party Costs and no additional sums shall be paid to the Contractor.

10. **FUNDING**

The provisions of paragraph 4 (Funding) of Part 1 (General Provisions) of this Change Protocol shall apply.

11. **DUE DILIGENCE**

The provisions of paragraph 5 (Due Diligence) of Part 1 (General Provisions) of this Change Protocol shall apply.

12. **IMPLEMENTATION**

The provisions of paragraph 6 (Implementation) of Part 1 (General Provisions) of this Change Protocol shall apply.

13. **PAYMENT**

The provisions of paragraph 7 (Payment) of Part 1 (General Provisions) of this Change Protocol shall apply.

14. **CHANGE IN LAW**

Where the High Value Change process set out herein is required to be followed where a Qualifying Change in Law occurs then references to Waste Transfer Station Works shall be deemed to be references to Key Facility Works where the context so requires.

SCHEDULE 21

CHANGE PROTOCOL

PART 5

CONTRACTOR CHANGES

1. If the Contractor wishes to introduce a Contractor Change, it shall serve a Contractor Change Notice on the Authority.
2. The Contractor Change Notice shall:
 - (i) set out the proposed Contractor Change in sufficient detail to enable the Authority to evaluate it in full;
 - (ii) specify whether the Contractor Change is:
 - (i) a Low Value Change;
 - (ii) a Medium Value Change;
 - (iii) a High Value Change; and/or
 - (iv) is required as a result of a Qualifying Change in Law;
 - (iii) specify the Contractor's reasons for proposing the Contractor Change;
 - (iv) indicate any implications of the Contractor Change;
 - (v) indicate what savings, if any, will be generated by the Contractor Change:
 - (i) whether a revision of the Unitary Charge is proposed (and, if so, give details of such proposed revision); or
 - (ii) whether such savings will be paid by a lump sum;
 - (vi) if the Contractor Change is required as a result of a Qualifying Change in Law, what sums, if any, will be payable by the Authority;
 - (vii) indicate if there are any critical dates by which a decision by the Authority is required;
 - (viii) indicate if all necessary consents have been obtained (or indicate the process for obtaining such consents) from the Insurance Brokers, to the extent required; and
 - (ix) request the Authority to consult with the Contractor with a view to deciding whether to agree to the Contractor Change and, if so, what consequential changes the Authority requires as a result.
3. The Authority shall evaluate the Contractor Change Notice in good faith, taking into account all relevant issues, including whether:

- (i) a revision of the Unitary Charge will occur;
 - (ii) the Contractor Change may affect the quality of the Services and/or the Waste Transfer Station Works or the likelihood of successful completion of the Waste Transfer Station Works and/or delivery of the Interim Services or the Services (or any of them);
 - (iii) the Contractor Change may interfere with the relationship of the Authority with third parties;
 - (iv) the financial strength of the Contractor is sufficient to perform the Interim Services or the Services after implementation of the Contractor Change;
 - (v) the value and/or life expectancy of any of the Waste Transfer Station and/or Assets is reduced; or
 - (vi) the Contractor Change materially affects the risks or costs to which the Authority is exposed.
4. If the Contractor Change causes, or will cause, the Contractor's costs or those of a sub-contractor to decrease, there shall be a decrease in the Unitary Charge such that any cost savings (following deduction of costs reasonably incurred by the Contractor in implementing such Contractor Change) shall be shared on the basis of fifty per cent (50%) of the saving being retained by the Contractor and fifty per cent (50%) of the saving being paid to the Authority.
5. As soon as practicable after receiving the Contractor Change Notice, the Parties shall meet and discuss the matters referred to in it. During discussions the Authority may propose modifications to, or accept or reject, the Contractor Change Notice except in relation to a Qualifying Change in Law.
6. If the Authority accepts the Contractor Change Notice (with or without modification) the Parties shall consult and agree the remaining details as soon as practicable and upon agreement of the Contractor Change, the Authority shall issue an Authority Confirmation which shall set out the agreed Contractor Change and:
- (i) the Parties shall enter into any documents to amend this Contract or any relevant Ancillary Document which are necessary to give effect to the Contractor Change;
 - (ii) if applicable, the Unitary Charge shall be revised in accordance with Schedule 19 (Revision of Base Case and Custody);
 - (iii) if applicable, the Contractor shall pay to the Authority a sum equal to the amount calculated in accordance paragraph 4 within twenty (20) Business Days of receipt of an invoice for such amount; and
 - (iv) the Contractor Change shall be implemented within the period specified by the Authority in its notice of acceptance.

7. If the Authority rejects the Contractor Change Notice, it shall not be obliged to give its reasons for such a rejection and the Contractor shall not be entitled to reimbursement by the Authority of any of its costs unless such Change is required as a result of a Qualifying Change in Law.
8. Unless the Authority Confirmation expressly agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a Contractor Change and, subject to Clause 44 (Change in Law), any funding shall be provided by the Contractor.
9. The Authority shall not reject a Contractor Change which is required in order to conform to a Qualifying Change in Law. The costs of introducing a Contractor Change resulting from a Qualifying Change in Law (including any resulting revision of the Unitary Charge) shall be dealt with in accordance with Clause 44 (Change in Law).
10. Where the Contractor Change process set out herein is followed where a Qualifying Change in Law occurs then references to Waste Transfer Station Works shall be deemed to be references to Key Facility Works where the context so requires.

APPENDIX 1

Not Used

APPENDIX 2

Not Used

APPENDIX 3
LOW VALUE CHANGE REQUEST

Low Value Change Request	Dated
To be completed by Authority Representative	
Change no:	
Brief description of the Change	
Qualifying Change in Law	
Budget for the Change	
Date for completion/implementation	
To be completed by Contractor Representative	
Confirmation of Price/Time (if applicable)	
cost of labour rates	
lifecycle cost (if appropriate)	
additional FM cost (if appropriate)	
plant/equipment costs (if appropriate)	
Total cost	

SCHEDULE 22

DISPUTE RESOLUTION PROCEDURE

1. DISPUTE

Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Schedule.

2. CONSULTATION

If a dispute arises in relation to any aspect of this Contract, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter. The Parties shall involve senior representatives (at senior director level) in any such consultations.

3. ADJUDICATION

Without prejudice to paragraph 2 above and any provision allowing for a dispute to be referred to an Expert in accordance with paragraph 11A (Reference to an Expert), either Party shall have the right to refer any dispute to adjudication and either Party may, at any time, give notice in writing of its intention to do so (hereinafter called a 'Notice of Adjudication'). The adjudicator shall be selected in accordance with paragraph 4 (Identity of Adjudicator) (the "Adjudicator").

4. IDENTITY OF ADJUDICATOR

The Adjudicator nominated to consider a dispute referred to him shall be selected (unless otherwise agreed by the Parties) by a relevant panel of experts appointed in accordance with the following:

- 4.1 there shall be two (2) panels of experts, one (1) in respect of construction matters (the "Construction Panel") and one (1) in respect of operational and maintenance matters (the "Operational Panel"). All the experts on each panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-Contractor and any of the major competitors of the Contractor or relevant Sub-Contractor;
- 4.2 the Construction Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place no later than twenty (20) Business Days of the date upon which the Contractor obtains a Satisfactory Planning Permission in accordance with Schedule 26 (Planning) or in the case of a Revised Project Plan being implemented, no later than twenty (20) Business Days of the date upon which the Contractor obtains a satisfactory planning permission as defined in accordance with the Revised Project Plan;
- 4.3 the Operational Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place prior to 1st April 2014;

- 4.4 if any member of a panel resigns during the term of this Contract, a replacement expert shall be appointed by the Contractor and the Authority as soon as practicable;
- 4.5 if the Authority and the Contractor are unable to agree on the identity of the experts to be appointed to the panels, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within twenty (20) Business Days of any application for such appointment by either Party.

4A. APPOINTMENT OF ADJUDICATOR

The Adjudicator (to be selected in accordance with paragraph 4 (Identity of Adjudicator)) is to be appointed in accordance with a timetable with the object of securing his appointment within seven (7) days of either Party serving a Notice of Adjudication, on the other, in accordance with paragraph 3 (Adjudication).

5 SUBMISSION OF ARGUMENTS

The Adjudicator shall require the Parties to submit in writing their respective arguments in accordance with the timetable proposed by the Adjudicator. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

6 ADJUDICATOR'S DECISION

6.1 The Adjudicator shall provide to both Parties his written decision on the dispute, within twenty-eight (28) days of the dispute first being referred to him.

6.2 The Adjudicator may extend the period of twenty-eight (28) days by up to fourteen (14) days with the consent of the Party by whom the dispute was referred or by agreement between the Parties.

6.3 The Adjudicator's decision shall be binding on both Parties until the dispute is finally determined by legal proceedings or by agreement.

7 ADJUDICATOR'S COSTS

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

8 ADJUDICATOR AS EXPERT

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

9 ADJUDICATOR'S POWERS

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

10 CONFIDENTIALITY

All information, data or documentation disclosed or delivered by a Party to the Adjudicator or to the other Party in consequence of or in connection with an Adjudication shall be treated as confidential. The Adjudicator or other Party shall not, save as permitted by Clause 84 (Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudication and/or the Adjudicator's work.

11 LIABILITY OF ADJUDICATOR

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is dishonest or in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

11A. REFERENCE TO AN EXPERT

Without prejudice to paragraph 2 above, if there is any dispute in respect of matters referred to in Clause 21.4 (Effect of issue of Test Certificate) either Party may refer this dispute to an Expert in accordance with this paragraph 11A and shall be so referred upon the giving of written notice to the other Party. The Expert shall be selected in accordance with paragraph 11B (Identity of Expert) (the "Expert").

11B. IDENTITY OF EXPERT

11B.1 The Expert shall be agreed between the parties or, in the absence of such agreement within fourteen (14) days from the serving of written notice under this Clause, shall be appointed by the Institute of Mechanical Engineers upon the application of either Party.

11B.2 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by paragraph 11D (Expert's Decision) then:

- (i) either party may apply to the Institute of Mechanical Engineers to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- (ii) this paragraph 11B.2 shall apply to the new Expert as if he were the first Expert appointed.

11C. SUBMISSION OF ARGUMENTS

Within five (5) Business Days of appointment of the Expert in relation to a particular dispute, the Parties will make submissions to the Expert unless the Expert determines an alternative timetable to which the Parties must adhere. The Parties shall afford the Expert all assistance reasonably required in deciding any dispute referred to him and shall provide him with any information and documentation that he may reasonably require.

11D. EXPERT'S DECISION

11D.1 The Expert is required to prepare a written decision (including reasoning) and give notice (including a copy) of the decision to the Parties within twenty-eight (28) days of the matter being referred to the Expert. The Expert's decision is not binding on either Party (except in relation to any determination under Clause 21.4 of the Contract, where the Expert's determination shall be final binding and enforceable upon the Parties other than in the case of fraud, collusion, bias or manifest error).

11D.2 Neither Party shall be entitled to suspend performance under the Contract by reason of the reference of a dispute to an Expert.

11E. EXPERT'S POWERS

11E.1 The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reached his determination.

11E.2 The Expert shall act impartially and may take the initiative in ascertaining the facts and the law. The Expert shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

11F. EXPERT'S COSTS

The Expert shall have power by his decision to fix the reasonable amount of his fees in connection therewith and they shall be borne in equal shares between the Parties. Each party shall bear its own costs in relation to the reference to the Expert.

11G. CONFIDENTIALITY

All information, data or documentation disclosed or delivered by a Party to the Expert or to the other Party in consequence of or in connection with his appointment as an Expert shall be treated as confidential. The Expert shall not, save as permitted by Clause 84 (Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the reference to an Expert and/or the Expert's work.

11H. LIABILITY OF EXPERT

The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is

dishonest or in bad faith. Any employee or agent of the Expert is similarly protected from liability.

12 COURT PROCEEDINGS

12.1 If any Party is dissatisfied with the Adjudicator's decision (made in accordance with paragraph 6 (Adjudicator's Decision)), or the decision of the Expert (made in accordance with paragraph 11D (Expert's Decision) other than in respect of any determination under Clause 21.4 of the Contract)), it may commence court proceedings for the determination of the dispute.

12.2 In relation to any proceedings commenced pursuant to paragraph 12.1:

- (a) no Party shall be limited in the proceedings before the Court to the evidence or arguments put before the Adjudicator or the Expert (as the case maybe);
- (b) the Adjudicator or the Expert (as the case maybe) shall not be called as a witness nor required to give evidence before the Court on any matter whatsoever;
- (c) any Party can request the Court to set aside or revise a direction by the Adjudicator in respect of payment by the Parties of the costs or fees of the Adjudicator (including payment of the Adjudicator's fees and expenses); and
- (d) neither Party may ask the Court to alter the amount of an Expert's fees as fixed, or their liability to pay those fees in equal shares, as provided for under paragraph 11F (Expert's Costs).

13. JURISDICTION AND ENFORCEMENT

Subject to the terms of this Schedule, the Parties agree that the Courts of England and Wales have exclusive jurisdiction to settle any dispute between them arising under for related to this Contract, and for such purposes irrevocably submit to the jurisdiction of the Courts of England and Wales.

SCHEDULE 23

COMMERCIALLY SENSITIVE INFORMATION

PART 1

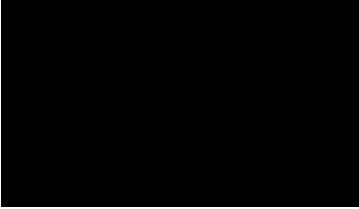
COMMERCIALLY SENSITIVE CONTRACTUAL PROVISIONS

Column 1 Commercially Sensitive Contractual Provisions	Commentary /Justification	Column 2 For period ending on date below
PROJECT AGREEMENT		
Clause 6A.5 (Parent Company Guarantee)	Criteria to be kept confidential until Notice to Proceed has passed under the EPC Contract as the Contractor is still in negotiations on PPP deals and therefore require guarantee criteria on this project to remain confidential. The figure of [REDACTED] should remain confidential for the Contract Period as that is commercially sensitive information.	Notice to Proceed under the EPC Contract Contract Period (including any period of extension)
Clause 6A.6 (Parent Company Guarantee)	Value of alternative security to be kept confidential as it is commercially sensitive information.	Contract Period (including any period of extension)
Clause 13.9 - the value of the Refurbishment Works and date for completion of the Refurbishment Works	Value of Refurbishment Works should be kept confidential	Contract Period (including any period of extension)
Clause 20.5 (Interim Services)	[REDACTED]	[REDACTED]

Schedule 23 – Commercially Sensitive Information

Clause 44.3 (Change Agreed)	Intra group loan rate to be kept confidential as it is commercially sensitive information.	Contract Period (including any period of extension)
Clause 44.4A (Authority Proportion)	Project specific calculation of Authority's Proportion is calculated to be kept confidential as it is commercially sensitive information.	Contract Period (including any period of extension)
Clause 44.8		Contract Period (including any period of extension)
Clause 52 (Refinancing)		Contract Period (including any period of extension)
Clause 55.5 (Required Insurances)	Figures and project specific amendments to be kept confidential	Contract Period (including any period of extension)
Clause 55.10 (Required Insurances)	Figure to be kept confidential	Contract Period (including any period of extension)
Clause 56.2-3 (Reinstatement)	Figures to be kept confidential	Contract Period (including any period of extension)
Clause 61.2.4 (Indemnities)	Cap on indemnity figure to be kept confidential.	Contract Period (including any period of extension)
Clause 62.7 (Maximum Liability)	Cap on liability figure to be kept confidential.	Contract Period (including any period of extension)
Clause 67.4 (Termination for Contractor Default)	Persistent breach triggers to be kept confidential.	Contract Period (including any period of extension)
Clause 69.6.1		Contract Period (including any period of extension)

Schedule 23 – Commercially Sensitive Information

		
Clause 81.9A (Replacement of Sub-Contractors)	Number of instances where sub-contractors may be replaced to be kept confidential	Contract Period (including any period of extension)
SCHEDULES to the PROJECT AGREEMENT		
Schedule 1 (Definitions)		
“Contractor Default”	Confidential to the extent they vary from WIDP	Contract Period (including any period of extension)
“Contractor’s Share”	The amount which the Contractor is responsible for where a Change in Law occurs is commercially sensitive information.	Contract Period (including any period of extension)
“Excluded Third Party Waste Contracts”	Confidential	Contract Period (including any period of extension)
“Interim Services”	Details of Interim Services to be kept confidential as these form part of a bespoke arrangement agreed between the Parties.	Contract Period (including any period of extension)
“Joint Insurance Account”	Details of account e.g. number, confidential	Contract Period (including any period of extension)
“Latest Service Element”	Confidential	Contract Period (including any period of extension)
“Market Tested Services”	Confidential	Contract Period (including any period of extension)
“Market Testing Review Dates”	Confidential	Until last review date has passed
“Off-Take Contracts”	Confidential	Contract Period (including any period of extension)
“Qualifying in Change in Law” limb (c)	Bespoke Change in Law arrangement agreed	Contract Period (including any period of extension)

Schedule 23 – Commercially Sensitive Information

	between the Parties to be treated as confidential.	
“Specific Change in Law” limb (d)	Limb (d) to this definition is a project specific amendment and is to be treated as confidential. Release of this information will allow competitors to work out details of the Contractor’s financial model.	Contract Period (including any period of extension)
“Target Landfill Tonnage”	Definition of how this target is calculated is specific to the solution and should be treated as confidential.	Contract Period (including any period of extension)
Schedule 2 (Authority’s Requirements) - non WIDP drafting to be kept confidential	The drafting surrounding the Contractor’s specific solution should be kept confidential.	Contract Period (including any period of extension)
Schedule 3 (Contractor’s Proposals)	Confidential	Contract Period (including any period of extension)
Schedule 4 (Payment Mechanism)	Confidential	Contract Period (including any period of extension)
Schedule 8 (Key Dates) Longstop Dates only	The Contractor is concerned that objectors may use information about Longstop Dates in the Contract to drag out proceedings etc and frustrate the Contract. This has been the Contractor’s experience on other deals.	Until all Longstop Dates, including any revision to a Longstop Date agreed between the Parties, have passed.
Schedule 10 (Required Insurances)	Non WIDP drafting to be treated as confidential	Contract Period (including any period of extension)
Schedule 11 (Tests)	Confidential	Five years from the Key Facility Services Commencement Date
Schedule 12 (Independent Certifier Deed of Appointment)	Confidential	Contract Period (including any period of extension)
Schedule 16 (Reporting Requirements)	The bespoke reporting arrangements agreed under this Contract should be kept	Contract Period (including any period of extension)

Schedule 23 – Commercially Sensitive Information

	confidential	
Schedule 17 (Compensation on Termination)	Project specific elements (non WIDP) elements of this schedule to be treated as confidential.	Contract Period (including any period of extension)
Schedule 19 (Revision of Base Case and Custody)	Confidential	Contract Period (including any period of extension)
Schedule 20 (Employment and Pensions)	Confidential	Contract Period (including any period of extension)
Schedule 21 (Change Protocol)	Project specific elements (non WIDP) elements of this schedule to be treated as confidential.	Contract Period (including any period of extension)
Schedule 23 (Commercially Sensitive Information)	Confidential	Contract Period (including any period of extension)
Schedule 24 (Foreign Exchange Adjustment Protocol)	Confidential	Until the Key Facility Services Commencement Date. Note that any values or costs should remain confidential for the Contract Period (including any period of extension)
Schedule 26 (Planning)	Non WIDP drafting to be treated as confidential. Even following the Key Facility Services Commencement Date, the project specific arrangement agreed between the parties should be kept confidential.	Contract Period (including any period of extension)
Schedule 27 (Parent Company Guarantee)	Confidential	Contract Period (including any period of extension)
Schedule 30 (Outline Substitute Waste Plan)	Confidential	Contract Period (including any period of extension)
Schedule 31 (Waste Acceptance Protocol)	Confidential	Contract Period (including any period of extension)
Schedule 32 (Excess Revenue Share Threshold Adjustment)	Confidential	Contract Period (including any period of extension)
Schedule 33 (Finance Cost)	Confidential	Contract Period

Adjustment Mechanism)		(including any period of extension)
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PART 2

COMMERCIALLY SENSITIVE MATERIAL

Column 1	Column 2
Commercially Sensitive Material	For period ending on date below
Contractor's Proposals not otherwise in the public domain.	Contract Period (including any period of extension)
Bid submission documents not otherwise in the public domain.	Contract Period (including any period of extension)
Construction Sub-Contract	Contract Period (including any period of extension)
Offtake Contracts	Contract Period (including any period of extension)
Third Party Waste Contracts	Contract Period (including any period of extension)
Leases for Villiers Road Site and Key Facility Site	Contract Period (including any period of extension)

SCHEDULE 24

FOREIGN EXCHANGE RATE ADJUSTMENT PROTOCOL

1. **Background** - The purpose of this Schedule 24 is to detail the process for agreeing the exchange rate for the Project immediately prior to the issue of Notice to Proceed and to indicate the activities to be undertaken by or on behalf of the Parties in order to update the Unitary Charge and the Base Case.
2. The Authority is taking the full risk of any movement in euro:sterling exchange rates between the Commencement Date and the Notice to Proceed being issued to the Construction Sub-Contractor.
3. The Contractor will provide information on exchange rate pricing on an open book basis and allow the Authority and its advisers to undertake benchmarking to ensure that the exchange rate quoted is in line with the market.
4. The process will allow the determination of the Unitary Charge payable by the Authority to the Contractor pursuant to Schedule 4 (Payment Mechanism).
5. A dry run of the process detailed in this protocol will be undertaken in advance in order to ensure that the process is understood by the Parties and their respective advisers. The date for the dry run will depend on the timetable for Notice to Proceed being achieved and the Contractor shall give the Authority as much notice as is reasonably practicable of the likely date of the issue of the Notice to Proceed.
6. **“Dry Run” at Pre-Notice to Proceed** - before the Notice to Proceed is issued, the following activities will be undertaken by or on behalf of the Parties:
 - 6.1 the Contractor and its advisers will obtain a best estimate fixed exchange rate from the nominated exchange rate forward contract provider based on the assumed date for Notice to Proceed. The rate will be benchmarked by the Authority’s nominated benchmarking advisers;
 - 6.2 the Base Case will be updated with the agreed foreign exchange rate and provided to the Authority and its financial advisers(acting reasonably);
 - 6.3 the Contractor’s financial advisers will run foreign exchange sensitivities based on the foreign exchange rate provided as requested by the Authority and its financial advisers;
 - 6.4 the Authority’s financial advisers will review and agree the Base Case and sensitivities;
 - 6.5 both Parties will confirm their acceptance of the updated Base Case and the methodology for obtaining and agreeing the foreign exchange rate and agreeing the Base Case;

- 6.6 the Authority will confirm that it accepts the sensitivities and the resulting range of the Unitary Charge; and
 - 6.7 following completion of these activities, all parties will confirm that they are willing to proceed with the Notice to Proceed update.
7. **Notice to Proceed update** - the following activities will take place:
- 7.1 the Contractor and its advisers will advise the nominated exchange rate forward contract provider of the amounts of foreign exchange required, the two currencies involved, and the relevant dates;
 - 7.2 the nominated forward contract provider will provide a fixed exchange rate;
 - 7.3 the rate will be benchmarked by the Authority's benchmarking advisers;
 - 7.4 both Parties will confirm acceptance of the exchange rate;
 - 7.5 Pennon plc confirms that it will underwrite the FX transaction;
 - 7.6 the Contractor enters into FX forward at agreed rate;
 - 7.7 the Base Case will be updated with the agreed foreign exchange rate and provided to the Authority and its advisers;
 - 7.8 the Authority's financial adviser will review and agree the Base Case;
 - 7.9 both Parties will confirm acceptance of the updated Base Case and the updated Unitary Charge;
 - 7.10 Schedule 4 (Payment Mechanism) will be updated accordingly.
8. **Financial Model Adjustments** - in order to update the Base Case, the following actions will be carried out:
- 8.1 the euro:sterling exchange rate will be updated at cell C78 within the worksheet "Misc" of the Base Case with the benchmarked and agreed euro:sterling exchange rate. The rate entered will be the all-in-rate inclusive of inclusive of all applicable credit spreads;
 - 8.2 optimisation of the Base Case will be undertaken in accordance with the details submitted in worksheet "Databook" of the Base Case;
 - 8.3 the model optimisation will take into account the need to maintain the Post Tax Project IRR as stated within the worksheet "Results" cell D8 of the Base Case, unless stated otherwise.

SCHEDULE 25
FORM OF COLLATERAL WARRANTY
PART A
WARRANTY FROM THE CONSTRUCTION SUB-CONTRACTOR

DATED _____ **20[]**

(1) []

(2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON

(3) VIRIDOR SOUTH LONDON LIMITED

(4) []

DUTY OF CARE DEED
relating to

THIS DEED is made on [] 20[]

BETWEEN:

- (1) [] (Company No. []) whose registered office is at [] (the "Initial Works Contractor");
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** of Taberner House, Park Lane, Croydon, CR9 3JS (the "Authority"), which expression includes its permitted successors in title and assigns);
- (3) **VIRIDOR SOUTH LONDON LIMITED** (registered in England and Wales under Company No. 8106962) whose registered office is at Peninsula House, Rydon Lane, Exeter, Devon, EX2 7HR (the "Contractor"); and
- (4) [] (Company No. []) whose registered office is at [] (the "Guarantor").

BACKGROUND

- (A) By a contract dated [] (the "Project Agreement") the Authority has appointed the Contractor to carry out, in relation to the Sites, the provision of residual waste treatment to the Authority at each and every Site/Facility as contemplated by (and defined in) the Contract including the carrying out of the design, construction, commissioning and testing of the Works and the provision of the Services.
- (B) By a design and build contract dated [] (the "Construction Sub-Contract") the Contractor has appointed the Initial Works Contractor to carry out in relation to the Sites the design, construction, commissioning and testing of the Works.
- (C) The Guarantor has agreed to guarantee the obligations of the Initial Works Contractor under this Deed.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Construction Sub-Contract.

2. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authority to the Initial Works Contractor, receipt of which the Initial Works Contractor acknowledges:

3. INITIAL WORKS CONTRACTOR'S WARRANTY AND LIABILITY

- 3.1 The Initial Works Contractor warrants to the Authority that it has carried out and will continue to carry out its duties under the Construction Sub-Contract in accordance with the Construction Sub-Contract in respect of the Waste Transfer Station Works only and that it has carried out and will carry out and

complete the Waste Transfer Station Works in accordance with the Construction Sub-Contract.

3.2 The Initial Works Contractor shall be entitled in any action or proceedings by the Authority to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Contractor under the Construction Sub-Contract in relation to the Waste Transfer Station Works, and shall have no liability under this Deed that is of greater or of longer duration than it would have had if the Authority had been a party to the Construction Sub-Contract only in relation to the Waste Transfer Station Works. Upon the expiration of three (3) years from the Practical Completion of the Waste Transfer Station Works (as defined in the Construction Sub-Contract), the liability of the Initial Works Contractor under this Deed shall cease and determine, save in relation to any claims made by the Authority against the Initial Works Contractor and notified by the Authority to the Initial Works Contractor in writing prior thereto.

3.3 Notwithstanding any other provision of this Deed and/or the Construction Sub-Contract:

3.3.1 the Initial Works Contractor's total aggregate liability for breach, negligence, act or omission under or in connection with this collateral warranty in respect of the Waste Transfer Station Works to the Authority shall be £[insert figure equal to 100% of the value of the Waste Transfer Station Works] (except for death and personal injury, loss of or damage to property and fraud) and shall fall under the Aggregate Cap under the Construction Sub-Contract; and

3.3.2 the duration of liability in respect of the Waste Transfer Station Works to the Authority under this collateral warranty shall be 3 years from Practical Completion of the Waste Transfer Station Works as defined in the Construction Sub-Contract.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Initial Works Contractor in the course of performing any of its obligations under the Construction Sub-Contract in respect of the Waste Transfer Station Works (the "Documents") will remain vested in the Initial Works Contractor. For the purposes of this clause 4, "Intellectual Property" shall mean all copyright and all database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered, together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.

4.2 The Initial Works Contractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Authority, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Initial Works

Contractor's obligations under the Construction Sub-Contract or the termination of the Construction Sub-Contract or this Deed or the determination of the Initial Works Contractor's employment under the Construction Sub-Contract or any dispute under the Construction Sub-Contract or this Deed) to use and to reproduce all Documents for any purpose whatsoever connected with the Project including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, reinstatement and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

- 4.3 The Initial Works Contractor will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Construction Sub-Contract or under this Deed or as otherwise required to enable it to fulfil its obligations under the Construction Sub-Contract and then only provided that the Documents are used strictly for the purpose for which they were prepared.
- 4.4 The Initial Works Contractor will not be liable for any use the Authority may make of the Documents for any purpose other than the purposes set out in clause 4.2.

5. INSURANCE

5.1 The Initial Works Contractor hereby covenants with the Authority to:

- 5.1.1 take out or procure the taking out of Professional Indemnity insurance cover with a limit of indemnity that shall be one million pounds (£1,000,000) in the aggregate and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until three (3) years after Practical Completion of the Waste Transfer Station Works, provided that such insurance is generally available in the market at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Initial Works Contractor's own claims record or other acts, omissions, matters or things peculiar to the Process Works Sub-Contractor will be deemed to be within the reasonable rates;
- 5.1.2 provide evidence (as and when reasonably required by the Authority but not more than once in any 12 month period) satisfactory to the Authority of the Professional Indemnity insurance referred to in paragraph 5.1.1 being in full force and effect from the date of the Construction Sub-Contract;
- 5.1.3 provide the Authority with notice of any adverse material changes to or suspension of cover relevant to the Works as soon as reasonably practicable following receipt of notice of any such change or suspension.

6. NOTICES

Any notice to be given by any party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any

notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

7. ASSIGNMENT

The benefit of and the rights of the Authority under this Deed may be assigned with the consent of the Initial Works Contractor on two occasions only and the Authority will notify the Initial Works Contractor in writing prior to such assignment specifying the name and address of the assignee and the date of the assignment for agreement by the Initial Works Contractor. The Initial Works Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Villiers Road Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. INSPECTION OF DOCUMENTS

The Initial Works Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Authority may make or procure to be made for its benefit or on its behalf.

9. EFFECT AND LIMITATION OF LIABILITY

- 9.1 The Initial Works Contractor has no liability under this Deed which is greater or of longer duration than the Initial Works Contractor would have had if the Authority had been a party to the Construction Sub-Contract (but for the avoidance of doubt only in relation to the Waste Transfer Station Works) provided that the Initial Works Contractor shall not be entitled to set off or deduct from any sums payable to the Authority under this Deed any sums due or claimed as due by the Initial Works Contractor from the Contractor.
- 9.2 The Initial Works Contractor shall be entitled in any action or proceedings brought by the Authority under this Deed to rely on any limitation in the Construction Sub-Contract and to raise equivalent rights in defence of liability as it would have against the Contractor under the Construction Sub-Contract.
- 9.3 The Initial Works Contractor shall have no liability to the Authority for any delay in the carrying out or completion of the Works or any Works under the Construction Sub-Contract.
- 9.4 Notwithstanding execution and delivery of this Deed or any term or condition to the contrary the Authority shall not be entitled to make any claim against the Initial Works Contractor and/or the Guarantor under this Deed nor pursuant to such term or condition unless and until the Project

Agreement has been terminated and/or the Contractor has become insolvent as defined under the Construction Sub-Contract.

10. GUARANTEE

10.1 Guarantee Obligations

Subject to clause 9.4, the Guarantor:

10.1.1 guarantees to the Authority the performance of this Deed by the Initial Works Contractor of those of its obligations as set out in clause 3.1 (the “Obligations”); and

10.1.2 shall be liable to the Authority for any established and ascertained losses, damages, costs and/or expenses suffered or incurred by the Authority in consequence of the Contractor failing to effect the performance of the Obligations.

10.2 The Guarantor’s liability under this Guarantee is subject to and conditional upon the Authority:

10.2.1 taking all reasonable steps to mitigate any losses, damages, costs or expenses suffered or incurred by the Authority in consequence of the Initial Works Contractor failing to perform the Obligations; and

10.2.2 seeking redress from the Initial Works Contractor under this Deed in respect of any failure by the Initial Works Contractor to perform the Obligations before bringing any proceedings against the Guarantor.

10.3 The Guarantor’s liability to the Guarantor shall be no greater or longer in respect of any matter than the Initial Works Contractor’s liability to the Guarantor under or in connection with this Deed.

10.4 In any proceedings brought by the Guarantor under this Guarantee, the Guarantor shall be entitled:

10.4.1 to rely on any limitation of liability in the Deed and the Construction Sub-Contract;

10.4.2 to raise the equivalent rights in defence of liability as the Initial Works Contractor would have had against the Authority under the Deed and the Construction Sub-Contract; and

10.4.3 to rely on any counterclaim the Contractor might have against the Authority.

11. APPLICABLE LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

12. THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Contractor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Initial Works Contractor acting by two Directors:

Director

Director

EXECUTED AS A DEED by the Authority acting by two authorised signatories:

Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by the Guarantor acting by two authorised signatories:

Authorised Signatory

Authorised Signatory

PART B

DATED _____ **20[]**

(1) []

(2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON]

(3) VIRIDOR SOUTH LONDON LIMITED

**DUTY OF CARE DEED
relating to**

THIS DEED is made on [] 200[]

BETWEEN:

- (1) [] (registered in England and Wales under Company No.) whose registered office is at [] (the "Waste Transfer Station Refurbishment Works Construction Sub-Contractor");
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** of Taberner House, Park Lane, Croydon, CR9 3JS (the "Authority"), which expression includes its permitted successors in title and assigns); and
- (3) **Viridor South London Limited** (registered in England and Wales under Company No. 8106962) whose registered office is at Peninsula House, Rydon Lane, Exeter, Devon, EX2 7HR (the " Contractor");

BACKGROUND

- (A) By a contract dated [] (the "Project Agreement") the Authority has appointed the Contractor to carry out, in relation to the Sites, the provision of residual waste treatment to the Authority at each and every Site/Facility as contemplated by (and defined in) the Contract including the carrying out of the design, construction, commissioning and testing of the [Initial Waste Transfer Station Works and] the Key Facility Works and the provision of the Services.
- (B) By a design and build contract dated [] (the "Waste Transfer Station Refurbishment Works Construction Sub-Contract") the Contractor has appointed the Waste Transfer Station Refurbishment Works Construction Sub-Contractor to carry out in relation to the Villiers Road Site the design, construction, commissioning and testing of the Refurbishment Works.
- (C) The Waste Transfer Station Refurbishment Works Construction Sub-Contractor is obliged under the Waste Transfer Station Refurbishment Works Construction Sub-Contract to give a warranty in this form in favour of the Authority.

13. DEFINITIONS AND INTERPRETATIONS

- 2.3 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Waste Transfer Station Refurbishment Works Construction Sub-Contract.

3 OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authority to the Waste Transfer Station Refurbishment Works Construction Sub-Contractor,

receipt of which the Waste Transfer Station Refurbishment Works Construction Sub-Contractor acknowledges:

4 CONSTRUCTION SUB-CONTRACTOR'S WARRANTY AND LIABILITY

4.1 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor warrants to the Authority that it has carried out and will continue to carry out its duties under the Waste Transfer Station Refurbishment Works Construction Sub-Contract in accordance with the Waste Transfer Station Refurbishment Works Construction Sub-Contract and that it has carried out and will carry out and complete the Waste Transfer Station Refurbishment Works in accordance with the Waste Transfer Station Refurbishment Works Construction Sub-Contract;

4.2 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor shall be entitled in any action or proceedings by the Authority to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Contractor under the Waste Transfer Station Refurbishment Works Construction Sub-Contract, and shall have no liability under this Deed that is of greater or of longer duration than it would have had if the Authority had been a party to the Waste Transfer Station Refurbishment Works Construction Sub-Contract as joint employer. Upon the expiration of twelve (12) years from the date of completion of the Waste Transfer Station Refurbishment Works in accordance with the Waste Transfer Station Refurbishment Works Construction Sub-Contract, the liability of the Waste Transfer Station Refurbishment Works Construction Sub-Contractor under this Deed shall cease and determine, save in relation to any claims made by the Authority against the Construction Sub-contractor and notified by the Authority to the Construction Sub-Contractor in writing prior thereto.

5 INTELLECTUAL PROPERTY RIGHTS

5.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, specifications, plans, software and any other documents or materials in any medium which have been created and/or developed by the Waste Transfer Station Refurbishment Works Construction Sub-Contractor in the course of performing any of its obligations under the Waste Transfer Station Refurbishment Works Construction Sub-Contract (the "Documents") will, as between the Authority and the Waste Transfer Station Refurbishment Works Construction Sub-Contractor, remain vested in the Waste Transfer Station Refurbishment Works Construction Sub-Contractor. For the purposes of this clause 4, "Intellectual Property" shall mean all copyright and all database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered, together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.

5.2 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Authority, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable,

royalty-free, non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Waste Transfer Station Refurbishment Works Construction Sub-Contractor's obligations under the Waste Transfer Station Refurbishment Works Construction Sub-Contract or the termination of the Waste Transfer Station Refurbishment Works Construction Sub-Contract or this Deed or the determination of the Waste Transfer Station Refurbishment Works Construction Sub-Contractor's employment under the Waste Transfer Station Refurbishment Works Construction Sub-Contract or any dispute under the Waste Transfer Station Refurbishment Works Construction Sub-Contract or this Deed) to use and to reproduce all Documents for any purpose whatsoever connected with the Project including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, reinstatement and repair of the Project. Such licence will carry the right to grant sub-licences and will be transferable to third parties.

- 5.3 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Waste Transfer Station Refurbishment Works Construction Sub-Contract or under this Deed or as otherwise required to enable it to fulfil its obligations under the Waste Transfer Station Refurbishment Works Construction Sub-Contract and then only provided that the Documents are used strictly for the purpose for which they were prepared.
- 5.4 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor will not be liable for any use the Authority may make of the Documents for any purpose other than the purposes set out in clause 4.2.

6 INSURANCE

- 6.1 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor hereby covenants with the Authority to:
- 6.1.1 take out or procure the taking out of Professional Indemnity insurance cover with a limit of indemnity that shall be a minimum of ten million pounds (£10,000,000) either each and every loss or in the aggregate in relation to the Waste Transfer Station Refurbishment Works (if in the aggregate then in any one (1) year of insurance a minimum of one (1) automatic reinstatement of the aggregate indemnity limit is required) and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until six (6) years after practical completion of the Waste Transfer Station Refurbishment Works, provided that such insurance is generally available in the market at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Waste Transfer Station Refurbishment Works Construction Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Construction Sub-Contractor will be deemed to be within the reasonable rates;
- 6.1.2 provide evidence (as and when reasonably required by the Authority but not more than once in any 12 month period)

satisfactory to the Authority of the Professional Indemnity insurance referred to in paragraph 5.1.1 being in full force and effect from the date of the Waste Transfer Station Refurbishment Works Construction Sub-Contract;

- 6.1.3 provide the Authority with notice of any adverse material changes to or suspension of cover relevant to the Works as soon as reasonably practicable following receipt of notice of any such change or suspension;
- 6.1.4 inform the Authority as soon as reasonably practicable of any claim under the Professional Indemnity insurance referred to in paragraph 5.1.1 in respect of the Waste Transfer Station Refurbishment Works in excess of one million pounds (£1,000,000) and provide such information to the Authority as the Authority may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

7 NOTICES

Any notice to be given by any party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

8 ASSIGNMENT

The benefit of and the rights of the Authority under this Deed may be assigned with the consent of the Waste Transfer Station Refurbishment Works Construction Sub-Contractor on two occasions only and the Authority will notify the Waste Transfer Station Refurbishment Works Construction Sub-Contractor in writing prior to such assignment specifying the name and address of the assignee and the date of the assignment for agreement by the Waste Transfer Station Refurbishment Works Construction Sub-Contractor. The Waste Transfer Station Refurbishment Works Construction Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

9 INSPECTION OF DOCUMENTS

The Waste Transfer Station Refurbishment Works Construction Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Authority may make or procure to be made for its benefit or on its behalf.

10 NOT USED**11 EFFECT AND LIMITATION OF LIABILITY**

11.1 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor has no liability under this Deed which is greater or of longer duration than the Waste Transfer Station Refurbishment Works Construction Sub-Contractor would have had if the Authority had been a party to the Waste Transfer Station Refurbishment Works Construction Sub-Contract as joint employer provided that the Waste Transfer Station Refurbishment Works Construction Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Authority under this Deed any sums due or claimed as due by the Waste Transfer Station Refurbishment Works Construction Sub-Contractor from the Contractor.

11.2 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor shall be entitled in any action or proceedings brought by the Authority under this Deed to rely on any limitation in the Waste Transfer Station Refurbishment Works Construction Sub-Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Contractor under the Waste Transfer Station Refurbishment Works Construction Sub-Contract.

11.3 Notwithstanding execution and delivery of this Deed or any term or condition to the contrary the Authority shall not be entitled to make any claim against the Waste Transfer Station Refurbishment Works Construction Sub-Contractor under this Deed nor pursuant to such term or condition unless and until the Project Agreement has been terminated.

11.4 The Waste Transfer Station Refurbishment Works Construction Sub-Contractor shall have no liability to the Authority for any delay in the carrying out or completion of the Works or any Works under the Contract.

12 APPLICABLE LAW AND JURISDICTION

This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

13 THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Waste Transfer Station Refurbishment Works Construction Sub-Contractor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Contractor acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by the Authority acting by two authorised signatories:

Authorised Signatory

Authorised Signatory

Schedule 25 – Form of Collateral Warranty

SCHEDULE 26**PLANNING****1 DEFINITIONS**

In each part of this Schedule 26 (Planning) the following expressions (in addition to those specified in Schedule 1 (Definitions)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

- Challenge Period** means the expiry of the later of:
- (a) the period prescribed by statute during which a third party may institute a challenge which could result in the quashing or modification of the relevant decision of the Planning Authority; and
 - (b) where such a challenge is initiated within the period in (a) above the period up to and including the final determination or withdrawal of that challenge plus five (5) Business Days;
- Deemed Refusal** means any failure to determine a Planning Application by the Planning Authority within the statutory period which would entitle the Contractor to appeal against the deemed refusal of that Planning Application or any other period which the Contractor and the Planning Authority may agree shall constitute the period for determination of the Planning Application for the purposes of any appeal by the Contractor;
- Judicial Review Challenge** means proceedings brought under Part 54 of the Civil Procedure Rules or by any party other than the Contractor under Section 288 of the Planning Act in respect of the Planning Permission;
- Leading Counsel** means counsel experienced in town and country planning matters and practising at the town and country planning bar who:
- (a) shall either be [REDACTED] or [REDACTED] (or such other counsel agreed by the Parties) or, in default of agreement, shall be of 15 years' call and identified by the Chairman of the Planning and Environmental Bar Association or his deputy; and

- (b) accepts instructions to provide an opinion pursuant to paragraph 2 (Planning Consents);

Off-Site Expenditure	means any costs or expenses, relating to land outside the Key Facility incurred in order to comply with or fulfil any requirement or obligation or condition of any Planning Permission, associated Planning Agreement or agreement with any Relevant Authority and, for the avoidance of doubt, any costs or expenses incurred by the Contractor in respect of Off-Site Works shall be treated as Off-Site Expenditure;
Off-Site Works	means any works, relating to land outside the Key Facility in order to comply with or fulfil any requirement or obligation or condition of any Planning Permission, associated Planning Agreement or agreement with any Relevant Authority;
Planning Agreement	means: Section 106 of the Town and Country Planning Act 1990; Section 38 or 278 Highways Act 1980; Section 104 Water Industry Act 1991 or any other provision of a similar intent within the meaning of the Water Act 1989, with an appropriate authority for the supply of water or the drainage of foul water from the Site;
Planning Permission Longstop Date	means in respect of the Facility, the date as set out in Schedule 8 (Key Dates);
Revised Project Plan Longstop Date	31 December 2016
Satisfactory Planning Permission	means a Planning Permission with the Challenge Period expired (and any Proceedings having been finally determined such that the Planning Permission has been upheld and may be implemented) for the Key Facility, together with any associated Planning Agreement or agreement with any Relevant Authority which is a permission for the description of the development which is the subject of the agreed Planning Application for the Key Facility and does not impose on the Contractor by way of condition or other obligation any of the following requirements:

- (a) a requirement to obtain the agreement of a third party other than in respect of land outside the Key Facility other than:
 - (i) statutory undertakers in respect of any utility; and
 - (ii) a highway authority;
- (b) a requirement to:
 - (i) carry out Off-Site Works other than highway improvements to Beddington Lane, TfL road improvement contributions and/or ecological mitigation measures imposed by the s106 Agreement; or
 - (ii) incur Off-Site Expenditure in excess of [REDACTED] pounds [REDACTED];
- (c) a requirement to incur in excess of [REDACTED] pounds [REDACTED] addressing conditions of the Planning Permission, associated Planning Agreement or agreement with any Relevant Authority excluding Off-Site Expenditure (in respect of which paragraph (b) above is applicable);
- (d) a requirement which restricts the hours during which construction works may be carried out to less than 12 hours a day and/or restricts the number of vehicle movements or the hours of delivery during the Works Period and such requirement(s) is demonstrated to the Authority's reasonable satisfaction as likely to result in the Contractor being unable to meet the requirements of the Construction Programme as agreed at the date of this Contract;
- (d) a requirement which renders the Contractor unable to deliver or perform all or any of the Services as are to be provided at the Key Facility in accordance with the Authority's Requirements at the Key Facility or would significantly impede the ability of the Contractor to accept and/or process Third Party Waste but only to

the extent that it has one or more of the following effects:

- i prevents the Key Facility from operating in accordance with the Authority's Requirements;
- ii restricts the number of waste (excluding any process residues) carrying vehicle movements to and from the Key Facility to an amount which would prevent the Contractor from operating the Key Facility to its designed mechanical and thermal capacity and as set out in the application for the Environmental Permit;
- iii permits access by the public in such a manner or in such numbers that would result in material additional expenditure by the Contractor for the purposes of supervision or would otherwise adversely impact safety or operations at the Site;
- iv requires that any waste will be delivered otherwise than by road going vehicles alone;
- v restricts the hours of delivery of waste to the Site which prevents the Key Facility from operating to its designed mechanical and thermal capacity and as set out in the application for the Environmental Permit;
- vi causes or is likely to cause the Contractor to be in breach of the Environmental Permit based upon anticipated conditions of the Environmental Permit, having regard to the application for such Environmental Permit;
- vii limits the life of the planning permission granted for the

Key Facility to less than the period from the date that the challenge period in respect of that planning permission has expired until the date falling thirty five (35) years thereafter; and

- viii restricts tonnage levels of waste to be received and/or processed at the Facility which prevents the Key Facility from operating to its designed mechanical and thermal capacity and as set out in the application for the Environmental Permit;

and an "Unsatisfactory Planning Permission" is one which is not a Satisfactory Planning Permission provided that:

(i) the Contractor may at its sole discretion increase the [REDACTED] pounds [REDACTED] threshold stipulated in limb (b) where such additional expenditure is necessary to obtain a Satisfactory Planning Permission and where the [REDACTED] pounds [REDACTED] threshold stipulated in limb (c) has not been fully exhausted but the Contractor shall not be obliged to incur more than [REDACTED] pounds [REDACTED] in total in relation to any obligations falling under limbs (b) and (c) in attempting to obtain a Satisfactory Planning Permission; and

(ii) the Contractor may at its sole discretion increase the [REDACTED] pounds [REDACTED] threshold stipulated in limb (c) where such additional expenditure is necessary to obtain a Satisfactory Planning Permission and where the [REDACTED] pounds [REDACTED] threshold stipulated in limb (b) has not been fully exhausted but the Contractor shall not be obliged to incur more than [REDACTED] pounds [REDACTED] in total in relation to any obligations falling under limbs (b) and (c) in attempting to obtain a Satisfactory Planning Permission; and

(iii) notwithstanding (i) and (ii) above, if in

the Contractor's reasonable opinion the amount required to be incurred in relation to limbs (b) or (c) of this definition is likely to exceed [REDACTED] pounds [REDACTED], then the Contractor may at its sole discretion decide to incur such additional expenditure as is necessary to obtain a Satisfactory Planning Permission.

2 PLANNING CONSENTS

2.1 Contractor to obtain Planning Permission

- 2.1.1 The Contractor undertakes to the Authority that (subject to the provisions of this paragraph 2 (Planning Consents)):
- (a) it shall use All Reasonable Endeavours to obtain a Satisfactory Planning Permission to enable it to undertake the Works and to deliver the Services at the Key Facility;
 - (b) the Contractor shall in pursuing any relevant Planning Permission use reasonable endeavours to follow and meet the Key Dates (Schedule 8) in respect of the Site in question.
- 2.1.2 The Contractor shall bear the costs of obtaining and of implementing and complying with the provisions and conditions of all Planning Permissions, subject to the definition of Satisfactory Planning Permission limb (c), (other than the Authority's internal costs). The Contractor shall not be permitted to request additional monies from the Authority in order to meet the cost of complying with limbs (b) and/or (c) of the definition of a Satisfactory Planning Permission where the costs which are likely to be required in order to obtain a Satisfactory Planning Permission exceed the thresholds set out in that definition as set out above.
- 2.1.3 The Contractor shall provide to the Authority on a quarterly basis a written summary of:
- (a) the steps taken by the Contractor in the preceding quarter in compliance with its obligations under this paragraph 2.1; and
 - (b) a written summary of those steps which it anticipates taking in the following quarter in order to comply with its obligations under this paragraph 2.1.
- 2.1.4 Without limiting the Contractor's obligations under this paragraph 2.1 the Authority may within five (5) Business Days after receipt of such summary notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under this paragraph 2.1. If the Contractor disagrees, it may refer the matter to the Dispute Resolution Procedure.

2.1.5 Without prejudice to the Contractor's obligations under this paragraph 2 (Planning Consents) the Authority shall at the reasonable written request of the Contractor provide written confirmation (on not more than a quarterly basis) as to whether the Authority believes that, in its opinion the Contractor has up to the date of the Contractor's request fully complied with its obligations in paragraph 2.1.1 to use All Reasonable Endeavours to obtain a Satisfactory Planning Permission and to rectify any failures to do so. At the same time as the Contractor makes any such request the Contractor shall provide the Authority with supporting information regarding the steps which it has taken in order to obtain a Satisfactory Planning Permission and the Authority's confirmation shall be solely based on such information.

2.1.6 Where:

- (a) the Authority confirms in writing that in its opinion the Contractor has fully complied with its obligations in paragraph 2.1.1 to use All Reasonable Endeavours up to the date of the Contractor's request; or
- (b) the Contractor has taken measures in accordance with paragraph 2.1.5; or
- (c) the Contractor has made a request pursuant to paragraph 2.1.5 and the Authority has failed to respond to such request in accordance with paragraph 2.1.5 within twenty (20) Business Days,

the Contractor shall other than in respect of any prior failure to use All Reasonable Endeavours previously notified by the Authority to the Contractor be considered to have used All Reasonable Endeavours up and until the date of the Contractor's request pursuant to this paragraph 2.1.6 only. In the event that any information subsequently comes to the attention of the Authority which suggests that the Contractor has failed to use All Reasonable Endeavours prior to the date of the Contractor's request pursuant to this paragraph 2.1.6 then any such written confirmation provided by the Authority pursuant to paragraph 2.1.6(a) or failure to provide written confirmation pursuant to paragraph 2.1.6(b) shall be disregarded.

2.1.7 Where pursuant to the Contractor's request as described in paragraph 2.1.5, the Authority is of the opinion that the Contractor has failed to use All Reasonable Endeavours to obtain a Satisfactory Planning Permission, it shall provide detailed reasons in writing to the Contractor to justify such opinion together with such supporting documentation as is relevant and the Contractor may refer the matter to the Dispute Resolution Procedure.

2.1.8





2.2 **Meaning of All Reasonable Endeavours**

For the purposes of paragraph 2.1 (Contractor to obtain Planning Permission) of this Schedule 26 (Planning) “All Reasonable Endeavours” means that the Contractor shall:

- 2.2.1 in relation to the preparation, submission and process of any Planning Application made in the name of the Contractor incur all reasonably necessary expenditure and do all the things reasonably necessary (including the commencement and prosecution or defence of Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of a Satisfactory Planning Permission;
- 2.2.2 prepare all documentation and supporting information in accordance with good planning practice;
- 2.2.3 respond to all other queries of the Planning Authority promptly;
- 2.2.4 meet the costs of any Proceedings such costs to include the cost of instructing Leading Counsel (including for the purposes of deciding whether to initiate or pursue Proceedings) and securing the services of any expert witnesses considered necessary for the purpose of such Proceedings;
- 2.2.5 provide forthwith copies to the Authority of all instructions (including enclosures) given to Leading Counsel and opinions received from Leading Counsel relating to such Proceedings in respect of any Planning Permission sought. The Authority’s Representative shall be entitled to attend any conference with Leading Counsel and the Contractor shall endeavour when arranging such conference to agree a convenient time for attendance by the Authority’s Representative; and
- 2.2.6 subject to paragraph 2.5.3, in relation to any Judicial Review Challenge, provide to the Authority all such assistance as it reasonably requires to the extent that the provisions of such reasonable assistance does not cause the Contractor to incur any material expense (on each individual occasion or in the aggregate);

provided always that this paragraph 2.2 shall not require the Contractor to join as interested party in any Review Challenge.

2.3 Obligations of the Contractor

The Contractor shall not cause or permit any Affiliate, associated or holding company of the Contractor or any entity or any third party over which it has control to object or procure any objection to any Planning Application.

2.4 Proceedings

2.4.1 If in respect of the Key Facility, the relevant Planning Authority:

- (a) resolves to or is minded to grant permission for a Planning Application and that Planning Application is called-in by the Secretary of State under section 77 of the Planning Act; or
- (b) refuses to grant planning permission for a Planning Application (including any refusal on any re-determination of a Planning Application following the quashing of a decision to grant permission for such Planning Application) and this shall include the refusal of the Secretary of State to grant permission on appeal under section 77 of the Planning Act or there is a Deemed Refusal; or
- (c) grants permission for a Planning Application which is not a Satisfactory Planning Permission in circumstances where the Authority and the Contractor agree (or are unable to agree and it is determined pursuant to Schedule 22 (Dispute Resolution Procedure)) that Proceedings may secure a Satisfactory Planning Permission; or
- (d) grants permission for a Planning Application in respect of which any condition or requirement is imposed which is unreasonable in the Contractor's reasonable opinion, the Contractor shall take the opinion of Leading Counsel as to the merits of pursuing any Proceedings.

2.4.2 If Leading Counsel advises the Contractor that there is a reasonable prospect of success in pursuing any Proceedings in order to obtain a Satisfactory Planning Permission (or in order to remove any such unreasonable condition or requirement as referred to in paragraph 2.4.1(d)) the Contractor may institute such Proceedings, and if so instituted, the Contractor shall pursue or defend the same until determination of such Proceedings (subject to the Planning Permission Longstop Date) unless subsequently the Contractor proposes to cease such Proceedings in accordance with paragraph 2.4.6.

2.4.3 At any reasonable time after the commencement of any Proceedings in relation to any Planning Permission, the Contractor may take (subject to notifying the Authority of such intention) the opinion of Leading Counsel as to the merits of continuing to pursue such Proceedings and to make such opinion available to the Authority.

- 2.4.4 In the event that Leading Counsel advises under paragraph 2.4.2 or subsequently under paragraph 2.4.3 that there is no reasonable prospect of success the Contractor may by serving written notice on the Authority on or before a date twenty (20) Business Days from the receipt by the Contractor of the advice of Leading Counsel propose that a Revised Project Plan is pursued in accordance with paragraph 3.3, and in such circumstances the Authority shall be obliged to consider such Revised Project Plan.
- 2.4.5 Notwithstanding that the Contractor may propose a Revised Project Plan to the Authority in accordance with paragraph 3.3, the Contractor may still institute or continue to pursue Proceedings, subject to service of prior written notice of its intention to do so upon the Authority and subject to paragraph 2.4.6 the Contractor may continue to pursue such Proceedings until the Revised Project Plan Longstop Date, and the Contractor will bear all costs of instituting or continuing to pursue those Proceedings which it incurs.
- 2.4.6 The Contractor shall be entitled, in its absolute discretion, to cease to pursue any Proceedings which it institutes or continues pursuant to paragraph 2.4.5 and in respect of which it has undertaken to bear the costs pursuant to paragraph 2.4.5.
- 2.5 Material Expenditure in Assisting the Authority in the case of Judicial Review Challenge**
- 2.5.1 If a third party makes a Judicial Review Challenge against the Planning Authority, the Authority will (but following consultation with the Contractor and having due regard to any representations of the Contractor) liaise with the Planning Authority. The Parties acknowledge that the Planning Authority may at its sole discretion determine whether to defend any proceedings that result from a Judicial Review Challenge (the "Judicial Review Proceedings") and where the Planning Authority determines that it will defend such Judicial Review Proceedings, then save as provided for in this paragraph, the Contractor will not be responsible for any costs incurred.
- 2.5.2 Subject to paragraph 2.5.3, the Contractor shall in relation to a Judicial Review Challenge provide to the Authority on written request by the Authority and, if required by the Authority, also to the Planning Authority, all such assistance as the Authority reasonably requires and in doing so shall exercise all proper care and skill in accordance with its requirements of paragraph 2.2.
- 2.5.3 Where the provision of assistance pursuant to paragraph 2.5.2 will in the Contractor's opinion require the Contractor to incur material expense (on each individual occasion or in the aggregate) the Contractor shall in any event provide such assistance and the Authority shall reimburse the Contractor in an amount equal to those reasonable and proper expenses incurred in the provision of such assistance provided that:

- (a) the Contractor shall on receipt of each written request from the Authority pursuant to paragraph 2.5.2 and in advance of the provision of assistance (unless otherwise agreed in writing) pursuant to paragraph 2.5.3 notify the Authority that in its opinion paragraph 2.5.3 applies and shall provide to the Authority for its written approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of the assistance including a detailed breakdown of the estimated cost of legal fees and all other professional fees and other disbursements (if any) together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time incur any costs above the said estimate and each element thereof or employ any additional or alternative legal or professional advisers without the further approval of the Authority (such approval not to be unreasonably withheld or delayed); and
- (b) the Authority may in writing:
 - (i) modify any request for assistance and the Contractor shall on receipt of such modification from the Authority and in advance of the provision of the assistance requested under the modification (unless otherwise agreed in writing) follow the procedure in paragraph 2.5.3(a) in respect of the modified request; or
 - (ii) withdraw or terminate the requirement for reasonable assistance at any time with five (5) Business Days notice but without prejudice to the Authority's obligation under this paragraph 2.5.3 to pay the Contractor's costs incurred up to and including the date of the withdrawal or termination.

2.5.4 Where the Authority is required to reimburse the Contractor pursuant to this paragraph 2.5 for costs incurred pursuant to paragraph 2.5.3, the Authority shall reimburse the Contractor pursuant to paragraph 2.5.3 subject to the Contractor providing satisfactory evidence to the Authority that the costs were reasonably and properly incurred and the Contractor complied with the requirements of this paragraph 2.5.

2.6 **Costs of Proceedings**

The Contractor will bear all costs relating to and arising from any Proceedings (including for the avoidance of doubt the costs of obtaining any Leading Counsel's opinion under paragraph 2.4 (Proceedings)).

3 **SATISFACTORY PLANNING PERMISSION**

3.1 **Satisfactory Planning Permission**

3.1.1 Where on or prior to the Planning Permission Longstop Date for the Facility the Contractor obtains either:

- (a) a Satisfactory Planning Permission; or
- (b) an Unsatisfactory Planning Permission where the Authority has served an Authority Change Notice in accordance with paragraph 3.1.8(a) below to enable the Contractor either:
 - (i) to comply with the Unsatisfactory Planning Permission without being in breach of this Contract; and/or
 - (ii) to render compliance with the relevant part of the Unsatisfactory Planning Permission unnecessary; and/or
 - (iii) to render the Unsatisfactory Planning Permission a Satisfactory Planning Permission;

it shall, subject to Clause 10.2 (Grant of Lease), after the Challenge Period (if any) relating to the Satisfactory Planning Permission has elapsed (and in each case under paragraph 3.1.8(a) upon confirmation and final agreement of the consequential Authority Change Notice for the purposes of this paragraph 3 (Satisfactory Planning Permission)) proceed to implement the Satisfactory Planning Permission at the Beddington Lane Site.

3.1.1A If the Parties do not agree the Authority Change Notice served under paragraph 3.1.8 (a) below in accordance with Schedule 21 (Change Protocol), then subject, where relevant, to the Contractor deciding in its sole discretion that it may incur additional expenditure in respect of limbs (b) and (c) of the definition of Satisfactory Planning Permission, paragraph 3.1.8 (b) shall apply.

3.1.2 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of the Planning Permission for the Facility the Contractor shall provide to the Authority a copy of the Planning Permission and will notify the Authority in writing whether or not the Contractor considers the Planning Permission to be a Satisfactory Planning Permission or is an Unsatisfactory Planning Permission.

3.1.3 If the Contractor considers that the Planning Permission will be notwithstanding the expiry of the Challenge Period an Unsatisfactory Planning Permission it shall provide within five (5) Business Days of the issue of the notice given pursuant to paragraph 3.1.2 to the Authority (or such longer period as the parties may in the circumstances and acting reasonably agree):

- (a) full details of the grounds for such opinion; and/or
- (b) an indication of what action could be taken (if any) by the Contractor or the Authority to enable the Contractor to comply with the Planning Permission without being in breach of this Contract which would be such as to render it a Satisfactory Planning Permission or render compliance

with such Unsatisfactory Planning Permission unnecessary including without limitation:

- (i) Proceedings; or
- (ii) the issue of an Authority Change Notice to vary the Works and/or Services;

provided that where the Contractor considers that a Planning Permission will be an Unsatisfactory Planning Permission due to a requirement to incur in excess of [REDACTED] pounds [REDACTED] under limbs (b) and (c) of definition of Unsatisfactory Planning Permission then notwithstanding limbs (a) and (b) above, the Contractor may at its sole discretion propose a Revised Project Plan whereupon paragraph 3.3 shall apply.

- 3.1.4 If the Contractor fails to provide the notice pursuant to paragraph 3.1.2 within fifteen (15) Business Days after issue of the Planning Permission then on the expiry of the Challenge Period, the Planning Permission shall be deemed to be a Satisfactory Planning Permission.
- 3.1.5 If the Contractor notifies the Authority that the Planning Permission is a Satisfactory Planning Permission or such a Planning Permission is deemed to be a Satisfactory Planning Permission in accordance with paragraph 3.1.4 then the provisions of paragraph 3.1.1 apply.
- 3.1.6 If the Contractor notifies the Authority that the Planning Permission will be on expiry of the Challenge Period an Unsatisfactory Planning Permission the Authority shall, within ten (10) Business Days of receipt of the notice given pursuant to paragraph 3.1.3 notify the Contractor in writing whether or not the Authority accepts the Planning Permission is or will be an Unsatisfactory Planning Permission and whether it accepts the action indicated by the Contractor in the notice served pursuant to paragraph 3.1.3 and in particular whether Proceedings will be likely to secure a Satisfactory Planning Permission having regard to the grounds given by the Contractor in the notice served pursuant to paragraph 3.1.3.
- 3.1.7 If the Authority does not accept within the time set out in paragraph 3.1.6 or is deemed to not accept because it has not notified to the Contractor within the time set out in paragraph 3.1.6 that the Planning Permission will be on expiry of the Challenge Period an Unsatisfactory Planning Permission the matter may be referred at the instance of either Party for determination by an expert under Schedule 22 (Dispute Resolution) as to whether the Planning Permission is a Satisfactory Planning Permission or an Unsatisfactory Planning Permission.
- 3.1.8 If the Authority accepts in accordance with paragraph 3.1.6 or it is determined pursuant to paragraph 3.1.7 that the Planning Permission is an Unsatisfactory Planning Permission and the

Parties agree that Proceedings will not be likely to secure a Satisfactory Planning Permission the Authority may:

- (a) subject to this paragraph 3.1.8(a) within thirty (30) Business Days after it is accepted by the Authority pursuant to paragraph 3.1.6 or it is determined that a Planning Permission is an Unsatisfactory Planning Permission in accordance with this paragraph 3.1.8 issue an Authority Change Notice in respect of the Works and/or the Services or other actions required to enable the Contractor to comply with the terms of the Planning Permission which render it an Unsatisfactory Planning Permission without being in breach of this Contract or to render it a Satisfactory Planning Permission or render compliance with such Unsatisfactory Planning Permission unnecessary (in each case upon confirmation and final agreement of the consequential Authority Change Notice for the purposes of this paragraph 3 (Satisfactory Planning Permission) the Planning Permission shall be deemed to be a Satisfactory Planning Permission provided the Challenge Period has expired) provided that, for the avoidance of doubt, nothing in this clause 3.1.8 shall require the Authority to issue an Authority Change Notice to meet any additional costs which are above the thresholds in limbs (b) or (c) of the definition of Satisfactory Planning Permission and the Parties confirm that under any Authority Change Notice under this paragraph 3.1.8 (a) the Contractor shall not be obliged to incur more than [REDACTED] pounds [REDACTED] in total in relation to any obligations falling under limbs (b) and (c) in attempting to obtain a Satisfactory Planning Permission; or
- (b) require the Contractor to propose a Revised Project Plan in which case the provisions of paragraph 3.3 (Revised Project Plan) shall apply and the provisions of paragraph 3.2 (Failure to Obtain Planning Permission) shall cease to apply.

3.1.9 If the Authority:

- (a) does not issue the Authority Change Notice within the time set out in paragraph 3.1.8(a); or
- (b) withdraws or is deemed to have withdrawn the Authority Change Notice issued pursuant to paragraph 3.1.8(a) in accordance with Schedule 21 (Change Protocol) respectively,

then the Contractor shall prepare a Revised Project Plan in which case the provisions of paragraph 3.3 (Revised Project Plan) shall apply and the provisions of paragraph 3.2 (Failure to Obtain Planning Permission) shall cease to apply.

- 3.1.10 If the Authority accepts or it is determined pursuant to paragraph 3.1.7 that the Planning Permission is an Unsatisfactory Planning Permission and the Parties agree or if the Parties are unable to agree and either Party wishes to have determined whether Proceedings may secure a Satisfactory Planning Permission the Parties shall seek the opinion of Leading Counsel pursuant to paragraph 2.2 (Meaning of All Reasonable Endeavours) and the provisions of paragraph 2.4 (Proceedings) shall apply and if Proceedings are not instituted or if instituted are withdrawn or determined leaving in place an Unsatisfactory Planning Permission the Authority may either issue an Authority Change Notice or require the Contractor to prepare a Revised Project Plan in accordance with the provisions of paragraph 3.1.8.

3.2 Failure to Obtain Planning Permission

At the earlier of:

- 3.2.1 the date when the Parties reasonably conclude and agree that it will not be possible to obtain a Satisfactory Planning Permission for the Key Facility by the Planning Permission Longstop Date; and
- 3.2.2 the Planning Permission Longstop Date where at such date the Contractor has failed to obtain a Satisfactory Planning Permission; and
- 3.2.3 unless the Parties agree otherwise, the date at which Leading Counsel advises under paragraph 2.2 (Meaning of All Reasonable Endeavours) that there is no reasonable prospect of success in pursuing or continuing to pursue any Proceedings and obtaining a Satisfactory Planning Permission, save where the Contractor chooses to continue to pursue those Proceedings under paragraph 2.4 (Proceedings) in which case paragraphs 3.2.1, 3.2.2 or 3.2.4 shall apply. For the avoidance of doubt, the continuation of Proceedings by the Contractor shall not prevent it from proposing a Revised Project Plan; and
- 3.2.4 unless the Parties agree otherwise, the date at which Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory Planning Permission has not been obtained;

then the Authority shall be obliged by notice in writing to advise the Contractor that the Authority wishes the Contractor to propose a Revised Project Plan pursuant to paragraph 3.3 (Revised Project Plan) which the Authority shall consider and paragraph 3.3 (Revised Project Plan) shall apply. For the avoidance of doubt, the Contractor may continue pursuing a Satisfactory Planning Permission in parallel with proposing a Revised Project Plan.

3.3A Pursuit of a Revised Project Plan by mutual agreement

Notwithstanding the requirements set out in this Schedule 26 (Planning), the Parties may, by mutual agreement, pursue a Revised Project Plan at any time, whereupon paragraph 3.3 shall apply.

3.3B Cancellation of Revised Project Plan by mutual agreement

If a Satisfactory Planning Permission is obtained by the Contractor following the Planning Permission Longstop Date and prior to 31st December 2016 then the Parties may agree that work on the Revised Project Plan shall cease and the Satisfactory Planning Permission is implemented.

3.3 Revised Project Plan

- 3.3.1 If pursuant to paragraphs 2.4.4, 3.1.8(b) or 3.2 the Contractor is required to propose, or proposes, a revised Project Plan (the “Revised Project Plan”) then the Contractor shall provide, in accordance with the provisions of this paragraph 3.3 (Revised Project Plan) a draft Revised Project Plan in writing to the Authority within three (3) Months of being requested to do so or proposing a Revised Project Plan.
- 3.3.2 In negotiating the Revised Project Plan, the Parties shall at all times act in good faith and the Authority shall at all times act reasonably in considering the merits of the Revised Project Plan and provide the Contractor with feedback upon the Revised Project Plan (but without binding the Authority to deciding a particular outcome in relation to the Revised Project Plan) including providing reasons for the rejection of the Revised Project Plan.
- 3.3.3 The Contractor shall procure works, services, supplies, materials or equipment required in relation to the revised Project (unless otherwise agreed) (the “Revised Project”).
- 3.3.4 The draft Revised Project Plan shall set out:
- (a) the proposed technical solution(s) for the Revised Project;
 - (b) a project plan for the Revised Project covering the same or similar issues as the Contractor’s Proposals insofar as such issues are relevant to the Revised Project;
 - (c) the proposed length of time and programme for obtaining the Consents;
 - (d) the Contractor’s opinion regarding the likelihood of being able to obtain the relevant Consents;
 - (e) the interest(s) in land required for the Revised Project;
 - (f) the revised costs for the delivery of the Revised Project (the “Revised Project Plan Costs”);

- (g) the Contractor's opinion as to the changes in the risk profile required as a result of the Revised Project;
- (h) details of the relief required by the Contractor from its obligations under the Contract including any relief from termination required;
- (i) amendments required to the Contract and any Ancillary Documents;
- (j) any impact of the Revised Project on the provisions of the Works and/or Services other than those which are the subject of the Revised Project Plan;
- (k) proposed acceptance tests for certification of completeness for any required works;
- (l) any impact on any dates for the key works and services commencement dates and the Expiry Date;
- (m) outline Works Delivery Plan and/or Service Delivery Plan or any amendments to the existing Contractor's Proposals as the case may be;
- (n) details of the insurance arrangements required to cover any risks associated with the Revised Project;
- (o) the Contractor's opinion as to the compliance with Legislation of the draft Revised Project Plan;
- (p) how the Contractor intends to finance the Revised Project; and
- (q) details of how the Contractor will dispose of the Contract Waste during the carrying out of the Revised Project Plan and the costs of such disposal shall be included in the Revised Project Plan Costs.

3.3.5 The Contractor and the Authority shall during the period of six (6) Months from the receipt by the Authority of the draft Revised Project Plan discuss and seek to agree each and every element of the draft Revised Project Plan including:

- (a) the provision of evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred, foreseeable Changes in Law at that time have been taken account of by the Contractor; and

- (c) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Revised Project Plan, has been taken into account in the amount which in its opinion has resulted or is required under paragraph 3.3.3(f).

3.3.6 In any discussions which take place pursuant to paragraph 3.3.5 the Authority may:

- (a) suggest reasonable modifications to the draft Revised Project Plan provided that the Contractor shall not be obliged to take account of any such suggested modifications; or
- (b) require the Contractor to seek and evaluate competitive tenders for the relevant capital works.

3.3.7 If the Contractor either accepts (such acceptance shall be at the sole discretion of the Contractor) any modifications suggested by the Authority or there are any amendments to the draft Revised Project Plan following any competitive tenders for the relevant capital works in each case as arise pursuant to paragraph 3.3.4 then the Contractor shall, as soon as reasonably practicable following either the acceptance by the Contractor of any modifications or following the completion of any competitive tender, notify the Authority of any consequential changes to the draft Revised Project Plan.

3.3.8 The Authority shall by notice in writing from the Authority within six (6) Months of receipt of the draft Revised Project Plan pursuant to paragraph 3.3.1 either:

- (a) accept the draft Revised Project Plan and the Parties shall proceed to implement the Revised Project Plan in accordance with paragraph 3.4 (Implementation of Revised Project Plan) and the Parties shall execute such legal documentation as proposed by paragraph 3.3.3(i) to give effect to the Revised Project including the amendments to the Unitary Charge to reflect the Revised Project Plan Costs; or
- (b) reject the Revised Project Plan provided that in the event the Authority does not respond to such notice within the required time then the Authority shall be deemed to have rejected the Revised Project Plan and in the case of rejection or deemed rejection the Authority shall provide the Contractor with reasons for such rejection and the provisions of paragraph 3.5 (Termination as a Result of Planning Failure) shall apply.

3.4 Implementation of the Revised Project Plan

In the event that the Authority accepts the Revised Project Plan the Contractor shall implement the provisions of such Revised Project Plan in accordance with its terms.

3.4A Revised Project Plan and Revised Project Plan Longstop Date

3.4A.1 Where, at least 60 (sixty) days before the Revised Project Plan Longstop Date, the Contractor having agreed a Revised Project Plan pursuant to paragraph 3.3.8(a), has not obtained, or in its reasonable opinion is unlikely to obtain a satisfactory planning permission (as shall be defined in any variation to implement the Revised Project Plan) required to implement a Revised Project Plan prior to the Revised Project Plan Longstop Date, then the Parties may agree an extension to the Revised Project Plan Longstop Date, such extension not to extend beyond 31st December 2018.

3.4A.2 If, by the extended Revised Project Plan Longstop Date agreed in accordance with paragraph 3.4A.1, a satisfactory planning permission (as shall be defined in any variation to implement the Revised Project Plan) required to implement a Revised Project Plan has not been obtained then the Authority shall be entitled to terminate this Contract on thirty (30) Business Days notice and the Authority, subject to the Contractor having used all reasonable endeavours (as shall be defined in any variation to implement the Revised Project Plan) to obtain a satisfactory planning permission, shall pay the Contractor compensation in accordance with Part 5 (Compensation Following Planning Failure) of Schedule 17 (Compensation on Termination) provided that, where this paragraph 3.4A.2 applies, if the Authority has not served a notice to terminate this Contract by the extended longstop date agreed in accordance with 3.4A.1, the Contractor shall be entitled to terminate this Contract on thirty (30) Business Days notice and the Authority shall pay the Contractor compensation on the same basis as is set out above in this paragraph 3.4A.2.

3.4A.3 If a Revised Project Plan proposed by the Contractor is agreed by the Authority, the parties hereby confirm and agree that the pursuit of any planning permission under such plan shall be a shared risk between the Parties and that the WIDP Residual Waste Treatment Contract published in December 2010 shall be used as a basis for negotiation in relation to planning risk provided always that the provisions of Part 5 (Compensation Following Planning Failure) of Schedule 17 (Compensation on Termination) shall apply if the Contractor fails to obtain a satisfactory planning permission (as shall be defined in any variation to implement the Revised Project Plan) required to implement a Revised Project Plan).

3.5 Termination as a Result of Planning Failure

If the Authority rejects or is deemed to have rejected the Revised Project Plan pursuant to paragraph 3.3.8, then the Contractor, or the Authority may serve written notice on the other Party specifying such Party's wish to terminate the Contract. In the event of such notice of termination served pursuant to this paragraph 3.5 (Termination as a Result of Planning Failure) the Contract Period shall terminate thirty (30) Business Days from the date of such notice of termination and (provided that the Contractor has complied with its obligations under paragraph 2.2 (Meaning of All

Reasonable Endeavours) to use All Reasonable Endeavours to obtain Satisfactory Planning Permission), the provisions of Clause 70 (Compensation on Termination for Force Majeure) shall apply as if such termination constituted a Force Majeure Event.

3.6 Delays and Extensions of Time

3.6.1 Failure by the Contractor to achieve the Readiness Date and the Planned Works Commencement Date due to:

- (a) the Contractor having not obtained a Satisfactory Planning Permission for the Facility having used All Reasonable Endeavours to obtain Planning Permission; or
- (b) the Contractor having obtained a Satisfactory Planning Permission for the Facility but later than the applicable date set out Schedule 8 (Key Dates),

shall be deemed to be a Relief Event and the provisions of this paragraph 3.6 shall apply. Where the provisions of this paragraph 3.6.1 apply and Proceedings have resulted in a Satisfactory Planning Permission prior to the Planning Permission Longstop Date, then the financial consequences shall be determined in accordance with paragraph 8 of Schedule 19.

3.6.2 Compliance with this paragraph 3.6 shall be deemed to satisfy the provision of information requirements of Clauses 40.2 and 40.6 (Delays due to a Relief Event) where the Contractor is claiming relief pursuant to limb (k) of the definition of a Relief Event and the Contractor shall not additionally be required to comply with Clauses 40.2 (Relief) and 40.6 (Delays due to a Relief Event) in respect of any such claim.

3.6.3 Notwithstanding paragraph 3.6.1 the Contractor shall continue to comply with its obligations to use All Reasonable Endeavours to obtain the relevant Satisfactory Planning Permission (unless those obligations shall cease to apply in accordance with paragraphs 3.3 (Revised Project Plan) or 3.5 (Termination of Contract as a Result of Planning Failure).

3.6.4 If the Contractor obtains a Satisfactory Planning Permission the Contractor shall promptly so notify the Authority and within ten (10) Business Days:

- (a) demonstrate to the Authority the delay (if any) in mobilisation and commencement of the construction of the Facility by reference to Schedule 8 (Key Dates); and
- (b) propose to the Authority:
 - (i) a revised Planned Works Commencement Date;
 - (ii) a revised Planned Readiness Date;
 - (iii) a revised Planned Services Commencement Date;

(iv) a revised Expiry Date;

for the Facility (together “Revised Project Dates”).

3.6.5 The Authority and the Contractor shall seek to agree the Revised Project Dates as soon as possible and in doing so shall:

(a) agree the Revised Project Dates which are fair and reasonable in the circumstances having regard to the extent of the delay;

(b) disregard any delay caused by a breach, neglect or default of the Contractor; and

(c) take account of the extent to which the Contractor should be able, by acting in accordance with Good Industry Practice (and without being required to expend any sums), to mitigate the consequences of delay.

3.6.6 The parties agree that in determining the revised Expiry Date, the Authority shall ensure that, subject to legal restrictions under procurement law, the Expiry Date shall be such that it provides the Contractor with a twenty-five year operating period in respect of the Key Facility.

3.6.7 In default of delivery of the Revised Project Dates in accordance with paragraph 3.6.2 or default of agreement of the Revised Project Dates within ten (10) Business Days of delivery of such proposed Revised Project Dates, the Revised Project Dates shall be determined at the instance of either Party in accordance with Schedule 22 (Dispute Resolution).

3.6.8 Once agreed or determined the Construction Programme shall be amended to reflect the Revised Project Dates.

3.7 **Community Infrastructure Levy Charge**

For the avoidance of doubt, nothing in this Contract or this Schedule 26 shall require the Authority to contribute towards any Community Infrastructure Levy charge for which the Contractor may become liable nor, for the avoidance of doubt, shall any costs relating to the Community Infrastructure Levy charge count towards any of the financial thresholds in the definition of Satisfactory Planning Permission.

3.8 **Architectural Enhancements**

Any architectural enhancements to the design of the Key Facility required by a Planning Permission shall be at the Contractor’s risk.

3.9 **Notice to Proceed**

Unless agreed otherwise by the Parties, the Contractor undertakes to the Authority to issue the Notice to Proceed (pursuant to paragraph 5.1 (Notice to Proceed and Revised Project Plan) of Schedule 26 (Planning and Permitting) of the Construction Sub-Contract) within ten (10) Business Days

of a requirement to proceed with the implementation in accordance with paragraph 3.1.1 of this Schedule 26. Prior to Notice to Proceed, the Authority shall comply with its obligations set out in Schedule 24 (Foreign Exchange Rate Protocol).

SCHEDULE 27
PARENT COMPANY GUARANTEE

DATED

2012

- (1) VIRIDOR LIMITED**
- (2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON**

PARENT COMPANY GUARANTEE

THIS DEED is made on

BETWEEN:

- (1) **Viridor Limited** (registered number 02456473) whose registered office is at Peninsula House, Rydon Lane, Exeter, Devon EX2 7HR (the “Guarantor”); and
- (2) The **MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** of Taberner House, Park Lane, Croydon CR9 3JS (the “Authority”).

BACKGROUND:

- (A) The Authority has entered into a contract (the “Contract”) with Viridor (South London) Limited (the “Contractor”) dated _____ for the treatment of the South London Waste Partnership’s municipal waste (the “Project”).
- (B) The Authority has requested and the Guarantor has agreed to provide a guarantee of the Contractor’s obligations under the Contract.

IT IS NOW AGREED:

1 GUARANTEE

1.1 In consideration of the Authority (at the request of the Guarantor) entering into the Contract the Guarantor:

1.1.1 as principal obligor, and not merely as surety, hereby irrevocably and unconditionally guarantees to the Authority the full due and punctual performance and observance of all the obligations of the Contractor under or pursuant to the Contract or any agreement or document entered into pursuant to the Contract (the “Guaranteed Obligations”) subject to the terms of this Deed; and

1.1.2 subject to clause 2.4 undertakes to indemnify and keep indemnified the Authority on demand against all losses, liabilities, claims, costs, demands or expenses suffered or incurred by the Authority as a result of the failure by the Contractor to observe or perform any of the Guaranteed Obligations and/or as a result of any of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective on any ground whatsoever whether or not known to the Authority, as if such obligation were fully valid and enforceable.

2 LIABILITY

2.1 The liability of the Guarantor will not be discharged or affected in any way by:

2.1.1 any act, omission, fact, event or rule of law which, but for this Clause 2 might operate to release in whole or in part the Guarantor from its obligations under this Deed including (without limitation) any novation, assignment, termination (whether automatic or otherwise and whether by reason of the Contractor’s insolvency or otherwise), amendment or

extension of time or variation of or under the Contract or any act carried out in performance or purported performance of the Contract or any consent, waiver, forbearance or forgiveness by the Authority of the Contractor any other person; or

- 2.1.2 any total or partial invalidity, illegality or unenforceability of the Contract or any agreement or document entered into pursuant to the Contract; or
 - 2.1.3 a legal limitation, disability or incapacity or lack of authority of the contractor or any other person; or
 - 2.1.4 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Contractor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security; or
 - 2.1.5 any amendment (however fundamental) to, or variation or replacement of the Contract or any agreement or document entered into pursuant to the Contract; or
 - 2.1.6 any insolvency, liquidation, administration, receivership, administrative receivership, winding-up or similar proceedings or procedure.
- 2.2 The Authority may claim under this Deed without making any demand or claim or taking any proceedings against the Contractor or taking any action to claim under or enforce any other right or security or other guarantee which it may hold from time to time in respect of the obligations of the Contractor under the Contract or any agreement or document entered into pursuant to the Contract.
- 2.3 Any release, discharge or settlement (whether in respect of any of the Guaranteed Obligations or otherwise) shall be conditional upon no disposition or payment being void, set aside or ordered to be refunded for any reason and if such condition is not fulfilled, the liability of the Guarantor under this guarantee shall continue as if such release, discharge or settlement had not been made.
- 2.4 The following provisions shall apply in respect of the Guarantor's obligations and liabilities hereunder:
- 2.4.1 without prejudice to the provisions of Clause 1.1, the Guarantor shall have no greater obligation or liability under this Deed than those of the Contractor set out in the Contract or any agreement or document entered into pursuant to the Contract;
 - 2.4.2 the same periods of limitation which apply between the Contractor and the Authority under the Contract shall apply to any claim under this Guarantee;
 - 2.4.3 the Guarantor's liability shall be limited to [REDACTED] (Indexed) (the "Maximum Liability") which Maximum Liability shall, for the avoidance of doubt, reduce to the extent that the Liability Cap (as defined in the Contract is reduced as a result of the Contractor

discharging claims made by the Authority under the Contract) which reduce the Liability Cap.

3 CONTINUING GUARANTEE

The Guarantor's obligations under this Deed shall continue in full force and effect until the earlier of (i) final performance in full of the Guaranteed Obligations regardless of any intermediate payment, partial settlement or other matter whatsoever or (ii) the date upon which the Maximum Liability has been satisfied paid by the Guarantor hereunder.

4 GUARANTOR'S DEFENCES

The Guarantor will be entitled in any proceedings brought by the Authority under this Deed to take advantage of any defences or set-offs, which would be available to the Contractor in any proceedings brought by the Authority under the Contract.

5 EFFECT OF OUTSTANDING OBLIGATIONS

- 5.1 So long as the obligations of the Contractor under the Contract remain outstanding and unperformed the Guarantor will not claim any set-off or counterclaim against the Contractor in respect of amounts paid by the Guarantor under this Deed.
- 5.2 Until all amounts which may be or become payable by the Contractor under or in connection with the Contract have been irrevocably paid in full, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:
- 5.2.1 to be indemnified by the Contractor;
- 5.2.2 to claim any contribution from any other guarantor of the Guaranteed Obligations; and/or
- 5.2.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Authority under the Contract or of any other guarantee or security taken pursuant to, or in connection with, the Contract or the Guarantee Obligations, by the Authority.
- 5.3 No payments in the form of dividends owed from the Contractor to Viridor Limited either directly or indirectly through any other Associated Company of the Viridor group of companies shall be prevented by the operation of this Clause 5.

6 WARRANTIES

The Guarantor represents and warrants to the Authority that:

- 6.1 it has full power and authority to enter into and perform this Deed which constitutes or when executed will constitute, valid and binding obligations on the Guarantor which are enforceable in accordance with their respective terms;

6.2 it has taken all corporate and other action necessary to enable it to enter into and perform this Deed and has obtained all approvals and consents required by it for the performance by it of its obligations under this Deed;

6.3 the execution and delivery of, and the performance by the Guarantor of its obligations under, this Deed and any agreement or document entered into pursuant to this Deed will not:

6.3.1 result in a breach of any provision of the Memorandum or Articles of Association of the Guarantor; or

6.3.2 result in a breach of any order, judgment or decree of any court or governmental agency or security interest to which the Guarantor is a party or by which the Guarantor or any of its assets is bound.

7 NOTICES

7.1 Any notice, demand or other communication given under this Deed shall be in writing and signed by or on behalf of the party giving it and shall be served:

7.1.1 on the Guarantor by delivering it by hand or sending it by pre-paid recorded delivery or registered post or by fax to: Viridor Limited, Peninsula House, Rydon Lane, Exeter, Devon, EX2 7HR, FAO the Company Secretary, FAX 01392 420083 or to such other address or fax number as are last notified in writing to the Authority; and

7.1.2 on the Authority by delivering it by hand or sending it by pre-paid recorded delivery or registered post to: The Mayor and Burgesses of the London Borough of Croydon, Taberner House, Park Lane, Croydon, CR9 3JS, FAO The contract manager from time to time of the Authority (as at the date of this Deed being Malcolm Kendall, Head of Environmental & Leisure) or to such other address as is last notified in writing to the Guarantor.

7.2 Subject to clause 7.3, in the absence of evidence of earlier receipt, any notice or other communication given pursuant to this clause shall be deemed to have been received:

7.2.1 if delivered by hand, at the time of actual delivery to the address referred to in clause 7.1;

7.2.2 in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and

7.2.3 if sent by fax, at the time of completion of transmission.

7.3 If deemed receipt under clause 7.2 occurs before 9.00 am on a Business Day, the notice shall be deemed to have been received at 9.00 am on that day. If deemed receipt occurs after 5.00 pm on a Business Day or on any day which is not a Business Day, the notice shall be deemed to have been received at 9.00 am on the next Business Day.

8 GENERAL

- 8.1 Except where this Deed provides otherwise, each party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance by it of this Deed.
- 8.2 No variation of this Deed shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 8.3 This Deed and each of the agreements and documents executed pursuant to this Deed shall be binding upon and enure for the benefit of the successors in title of the parties.
- 8.4 If any provision of this Deed is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair:
- 8.4.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- 8.4.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.
- 9 ASSIGNMENT**
- 9.1 The Authority is not entitled to assign the benefit of and its rights under this Deed at any time without the Guarantor's consent.
- 10 GOVERNING LAW AND JURISDICTION**
- 10.1 This Deed and any contractual and/or non-contractual obligations arising out of or in connection with it will be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the courts of England.
- 11 THIRD PARTY RIGHTS**
- 11.1 The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 12 COUNTERPARTS**
- 12.1 This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same document.

This document is executed as a Deed on the date stated at the beginning of this Deed.

EXECUTED and DELIVERED)
as a DEED by VIRIDOR LIMITED)
acting by:)

Director

Director/Company Secretary

The COMMON SEAL of)
The MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF CROYDON)
was hereunto affixed in the presence of:)

Authorised Signatory

Seal Number

SCHEDULE 28

RELEVANT DISCHARGE TERMS

- 1 The sums referred to in paragraph 2.1 and the adjustment between the Parties of the rights and liabilities relating to the Facilities and assets referred to in paragraph 2 shall be the relevant discharge terms in relation to this Contract for the purposes of Section 6 of the Local Government (Contracts) Act 1997.
- 2 In the event of the making of a determination or court order by a court of final jurisdiction on an application for judicial review or audit review (within the meaning of the Local Government (Contracts) Act 1997), the result of which is that this Contract does not have effect or is otherwise unenforceable, then:
 - 2.1 the Contractor shall be entitled to be paid by the Authority the sum which is the equivalent of the Authority Default Termination Sum as calculated under paragraph 2.1 (Compensation for limbs(b),(c) and (d) of the definition of Authority Default and Authority Voluntary Termination) of Part 2 of Schedule 17(Compensation on Termination); and
 - 2.2 the Authority shall have the option to require the Contractor to transfer its rights, title and interest in and to the Assets to the Authority or as directed by the Authority.
- 3 The Authority shall pay to the Contractor the sums referred to in paragraph 2 above within forty (40) Business Days of determination or order of the court referred to in paragraph 2 above and the provisions of paragraphs 1 to 3 of Part 7 (General) of Schedule 17 (Compensation on Termination) shall apply.

SCHEDULE 29

NOT USED

SCHEDULE 30

OUTLINE SUBSTITUTE WASTE PLAN

PRINCIPLES

This Substitute Waste Plan is intended to be used in the event that the Authority is unable to deliver the Minimum Tonnage in any Contract Year following the Key Facility Services Commencement Date. Where this is the case this plan sets out the principles and practices required to seek to introduce new third party waste in order to ensure that the Minimum Tonnage is maintained so far as is possible.

1 PROCEDURE: SUBSTITUTE WASTE PROTOCOL

1.1 Initiating Substitute Waste Plan Protocols

The Authority will be responsible for the issue of a Substitute Waste Notice in accordance with clause 25.2.4 of the Contract based on its internal data and forecasts or following presentation of routine contract monitoring data supplied by the Contactor setting out tonnage received through the gate.

The Substitute Waste Notice will be issued to the Contractor's contract manager responsible for the Contract. The Substitute Waste Notice must include details of when, how much and the period over which the Substitute Waste will be required including the date upon which the Substitute Waste Notice will expire ("Substitute Waste Notice Expiry Date"), together with any other specific characteristics required or desirable.

Within 25 (twenty-five) Business Days of receipt of the Authority's Substitute Waste Notice or later depending on agreement of any additional resourcing requirements in accordance with paragraph 1.2 below, the Contractor will be required to formally initiate the Substitute Waste Protocols as set out in paragraphs 1.3 to 1.5 below.

1.2 Resourcing

The performance of the Substitute Waste Protocol will be carried out by the Contactor's existing marketing staff available at the time of issue of the Substitute Waste Notice. In the event that the Substitute Waste Notice issued by the Authority indicates that the shortfall in Contract Waste is forecast to be fifty percent (50%) or more below the Minimum Tonnage for the relevant Contract Year and the Contactor is of the reasonable opinion that additional marketing staff will be required, the Contactor will not be required to proceed to implement the Substitute Waste Protocol until the Contactor and the Authority have pre-agreed the scope of marginal additional costs that might be incurred in complying with the Substitute Waste Protocol. However, where practicable, the Contactor's staff allocated to other activities will be utilised to undertake such activities.

1.3 Identification of Collection Operators Able to Supply Substitute Waste

The starting point in identifying the potential for supply of Substitute Waste will be an internal database of waste collection operators identifying areas of operation, potential waste quantities, typical waste properties and likely pricing structures.

The Contactor will not be required to source any Substitute Waste to the extent that the relevant waste falls within any category of excluded Substitute Waste. Excluded

Substitute Waste shall be materials or mixtures of materials not permitted to be treated at the Key Facility and/or materials whose average calorific value falls outside the acceptable calorific value range as defined in MS 3.1a.i (unless otherwise agreed between the Authority and the Contractor on a case by case basis).

Through a review of this database, an initial shortlist of potential Substitute Waste suppliers will be developed. Waste collection operators in geographical proximity to the Key Facility will be prioritised in order to minimise transport movements, and maximise the achievable gate fee.

The Contractor will liaise with shortlisted third party waste suppliers in order to obtain further details of potential properties and quantities of additional Substitute Waste available, and negotiate outline pricing arrangements. The time period required by the Contractor to carry out this process will vary depending on the amount of the shortfall in the Contract Waste as against the Minimum Tonnage and the availability of third party waste suppliers with suitable third party waste at the relevant time. Negotiation will initially be conducted with suppliers via telephone in order to rapidly develop an understanding of available Substitute Waste streams and secure the required tonnages.

1.4 Continuous Monitoring of Supplied Substitute Waste

Substitute Waste received at the Key Facility will be closely monitored in order to ensure that:

- the quantity of Substitute Waste is consistent with the deficit with respect to the Minimum Tonnage (or other trigger mechanism to be defined); and
- material properties (in particular the reject fraction and approximate Net Calorific Value) are in line with anticipated levels.

Should any significant deviation occur with respect to these requirements, the Contractor will initially engage with the supplier to identify options for resolution.

1.5 Notification of termination of the Substitute Waste Protocol

In the event that the Authority wishes to terminate the Substitute Waste Protocol earlier than the Substitute Waste Notice Expiry Date, then the Authority shall be required to give the Contractor written notice of such termination ("Termination Notice") which shall take effect within a period of four (4) weeks from the date of such Termination Notice (the "Termination Period"). The Contractor needs to be given sufficient time to terminate any contracts secured for Substitute Waste and this may vary depending on the scale of waste required and the number of separate contracts needed to secure Substitute Waste. To the extent that the Contractor is required to terminate any third party waste contracts in order to comply with this Substitute Waste Protocol the Authority hereby agrees to indemnify the Contractor in respect of any Losses properly incurred by the Contractor in respect of such third party waste contracts provided that the Contractor shall have an obligation at all times to mitigate its liability for such Losses.

SCHEDULE 31

WASTE ACCEPTANCE PROTOCOL

1. DEFINITIONS

In each part of this Schedule 31 the following expressions (in addition to those specified in Schedule 1 (Definitions)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Acceptable Waste	means Contract Waste other than Unsuitable Waste;
Authority Vehicle	means a vehicle delivering waste on behalf of the Authority and/or the Partnership;
Contract Waste Category	means Contract Waste Category A, Contract Waste Category B or Contract Waste Category C, as appropriate;
Contract Waste Category C	shall have the meaning given to it in paragraph xi of Schedule 2 (Authority's Requirements);
Designated Tipping Point	the location within the relevant facility at which Loads are tipped, as directed by the Contractor;
Disputed Load	means an alleged Non-conforming Load, where the Authority's Representative and the Contractor fail to agree that the Load is a Reclassified Load;
Key Facility	means the Key Facility located at the Beddington Lane Site;
Load	means an amount of Contract Waste delivered by or on behalf of the Authority to a Delivery Point contained in or delivered by a single vehicle;
Non-Conforming Load	means a Load containing Unsuitable Waste or a Load containing incorrectly designated Contract Waste;
Reclassified Load	means a Non-Conforming Load which is reclassified pursuant to paragraphs 4.3 or 4.4;
Unsuitable Waste	means waste falling into any of the categories as set out in Appendix 1 to this Schedule;
Waste Query Procedure	means the procedure set out in paragraph 3 (Waste Query Procedure) below.

2. VALIDATION AND ACCEPTANCE OF WASTE AT THE WEIGHBRIDGE

- 2.1 All Authority Vehicles delivering Waste shall be required to have been previously authorised to deliver Waste and either to be in possession of a

valid waste transfer note (“WTN”) for the Load to be delivered or to be covered by a season ticket WTN.

- 2.2 Vehicles arriving at either Site shall be required to report to the relevant weighbridge. For unregistered Authority Vehicles, confirmation that it is a valid Authority Vehicle shall be required prior to the vehicle being registered onto the database.
- 2.3 Where it is identified from the WTN that the material to be delivered to Site is Unsuitable Waste, the Authority Vehicle will be denied access to the Facility.
- 2.4 With reference to Appendix 1, Contract Waste that is excluded from the list of wastes that may be received at the Villiers Road Site will be classified as Unsuitable Waste. In such a case the vehicle will be denied access to the Villiers Road Site and instructed to redeliver to the Beddington Lane Site.
- 2.5 Where it is identified from the WTN that the Load is Ad-hoc Waste (Category C) and the Contractor has not been notified at least four (4) hours in advance of delivery, the Load shall be classified as Unsuitable Waste, and the Authority Vehicle denied access to the Site.
- 2.6 In the case of paragraphs 2.3 to 2.5 applying, the Waste Query Procedure will not be invoked and the Load will not be quarantined. A record will be kept of the attempted delivery of Unsuitable Waste and the Authority will be notified within a twenty-four hour Business Day period.
- 2.7 Where practicable the weighbridge operator shall use reasonable endeavours to carry out a visual (direct or closed circuit television) inspection of the Waste to confirm that the Waste is as described on the WTN and that it can be accepted at the Facility, as defined by the Environmental Permit issued for the Facility. Should the Waste not appear to be as described on the WTN then the Waste Query Procedure shall be followed to determine the correct waste description and to confirm the Contract Waste Category.
- 2.8 After a satisfactory check of the WTN and vehicle, the weighbridge operator shall record the gross weight of the vehicle and Load, allow the vehicle access to the Site for tipping and direct the driver to the Designated Tipping Point.
- 2.9 The Load shall be further inspected at the Designated Tipping Point and, in the event that the waste is considered a Non-Conforming Load, the Waste Query Procedure shall apply.
- 2.10 Once the Load has been discharged, the vehicle shall exit the tipping hall or Waste Transfer Station building (as appropriate) and return to the weighbridge. The weighbridge operator shall record the tare weight of the vehicle, the net weight of Waste delivered shall be automatically calculated and an electronic weighbridge ticket shall be issued to the driver.

3. WASTE QUERY PROCEDURE

- 3.1 Any vehicle delivering Waste to a Site may be selected for inspection to demonstrate compliance with the WTN for the Load, the conditions of the Environmental Permit, the defined restrictions for the Site, or for confirming

the Contract Waste Category. Waste which does not meet these criteria shall be designated as Non-Conforming Loads.

- 3.2 The results of such inspections shall be recorded against the unique number assigned to the WTN and retained for auditing purposes.

Inspections at the weighbridge

- 3.3 Having identified a vehicle or Load for inspection, the weighbridge operator shall use reasonable endeavours to confirm that the Waste is acceptable for disposal or treatment on Site, including where appropriate a visual check of the surface of the Load or of the safety of the vehicle, verbal confirmation of the Load contents with the driver or the recording of images.
- 3.4 In the event that the weighbridge operator is not satisfied that the vehicle or Load may be permitted on the Site then the driver of the vehicle shall be directed to leave the weighbridge with the vehicle and report to the designated quarantine area for further investigation and instruction. In such circumstances, wherever possible Authority Vehicles shall be instructed to tip their Waste in the quarantine area and leave the Site.

Inspections at the Designated Tipping Point

- 3.5 The Key Facility tipping hall and bays and the Waste Transfer Station building shall be monitored by closed circuit television operated by a designated member of staff. A visual inspection of the Waste as it is tipped shall be carried out and any anomalies logged and reported to senior management for action. In addition, ad hoc physical checks of Waste being discharged may be authorised.
- 3.6 In the event that it is observed while a vehicle is tipping, that waste apparently inappropriate to the Designated Tipping Point delivery point, or Non-Conforming Load is being discharged, the driver shall be directed to cease discharging until an inspection has been carried out. Where practicable such inspections shall take place in situ; however, if appropriate, the vehicle and Load shall be secured and reasonable precautions taken to prevent further tipping of Waste.
- 3.7 If while a Load is identified in the Load being is tipped, it is considered that it is a Non-Conforming Load, then the driver of the vehicle shall be directed to move the vehicle to the designated quarantine area for further investigation.
- 3.8 If necessary, any suspected Unsuitable Waste or Waste that has been incorrectly categorised, that has been discharged into the Designated Tipping Point shall be segregated to the extent reasonably practicable from the Waste in the waste reception bunker or tipping area (as appropriate) and transferred to a dedicated quarantine area.

Inspections in the designated quarantine area

- 3.9 Vehicles identified as requiring detailed inspection shall be directed to a designated quarantine area where they shall be required to expose or tip their remaining Load as appropriate to permit inspection of the Load by Site staff.

- 3.10 The inspection shall be conducted by a trained member of staff following Site specific procedures, and documented for future reference. The purpose of the inspection shall be:
- 3.10.1 to identify or eliminate the presence of Unsuitable Waste;
 - 3.10.2 to confirm the Contract Waste Category; and
 - 3.10.3 to inform a decision regarding how the Load will be processed.
- 3.11 If the inspection concludes that the Load does not constitute a Non-Conforming Load, the vehicle and Load shall be recovered and processed at the Facility as normal.
- 3.12 In the event that the Load is found to contain Unsuitable Waste, which cannot be segregated from the remainder of the Load, then the Load shall be deemed to be Non-Conforming Load and a decision shall be required by the Site supervisor regarding the processing or segregation of the Load.
- 3.13 Where it is reasonably practicable to do so then the Unsuitable Waste portion of the Load shall be segregated from the remainder of the Load, which shall be processed as normal. The Unsuitable Waste portion shall be retained in quarantine for suitable disposal, or in the case of Third Party Waste returned to the producer as appropriate. A record of the weight of Unsuitable Waste in the Load shall be maintained and it shall be allocated a unique reference number based on the date it was received at the Site and shall be referenced to the relevant Waste Transfer Note.
- 3.14 In the event that it is considered that the Load has been given the incorrect Contract Waste Category designation, the Contractor shall make a record of the composition of the Load. The Load shall be held in the quarantine area and shall be deemed to be a Non-conforming Load, whereupon the provisions of paragraphs 4.1 to 4.6 shall apply as appropriate.
- 3.15 A register of Non-conforming Loads based on the unique reference number shall be maintained to record its storage, transportation and subsequent treatment/disposal.

4. PROCEDURE FOR NON-CONFORMING LOADS

- 4.1 The Contractor shall notify the Authority's Representative as soon as reasonably practicable that a Load is a Non-Conforming Load and shall issue by email a written pro-forma, recommending how to manage the Non-Conforming Load accompanied by the following evidence of contamination and/or incorrect classification:
- 4.1.1 photographic evidence; and
 - 4.1.2 a completed waste reclassification form, with copy ticket and reason for reclassification, countersigned by the driver and Site manager/nominee.
- 4.2 The Contractor shall, for a period of eight (8) hours after the notification referred to in paragraph 4.1 above, afford the Authority's Representative a reasonable opportunity to carry out a joint inspection of the Non-conforming

Load in conjunction with the Contractor in order to confirm and agree the designation.

4.3 In the event that the Authority's Representative either:

4.3.1 declines to carry out a joint inspection in accordance with paragraph 4.2 above; or

4.3.2 fails to respond to the relevant notification within the time period specified in paragraph 4.2,

then the Non-conforming Load shall be deemed to be a Reclassified Load.

4.4 Following a joint inspection, the Parties shall act reasonably to reach a joint decision as to whether the Non-conforming Load shall be a Reclassified Load.

4.5 Where it is decided pursuant to paragraph 4.4 above, or deemed in accordance with paragraph 4.3 above, that a Non-conforming Load is a Reclassified Load, the Contractor shall determine suitable alternative means of disposal or treatment for that Reclassified Load, for approval by the Authority, such approval not to be unreasonably withheld, and shall dispose of the Reclassified Load accordingly.

4.6 Where the Parties are unable to reach a joint decision in accordance with paragraph 4.4 above, the Non-conforming Load shall be deemed to be a Disputed Load whereof the following consequences shall apply:

4.6.1 the Parties shall each record reasons for their respective contentions in respect of the Disputed Load and collate relevant supporting evidence;

4.6.2 where the Disputed Load consists of Contract Waste Category C, the Contractor shall provide to the Authority a cost breakdown in respect of managing such a Disputed Load;

4.6.3 the Contractor may, at its sole discretion, dispose of the Disputed Load at its own cost; and

4.6.4 the Parties shall refer the matter for adjudication in accordance with Schedule 22 (Dispute Resolution Procedure).

Appendix 1: Unsuitable Wastes

Unsuitable Waste	Exceptions
Waste not defined as Core Waste, Specialist Waste or Ad-hoc Waste under the Contract	None
Waste defined as Specialist Wastes and Ad-hoc Waste, that the facility is not licensed to receive.	None
<p data-bbox="308 613 874 680">Separately collected Contract Wastes as defined below;</p> <ul style="list-style-type: none"> <li data-bbox="360 719 635 752">• Fly tipped waste; <li data-bbox="360 786 874 887">• Waste delivered in accordance with Schedule 2 of the Controlled Waste Regulations 1992; <li data-bbox="360 920 874 1021">• Waste contaminants and residues from the Partnership's other waste contracts; <li data-bbox="360 1055 874 1189">• Other waste collected by or on behalf of the Partnership from time to time, and not defined under Contract Waste; <li data-bbox="360 1223 874 1323">• Gully cleansing arisings which have not been dewatered prior to delivery to site; <li data-bbox="360 1357 563 1391">• Dog faeces; <li data-bbox="360 1424 491 1458">• Tyres; <li data-bbox="360 1491 536 1525">• Asbestos; <li data-bbox="360 1559 874 1659">• Separately collected Household Clinical - Sharps and Offensive waste; <li data-bbox="360 1693 616 1727">• Batteries (Car); <li data-bbox="360 1760 600 1794">• Gas cylinders; <li data-bbox="360 1827 719 1861">• Pressurised Containers; <li data-bbox="360 1895 655 1928">• Fire extinguishers; 	Applicable to Villiers Road Facility only

Unsuitable Waste	Exceptions
Liquid wastes that flow near instantaneously into a hollow in the surface of the waste	Any waste containing less than 10% free draining liquid substances that do not pose a spontaneous combustion risk during tipping or in the Designated Tipping Point.
Animal remains	Any whole or part animal carcasses less than 25kg per Contract Waste Load
Dog faeces;	Less than 500kg per delivery
Malodorous waste	Amounts such that the Contractor (acting reasonably) determines would not result in a Relevant Authority requiring extra measures to be taken at the Facility to control odour

SCHEDULE 32

EXCESS REVENUE SHARE THRESHOLD ADJUSTMENT

1. The following definitions will apply for this Schedule 32:

Adjusted Third Party Income Threshold shall have the meaning given in paragraph 1 below to this Schedule 32; and

Base Case Third Party Income Threshold is an annual amount calculated as █% (█ per cent) of the Third Party Income, which is set out in Appendix 4 of Schedule 4 to the Project Agreement.

2. To the extent that there is an increase in the Unitary Charge calculated in accordance with paragraph 8 of Schedule 19 (Revision of Base Case and Custody), the Base Case Third Party Income Threshold will be revised in accordance with this Schedule 32 and the relevant worksheets in the Base Case in order to produce an adjusted Base Case Third Party Income Adjustment (“the Adjusted Third Party Income Threshold”).
3. Any adjustment to the Base Case Third Party Income Threshold is subject to a maximum reduction of █ pounds █ per annum calculated on a real basis, pro rated for partial periods.
4. Following the update to the Financial Model at the Notice to Proceed in accordance with paragraph 8 of Schedule 19, the updated Unitary Charge (real) will be compared to the Unitary Charge (real) as per the Base Case in order to calculate the difference between the two on a period by period basis. The Unitary Charge can be found in the Financial Model within rows 13-22 of the “Summary calcs” sheet.
5. Any increase to the Unitary Charge (real) will reduce the Base Case Third Party Income Threshold. The Base Case Third Party Income Threshold will be reduced by two pounds in real terms for each pound increase in the real Unitary Charge.

SCHEDULE 33

NOT USED