

DATED 5th November 2012

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

and

(2) VIRIDOR SOUTH LONDON LIMITED

SOUTH LONDON WASTE PARTNERSHIP

RESIDUAL WASTE TREATMENT CONTRACT

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THIS CONTRACT is made on 5th November

2012

BETWEEN:

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CROYDON** of Taberner House, Park Lane, Croydon, CR9 3JS (the "Authority"); and
- (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").

WHEREAS:

- (A) The Waste Strategy 2007 issued by the Secretary of State pursuant to the Environmental Protection Act 1990 (the EPA) requires local authorities to achieve certain targets for recycling and composting which have been enshrined in National Indicators ("NIs"). The 1999 Landfill Directive (99/31/EC) requires all local authorities to divert prescribed amounts of biodegradable municipal waste from landfill and this is enforced by the Waste Emissions and Trading Act 2003 (together the NIs and landfill diversion requirements shall be known as the "Statutory Targets").
- (B) The South London Waste Partnership (the "Partnership") has been formed between the Authority, the London Borough of Merton, the London Borough of Sutton and the Royal Borough of Kingston Upon Thames. The Partnership has delegated to the Authority, or its successors, the function to enter into this Contract as the contracting authority on behalf of the Partnership.
- (C) The Authority, the London Borough of Merton, the London Borough of Sutton and the Royal Borough of Kingston Upon Thames are all waste disposal authorities under Section 30(2)(b)(iii) of the EPA and have statutory duties under EPA to make arrangements for the disposal of waste that is collected by the waste collection authorities and to provide household recycling centres within its area.
- (D) Pursuant to a notice published in the Official Journal of the European Union on 13 May 2009, the Authority, on behalf of the Partnership, invited expressions of interest from appropriately qualified organisations for services relating to the design, build, finance, operation and maintenance of residual waste treatment facilities with a view to assisting the Partnership discharging the statutory obligations and in meeting its Statutory Targets on the basis set out in this Contract.
- (E) The Contractor has submitted proposals to the Partnership setting out how it will meet the Authority's Requirements.
- (F) The Partnership, through its lead authority, the Authority, has selected the Contractor as the most economically advantageous tenderer to provide the Interim Services and Services pursuant to this Contract.

PART I - PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice-versa;
- 1.2.3 a reference to any recital, Clause, sub-clause or Schedule is, except where expressly stated to the contrary, a reference to such recital, Clause, sub-clause or Schedule, of and to this Contract and all references to parts, sections, paragraphs, appendices or annexes are to parts, sections, paragraphs, appendices or annexes of, or to, the Schedules;
- 1.2.4 save where otherwise provided in this Contract, any reference to any agreement, document, procedure or other instrument (other than this Contract) shall be deemed to be references to that agreement, document, procedure or other instrument as from time to time amended, varied, supplemented, substituted, novated or assigned in accordance with its terms;
- 1.2.5 references to "this Contract" include this Contract as amended or supplemented in accordance with its terms;
- 1.2.6 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.7 references to any documents being 'in the agreed form' means such documents have been initialled by or on behalf of each of the parties for the purposes of identification;
- 1.2.8 a reference to a person includes an individual, a government department or body, a local authority, an agency, firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.9 the contents page, headings and sub-headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Contract;
- 1.2.10 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;

- 1.2.11 any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
- 1.2.12 subject to any express provisions to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense;
- 1.2.13 if a period of time is specified from, following, after or within a certain period of time of a given Business Day or day, or from, following, after or within a certain period of time of the Business Day or day of an act or event, it shall be calculated exclusive of that Business Day or day;
- 1.2.14 the Authority is acting as contracting authority on behalf of the Partnership and the Contractor acknowledges that in bringing any claim or other proceedings under this Contract, the Authority may claim either or both in respect of its own losses and expenses and on behalf of the Partnership in respect of the losses and expenses incurred by all or any members of the Partnership; and
- 1.2.15 reference to the Authority shall, where the context requires, include the Partnership or any of the members of the Partnership.

1.3 Schedules

The Schedules to this Contract form part of this Contract.

1.4 Exclusion of Legislation

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

1.5 Indexation

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

Index₁
Index₂

where Index₁ is the value of the All Items Retail Prices Index (excluding mortgage interest payments) (RPIX) most recently published prior to the relevant calculation date and Index₂ is the value of the All Items Retail Prices Index (excluding mortgage interest payments) (RPIX) on the Price Reference Date.

1.6 Responsibility for Related Parties

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

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

1.7 Approval

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

1.8 Statutory Capacity

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

1.9 Succession

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

1.10 Co-operation

The Authority undertakes to the Contractor that in relation to the Sites, the Authority shall not (and shall ensure that any Authority Related Party shall not) wilfully or negligently impede, hinder, obstruct or interfere with the Contractor in the performance of its obligations under this Contract.

2. PRECEDENCE OF DOCUMENTATION

2.1 Precedence of Documentation

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

3. COMMENCEMENT AND DURATION

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

3.2 The Services Period in respect of those Services provided from the Key Facility will commence on the Key Facility Services Commencement Date and terminate on the earlier of:

3.2.1 the Expiry Date; and

3.2.2 the Termination Date.

3.3 The Service Period in respect of those Services provided from the Waste Transfer Station will commence at the Villiers Road Site on the Key Facility Services Commencement Date and terminate on the earlier of:

3.3.1 the Expiry Date; and

3.3.2 The Termination Date.

3.4 The Interim Services shall be provided on and from 1st April 2014 in accordance with Clause 20.5.

3.5 Where the Expiry Date in respect of the Service Periods specified in Clauses 3.2 and 3.3 (Commencement and Duration) is due to fall on a date earlier than the thirty-fifth (35th) anniversary of the Commencement Date (the "Projected Expiry Date"), then on or before a date falling no later than twenty four (24) Months (or such shorter period agreed between the Parties) prior to the Projected Expiry Date, the Authority shall, at its sole discretion, have the option to give written notice to the Contractor of its desire to extend the Service Periods referred to in Clauses 3.2 and 3.3 (Commencement and Duration) by such further fixed period (the "Extension of Contract Period") so that the Expiry Date will occur on such date later than the Projected Expiry Date (but not in any event being later than the 35th anniversary of the Commencement Date) and on the Authority giving such written notice this Contract shall remain in full force and effect during such Extension of Contract Period until the earlier of the expiry of the Extension of Contract Period or the Termination Date but the Extension of Contract Period shall not commence unless the Parties have agreed (acting always within the applicable public procurement rules) the terms of such Extension of Contract Period, including any consequential variations to the Contract, the Unitary Charge, the Lease and any Ancillary Documents and provided further that the Authority has demonstrated to the Contractor (acting reasonably) that the proposed tonnages of Contract Waste projected to be delivered by the Partnership to the Contractor during the Extension of Contract Period are likely to be broadly consistent with the profile for such Contract Waste tonnages actually delivered by the Partnership to the Contractor in the five Contract Years immediately prior to the service of the notice by the Authority of its desire to seek an Extension of Contract Period.

4. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

4.1 Certification Requirements

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

4.2 Contractor's Consent

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

4.3 Failure to Issue a Certificate

If a certificate is not issued by the Authority pursuant to Clause 4.2 (Contractor's Consent) within six (6) weeks of the date of this Contract then the Contractor shall be entitled by giving notice in writing to the Authority within five (5) Business Days of such date to terminate this Contract, whereupon the Relevant Discharge Terms shall apply.

4.4 Unenforceability of Contract

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

4.5 Relevant Discharge Terms

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

5. GENERAL WARRANTIES AND UNDERTAKINGS

5.1 Contractor Undertakings

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

- 5.1.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Business Days of becoming aware that the same may be threatened or pending or within twenty (20) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor), give the Authority notice of all such litigation, arbitration, administrative or adjudication or mediation

proceedings which would adversely affect, to an extent which is material in the context of this Project, the Contractor's ability to perform its obligations under this Contract and shall, for so long as such proceedings subsist, keep the Authority reasonably informed of the same;

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

5.2 Prohibited Act

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

5.3 Status of Warranties

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

5.4 Contractor Warranty

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

- 5.4.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.4.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract and the Ancillary Documents;
- 5.4.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract and the Ancillary Documents has been taken or, in the case of any Ancillary Documents executed after the date of this Contract, will be taken before such execution;
- 5.4.4 the obligations expressed to be assumed by the Contractor under the Ancillary Documents are, or in the case of any Ancillary Documents executed after the date of this Contract will be, legal, valid, binding and enforceable to the extent permitted by law and each Ancillary Document is or will be in the proper form for enforcement in England;
- 5.4.5 the execution, delivery and performance by it of the Ancillary Documents does not contravene any provision of:
 - (a) any existing Legislation either in force, or enacted but not yet in force and binding on the Contractor;
 - (b) the memorandum and articles of association of the Contractor;
 - (c) any order or decree of any court or arbitrator which is binding on the Contractor; or
 - (d) any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.4.6 the Contractor Warranted Data is true and accurate in all respects;
- 5.4.7 the Contractor has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;
- 5.4.8 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under the Ancillary Documents;

- 5.4.9 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Ancillary Documents;
- 5.4.10 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 5.4.11 the Ancillary Documents are or, when executed, will be in full force and effect and constitutes or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties thereto; and
- 5.4.12 the copies of the Ancillary Documents which the Contractor has delivered, or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to the Ancillary Documents which would materially affect the interpretation or application of any of the Ancillary Documents,

and the Authority relies upon such warranties and representations.

5.5 No Warranty by Authority

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

5.6 No Liability to Contractor

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

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

5.7 Fraudulent Statements

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

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

6. CONTRACTOR'S DUE DILIGENCE

Subject to Clause 5.7 (Fraudulent Statements) and the provisions of Clauses 11.5 and 11.6 (Site Conditions) and 14 (Fossils and Antiquities), the Contractor shall be deemed to have:

- 6.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract; and
- 6.2 gathered all information necessary to perform its obligations under this Contract and other obligations assumed including:
- 6.2.1 information as to the nature, location and condition of the Sites (including hydrological, geological, geotechnical and sub-surface conditions);
 - 6.2.2 current and projected tonnages, trends and composition of Contract Waste; and
 - 6.2.3 information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures.
- 6.3 Subject to Clause 5.7 (Fraudulent Statements), the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

6A PARENT COMPANY GUARANTEE

- 6A.1 The Contractor shall procure the execution on or before the date of this Contract (and as a condition of this Contract) of a Parent Company Guarantee in favour of the Authority in the form set out in Schedule 27 (Parent Company Guarantee) to secure the due performance by the Contractor of its obligations to the Authority.
- 6A.2 As at the date of this Contract the Guarantor shall be Viridor Limited a company incorporated under the laws of England and Wales (Company No. 02456473) whose registered office is at Peninsula House, Rydon Lane, Exeter, Devon, EX2 7HR ("the Guarantor").
- 6A.3 Unless and until otherwise agreed by the Parties the form of guarantee set out at Schedule 27 (Parent Company Guarantee) shall be the relevant specified form for the purposes of this Contract.
- 6A.4 If during the Contract Period the Guarantor shall cease to meet the Guarantee Criteria in Clause 6A.5 (Parent Company Guarantee), the Contractor shall, within twenty (20) Business Days following a written

request from the Authority, at its own cost and expense, procure that a Substitute Guarantor which at the relevant time and thereafter shall meet the Guarantee Criteria shall become the Guarantor and shall provide a parent company guarantee in favour of the Authority substantially in the form set out in Schedule 27 (Parent Company Guarantee) to secure the due performance by the Contractor of its obligations to the Authority.

6A.5 The Guarantee Criteria for the purposes of Clause 6A.4 (Parent Company Guarantee) shall be that:

6A.5.1 the Guarantor's latest statutory accounts shall demonstrate that the Guarantor has a consolidated net asset value of not less than [REDACTED] pounds [REDACTED]; and

6A.5.2 the Guarantor files its statutory accounts in accordance with Legislation provided that this criterion shall be satisfied if the Guarantor files its accounts up to and including the twentieth (20th) Business Day following the date required by Legislation.

6A.6 In the event that the Contractor shall fail to comply with Clause 6A.4 (Parent Company Guarantee) the Contractor shall within twenty (20) Business Days of a written request from the Authority provide suitable alternative security to the Authority to a value of not less than [REDACTED] pounds [REDACTED] (Indexed) (which may take the form (without limitation) of an alternative guarantee, the provision of funds or reserves by a third party under guarantee, performance bond, cash, deposit or escrow account) as the Authority may approve (such approval not to be unreasonably withheld or delayed).

6A.7 If the Contractor fails to provide the alternative security in accordance with the requirements of Clause 6A.6 (Parent Company Guarantee), and without prejudice to its rights under Clause 67 (Termination for Contractor Default), the Authority shall be entitled (but not obliged) (for so long as the failure continues) to procure such alternative security for itself and recover the cost of so doing from the Contractor, either by retaining some or all of any subsequent Monthly Payment or by claiming the relevant amount as a debt.

6A.8 If the Contractor shall provide alternative security under Clause 6A.6 (Parent Company Guarantee), the Authority may request in writing that the Contractor continues to seek to put in place a parent company guarantee and if the Authority so requests, the Contractor shall seek to put in place a parent company guarantee substantially in the form set out in Schedule 27 (Parent Company Guarantee) from a Substitute Guarantor to secure the due performance by the Contractor of its obligations to the Authority.

6A.9 Where under Clause 6A.8 (Parent Company Guarantee) the Authority has requested and the Contractor has provided a substitute parent company guarantee, or where the existing parent company guarantee complies again with Clause 6A.5 (Parent Company Guarantee), then the Contractor shall no longer continue to be required to provide the alternative security required under Clause 6A.6 (Parent Company Guarantee) provided always that if the Substitute Guarantor or existing parent company guarantee fail again to comply with Clause 6A.5 (Parent Company Guarantee), the provisions of Clauses 6A.6 and 6A.7 (Parent Company Guarantee) shall immediately apply.

6A.10 Any dispute under this Clause 6A (Parent Company Guarantee) may be referred by either party for determination under Schedule 22 (Dispute Resolution Procedure).

7. AMENDMENT OF DOCUMENTS

7.1 Delivery of Initial and Changed Ancillary Documents

The Contractor has provided to the Authority copies of the Ancillary Documents as listed Schedule 5 (Ancillary Documents).

7.2 Without prejudice to the provisions of Clauses 7.1 or 7.3 (Amendment of Documents), if at any time an amendment is made to any of the Ancillary Documents (which for the avoidance of doubt shall only include those parts of the Construction Sub-Contract explicitly referenced in Part 1 of Schedule 5 (Ancillary Documents)), or the Contractor enters into a new Ancillary Document (or any agreement which affects the interpretation or the application of any of the Ancillary Documents), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

7.3 Ancillary Documents

The Contractor shall perform its obligations under, and observe all of the provisions of, the Ancillary Documents and shall not:

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

unless the proposed course of action (and any relevant documentation) has been submitted to the Authority's Representative for review under the Review Procedure and there has been no objection in accordance with paragraph 3 of the Review Procedure within twenty (20) Business Days of receipt by the Authority's Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the Parties, and, in the circumstances specified in Clause 7.3.1 (Ancillary Documents), the Contractor has complied with Clause 81 (Assignment and Subcontracting).

7.4 Changes to Sub-Contracts

No amendment, waiver or exercise of a right under this Contract or any Sub-Contract shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this Clause 7.4 (Changes to Sub-Contracts). In the event of any conflict between the provisions of this Clause 7.4 (Changes to Sub-Contracts) and any other provision of this Contract, the provisions of Clause 7.4 (Changes to Sub-Contracts) shall prevail.

8. LIAISON PROCEDURE

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

9. REPRESENTATIVES

9.1 Representatives of the Authority

9.1.1 The Authority's Representative shall be such person notified by the Authority to the Contractor in writing within twenty (20) Business Days of the Commencement Date or such other person appointed pursuant to this Clause. The Authority's Representative shall exercise the functions and powers of the Authority in relation to the Project which are identified in this Contract as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Contract as may be notified to the Contractor from time to time.

9.1.2 The Authority's Representative shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Authority's Representative and all references to the "Authority's Representative" in this Contract (apart from this Clause) shall be taken as reference to such person so far as they concern matters within the scope of such person's authority.

9.1.3 The Authority may by notice to the Contractor change the Authority's Representative. Where the Authority wishes to do so, it shall by written notice to the Contractor propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Contractor (not to be unreasonably withheld or delayed).

9.1.4 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Contract), the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.

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

9.2 Representatives of the Contractor

- 9.2.1 The Contractor's Representative shall be such person as notified by the Contractor to the Authority in writing within twenty (20) Business Days of the Commencement Date or such other person appointed pursuant to this Clause. The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.
- 9.2.2 The Contractor may by notice to the Authority change the Contractor's Representative. Where the Contractor wishes to do so, it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

9.3 Appointment of Representatives

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

PART II - LAND

10. LAND ISSUES

10.1 Grant of Leases

- 10.1.1 The Authority shall procure that the Royal London Borough of Kingston grants and the Contractor will accept the First Lease on the First Lease Completion Date and the Second Lease on the Second Lease Completion Date.
- 10.1.2 If, prior to the First Lease Completion Date, a lease is granted in respect of the Villiers Road Site or part thereof to an Affiliate of the Contractor which such lease ceases to be vested in such Affiliate prior to the First Lease Completion Date, the Authority shall procure that the lessee thereunder shall yield up the Villiers Road Site in accordance with the provisions of such lease.
- 10.1.3 The Authority shall procure that the Leases are granted with vacant possession save in respect of any occupation by the Contractor, any Contractor Related Party or any Affiliate of the Contractor.
- 10.1.4 Not less than twenty (20) Business Days prior to each of the First Lease Completion Date and the Second Lease Completion Date, the Authority's Representative shall deliver an engrossment of the relevant counterpart Lease to the Contractor's Representative.
- 10.1.5 The Contractor shall execute and deliver to the Authority's Representative the relevant counterpart Lease within ten (10) Business Days of receipt. The Parties confirm in relation to each Lease that a Landlord's Notice has been served on the Contractor and the Contractor or a person duly authorised by the Contractor has made a Tenant's Declaration.
- 10.1.5A The Authority and the Contractor agree that the provisions of Sections 24-28 (inclusive) of the Landlord and Tenant Act 1954 are to be excluded in relation to the tenancies to be created by the Leases.
- 10.1.6 **Registration**
- (a) The Contractor shall apply for registration of the Second Lease and any new lease granted pursuant to Clause 10.2 (Registration) at HM Land Registry and meet all fees in connection therewith as soon as reasonably practicable after the Second Lease has been completed and shall within ten (10) Business Days of completion of such application supply copies of the leasehold register entries and title plan to the Authority's Representative.
- (b) The Authority shall use all reasonable endeavours to assist the Contractor in responding to any requisitions raised by

HM Land Registry and the Authority shall deliver to the Contractor prior to the completion of the Second Lease such consents as are required to be produced by virtue of the restrictions appearing on the Proprietorship Register for the Authority's title to the Villiers Road Site to enable the Second Lease to be registered.

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

10.1.8 The Leases shall be granted with vacant possession (save as aforesaid) but otherwise subject to but where applicable with, the benefit (to the extent the Authority is capable of transferring the same) of:

- (a) all existing rights privileges easements liabilities (and in particular but without prejudice to the generality of the foregoing) drainage or other service rights or easements and quasi or reputed easements affecting the Villiers Road Site and existing as at the date hereof;
- (b) all local land charges (whether registered or not before the date hereof) and all matters capable of registration as local land charges (whether or not actually registered as such) affecting or relating to the Villiers Road Site or any part thereof or any building or other structure thereon whether general or specific;
- (c) all notices orders proposals or requirements whatsoever (whether registered or not before the date hereof) affecting or relating to the Villiers Road Site or any part thereof given or made by any government department or by any statutory undertaker or by any public local authority or other competent authority;
- (d) all actual or proposed charges (other than financial charges or liability for chancel repairs) orders proposals restrictions agreements notices or other matters whatsoever (whether registered or not before the date hereof) affecting or relating to the Villiers Road Site or any part thereof or any building or other structure thereon or any part thereof under the Planning Act; and
- (e) the matters mentioned or referred to in the registers to the freehold title to the Villiers Road Site as at the date of this Contract (save for financial charges);

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

10.2 Where the Contract Period is extended pursuant to Clause 3.5 (Commencement and Duration), the Authority shall (if required), not less than ten (10) Business Days prior to the expiry of any the Lease relating to

the Villiers Road Site (where necessary for the continued provision of the Services for the extended Contract Period), grant or procure the grant to the Contractor a further lease for the Villiers Road Sites for the entire period of the extended Contract Period and the Contractor shall accept the grant of any such lease. Any such lease shall otherwise be on the same terms as the Lease. Prior to the terms of any such lease being agreed, the Authority shall procure that a Landlord's Notice is served and the Contractor shall make a Tenant's Declaration. The parties shall agree to the exclusion of ss24-28 of the Landlord and Tenant Act 1954 in relation to the tenancy to be granted by such Lease.

10.3 Consents

Insofar as any Consents are required for the carrying out of Works at and operation and/or use of the Villiers Road Site the Contractor will at its own expense in all respects procure that such Consents are obtained in accordance with Clause 12 (Consents) for the Villiers Road Site and will supply copies of any Consents for the Works to the Authority within five (5) Business Days of receipt by the Contractor.

10.4 Title

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

10.5 Early Termination

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

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

10.5.2 the Contractor shall forthwith deliver to the lessor in accordance with the relevant Lease together with relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to the relevant Lease; and

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

10.6 Expiry of Contract

Not later than twenty (20) Business Days before the last day of the Contract Period, the Authority may, by written notice to the Contractor, require the Contractor to assign, with effect from the last day of the Contract Period, its unencumbered interest in the relevant Lease (as applicable) to such assignee

as shall be notified by the Authority to the Contractor in the notice by delivering to the Authority within ten (10) Business Days a duly executed deed of assignment in such form as the Authority and the Contractor shall agree (each acting reasonably) together with all relevant title deeds and releases from any charge. Upon any such assignment the Contractor and any guarantor shall be released from all future liability (but not any past or present liability) under the Lease.

10.7 Adjacent Land and Third Party Consents

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

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

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

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

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

11. SITE CONDITIONS

11.1 Site Conditions

Subject to the provisions of this Clause 11 (Site Conditions), shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract and the generality of the foregoing), the Contractor shall be deemed to have:

- 11.1.1 carried out a ground physical and geophysical investigation and to have inspected and examined the Site(s) and its surroundings and

(where applicable) any existing structures or works on, over or under the Site(s);

- 11.1.2 satisfied itself as to the nature of the Site Conditions, the ground, ecosystem, water table, drainage and the subsoil, the form and nature of the Site(s), the load bearing and other relevant properties of the Site(s), the risk of injury or damage to property affecting the Site(s), the nature of the materials (whether nature or otherwise) to be excavated, the existence of any overhead or underground cables, pipes, drains and other utilities and the nature of the design, works and materials necessary for the execution of the Works;
 - 11.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Site(s) and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Site(s));
 - 11.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority its employees and agents) with access to or use of, or rights in respect of, the Site(s) with particular regard to Adjoining Owners;
 - 11.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties;
 - 11.1.6 satisfied itself as to the presence or absence of any Contamination; and
 - 11.1.7 satisfied itself as to its obligations under the Wildlife and Countryside Act 1981 in relation to any Site.
- 11.2 The Contractor shall procure that a New Contamination Log is kept after the Interim Services Commencement Date and retained in accordance with the terms of its Environmental Permit for the Villiers Road Site which shall be open to inspection by the Authority on reasonable notice and the Authority hereby agrees to treat the contents of the New Contamination Log as Confidential Information. The parties agree that:
- 11.2.1 any Contamination recorded in the New Contamination Log should be treated as New Contamination for the purposes of this Clause 11; and
 - 11.2.2 any Contamination recorded or referred to in any audits, reports or surveys of the Villiers Road Site carried out on behalf of either Party prior to the Works Commencement Date should not be treated as New Contamination for the purposes of this Clause 11 unless the Authority can demonstrate (on the balance of probabilities) that such Contamination was caused by the Contractor or a Contractor Related Party.
- 11.3 Notwithstanding Clauses 11.5 and 11.6 (Site Conditions), the Contractor shall not be entitled to make any claim in relation to Site Conditions against the Authority of any nature whatsoever, on any grounds including

the fact that incorrect or insufficient information on any matter relating to the Villiers Road Site was given to it by any person, whether or not the Authority, its contractors or agents.

11.4 Unless otherwise expressly stated and subject to Clause 11.5 (Site Conditions), the Contractor accepts full responsibility for all matters referred to in Clause 11.1 (Site Conditions) and the Contractor shall at all times comply with its obligations under this Contract including (without limitation) complying with, at its own cost, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority, the Contractor or the EPC Contractor).

11.5 The Authority shall be responsible for, and shall release and indemnify the Contractor, its employees, agents and contractors on demand from and against:

11.5.1 all liability for complying with the requirements of, including the carrying out of any actions required by, a Relevant Environmental Authority (whether required to be carried out by the Authority, the Contractor or the EPC Contractor) in relation to Contamination (save in respect of any Contamination on any part of the Contractor Controlled Parts of the Villiers Road Site which is New Contamination) present at, in, on, or under or escaping from the Villiers Road Site; and

11.5.2 any and all Losses which the Contractor may suffer to the extent that such Losses relate to Hazardous Substances (save in respect of any Hazardous Substances on any part of the Villiers Road Site which is New Contamination) present at, in, on, or under or escaping from the Villiers Road Site;

provided that the Authority shall have no liability under this Clause 11.5 (Site Conditions) where the Authority demonstrates, on the balance of probabilities, that such Losses were caused by a Contractor or Contractor Related Party.

11.6 The Contractor shall be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against:

11.6.1 all liability for complying with the requirements of, including the carrying out of any actions required by, a Relevant Environmental Authority (whether required to be carried out by the Authority, the Contractor or the EPC Contractor) in relation New Contamination present at, in, on, or under or escaping from the Contractor Controlled Parts of the Villiers Road Site; and

11.6.2 any and all Losses which the Authority may suffer to the extent that such Losses relate to New Contamination present at, in, on, or under or escaping from the Contractor Controlled Parts of the Villiers Road Site.

11.7 This Clause 11 (Site Conditions) is an agreement for the purposes of paragraph 7.29 of the Contaminated Land Statutory Guidance issued by

DEFRA in April 2012 as may be amended for time to time (an "Agreement on Liabilities"). Each party consents to the provisions of this Clause 11 (Site Conditions) being disclosed to a Relevant Environmental Authority. The parties agree not to challenge the validity, existence or application of the Agreement on Liabilities in relation to any disclosure pursuant to this Clause 11.7 (Site Conditions).

11.8 Without prejudice to the Authority's obligations under this Contract, in respect of any Contamination which the Authority is responsible for under Clause 11.5 (Site Conditions) above, the Authority shall at its own cost:

11.8.1 supply to the Contractor copies of all notices, directions, reports or non-privileged correspondence concerning any such Contamination at the Villiers Road Site or any migration or other escape of Contamination which may result in proceedings being taken or threatened against the Authority, Contractor and/or the EPC Contractor under Environmental Law; and

11.8.2 the Contractor shall use its reasonable endeavours to take and complete promptly and diligently all actions or precautions required by such notice, direction, report or correspondence at the expense of the Authority.

11.9 Without prejudice to the Contractor's obligations under this Contract, in respect of any New Contamination which the Contractor is responsible for under Clause 11.6 (Site Conditions) above, the Contractor shall at its own cost:

11.9.1 supply to the Authority copies of all notices, directions, reports or non-privileged correspondence concerning any New Contamination at the Villiers Road Site or any migration or other escape of New Contamination which may result in proceedings being taken or threatened against the Authority, Contractor and/or the EPC Contractor under Environmental Law; and

11.9.2 take and complete promptly and diligently all actions or precautions required by such notice, direction, report or correspondence.

11.10 The Contractor shall permit the Authority and its employees and agents at all reasonable times after giving to the Contractor forty eight (48) hours written notice, except in an emergency, to enter the Contractor Controlled Parts of the Villiers Road Site to undertake investigations (including the taking of samples) in, on or under the Site to ascertain the condition of the site and the nature, extent and mobility of Contamination in, on or under the Site.

11.11 For the avoidance of doubt, the Site Conditions in respect of the Beddington Lane Site shall be the sole responsibility of the Contractor and the Authority shall not bear any responsibility or liability in respect of the same nor shall the Contractor be entitled to any other relief under this Contract save that if the Contractor is promptly and diligently taking appropriate action to address the Site Conditions at the Beddington Lane Site, then a Relief Event shall be deemed to have occurred and the Contractor shall be provided with relief from termination for a reasonable period of time (to be agreed between the Parties acting reasonably) for the purposes of the Contract.

11.12 Storage

The Contractor shall ensure that any hazardous materials or equipment used or intended to be used in the carrying out of the Waste Transfer Station Works or the provision of the Interim Services and/or the Services are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice.

11.13 COSHH Register

The Contractor shall maintain a COSHH register in accordance with Legislation and Good Industry Practice. The Authority shall notify the Contractor of any items which it or any Authority Related Party is using or storing at any of the Site(s) and which are required to be included in such register.

12. CONSENTS

12.1 The Contractor and the Authority shall comply with their respective obligations as set out in Schedule 26 (Planning).

12.2 Except as provided for in Schedule 26 (Planning), the Contractor shall:

12.2.1 at its own expense obtain, implement and maintain and renew as necessary all Consents which may from time to time be required for the carrying out of the Works and the performance of the Interim Services and/or the Services;

12.2.2 comply with the conditions attached to any Consents and procure that no such Consent is breached by any Contractor Related Party and use its reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works and/or provide the Interim Services and/or the Services;

12.2.3 notify the Authority promptly of any notices received (whether from any Relevant Authority or any other person) relating in any way to any Consent;

(a) which may have a material impact on the ability to provide the Interim Services and/or the Services at the Beddington Lane Site; or

(b) in relation to the Waste Transfer Station; and

shall provide to the Authority a copy of any such notice within five (5) Business Days of receipt by the Contractor.

12.3 In relation to the Waste Transfer Station only, the Contractor shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) apply for or agree to any material change, relaxation or waiver of any Consent (whether obtained before or after the date of the Contract) or of any condition attached to it which may adversely effect the ability of the Contractor to deliver the Waste Transfer Station Works, the Interim Services and/or the Services but,

subject to the compliance by the Contractor with its obligations under this Clause 12 (Consents), references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.

12.4 When reasonably requested to do so by the Authority's Representative, the Contractor shall report to the Authority's Representative as to the progress of the Planning Application and any relevant Environmental Permit and details of any reasonably requested discussions and negotiations with the Planning Authority, the Permitting Authority and any other Relevant Authority and any statutory consultees and supply the Authority's Representative with copies of all reasonably requested documents, letters and instructions and enclosures to and opinions of Leading Counsel or the Contractor's consultants relating to any Planning Application, Environmental Permit, Planning Permission or Proceedings or Environmental Permit proceedings relating to the Project. Any action taken by the Contractor in discharging its obligation under Schedule 26 (Planning) shall also constitute a discharge of its obligations under this Clause 12.6 to the extent that the obligations under this Clause 12.4 are the same as those under Schedule 26 (Planning). Nothing in this Clause 12.4 shall increase or affect the obligations of the Contractor to use All Reasonable Endeavours under paragraph 2 of Schedule 26(Planning).

12.5 The Contractor shall:

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

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

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

PART III - WORKS

13. PRINCIPAL OBLIGATIONS

13.1 Obligation to Carry Out

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

- 13.1.1 the Key Facility shall achieve the Readiness Date on or before the Planned Readiness Date;
- 13.1.2 the Waste Transfer Station will achieve Practical Completion on or before the Waste Transfer Station Planned Practical Completion Date;
- 13.1.3 the Key Facility shall achieve Service Commencement on or before the Key Facility Planned Service Commencement Date;
- 13.1.4 the Works fully comply with and meet all the requirements of this Contract, the Works Requirements, the Commissioning Requirements, the Works Method Statements, Construction Programme, Good Industry Practice, Guidance, all Consents and all applicable Legislation; and
- 13.1.5 the Contractor shall carry out Works at the Villiers Road Site so as not to cause nuisance to, and so as to cause as little disturbance or interference as is practicable to, persons on neighbouring land or land adjacent to the Villiers Road Site including the Authority's Property.

13.2 Overall Responsibility

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

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

13.3 Works Stipulations

During the carrying out of the Waste Transfer Station Works, the Contractor shall or shall procure that the Construction Sub-Contractor and its subcontractors and/or consultants shall:

- 13.3.1 not use or occupy or permit the Villiers Road Site or any land upon which the Waste Transfer Station Works are being undertaken to be used or occupied for any purpose other than the carrying out of the Waste Transfer Station Works;
- 13.3.2 not deposit or manufacture or permit to be deposited or manufactured on the Villiers Road Site or any land upon which the Waste Transfer Station Works are being undertaken any materials which are not required for the carrying out of the Waste Transfer Station Works;
- 13.3.3 at the Contractor's sole cost transport all surplus materials arising from the Waste Transfer Station Works and arrange for the disposal of the same at such places as may lawfully be used for disposal and the Contractor shall ensure that such materials will not cause or give rise to pollution of the environment as defined by Section 29(3) Environmental Protection Act 1990;
- 13.3.4 ensure that all vehicles leaving the Villiers Road Site are adequately cleaned to prevent the deposit of waste materials and debris on the Adjoining Property or any highway, road and/or footpath and if any such material or debris is so deposited the Contractor shall forthwith employ such measures as shall be necessary to remove the material and debris and to clean and reinstate the Adjoining Property and/or any highway, road and/or footpath to the reasonable satisfaction of the owners or occupiers of the Adjoining Property or any highway, road and/or footpath as the case may be;
- 13.3.5 not without the written consent of the Authority erect or permit or suffer to be erected on the Villiers Road Site any temporary structure except site accommodation usual in connection with works of a like nature to the Waste Transfer Station Works or as contemplated by the Works Method Statements; and
- 13.3.6 not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Villiers Road Site any signs or trade boards of a marketing nature save those previously approved in writing by the Authority (such approval not to be unreasonably withheld or delayed).

13.4 Utilities

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

- 13.4.1 be responsible for determining the location of such services and utilities as may be within the Sites and for the maintenance of access to such services and utilities, in the case of the Villiers Road Site, in accordance with the terms of the Leases;
- 13.4.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Sites;

- 13.4.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities not within the Sites;
 - 13.4.4 pay to all Relevant Authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Sites;
 - 13.4.5 make connection into services and utilities outside the Sites; and
 - 13.4.6 otherwise do all that is required in relation to the utilities required for the purposes of carrying out the Works and as will be necessary to provide the Services.
- 13.5 The Contractor may vary the Construction Programme subject to Clause 13.6 below.
- 13.6 The Contractor shall not implement any material variation to the Construction Programme which impacts the Contractor's ability to achieve the Key Facility Planned Services Commencement Date until the Authority consents or is deemed to have consented to the variation in accordance with the Review Procedure. Once consented to a proposed variation will form part of the Construction Programme.
- 13.7 The Contractor shall procure Practical Completion of the Waste Transfer Station Refurbishment Works in accordance with a specification and programme notified to the Authority and approved by the Authority (such approval not to be unreasonably withheld or delayed).
- 13.8 The Contractor shall notify the Authority in writing when Practical Completion of the Waste Transfer Station Refurbishment Works has occurred and shall allow the Authority sufficient access to enable the Authority to satisfy itself that Practical Completion of the Waste Transfer Station Refurbishment Works has occurred.
- 13.9 If Practical Completion of the Waste Transfer Station Refurbishment Works has not occurred to the Authority's satisfaction (acting reasonably) by 31st March 2025 the Contractor shall re-imburse the Authority a sum of [REDACTED] (Indexed) less the value of the Waste Transfer Station Refurbishment Works completed) or, if the Authority elects an adjustment shall be made to Unitary Charge by application of Schedule 19 (Revision of Base Case and Custody) to reflect the amount due to the Authority.

14. FOSSILS AND ANTIQUITIES

14.1 Property

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

14.2 Discovery

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

- 14.2.1 immediately inform the Authority's Representative of such discovery;
- 14.2.2 take all steps not to disturb the object and, if necessary, cease any Waste Transfer Station Works in so far as the carrying out of such works would endanger the object or prevent or impede its excavation; and
- 14.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

14.3 Action

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

- 14.4 The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in Clause 14.3 (Action) above at its own cost (except and to the extent that such instruction constitutes an Authority Change pursuant to Clause 14.6 (Action) below in respect of which case the provisions of Schedule 21 (Change Protocol) shall apply).
- 14.5 If directed by the Authority's Representative, the Contractor shall allow representatives of the Authority to enter the Villiers Road Site for the purposes of inspection, removal or disposal of such discovery provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of the Waste Transfer Station, the Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time.
- 14.6 If any instruction referred to in Clause 14.3 (Action) above includes a requirement for the Contractor to carry out works (being any work or alteration, addition, demolition or extension or variation in the Waste Transfer Station) which are not works which would be necessary for the purpose of compliance with Legislation or any Consents, such works shall be deemed to be an Authority Change and the provisions of Schedule 21 (Change Protocol) shall apply as if such instruction were an Authority Change Notice issued by the Authority in accordance with the provisions of Schedule 21 (Change Protocol).
- 14.7 The Authority shall act promptly and diligently in dealing with its obligations in this Clause 14 (Fossils and Antiquities) in relation to any find so as to mitigate any effect on the Contractor, the Waste Transfer Station Works and/or the Interim Services and/or the Services.

15. DESIGN DEVELOPMENT

15.1 Design Warranty

In relation to the Waste Transfer Station, the Contractor warrants that it has used and will continue to use the degree of skill and care in the design of the Works that would reasonably be expected of a competent professional designer experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Waste Transfer Station Works.

15.2 Submission of Reviewable Design Data

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

15.3 Review of Design Data

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

15.4 Rectification of Construction Proposals

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

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

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

15.5 Liability in relation to Design not diminished by Review

The liability of the Contractor to carry out the design of the Waste Transfer Station Facility according to this Contract shall not be modified, diminished or otherwise affected by any Reviewable Design Data or other document or information regarding design having been reviewed or commented upon by the Authority or the Authority's Representative.

16. MANAGEMENT OF CONSTRUCTION SUB-CONTRACT

16.1 The Contractor shall:

16.1.1 take reasonable steps to ensure that the Construction Sub-Contractor and all other persons employed by the Contractor in

connection with the Works comply with all relevant Legislation relating to employment including (without limitation) the Race Relations Act 1976 and Sex Discrimination Act 1975;

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

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

16.2 Site Meetings

The Contractor shall procure that the Construction Sub-Contractor attends Liaison Committee Meetings at least once every two months in accordance with Schedule 18 (Liaison Procedure).

16.3 Construction Programme

The Contractor shall procure that (subject to the terms of this Contract) the Works are carried out in compliance to the extent reasonably practicable with the Construction Programme.

16.4 Notification of Delays in Progress of the Works

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

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

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

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

17. CDM REGULATIONS

17.1 Responsibility for Design

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

17.2 The Contractor as "client"

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

17.3 Duties under the CDM Regulations

The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of all the obligations, requirements and duties arising under the CDM Regulations in connection with the Works and/or the Services (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Key Facility Planned Service Commencement Date, provide a certified copy of the final draft Health and Safety File (as defined in the CDM Regulations) to the Authority and, within thirty (30) Business Days of the Acceptance Test Certificate for each Facility in accordance with Clause 21 (Completion of the Works), a certified copy of the full Health and Safety File relating to that Facility. The Contractor shall ensure that the Health and Safety File is revised in accordance with Good Industry Practice as often as may be appropriate to incorporate any relevant new information in relation either to the Works and/or the Services during the Contract Period and the Contractor shall provide the Authority on at least one occasion in each Contract Year with copies of all material updates or revisions made to the Health and Safety File or, alternatively, a confirmation that there are no such updates or revisions.

17.4 Authority to co-operate and provide information

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

18. INDEPENDENT CERTIFIER

18.1 Appointment

The Parties shall on or prior to the issuing of the Notice to Proceed (as defined under the Construction Sub-Contract) under the Construction Sub-Contract, appoint a suitably qualified and experienced consultant to act as

the Independent Certifier for the purposes of this Contract. The Independent Certifier's Deed of Appointment shall be substantially in the form set out in Schedule 12 (Independent Certifier's Deed of Appointment).

18.2 Changes to terms of Appointment

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

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

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

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

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

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

18.5 Replacement

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

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

18.7 Provision of Documents

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

19. MONITORING AND INSPECTION

19.1 Right of Inspection

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

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

19.2 Right to Open Up

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

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

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

19.2.4 If, following the exercise by the Authority's Representative of his right pursuant to Clause 19.2.1 (Right to Open Up), the inspection

shows that the relevant part or parts of the Waste Transfer Station Works is or are defective, the Contractor shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Contractor at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Waste Transfer Station Works.

19.2.5 If, following the exercise by the Authority's Representative of his right pursuant to Clause 19.2.1 (Right to Open Up), the Authority's Representative is of the opinion that the inspection shows that the relevant part or parts of the Waste Transfer Station Works is or are defective and the Contractor does not agree with such opinion, the matter shall be determined in accordance with Schedule 22 (Dispute Resolution Procedure).

19.2.6 Without prejudice to the rights of the Authority's Representative pursuant to this Clause 19.2 (Right to Open Up) the Parties acknowledge that the exercise of such rights pursuant to this Clause 19.2 (Right to Open Up) shall not in any way affect the obligations of the Contractor under this Contract save as expressly set out in this Clause 19 (Monitoring and Inspection).

19.3 Health and Safety Requirements

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

19.4 Supply of Information

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

19.5 Contractor's Reasonable Assistance

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

20. DELAYS

20.1 Notice

If at any time the Contractor becomes aware that the Key Facility and/or the Waste Transfer Station will not or is unlikely to receive an Acceptance

Test Certificate by the Key Facility Planned Services Commencement Date, then the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Business Days of becoming aware of the likely delay give notice to the Authority to that effect specifying:

- 20.1.1 the reason for the delay or likely delay; and
- 20.1.2 an estimate of the likely effect of the delay on the receipt of the Acceptance Test Certificate of the Facility (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with Clause 20.3 (Duty to Mitigate)).

20.2 Supply of Information

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

- 20.2.1 is received by the Contractor; or
- 20.2.2 is reasonably requested by the Authority.

20.3 Duty to Mitigate

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

20.4 Time for Completion of the Works

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

- 20.4.1 a Compensation Event, then the provisions of Clause 39 (Compensation Events) shall apply; or
- 20.4.2 a Relief Event, then the provisions of Clause 40 (Relief Events) shall apply; or
- 20.4.3 an Excusing Cause, then the provisions of Clause 41 (Excusing Causes) shall apply; or
- 20.4.4 a Force Majeure Event, then the provisions of Clause 69 (Termination on Force Majeure) shall apply.

20.5 Interim Services

- 20.5.1 Subject to Clause 20.4 (Time for Completion of the Works), the Contractor shall provide the Interim Services on and from the 1st April 2014 until the Key Facility Services Commencement Date and the Authority shall pay the Interim Service Period Monthly Unitary Charge in accordance with Schedule 4A (Interim Services Payment Mechanism).

20.5.2 If, at any time prior to the Key Facility Services Commencement Date, the Contractor fails to provide the Interim Services, then the Contractor shall indemnify the Authority from and against any and all costs, taxes, fines and losses reasonably and properly incurred by the Authority as a direct result of the failure to provide such services, including but not necessarily limited to costs, taxes, fines and losses which relate to:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

20.5.3 The Authority shall use reasonable endeavours to mitigate such costs and losses.

20.5.4

[REDACTED]

21. COMPLETION OF THE WORKS

21.1 Key Facility Services Commencement Date

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

- (a) certification that all the Readiness Tests have been satisfactorily passed in relation to the Key Facility; and
- (b) certification that the Acceptance Tests have been satisfactorily passed.

- 21.1.2 The Key Facility shall only be accepted and an Acceptance Test Certificate issued if the Key Facility has satisfactorily passed both the Readiness Tests and its Acceptance Tests.
- 21.1.3 The Initial Waste Transfer Station Works shall only be accepted and an Acceptance Test Certificate issued if the Initial Waste Transfer Station Works have satisfactorily passed the Acceptance Tests.
- 21.1.4 The Key Facility Services Commencement Date shall be the date specified in the Acceptance Test Certificate as the date on which the Acceptance Tests were achieved, or in the event of referral for determination under the Dispute Resolution Procedure pursuant to Clause 21.4.1 (Effect of issue of Test Certificate), the date upon which it is determined that the Key Facility passed the relevant Acceptance Tests.

21.2 Testing and Commissioning

- 21.2.1 The Contractor shall develop the Outline Commissioning Plan into the Commissioning Plan as set out in Method Statement 1.11 (Outline Commissioning Plan) and shall carry out all commissioning of the Key Facility in accordance with the Commissioning Plan as approved or not commented on by the Authority under the Review Procedure.
- 21.2.2 The Contractor shall provide to the Authority and the Independent Certifier not less than ten (10) Business Days notice of the anticipated date upon which the Contractor considers that the Key Facility and/or Waste Transfer Station will be in a condition to proceed with the Tests and the Contractor shall keep the Authority informed of any alterations to the proposed date and each Party will act reasonably in relation to any delays to the timetable notified.
- 21.2.3 The Contractor shall, not less than ten (10) Business Days prior to the anticipated date upon which the Contractor considers that the Key Facility will be in a condition to proceed with the Tests, confirm to the Authority the levels, timings and periods of deliveries of Contract Waste necessary for commissioning and testing of the Key Facility.
- 21.2.4 Provided that the Contractor has complied with its obligations under Clause 21.2.3 (Testing and Commissioning), the Authority shall procure the levels, timings and periods of deliveries of Contract Waste required under Clause 21.2.3 (Testing and Commissioning). Such arrangements shall be made in accordance with the Contract Waste delivery requirements for such Contract Waste confirmed in the notice issued under Clause 21.2.3 (Testing and Commissioning). The Authority shall be kept informed as to the likely need for a further finite period of delivery of Contract Waste to the Key Facility to allow for further Testing.
- 21.2.5 The Contractor shall be responsible for the handling and disposal of any Contract Waste delivered for the purposes of commissioning for the Key Facility.

- 21.2.6 The Contractor shall under the supervision of the Independent Certifier undertake the Tests in accordance with the provisions of Schedule 11 (Tests).
- 21.2.7 When the Contractor is of the opinion that the relevant Tests have been satisfactorily passed it shall forthwith promptly notify the Independent Certifier and the Authority of the same.
- 21.2.8 The Parties shall procure in accordance with the Independent Certifier's Deed of Appointment that the Independent Certifier shall, within the period of five (5) Business Days of its receipt of the Contractor's notice given under Clause 21.2.7 (Testing and Commissioning) either:
- (a) issue a Readiness Test Certificate and/or Acceptance Test Certificate (as appropriate) stating the date upon which the relevant Tests were satisfactorily passed; or
 - (b) notify the Authority and the Contractor that the relevant Test or Tests have not been satisfactorily passed (a "Notice of Non Completion") providing a report setting out the respects in which it considers that such Tests have not been passed.
- 21.2.9 Representatives from the Authority and the Independent Certifier shall be entitled to witness the performance of Tests provided that if representatives from the Authority are not available to witness the Tests where at least twenty (20) Business Days notice shall have been provided then the Contractor may proceed with the carrying out of the relevant Tests in any event.

21.3 Issue of Certificate

- 21.3.1 Within two (2) Business Days of the relevant Test having been satisfied, the Parties agree that the Independent Certifier shall issue the relevant Test Certificate in respect of the Key Facility and/or Waste Transfer Station notwithstanding that there may remain Snagging Items.
- 21.3.2 If a Notice of Non-Completion is served pursuant to Clause 21.2.8(b) (Testing and Commissioning) the Contractor shall repeat the steps set out in Clauses 21.2.1 to 21.2.8 (Testing and Commissioning) until all outstanding matters have been attended to and the relevant Test Certificate can be issued pursuant to Clause 21.3.1 (Issue of Certificate).

21.4 Effect of issue of Test Certificate

- 21.4.1 If the Independent Certifier fails to issue the relevant Test Certificate in accordance with Clause 21.3.1 (Issue of Certificate) and either Party wishes to challenge the relevant Test Certificate or if there are certain aspects of the Independent Certifier's report provided pursuant to Clause 21.2.8 (Testing and Commissioning) (as the case may be) which the relevant Party wishes to challenge, the relevant Party shall be entitled to refer the matter for

determination by Expert Determination under the Dispute Resolution Procedure as if it constituted a dispute.

21.4.2 The Parties agree that the relevant Test Certificate shall be final binding and enforceable upon the Parties except in the case of fraud, collusion, bias or manifest error unless the matter is referred for determination by Expert Determination under the Dispute Resolution Procedure within fifteen (15) Business Days of receipt of the relevant Test Certificate.

21.4.3 Without prejudice to any rights or remedies that the Parties may have against the Independent Certifier, the Parties agree that, notwithstanding any other provision contained in Schedule 22 (Dispute Resolution Procedure) the Expert Determination decision referred to in Clause 21.4.2 (Effect of issue of Test Certificate) shall be final, binding and enforceable upon the Parties and may not subsequently be referred by any Party to arbitration and/or any court of competent jurisdiction.

21.5 Waste Transfer Station Snagging Items

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

21.5.1 the Independent Certifier shall, at the same time as it issues the relevant Test Certificate, issue to the Contractor and the Authority a list of the relevant Snagging Items for the Waste Transfer Station (the "Snagging List"). Within ten (10) Business Days of receipt from the Independent Certifier of the Snagging List the Contractor shall provide to the Authority and the Independent Certifier a reasonable programme for making good each Snagging Item set out in the Snagging List provided that such programme shall require that each Snagging Item shall be made good within twenty-five (25) Business Days of the date of provision of that programme or within such time as is reasonably practicable. The Parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under Clause 60 (Dispute Resolution). The programme agreed or determined in accordance with this Clause 21.5 (Waste Transfer Station Snagging Items) shall be known as the Snagging Programme; and

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

21.6 If the Key Facility Test Certificate is issued subject to Snagging Items then the Contractor shall agree a programme ("the Key Facility Snagging Programme") with the Independent Certifier for the making good of such Snagging Items and shall rectify such Snagging Items in accordance with the Key Facility Snagging Item Programme. The Contractor shall keep the Authority fully informed about progress of rectifying such Snagging Items

but the Authority shall have no right to effect repairs itself in relation to such Snagging Items.

PART IV - SERVICES

22. PRINCIPAL OBLIGATIONS

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

22.1.1 in accordance with:

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

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

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

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

22.1.4 in accordance with the terms of the Lease.

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

22.2.1 the fact that the Contractor has provided the Interim Services and/or the Services in accordance with the Interim Services Method Statement or the Services Method Statement (as the case may be) shall not be a defence to an allegation that the Contractor has failed to comply with the Service Requirements; and

22.2.2 the fact that the Contractor has provided the Interim Services and/or the Services in accordance with the Service Requirements shall not be a defence to an allegation that the Contractor has failed to provide the Interim Services or the Services in accordance with the Services Method Statements.

23. ACCEPTANCE OF CONTRACT WASTE

23.1 Obligation to Accept

The Contractor shall accept in accordance with the Authority's Requirements all Contract Waste that is delivered to it by or under the direction of the Authority subject at all times to the Maximum Tonnage.

23.2 Minimum Tonnage

In the event that Contract Waste is not accepted by the Contractor or a Facility is not able to receive Contract Waste at any relevant time (provided that the Authority is not delivering Contract Waste in excess of the Maximum Tonnage), then without prejudice to any other right or remedy of the Authority under this Contract, the Contractor may be liable for Non-Acceptance Deductions and/or Mileage Deductions as the case may be calculated in accordance with the provisions of Schedule 4 (Payment Mechanism) and, for the avoidance of doubt, such Non-Acceptance Deductions and/or Mileage Deductions may arise notwithstanding that the Contractor is providing contingency services to the Authority in accordance with Method Statement "MS6.3 contingency plan".

24. OWNERSHIP OF WASTE

As between the Contractor and the Authority all Contract Waste received by or in the possession of or accepted by the Contractor or any of its sub-contractors shall thereupon become and be deemed to be acquired by and in the ownership of and at the risk of the Contractor who shall take full responsibility for it and shall handle and dispose of such Contract Waste in accordance with the terms of this Contract.

25. PRIORITY OF WASTE AND SUBSTITUTE WASTE

25.1 Priority of Waste

In all circumstances throughout the Interim Services and the Services Period, the Contractor shall receive and process Contract Waste at the Facilities in priority to Third Party Waste up to the Maximum Tonnage.

25.2 Substitute Waste

25.2.1 At least six (6) months prior to the Key Facility Planned Services Commencement Date and on each anniversary of the Key Facility Services Commencement Date throughout the Services Period, the Authority shall provide the Contractor with all relevant information it has in its possession (to the extent not previously provided) relating to the collection of Municipal Waste within the Contract Area together with a forecast of Contract Waste tonnage for the following twelve (12) months provided that the Authority shall not be liable to the Contractor for any inaccuracy contained within the information or its completeness.

25.2.2 By no later than the date which shall be ten (10) Business Days before the Key Facility Services Commencement Date the

Contractor shall submit to the Authority the Substitute Waste Plan for review under the Review Procedure.

- 25.2.3 The Contractor shall submit to the Authority for review under the Review Procedure within ten (10) Business Days of the beginning of each Contract Year following the Key Facility Services Commencement Date an update of the Substitute Waste Plan to reflect the Contractor's proposals for sources of Substitute Waste (if any) provided that if sources for Substitute Waste shall remain unchanged then the Contractor may confirm this to the Authority in writing and in such circumstances shall not be obliged to submit an updated Substitute Waste Plan under the Review Procedure.
- 25.2.4 Subject to the Authority providing information in accordance with Clause 25.2.1 (Substitute Waste), in the event that the Authority considers that Contract Waste in the relevant Contract Year will fall below the Minimum Tonnage for such Contract Year, then the Authority shall at any time during the relevant Contract Year be entitled to notify the Contractor ("Substitute Waste Notice"):
- (a) that it considers Contract Waste in the relevant Contract Year will fall below the Minimum Tonnage for such Contract Year;
 - (b) the amount by which it considers there will be a shortfall between the amount of Contract Waste being provided and the Minimum Tonnage ("Contract Waste Shortfall"); and
 - (c) the period during which the Contract Waste Shortfall shall subsist ("Shortfall Period").
- 25.2.5 Where the Contractor receives a Substitute Waste Notice the Contractor shall be provided with a minimum of twenty-five (25) Business Days (such time period subject to extension in accordance with paragraph 1.2 (Resourcing) of Schedule 30 (Outline Substitute Waste Plan)) to formally initiate the Substitute Waste Plan to secure Substitute Waste for the Contract Waste Shortfall for the Shortfall Period in accordance with the proposals set out in the Substitute Waste Plan provided always that:
- (a) the Contractor shall not be obliged to terminate contracts with third parties existing at the time the Substitute Waste Notice is issued or when the Substitute Waste Plan is implemented in order to accommodate tonnages of Substitute Waste where a proposed Substitute Waste contract is for a minimum tonnage in excess of available capacity;
 - (b) third party waste contracts under negotiation at the time the Authority issues a Substitute Waste Notice shall not be required to form part of Substitute Waste to the extent that the Contractor is able to demonstrate to the Authority's reasonable satisfaction that such tonnages were the subject of negotiations at the time the Authority issued the relevant Substitute Waste Notice. For the avoidance of

doubt, any further or additional tonnages secured from third parties following the issuing of the Substitute Waste Notice which fall within the available capacity shall be considered Substitute Waste ;and

- (c) Third Party Waste shall not be deemed to be Substitute Waste at any time.

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

- (a) to the extent that the Substitute Waste Price is equal to or less than the Base Price per Tonne for Core Contract Waste Price Band 1 as set out in Appendix 1 (Base Payment Summary) of Schedule 4 (Payment Mechanism), then the Authority shall be entitled to and the Contractor shall pay an amount equal to the Substitute Waste Amount within ninety (90) Business Days after the end of each Contract Month in respect of the Shortfall Period;
- (b) to the extent that the Substitute Waste Price is in excess of the Base Price per Tonne for Core Contract Waste Price Band 1 as set out in Appendix 1 (Base Payment Summary) of Schedule 4 (Payment Mechanism), then:
 - (i) the Authority shall be entitled to and the Contractor shall pay an amount equal to the number of tonnes of Substitute Waste provided to the Contractor in each Contract Month multiplied by Base Price per Tonne for Core Contract Waste Price Band 1 as set out in Appendix 1 (Base Payment Summary) of Schedule 4 (Payment Mechanism), within ninety (90) Business Days after the end of each Contract Month in respect of the Shortfall Period (without double counting any payment made under paragraph 17.4 of Schedule 4 (Payment Mechanism)); and
 - (ii) the Authority shall be entitled and the Contractor shall pay an amount equal to the number of tonnes of Substitute Waste provided to the Contractor in each Contract Month multiplied by the Substitute Waste Price less the Base Price per Tonne for Core Contract Waste Price Band 1 as set out in Appendix 1 (Base Payment Summary) of Schedule 4 (Payment Mechanism) multiplied by fifty percent (50%) within ninety (90) Business Days after the end of each Contract Month in respect of the Shortfall Period (without double counting any payment made under paragraph 17.4 of Schedule 4 (Payment Mechanism)).

25.2.7 In the event that the Contractor has not complied with its obligations to assess the market for Substitute Waste as set out in paragraph 1.3 (Identification of Collection Operators able to supply Substitute Waste) of the Substitute Waste Plan then the Authority

shall, a maximum of five (5) Business Days following the expiry of the period for formal implementation agreed in accordance with Clause 25.2.5 (Substitute Waste) above, issue the Contractor with a written notice confirming why in its reasonable opinion, the Contractor has not complied with its obligations to assess the market for Substitute Waste as set out in paragraph 1.3 (Identification of Collection Operators able to supply Substitute Waste) of the Substitute Waste Plan (the "Substitute Waste Rectification Plan").

- 25.2.8 The Substitute Waste Rectification Plan shall specify any areas where the Authority considers in its reasonable opinion that the Contractor has failed to comply with paragraph 1.3 (Identification of Collection Operators able to supply Substitute Waste) of the Substitute Waste Plan together with the impact for the Authority as a result of such non compliance. The Authority shall identify achievable actions and objectives for rectifying such failure(s), provided that such actions and objectives must be those which a reasonable waste contractor may be expected to take, and are reasonable in all the circumstances taking into account prevailing market conditions.
- 25.2.9 Where the Authority has issued the Contractor with a Substitute Waste Rectification Plan, the Contractor shall use its reasonable endeavours to comply with such plan within a period of ten (10) Business Days of receipt, or such longer period as the Parties may agree acting reasonably.
- 25.2.10 Where the Contractor has not complied with its obligations pursuant to Clause 25.2.9 (Substitute Waste) above, the Minimum Tonnage of Contract Waste shall be reduced for the Contract Year within which the Substitute Waste Notice is issued by an amount equal to the difference between the number of tonnes of Substitute Waste which the Contractor would have secured (over and above the amount of Substitute Waste (if any) which the Contractor actually does secure but excluding any such tonnages that have been secured by the Contractor as a direct result of not complying with its obligations pursuant to Clause 25.2.9 (Substitute Waste) above)) if it had complied with its obligations under Clause 25.2.9 and the provisions of paragraph 17.2 of Schedule 4 (Payment Mechanism) shall apply accordingly.

25.3 Top Up Waste

- 25.3.1 Where there is a Contract Waste Shortfall the Authority may either issue a Substitute Waste Notice or procure Waste having the same or similar composition as Contract Waste itself provided that the Authority shall not compete for such Waste as against the Contractor. If the Authority procures such waste it shall be treated as Contract Waste and the definition of Contract Waste shall be deemed amended so as not to refer to the Authority's Administrative Area provided that such amendment shall be deemed only to the extent reasonably necessary to remedy the Contract Waste Shortfall.

26. MAINTENANCE

26.1 Maintenance

During the Services Period, the Contractor shall ensure on a continuing basis that its maintenance and operating procedures are compliant with the Maintenance Requirements and in any event are sufficient to ensure that:

- 26.1.1 the Interim Services and/or the Services are available as required by this Contract and the Authority's Requirements;
- 26.1.2 it can maintain the design intention of each Facility and the land, buildings and equipment at each Facility so as to meet the Contractor's obligations under this Contract until the Expiry Date or Termination Date (as the case may be); and
- 26.1.3 the Waste Transfer Station is handed back to the Authority on the Expiry Date in a condition complying with the Handback Requirements.

26.2 Surveys

- 26.2.1 If the Authority reasonably believes that the Contractor is in breach of its obligations under Clause 26.1 (Maintenance) then it may carry out or procure the carrying out of a survey of the Waste Transfer Station to assess whether the Waste Transfer Station has been and is being maintained by the Contractor in accordance with its obligations under Clause 26.1 (Maintenance). This right may not be exercised more often than once every two (2) years. For the avoidance of doubt, the Authority shall not be entitled to carry out such inspections at the Key Facility provided that this shall not prevent the Authority from exercising any of its rights to verify the existence or otherwise of a Relief Event under Clause 40.
- 26.2.2 The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days in advance of the date it wishes to carry out the Waste Transfer Station survey. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Interim Services and/or the Services.
- 26.2.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Interim Services and/or the Services by the Contractor. The cost of the survey, except where Clause 26.2.4 (Surveys) applies, shall be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.

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

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

26.2.5 The Contractor shall carry out such rectification and/or maintenance work within the reasonable period specified by the Authority (such time period to take into account the extent of the rectification and/or maintenance work to be carried out) and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

26.3 In the event of any failure by the Contractor to comply with Clause 26.2.5 (Surveys) or if the Authority is or becomes aware of a breach by the Contractor of its obligations under Clause 26.2.5 (Surveys) then the Authority shall be entitled to exercise its right of access in respect of the Villiers Road Site and remedy such breach in accordance with Good Industry Practice and shall be entitled to recover any costs or expenses incurred in doing so from the Contractor as a debt.

26.4 Programmed Maintenance

The Contractor shall undertake routine repairs and maintenance of the Assets in accordance with a Schedule of Programmed Maintenance which shall be developed as provided in the Service Requirements and which has been approved or not commented on by the Authority under the Review Procedure.

27. DUTY OF CARE

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

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

28. OPERATING MANUALS

28.1 Maintenance of Manual

The Contractor shall throughout the Interim Services Period and the Services Period maintain and update an operating and maintenance manual for the Waste Transfer Station setting out the procedures for providing the Interim Service and the Services at the Waste Transfer Station (the "Operating Manual").

28.2 Access to Manual

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

29. HEALTH AND SAFETY

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

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

29.3 The Contractor shall procure that it and any Contractor Related Parties at all times take such precautions as are appropriate in accordance with Good Industry Practice to protect the health and safety of all persons employed in the provision of the Works and/or the Interim Services and/or the Services or, to the extent it owes a duty under Legislation or common law, to protect the health and safety of persons otherwise entitled to be at or in the vicinity of the Sites.

30. EQUIPMENT

30.1 The Contractor shall, solely in relation to the Waste Transfer Station, from the Key Facility Services Commencement Date:

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

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

30.1.3 incur reasonable costs and make reasonable efforts to ensure that all Equipment and related contracts, agreements, guarantees, warranties, bonds and insurances are assignable/novatable to the

Authority or any third party who may provide the Waste Transfer Station Services on expiry or termination;

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

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

31. EMERGENCIES

31.1 If an Emergency arises during the Interim Services Period or the Services Period then the Authority may request that the Contractor:

31.1.1 procure such additional or alternative services at the Villiers Road Site which an experienced waste management contractor could reasonably be expected to be provide; and/or

31.1.2 provide the Authority with the opportunity to utilise spare capacity at the Key Facility then available (and for so long as such capacity remains available and for the avoidance of doubt any Third Party Waste Contracts which commence following such request shall deplete any capacity available for the Authority's use);

and the Contractor shall consider such request, acting reasonably.

31.2 The properly incurred costs of the Contractor of providing such services and/or capacity for use by the Authority and/or any revenue lost by the Contractor including for the avoidance of doubt any lost electricity income shall be borne by the Authority and paid against the Contractor's invoice in accordance with Clause 45 (Invoicing and Payment). If such costs are not agreed, the matter shall be referred to the Dispute Resolution Procedure.

32. PERFORMANCE MONITORING

32.1 Contractor Monitoring

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

32.2 Authority Monitoring

The Authority may elect, at its own cost, to undertake its own performance monitoring at any stage during the Interim Services Period and/or the Services Period for any purpose, including, to ensure that the Interim Services and the Services are being provided in accordance with this Contract. The Contractor will use its reasonable endeavours to assist the Authority in such an exercise. The Authority shall notify in writing the Contractor of the outcome of the performance monitoring exercise and the Contractor shall have due regard to the Authority's comments contained

within the notice in relation to the future provision of the Interim Services and/or the Services.

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

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

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

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

32.4 For the purposes of Clause 32.2 (Authority Monitoring), the Authority acknowledges that where the Contractor has failed to demonstrate its capability to the reasonable satisfaction of the Authority in accordance with Clause 32.3 but:

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

32.4.2 in the three (3) Months following the Authority notice (if it has not already been established) the increased level of monitoring of the Contractor under this Contract in respect of the relevant Interim Services or Services indicates that there have been no further fraudulent or materially erroneous reports of any kind;

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

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

33. **AUTHORITY STEP-IN**

33.1 **Right to Step-In**

If, at any time during the Services Period, the Authority reasonably believes that it needs to take action in connection with the Services provided by the Contractor at the Waste Transfer Station:

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

33.1.2 to discharge a statutory duty,

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

33.1A This Clause 33 (Authority Step-In) shall not apply to the Services provided by the Contractor at the Key Facility.

33.2 Notice to the Contractor

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

33.2.1 the action it wishes to take;

33.2.2 the reason for such action;

33.2.3 the date it wishes to commence such action;

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

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

33.3 Action by Authority

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

33.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify the Contractor against all Direct Losses (subject to the provisions of Clause 33.6 (Compensation for loss of Third Party Income) in relation to lost Third Party Income) where it fails to do so.

33.4 Step-In without Contractor Breach

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

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

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

33.5 Step-In on Contractor Breach

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

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

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

33.6 Compensation for loss of Third Party Income

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

33.6.1 in circumstances where the Contractor is not in breach, the Contractor's compensation for lost Third Party Income will be an amount equal to the higher of: (i) the amount of Third Party Income actually received by the Authority as a result of taking the Required Action; and (ii) an amount relating to the period of the Required Action calculated on the basis of the lower of: (A) the average Third Party Income received by the Contractor on a monthly basis in the twenty-four (24) Month period immediately prior to the Required Action being taken; and (B) the amount relating to Third party Income set out in the original Base Case,

in each case less (without double counting) the Authority's cost of generating such income; and

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

34. MARKET TESTING

34.1 Market Testing Procedure

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

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

- (a) the number and identity of prospective tenderers that will be invited to prepare and submit tenders for the Market Tested Services in question provided that any prospective tenderer shall possess an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question (and any dispute as to the selection of a prospective tenderer shall be determined in accordance with the Dispute Resolution Procedure);
- (b) whether any changes are required to the relevant Market Tested Services;
- (c) whether or not an independent tender manager needs to be appointed by the Contractor to manage the tender process; and
- (d) the form and contents of the tender documents (which shall include the Service Requirements to the extent that it relates to the Market Tested Services) to be delivered to prospective tenderers (the "Tender Documents"). Where relevant, the Tender Documents shall specify that (i) tenderers may submit tenders for all or any of the Market Tested Services and (ii) if a tenderer submits a tender for a group or groups of market tested services, then it may be required to provide all or any of the services in such group or groups.

34.1.2 No later than one hundred (100) Business Days before each Market Testing Review Date, the Contractor shall prepare and deliver to the Authority a draft market testing proposal (the "Market Testing Proposal") which shall incorporate all of the matters agreed by the Parties and shall reflect the payment structure contained in this Contract.

- 34.1.3 If the Parties are unable to agree any of the matters set out in the Market Testing Proposal or if the Authority reasonably considers that the Contractor has made a material error or omission in the Market Testing Proposal, the Authority may (subject to Clause 34.1.1(d)) (Market Testing Procedure) amend the provisions of the Market Testing Proposal to accord with statutory and government requirements at its sole discretion.
- 34.1.4 The Contractor may upon receiving any amendments made by the Authority in accordance with Clause 34.1.3 (Market Testing Procedure) refer the matter to the Dispute Resolution Procedure.
- 34.1.5 The Contractor shall manage the Market Testing tendering process in accordance with the Market Testing Proposal agreed or determined in accordance with this Clause 34 (Market Testing).
- 34.1.6 The Contractor shall provide to the Authority as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents.
- 34.1.7 Subject to Clause 34.1.8 (Market Testing Procedure), following the expiry of the tender period for the return of responses to the Tender Documents the Contractor shall determine, following consultation with the Authority, which tender to select, if any, in respect of each relevant Market Tested Services.
- 34.1.8 The Contractor shall by no later than seventy (70) Business Days before the Market Testing Review Date select:
- (a) in respect of tenders for the provision of an individual Market Tested Service, the most economically advantageous tender received in respect of the provision of that Market Tested Service; and
 - (b) in respect of tenders for the provision of more than one (1) Market Tested Services, the most economically advantageous tender in respect of the provision of those Market Tested Services,
- provided that nothing in this Clause 34.1.8 (Market Testing Procedure) shall oblige the Contractor to accept the lowest tender. The Contractor shall procure that the selected tenderer becomes a Sub-Contractor to it. Any dispute under this Clause 34.1.8 (Market Testing Procedure) shall be determined in accordance with the Dispute Resolution Procedure.
- 34.1.9 The Authority shall have the right to object to the selection of a tenderer where the tenderer has committed a Prohibited Act and such tenderer shall not be selected.
- 34.1.10 Where in relation to any Market Tested Service there are no valid tenders, or where the only valid tender is that submitted by the current provider of the relevant Market Tested Services, the Contractor shall conduct a benchmarking exercise in accordance with Clause 34.4 (Benchmarking following Market Testing).

34.2 Combination with other value testing exercise

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

34.3 Adjustments to Unitary Charge

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

34.3.2 Where the tender price of the Successful Tenderer is higher than the Latest Services Element, then the cost difference between the Successful Tenderer's tender price and the Latest Services Element shall be added to the Latest Services Element with effect from the relevant Market Testing Review Date and the Unitary Charge shall be adjusted to reflect that addition in accordance with Clause 53 (Revision of Base Case and Custody).

34.4 Benchmarking following Market Testing

34.4.1 Where Clause 34.1.10 (Market Testing Procedure) applies or where the Market Tested Service is being provided by an Affiliate of the Contractor on or prior to the relevant Market Testing Review Date, the Contractor shall conduct a benchmarking exercise as follows.

34.4.2 Each benchmarking exercise will be undertaken to ascertain the relative quality and competitiveness of the Market Tested Services in question. The Parties agree to co-operate with each other in good faith in carrying out the benchmarking exercise which will be undertaken on the basis of an objective and like for like comparison by comparing the standards and prices of the Market Tested Services in question and the costs of providing them with the standards and prices of equivalent services and the costs of providing them in similar circumstances provided by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Market Tested Services in question. Where the benchmarking exercise relates to Market Tested Services which are being provided by an Affiliate of the Contractor, the Authority may elect to carry out the Benchmarking exercise in accordance with this Clause 34.4 in all other cases the benchmarking exercise will be carried out by the Contractor.

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

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

- (a) the Authority will assume the risk of any agreed increase in the Monthly Payment arising as a result of the Market Costs exceeding one hundred and five percent (105%) of the Latest Services Element;
- (b) the Contractor will assume the risk of any agreed decrease in the Monthly Payment arising as a result of the Market Costs being less than ninety five percent (95%) of the Latest Services Element; and
- (c) the Latest Services Element shall be increased or decreased (as the case may be) to reflect the Market Costs,

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

35. NOT USED

PART V - EMPLOYMENT AND PENSIONS

36. EMPLOYMENT MATTERS

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

37. CONTRACTOR EMPLOYEES

37.1 Skills and Competencies

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

37.1.1 are appropriately skilled and competent;

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

37.1.3 are appropriately qualified.

37.2 Unsuitable Persons not to be engaged in the Interim Services or the Services

The Authority may, if it has reasonable grounds for believing that any Personnel or potential Personnel is or would be an Unsuitable Person, serve written notice on the Contractor requiring the Contractor to procure (at the Contractor's own cost and expense) that such Unsuitable Person is not engaged or employed directly or indirectly in, or in connection with, the provision of the Interim Services or the Services, or any part of the Interim Services or the Service, at the Villiers Road Site. The rights contained within this Clause 37.2 (Unsuitable Persons not to be engaged in the Interim Services or the Services) shall be exercised reasonably by the Authority and not arbitrarily, vexatiously or capriciously. For the avoidance of doubt, the Contractor shall not be obliged to dismiss or procure the dismissal of any Unsuitable Person in respect of whom a notice has been served pursuant to this Clause 37.2 (Unsuitable Persons not to be engaged in the Interim Services or the Services).

37.3 Contractor's Responsibility

Save as expressly provided in this Contract, the Contractor shall be entirely responsible for the employment and conditions of service of all personnel within the Viridor Group and shall seek to impose upon each Sub-Contractor and their sub-contractors an obligation to comply with all relevant employment Legislation. The Contractor shall carry out such checks as may be required in order to comply with Section 15 of the Immigration, Asylum and Nationality Act 2006.

38. NON-DISCRIMINATION

38.1 The Contractor shall:

- 38.1.1 not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion or belief, disability, sexual orientation, gender reassignment, pregnancy or maternity or otherwise);
- 38.1.2 comply with all equality legislation, including the obligations contained within such legislation to have due regard to the need to eliminate unlawful discrimination and harassment and victimisation and to promote equality of opportunity in employment and foster good relations between different groups;
- 38.1.3 adopt policies to comply with its statutory obligations under all equality legislation and confirm to the Authority reasonable details of such policies;
- 38.1.4 take all necessary steps (and deliver to the Authority full details of the steps taken) to prevent recurrence of unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission ("EHRC") or any successor body to the EHRC;
- 38.1.5 comply with all codes of practice (as amended or replaced from time to time) issued by the EHRC (or any successor organisations) for the elimination of discrimination and harassment and victimisation, the promotion of equal opportunity in employment and the fostering of good relations between different groups and provide such information as the Council may reasonably request for the purposes of ascertaining compliance with this Clause 38.1.5 (Non-Discrimination); and
- 38.1.6 comply with any other requirements and instructions which the Authority reasonably imposes upon the Contractor as a direct result of any statutory equality obligations imposed on the Authority at any time including, but not limited to, any requirements that the Authority may impose on the Contractor to gather and collate relevant data.

- 38.2 The Contractor shall take all reasonable steps to secure the observance of Clause 38.1 (Non-Discrimination) by all servants, employees, or agents of the Contractor and all suppliers and Sub Contractors of the Contractor employed in the performance of this Contract.

PART VI - SUPERVENING EVENTS

39. COMPENSATION EVENTS

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

- 39.1.1 the Contractor is unable to complete the Initial Waste Transfer Station Works prior to the Key Facility Planned Services Commencement Date and as a direct result there is a delay to the Key Facility Services Commencement Date and the provision of the Services; and/or
- 39.1.2 the Contractor is unable to commence the Key Facility Works on or before the Key Facility Planned Works Commencement Date and as a direct result there is a delay to the Key Facility Planned Readiness Date; and/or
- 39.1.3 the Contractor is unable to complete the Waste Transfer Station Refurbishment Works on or before the date set out in Clause 13.9 (Utilities) and as a direct result the Authority has the right of reimbursement under Clause 13.9 (Utilities); and/or
- 39.1.4 the Contractor is unable to achieve the Key Facility Readiness Date on or before the Key Facility Planned Readiness Date or following the Key Facility Planned Readiness Date, before the Key Facility Readiness Longstop Date; and/or
- 39.1.5 the Contractor is unable to achieve the Key Facility Services Commencement Date on or before the Key Facility Planned Services Commencement Date or, following the Key Facility Planned Services Commencement Date, before the Key Facility Acceptance Longstop Date; and/or
- 39.1.6 the Contractor is unable to comply with its obligations under this Contract; and/or
- 39.1.7 the Contractor incurs costs or loses revenue (including Third Party Income),

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

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

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

respect of Key Facility Works or the Initial Waste Transfer Station Works), the Key Facility Acceptance Longstop Date; and/or achievement of the Waste Transfer Station Refurbishment Works on or prior to the date set out in Clause 13.9 (Utilities); and/or payment of compensation and/or relief from its obligations under this Contract;

39.2.2 within twenty (20) Business Days of receipt by the Authority of the notice referred to in Clause 39.2.1 (Compensation Events) above, give full details of the Compensation Event and the extension of time and/or relief from its obligations under the Contract and/or any Estimated Change in Project Costs claimed; and

39.2.3 demonstrate to the reasonable satisfaction of the Authority that:

- (a) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or any delay in the achievement of the Key Facility Planned Works Commencement Date, the Key Facility Planned Readiness Date or the Key Facility Planned Services Commencement Date (whether in respect of Key Facility Works or the Initial Waste Transfer Station Works) and/or breach of the Contractor's obligations under this Contract; or following the Key Facility Planned Readiness Date, delay in achieving the Key Facility Readiness Date before the Key Facility Readiness Longstop Date; or following the Key Facility Planned Services Commencement Date, delay in achieving Services Commencement before the Key Facility Acceptance Longstop Date or the achievement of the Waste Transfer Station Refurbishment Works on or prior to the date set out in Clause 13.9 (Utilities); and
- (b) the Estimated Change in Project Costs, and/or time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

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

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

39.3.2 in the case of delay during the Works Period, the Expiry Date shall be postponed by such time as shall be reasonable for the Compensation Event, taking into account the likely effect of the delay, up to a maximum period of three (3) Months;

39.3.3 in the case of a delay, the Key Facility Planned Services Commencement Date or following the Key Facility Planned Services Commencement Date, the Key Facility Acceptance Longstop Date,

the date set out in Clause 13.9 (Utilities) shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay;

39.3.4 in the case of the Contractor being unable to comply with its obligations under this Contract during the Interim Services Period or the Services Period due to the occurrence of a Compensation Event, the Authority may agree to extend the Expiry Date and in such circumstances the Expiry Date shall be postponed by such time as shall be reasonable for the Compensation Event taking into account the likely effect of the delay.

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

(a) during the Contract Period; or

(b) as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, in the case of Change in Revenue, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated) within twenty (20) Business Days of its receipt of a written demand by the Contractor supported by all relevant information;

39.3.6 in the case of a payment of compensation for the Estimated Change in Project Costs and, in the case of Change in Revenue, without double counting, for revenue actually lost that does not result in Capital Expenditure being incurred by the Contractor referred to in Clause 39.3.5(b) (Compensation Events) above but which reflects a change in the costs and/or without double counting, loss of revenue being incurred by the Contractor after the Key Facility Services Commencement Date, the Authority shall compensate the Contractor in accordance with Clause 39.6 (Compensation Events) below by an adjustment to the Unitary Charge in accordance with Clause 53 (Revision of Base Case and Custody); and/or

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

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

39.5 If the Parties cannot agree the extent of any compensation, delay incurred, any revised dates or the relief to be provided from the Contractor's obligations under this Contract or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the

Contractor is entitled to any relief under this Clause, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

- 39.6 Any payment of compensation referred to in Clause 39.3.5(a) (Compensation Events) above shall be calculated in accordance with Clause 53 (Revision of Base Case and Custody).

40. RELIEF EVENTS

40.1 Occurrence

If and to the extent that a Relief Event:

40.1.1 is the direct cause of a delay in achieving (i) the Key Facility Planned Works Commencement Date and/or completion of the Initial Waste Transfer Station Works by the Key Facility Services Commencement Date, (ii) the Key Facility Readiness Date; (iii) the Key Facility Services Commencement Date; or (iv) completion of the Waste Transfer Station Refurbishment Works on or prior to the date set out in Clause 13.9 (Utilities); and/or

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

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

40.2 Relief

To obtain relief, the Contractor must:

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

40.2.2 within twenty (20) Business Days of receipt by the Authority of the notice referred to in Clause 40.2.1 (Relief) give full details of the relief claimed; and

40.2.3 demonstrate to the reasonable satisfaction of the Authority that:

(a) the Contractor and the Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

(b) the Relief Event directly caused the delay to the Key Facility Planned Works Commencement Date; and/or the Key Facility Readiness Date; and/or the Key Facility Planned Services Commencement Date; or following the

Key Facility Readiness Date, delay in achieving the Key Facility Readiness Date by the Key Facility Readiness Longstop Date; or following the Key Facility Planned Services Commencement Date, delay in achieving the Key Facility Acceptance Longstop Date, or achievement of the Waste Transfer Station Refurbishment Works on or prior to the date set out in Clause 13.9 (Utilities); or the need for relief from other obligations under the Contract;

- (c) the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
- (d) the Contractor is using reasonable endeavours to perform its obligations under this Contract.

40.3 Consequences

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

- 40.3.1 the Key Facility Planned Works Commencement Date; and/or the Key Facility Readiness Date and/or the Key Facility Planned Services Commencement Date; or following the Key Facility Readiness Date, the Key Facility Readiness Date by the Key Facility Readiness Longstop Date; or following the Key Facility Planned Services Commencement Date, the Key Facility Service Commencement by the Key Facility Acceptance Longstop Date and/or the date set out in Clause 13.9 (Utilities), shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or
- 40.3.2 the Authority shall not be entitled to exercise its right to terminate this Contract under Clause 67 (Termination for Contractor Default) and shall give such other relief as has been requested by the Contractor.

40.4 Deductions

Nothing in Clause 40.3 (Consequences) shall affect any entitlement to make deductions or any deductions made as a result of Clause 45 (Invoicing and Payment) and Schedule 4 (Payment Mechanism) during the period in which the Relief Event is subsisting.

40.5 Information

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

40.6 Notice

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

40.7 Disputes

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Key Facility Planned Works Commencement Date; and/or the Key Facility Planned Services Commencement Date; the Key Facility Readiness Longstop Date; the Key Facility Acceptance Longstop Date; the date set out in Clause 13.9 (Utilities) in relation to the achievement of the Waste Transfer Station Refurbishment Works; and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

41. EXCUSING CAUSES

41.1 Relief from Deductions

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

- 41.1.1 such failure by the Contractor to perform, and any poor performance of, any affected Interim Services or Service shall not constitute a breach of the provisions of this Contract by the Contractor;
- 41.1.2 such interference shall not be taken account of in measuring the performance of the Interim Services or Services in accordance with Clause 32 (Performance Monitoring) which shall be operated as though the relevant Interim Services or Services had been performed free from such adverse interference;
- 41.1.3 any such failure to perform the Interim Services or Services shall be deemed not to have occurred,

so that the Contractor shall be entitled to payment under this Contract as if there had been no such interference with the performance of the Interim Services or Services, and if the Excusing Cause is one of those listed in Clauses 41.2.5 or 41.2.7 (Relief from Deductions), the Authority shall be liable to the Contractor for any lost Electricity Income resulting from the occurrence of such Excusing Cause, up to the amount forecast in the Base Case.

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

- 41.2.1 where a Facility or part thereof that has been closed by written agreement between the Contractor and the Authority as part of that agreement no adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) will be levied;
- 41.2.2 the implementation of an Authority Change or, a Qualifying Change in Law to the extent the same are implemented in accordance with agreed procedures;
- 41.2.3 the implementation of any instruction of the Authority pursuant to Clause 31.1 (Emergencies) on the occurrence of an Emergency where the implementation of such instruction interferes adversely with, or causes a failure of, the performance of the Interim Services or the Services, in each case in accordance with this Contract;
- 41.2.4 the lawful exercise by any provider of utilities (or their respective employees, agents and subcontractors) on over or under the Villiers Road Site of any statutory rights to access to and egress from and to conduct any associated works in relation to any utilities infrastructure to the extent that such exercise interferes with and/or prevents the Contractor from performing the Interim Services and/or the Services;
- 41.2.5 the Authority exercises its right to monitor or carry out surveys where the Contractor is not in breach;
- 41.2.6 delivery of material to the Facilities which poses a significant threat to human health and as such is likely to require a shutdown;
- 41.2.7 the wilful actions, omissions, negligence of an Authority Related Party interferes with the provision of the Interim Services and/or the Services at the Villiers Road Site save to the extent that:
 - (a) such breach amounts to a Compensation Event; and/or
 - (b) such wilful actions, omissions, negligence, breach or default are caused by the wilful actions, omissions, negligence, breach or default of the Contractor or a Contractor Related Party.

41.3 Insured exposure

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

not limited to non disclosure or under insurance) or any other policy of insurance which the Contractor has taken out and maintained.

41.4 Mitigation of Excusing Cause

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

42. PROTESTER ACTION

- 42.1 The Contractor shall provide appropriate security and security fencing, an appropriately manned weighbridge and reasonable additional security measures in the event that and for so long as there are reasonable grounds for believing that a higher risk of Protester Action persists at either of the Sites and/or the Facilities.
- 42.2 Notwithstanding the provisions of Clause 42.1 (Protester Action) above, in the event Protester Action arises at or around the Sites and/or the Facilities or on the access road to the Sites and/or the Facilities the Contractor shall take such actions as are reasonable, proportionate and lawful to deal with Protester Action and where necessary shall co-operate with the emergency services.
- 42.3 Save to the extent provided in limb (g) of the definition of Relief Events and Clause 40 (Relief Events), the Contractor shall be responsible for the consequences of any delays or disruption consequent upon any Protester Action.

PART VII - CHANGE AND CHANGE IN LAW

43. AUTHORITY AND CONTRACTOR CHANGES

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

44. CHANGE IN LAW

44.1 Qualifying Change in Law

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

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

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

44.2 Parties to Discuss

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

21(Change Protocol) in order to discuss and agree the issues referred to in Clause 44.1 (Qualifying Change in Law) and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law. In applying the Change Protocol, the Contractor shall demonstrate (inter alia) its opinion on the matters referred to in Clause 44.1 (Qualifying Change in Law) by:

- 44.2.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige the Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- 44.2.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
- 44.2.3 subject to any confidentiality arrangements in place in respect of pricing information, giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the shareholders or their Affiliates carry on business;
- 44.2.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clauses 44.1.5 (Qualifying Change in Law) and/or 44.1.6 (Qualifying Change in Law).
- 44.2.5 providing evidence that the Contractor has used reasonable endeavours to pass any increase in costs to existing Third Party Waste or Off-Take customers of the Contractor as the case may be and has demonstrated in relation to Third Party Waste Contracts referred to in Clause 51.3 (Third Party Waste Contracts) by evidencing compliance with such Clause 51.3.

44.3 Change Agreed

If the Parties agree that the Contractor shall obtain funding on behalf of the Authority to fund any additional Capital Expenditure due to a Qualifying Change in Law, then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to the Parties (acting reasonably). The Parties agree that the market rate for any intra-group loan which may be obtained by the Contractor shall be

44.4 Contractor's Share

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

44.4A Authority Proportion

44.4A.1 The Parties agree that where the Cumulative Capital Expenditure referred to in Clause 44.4 (Contractor's Share) exceeds the Contractor's Share, then the Authority shall only be liable to compensate the Contractor the amount of the Authority Proportion in relation to such expenditure. The Authority Proportion shall be calculated in accordance with Clause 44.4A.2 (Authority Proportion).

44.4A.2 Any adjustment in the Unitary Charge resulting from the occurrence of a Qualifying Change in Law which involves Capital Expenditure at the Key Facility shall be subject to an abatement in accordance with this Clause 44.4A.2 (Authority Proportion) below. If the Qualifying Change in Law occurs at any time where it is agreed or determined that the Unitary Charge shall be increased or reduced, the amount of such increase or reduction shall be calculated in accordance with the following formula:

$$\text{Authority Proportion} = C_{\text{CIL,KEY FACILITY}} * (Y/R_{\text{KEY FACILITY}}) * (\text{Authority Capacity}_{\text{KEY FACILITY}} / \text{Facility Design Tonnage}_{\text{KEY FACILITY}}) + C_{\text{CIL,WASTE TRANSFER STATION}} * (100\% - (Y/R_{\text{WASTE TRANSFER STATION}}) * (\text{Villiers Road Only Tonnage} / \text{Facility Design Tonnage}_{\text{WASTE TRANSFER STATION}}))$$

where:

“**Authority Capacity_{KEY FACILITY}**” means the greater of the Guaranteed Minimum Tonnage and the average Contract Waste tonnage processed at the Key Facility in the three year period prior to the Qualifying Change in Law;

“**Authority Proportion**” means the Authority's proportion of Change in Law capital cost, amortised through an uplift or decrease in the Unitary Charge over Y calculated in accordance with Schedule 19 (Revision of Base Case and Custody);

“**Y**” means the time remaining from the date of the relevant Capital Expenditure to implement the Change in Law until the Expiry Date (expressed in Contract Years and, if applicable, within a fraction of a Contract Year);

“**C_{CIL}**” means the identified capital cost increase/reduction at the relevant Facility attributable to the relevant Qualifying Change in Law;

“**Facility Design Tonnage**” means the annual tonnage of waste (including Contract Waste and Third Party Waste) or feedstock that has been designed to be processed at the relevant Facility;

“**Villiers Road Only Tonnage**” means the average annual tonnage of Third Party Waste processed at the Waste Transfer Station which is not then subsequently treated at the Key Facility in the three year period prior to the Qualifying Change in Law;

“R_{KEY FACILITY}” means the useful economic life of the Key Facility remaining at the date of the relevant Capital Expenditure to implement the Change in Law which shall be at least the figure for Y plus ten (10) years or other period agreed between the Contractor and the Authority (expressed in Contract Years and fractions thereof);

“R_{WASTE TRANSFER STATION}” means the useful economic life of the Waste Transfer Station remaining at the date of the relevant Capital Expenditure to implement the Change in Law which shall be at least the figure for Y plus five (5) years or other period agreed between the Contractor and the Authority (expressed in Contract Years and fractions thereof).

44.5 Financing

If the Contractor has used reasonable endeavours to obtain funding for the Capital Expenditure referred to in Clause 44.3 (Change Agreed), and either:

44.5.1 the Contractor has been unable to obtain such funding within sixty (60) Business Days of the date that the agreement or determination referred to in Clause 44.3 (Change Agreed) occurred; or

44.5.2 the Contractor has been able to obtain such funding but the terms of such funding are not satisfactory to the Authority (acting reasonably),

then the Authority may seek funding on terms satisfactory to the Parties (acting reasonably) for the Capital Expenditure in accordance with Clause 44.3 (Change Agreed).

44.6 Adjustment to Unitary Charge

If it is agreed or determined that the Contractor is entitled to compensation to meet the costs of a Qualifying Change in Law or that the Authority is entitled to a reduction in the Unitary Charge due to the occurrence of a Qualifying Change in Law then such compensation payable under this Clause 44 (Change in Law) shall be by means of an adjustment to or reduction in the Unitary Charge and shall be determined and made in accordance with Clause 53 (Revision of Base Case and Custody).

44.7 Payment of Irrecoverable VAT

The Authority shall pay to the Contractor from time to time as the same is incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Qualifying Change in Law. Any such payment shall be made within twenty (20) Business Days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this Clause 44.7 (Payment of Irrecoverable VAT), “Irrecoverable VAT” means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Works or the Interim Services and/or the Services or any of the obligations or provisions under this Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent

that the Contractor is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

44.8

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PART VIII- PAYMENT PROVISIONS

45. INVOICING AND PAYMENT

45.1 Payment of the Unitary Charge

The Authority shall pay the Contractor the Unitary Charge in respect of each Payment Period, calculated in accordance with Schedule 4 (Payment Mechanism).

45.2 Report and Invoice

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

- 45.2.1 a report showing for that Payment Period indicating full details of the amounts calculated and due under Schedule 4A (Interim Services Payment Mechanism) or Schedule 4 (Payment Mechanism) (as the case may be); and
- 45.2.2 an invoice for the amount (if any) shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

45.3 Final Payment Period

- 45.3.1 During the final two (2) Payment Periods of the Contract Period, in addition to the amounts referred to in Clause 45.2 (Report and Invoice) the Authority may withhold an amount equal to the average per Payment Period of the sum of the adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) for the previous six (6) Payment Periods until such time as the Contractor shall have provided a report to the Authority in respect of those final two (2) Payment Periods containing the information set out in Clause 45.2 (Report and Invoice).
- 45.3.2 On receipt of the reports from the Contractor in respect of the final two (2) Payment Periods the Authority may retain from the amounts withheld pursuant to Clause 45.3 (Final Payment Period) a sum equivalent to the sum of the adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) identified in the report or any other amount agreed by the Parties or determined pursuant to Schedule 22 (Dispute Resolution Procedure) as owing to the Authority. The Authority shall pay the balance of any monies withheld to the Contractor or if it is agreed or determined the Contractor owes monies to the Authority in excess of those sums withheld, the Contractor shall pay such additional amounts to the Authority, in each case with interest on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the payment was withheld by the Authority pursuant to Clause 45.3 (Final Payment Period) or from the date on which over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

45.4 Payment

- 45.4.1 Subject to Clause 45.5 (Disputed Amounts), the Authority shall pay the amount stated in any invoice submitted under Clause 45.2 (Report and Invoice) on the final Business Day of the Payment Period in question.
- 45.4.2 Where a report shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority on the final Business Day of the Payment Period to which the report refers or, at the option of the Authority, carry forward that amount to the next report in reduction of amounts which would otherwise have been owed by the Authority to the Contractor.

45.5 Disputed Amounts

- 45.5.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to Clause 45.2 (Report and Invoice) in respect of any Payment Period the provisions of this Clause 45.5 (Disputed Amounts) shall apply.
- 45.5.2 The Authority shall notify the Contractor in writing within ten (10) Business Days of receipt by the Authority of the relevant invoice and supporting report of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (a "Disputed Amount") and submit to the Contractor such supporting evidence as the Authority may have.
- 45.5.3 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.

45.6 Response to Authority Notice

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

- 45.6.1 to retain on a permanent basis any amounts withheld pursuant to Clause 45.5 (Disputed Amounts); and
- 45.6.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

45.7 Dispute

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

45.8 Determination of Dispute

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

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

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

45.9 Indexation

On each Indexation Date the Annual Unitary Charge shall be adjusted for the Contract Year commencing on that Indexation Date in accordance with paragraph 19 (Indexation) of Schedule 4 (Payment Mechanism).

46. SET-OFF

- 46.1 The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.
- 46.2 If the payment or deduction of any amount referred to in Clause 46.1 (Set-Off) above is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

47. LATE PAYMENTS

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of

this Contract relating to the payment of compensation on termination of this Contract following the occurrence of an Authority Default provide the Contractor with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

48. UTILITIES AND NNDR

The Contractor shall be responsible for paying utility costs and charges and NNDR incurred in providing the Interim Services and the Services subject to paragraph 8 of Schedule 4A (Interim Services Payment Mechanism) and paragraph 10 of Schedule 4 (Payment Mechanism).

49. VAT

49.1 VAT on Payments

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

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

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

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

49.2 Landfill Tax

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

49.2.2 The Authority shall reimburse the Contractor for the payment of Landfill Tax under Clause 49.2.1 (Landfill Tax) in accordance with and to the extent provided in paragraphs 6 and 7 of Schedule 4 (Payment Mechanism) provided that for the avoidance of doubt the Authority shall in no circumstances be required to reimburse the Contractor for the payment of Landfill Tax payable on Third Party Waste.

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

50. THIRD PARTY INCOME

50.1 The provisions of paragraph 12 (Excess Revenue Share) of Schedule 4 (Payment Mechanism) shall apply in respect of Third Party Income.

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

51. OFF TAKE CONTRACTS AND THIRD PARTY WASTE CONTRACTS

51.1 Conditions for Off Take Contracts and Third Party Waste Contracts

51.1.1 At any time after the date of this Contract, if and whenever the Contractor shall enter into any Off Take Contracts and/or any Third Party Waste Contracts with the exception of the Excluded Third Party Waste Contracts, the Contractor shall ensure or procure as the case may be that any such contract is in writing and:

- (a) is on reasonable arms' length terms;
- (b) does not include any terms or conditions which are unusual having regard to standard market practice;
- (c) in relation to a Third Party Waste Contract, that the provisions of Clause 51.3 (Third Party Waste Contracts) are complied with.

51.2 Due diligence over Off Take Contracts and/or Third Party Waste Contracts

51.2.1 The Contractor shall:

- (a) afford the Authority ten (10) Business Days to conduct due diligence on any Off Take Contract and/or any Third Party Waste Contract with the exception of the Excluded Third Party Waste Contracts before the Contractor enters into the same to enable the Authority to assess its terms for compliance with the provisions of Clause 51.1 (Conditions for Off Take Contracts and Third Party Waste Contracts) above and to raise comments thereon;
- (b) take into account any reasonable comments made by the Authority and shall use its reasonable endeavours to amend the Off Take Contract and/or any Third Party Waste Contract accordingly before such Third Party Waste Contract is concluded provided that if the Contractor does not receive any comments from the Authority within ten (10) Business Days of providing any Offtake Contract or Third Party Waste Contract for review under the terms of this Clause 51.2 (Due diligence over Off Take Contracts and/or Third Party Waste Contracts), the Authority shall be deemed to have no comments on such contract and the Offtake Contract or the Third Party Waste Contract (as the

case may be) shall be deemed to satisfy the requirements of Clause 51.1.1(Conditions for Off-Take Contracts and Third Party Waste Contracts) above; and

- (c) on request and free of charge, provide copies of any Third Party Waste Contract and any related documents to the Authority's Representative.

51.3 Third Party Waste Contracts

- 51.3.1 Where a Third Party Waste Contract is to be entered into for a term greater than five (5) years (such contracts together with this Contract being "Qualifying Contracts"), the Contractor shall use reasonable endeavours to ensure that the provisions of paragraph 3 of Schedule 10 (Required Insurances) are included in the relevant contract so that the compensation payable by the Authority of its liability (as the case may be) under such aforementioned provisions is equal to the Authority Share (the Authority Share for such purposes being, as a percentage, the maximum Authority's tonnages to be supplied under the Contract over the maximum capacity of the Key Facility which is contracted under Qualifying Contracts).

PART IX - FINANCE AND AUDIT

52. REFINANCING

52.1 If at any time after the Key Facility Services Commencement Date, the Contractor, after obtaining the Authority's prior written consent (not to be unreasonably withheld or delayed), enters into funding arrangements with one or more third party senior debt providers in order to fund its obligations under this Contract, the Parties agree that (subject to Clause 52.2 (Refinancing)) any such refinancing shall be undertaken on terms which have substantially the same effect as the [REDACTED]

[REDACTED] including in particular the requirements for the Parties to negotiate in good faith to agree the basis and method of calculating any refinancing gain.

[REDACTED]

52.3 The Parties recognise that improved financing terms from a third party senior debt provider could be secured by entering into a long term arrangement with another public sector entity for the processing of waste which provides a secure and stable income stream. Where more favourable terms could be agreed for such a long term arrangement by offering a public sector entity a share of any future refinancing gain, the Authority agrees it will not withhold its consent (acting reasonably but having regard to the Authority's commercial interests) to any request to amend the sharing of refinancing gain provisions so that the public share can be distributed between public sector bodies based upon their usage of the Key Facility.

53. REVISION OF BASE CASE AND CUSTODY

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

54. CONTRACTOR RECORDS AND PROVISION OF INFORMATION

54.1 Records and Open Book Accounting

The Contractor shall at all times:

- 54.1.1 maintain a full record of particulars of the costs and revenues of performing the Works, the Interim Service and the Services provided that in the case of the Key Facility Works such obligation shall only apply to the extent that such detailed breakdown of costs is available to it;
- 54.1.2 upon request by the Authority, provide a written summary of any of the costs and revenues referred to in Clause 54.1.1 (Records and Open Book Accounting), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract; and
- 54.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records relating to the Works, the Interim Services and the Services are held and examine the records maintained under this Clause;

54.2 Books of Account

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

- 54.2.1 administrative overheads;
- 54.2.2 payments to Sub-Contractors;
- 54.2.3 capital and revenue expenditure;
- 54.2.4 all revenues (including, without limitation, Third Party Income), and
- 54.2.5 such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract,

and the Contractor shall have the books of account evidencing the items listed in Clauses 54.2.1 to 54.2.4 (Books of Account) inclusive, available for inspection by the Authority (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Authority as and when requested from time to time.

54.3 Maintenance of Records

- 54.3.1 The Contractor shall maintain or procure that detailed records relating to the performance of the Works and the delivery of the Interim Services and the Services are maintained, in each case in accordance with Good Industry Practice, the requirements of

Clause 88 (Quality Management Systems) and any applicable Legislation.

54.3.2 Without prejudice to Clause 54.3.1 (Maintenance of Records), the Contractor shall procure that the following are maintained:

- (a) a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and
- (b) full records of all maintenance procedures carried out during the term of this Contract

and the Contractor shall have the items referred to in Clauses 54.3.2(a) and 54.3.2(b) (Maintenance of Records) available for inspection by the Authority (and its advisors) upon reasonable notice and allow adequate opportunity for the Authority to take copies (at its own cost).

54.4 Auditor

The Contractor shall permit all records referred to in this Clause 54 (Contractor Records and Provision of Information) which relate to the Waste Transfer Station Works, the Interim Services and Services to be examined and copied from time to time by the Authority's Representative and other representatives of the Authority and by the Audit Commission or District Auditor, ombudsman or their representatives who reasonably require access to the same. The Contractor shall permit access to other records relating to this Contract for inspection by the Audit Commission or District Auditor or ombudsman as may be required by Legislation.

54.5 Retention

The records referred to in this Clause 54 (Contractor Records and Provision of Information) shall be retained for a period of at least six (6) years after the Contractor's obligations under this Contract have come to an end.

54.6 Not used

54.7 Confidentiality

All information referred to in this Clause 54 (Contractor Records and Provision of Information) is subject to the obligations set out in Clause 84 (Confidentiality).

54.8 Accounts

The Contractor shall:

- 54.8.1 provide to the Authority one electronic copy of its annual report and accounts within twenty (20) Business Days of publication;
- 54.8.2 provide to the Authority a copy of the Financial Model at Financial Close and (as the same may be amended) within twenty (20) Business Days of any amendment thereto; and

54.8.3 use its reasonable endeavours to assist the Authority in its preparation of any report required by the Defra or HM Treasury from time to time.

PART X - INSURANCE

55. REQUIRED INSURANCES

- 55.1 Save where expressly set out in this Contract, the Contractor shall, prior to the date upon which the Works commence at each of the Facilities, take out and maintain or procure the maintenance of the insurances described in Part 1 and Part 3 of Schedule 10 (Required Insurances) and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 55.2 Save where expressly set out in this Contract, the Contractor shall during the Interim Services Period and the Services Period take out and maintain or procure the maintenance of the insurances described in Part 2 of Schedule 10 (Required Insurances) and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 55.3 Not used
- 55.4 No party to this Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.
- 55.5 With the exception of the insurances required by law, the insurances referred to in Clauses 55.1 and 55.2 (Required Insurances) shall:
- 55.5.1 subject to Clause 55.7 (Required Insurances) below, name the Contractor as co-insured with any other party maintaining the insurance;
 - 55.5.2 provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 2 in Part 4 of Schedule 10 (Required Insurances);
 - 55.5.3 contain a Clause waiving the insurers' subrogation rights against the Authority, its employees and agents in accordance with Endorsement 2 in Part 4 of Schedule 10 (Required Insurances);
 - 55.5.4 provide for thirty (30) days prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 1 in Part 4 of Schedule 10 (Required Insurances); and
 - 55.5.5 in respect of the Physical Damage Policies, provide for payment of any proceeds received by the Contractor to be applied in accordance with Clause 56 (Reinstatement).
- 55.6 Wherever possible, and where the Authority is to be a co-insured in accordance with Schedule 10 (Required Insurances), the insurances referred to in Clauses 55.1 and 55.2 (Required Insurances) shall name the Authority as a co-insured for its separate interest.

- 55.7 The Contractor shall use reasonable endeavours to obtain and provide to the Authority:
- 55.7.1 In respect of insurance maintained exclusively in respect of the Project only, copies on request of all insurance policies referred to in Clauses 55.1 and 55.2 (Required Insurances) (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours; and
 - 55.7.2 In respect of all other insurances, a summary of insurance policy or policies (in a form satisfactory to the Authority) prepared by the Contractor's insurance broker; and
 - 55.7.3 evidence on request that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 55 (Required Insurances) and Schedule 10 (Required Insurances).
- 55.8 Renewal certificates in relation to the insurances referred to in Clauses 55.1 and 55.2 (Required Insurances) shall be obtained as and when necessary and the Contractor shall use reasonable endeavours to forward copies (certified in a manner acceptable to the Authority) to the Authority as soon as possible but in any event on or before the renewal date.
- 55.9 If the Contractor is in breach of Clauses 55.1 and 55.2 (Required Insurances) above, the Authority may pay any premiums, fees, broker's costs or other expenses (each of which shall at all times be reasonable) required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 55.10 The Contractor shall give the Authority notification within twenty (20) Business Days after any claim in respect of the Project in excess of one hundred thousand pounds (£100,000) on any of the insurance policies referred to in this Clause accompanied by full details of the incident giving rise to the claim.
- 55.11 Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.
- 55.12 The insurance premiums in respect of the insurances referred to in Clauses 55.1 and 55.2 (Required Insurances) shall be the responsibility of the Contractor.
- 55.13 With the exception of insurances required by law and those insurances not maintained exclusively in respect of the Project, the insurances referred to in this Clause shall be effected with insurers approved by the Authority such approval not to be unreasonably withheld or delayed.
- 55.14 The Contractor shall procure that any insurance broker of the Contractor from time to time charged with responsibility for placing or maintaining any of the Required Insurances shall provide the Authority with a letter of undertaking substantially in the form set out in Part 5a, or in the case of

insurance not maintained exclusively for this project Part 5b, of Schedule 10 (Required Insurances).

56. REINSTATEMENT

56.1 All insurance proceeds received under any policy referred to in paragraphs 1 and 4 of Part 1 and paragraph 1 of Part 2 of Schedule 10 (Required Insurances) (the "Physical Damage Policies") shall be applied to repair, reinstate and replace each part or parts of the assets in respect of which such proceeds were received.

56.2 All insurance proceeds paid under a Physical Damages Policy in respect of a single event (or a series of related events) in an amount in excess of five hundred thousand pounds (£500,000) (Indexed) shall be paid into the Joint Insurance Account.

56.3 Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "Relevant Incident") in an amount in excess of five hundred thousand pounds (£500,000) (Indexed):

56.3.1 the Contractor shall deliver to the Authority as soon as practicable and in any event within twenty (20) Business Days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the "Reinstatement Works") to repair, reinstate or replace (the "Reinstatement Outline") the assets which are the subject of the relevant claim or claims in accordance with Clause 56.3.2 (Reinstatement) below. The Reinstatement Plan shall set out:

- (a) if not the Construction Sub-Contractor the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority which approval shall not be unreasonably withheld or delayed; and
- (b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of the Authority, which approval shall not be unreasonably withheld or delayed;

56.3.2 the Authority shall within ten (10) Business Days of receipt of the Reinstatement Outline notify the Contractor in writing that:

- (a) it is satisfied that the Reinstatement Outline will enable the Contractor to comply with its obligations to carry out the Reinstatement Works within a reasonable timetable, and that the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works is approved;
- (b) the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the

Reinstatement Works is not approved together with its reasons for such non-approval in sufficient detail so as to enable the Contractor to understand the nature and extent of such non-approval and to assess whether the Authority's approval under Clause 56.3.1(a) (Reinstatement) has been unreasonably withheld;

- (c) the Authority does not approve the Reinstatement Outline together with its reasons for such non-approval, in sufficient details so as to enable the Contractor to understand the nature and extent of such non-approval and to assess whether the Authority's approval under Clause 56.3.1(b) (Reinstatement) has been unreasonably withheld or delayed; or
 - (d) if the Authority does not make one (1) of the said responses within the period specified in this Clause 56.3.2 (Reinstatement) it shall be deemed to have approved the Reinstatement Outline, save where the Authority has reasonably requested any further information from the Contractor, in which case the time limit outlined in Clause 56.3.2 (Reinstatement) will be deemed to commence upon receipt of such information by the Authority.
- 56.3.3 If the Authority gives notice of non-approval in accordance with Clauses 56.3.2(b) or 56.3.2(c) (Reinstatement) the Contractor may amend and re-submit the Reinstatement Outline (the Amended Reinstatement Outline) to the Authority for its reconsideration and the Authority shall give its approval or non-approval within five (5) Business Days of the submission of the Amended Reinstatement Outline to the Authority. If the Authority does not approve the Amended Reinstatement Outline, it shall provide reasons for such non-approval in sufficient detail so as to enable the Contractor to understand the nature and extent of such non-approval and to assess whether the Authority's approval has been unreasonably withheld or delayed.
- 56.3.4 In the event that the Amended Reinstatement Outline or a person proposed to carry out the Reinstatement Works is not approved by the Authority in accordance with Clause 56.3.3 (Reinstatement) the Contractor may submit the Amended Reinstatement Outline to the Dispute Resolution Procedure in order for it to be determined whether the Authority's approval under Clause 56.3.3 (Reinstatement) was unreasonably withheld or delayed.
- 56.3.5 The Reinstatement Outline or the Amended Reinstatement Outline (as the case may be) as approved by the Authority pursuant to this Clause 56 (Reinstatement) or as determined pursuant to the Dispute Resolution Procedure shall become the reinstatement plan (the "Reinstatement Plan").
- 56.3.6 The Contractor shall effect the Reinstatement Works in accordance with the Reinstatement Plan, and:

- (a) shall enter into contractual arrangements to effect the Reinstatement Works with the person(s) identified in the Reinstatement Plan;
- (b) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the Relevant Proceeds) (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements entered into to effect the Reinstatement Works and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the Parties shall operate the signatory requirements of the Joint Insurance Account to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works to the extent that such amounts relate to the Waste Transfer Station only;
- (c) the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this Clause 56 (Reinstatement), and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with this Clause 56.3 (Reinstatement) it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds;
- (d) the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;
- (e) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with this Clause 56.3 (Reinstatement) the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under this Clause 56.3 (Reinstatement) in respect of the Relevant Incident, together with any interest accrued; and
- (f) subject to Clause 61 (Indemnities), the Contractor shall be solely responsible for the payment of any deficiency.

56.4 Works Carried Out

Where insurance proceeds are to be used in accordance with this Contract to repair, reinstate or replace any part of any Facility, the Contractor shall carry out the work in accordance with the Authority's Requirements and the Contractor's Proposals so that on completion of the work the provisions of this Contract are complied with.

57. UNINSURABILITY

57.1 Uninsurable Risks

Nothing in this Clause 57 (Uninsurability) shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Contractor or a Contractor Related Party.

57.2 Risks Become Uninsurable

If a risk usually covered by contractors' all risks insurance, property damage insurance, marine cargo insurance, third party liability insurance, contractors' pollution liability insurance, environmental impairment liability insurance, delay in start up (including marine cargo delay in start up) and business interruption insurance (but not loss of profits) or statutory insurances in each case required under this Contract becomes Uninsurable then:

57.2.1 the Contractor shall notify the Authority of any risk becoming Uninsurable within five (5) Business Days of becoming aware of the same and in any event at least five (5) Business Days before expiry or cancellation of any existing insurance in respect of that risk; and

57.2.2 if both Parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that:

(a) the risk being Uninsurable is not caused by the actions of the Contractor or a sub-contractor (of any tier); and

(b) the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar PFI businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the absence of the type of relief envisaged by this Clause) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

the Parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

57.3 Consequences

57.3.1 If the requirements of Clause 57.2 (Risks Become Uninsurable) above are satisfied, but the Parties cannot agree as to how to manage the risk, then:

- (a) in respect of such third party liability insurance and contractors' pollution liability insurance and environmental impairment liability insurance only, the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the amount calculated in accordance with Part 4 (Compensation on Termination for Uninsurability) of Schedule 17 (Compensation on Termination) and the Contract will terminate or elect to allow the Contract to continue and Clause 57.3.1(b) (Consequences) below shall thereafter apply in respect of such risk; and
- (b) in respect of contractors' all risks insurance, property damage insurance, marine cargo insurance, delay in start up (including marine cargo delay in start up) and business interruption insurance (but not loss of profits) or statutory insurances and (if the Authority elects to allow the Contract to continue in accordance with Clause 57.3.1(a) (Consequences) third party liability insurance and contractors' pollution liability insurance and environmental impairment liability insurance the Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and this Contract will continue, or an amount equal to the amount calculated in accordance with Part 4 (Compensation on Termination for Uninsurability) of Schedule 17 (Compensation on Termination) plus (in relation to third party liability insurance and contractors' pollution liability and / or environmental impairment liability insurance only) the amount of insurance proceeds that would have been payable to the Contractor whereupon the Contract will terminate; and
- (c) where pursuant to Clauses 57.3.1(a) and 57.3.1(b) (Consequences) this Contract continues, then the Unitary Charge shall be reduced in each Contract Year for which the relevant insurance is not maintained, by an amount equal to the premium paid by the Contractor in respect of the relevant risk in the Contract Year prior to it becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a Contract Year only the reduction in the Unitary Charge shall be pro rated to the number of Months for which the risk was Uninsurable; and
- (d) where pursuant to Clause 57.3.1(a) and/or 57.3.1(b) (Consequences) this Contract continues the Contractor shall approach the insurance market at least every four (4) Months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be

incepted as soon as is reasonably practicable) for such risk in accordance with this Contract.

- (e) In respect of any period between the Authority receiving notification in accordance with Clause 57.2.1 (Risks Become Uninsurable) that a PL Risk has become Uninsurable and the Authority's notification to the Contractor in accordance with Clause 57.3.1(a) (Consequences) in respect of such risk then, provided it is ultimately agreed or determined that the requirements of Clause 57.2.2. are satisfied in respect of the Uninsurable TPL Risk; and subject to Clause 57.3.1 (f) below, Clause 57.3.1(b) (Consequences) shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the parties otherwise agree how to manage the risk during this period; and
- (f) Clause 57.3.1 (e) (Consequences) shall only apply provided the Contractor does not unreasonably materially delay (a) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of Clause 57.2.2 are satisfied in respect of the Uninsurable TPL Risk and/or (b) meeting with the Authority to discuss the means by which the risk should be managed.

TPL Risk should be defined as 'a risk which is required to be insured under the third party liability insurance policy and/or the contractors' pollution liability insurance and/or the environmental impairment liability insurance policies'.

57.4 Relevant Payment

If, pursuant to Clause 57.3.1(b) (Consequences), the Authority elects to make payment to the Contractor (such that the Contract will terminate) ("Relevant Payment"), the Contractor shall have the option (exercisable in writing within twenty (20) Business Days of the date of such election by the Authority (the "Option Period")) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case the Contract will continue (and the Relevant Payment will not be made by the Authority), and the Contractor's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

58. UNAVAILABLE TERMS AND CONDITIONS

58.1 Unavailability of Terms or Conditions

58.1.1 If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Contract:

- (a) any Insurance Term is not available to the Contractor in the worldwide insurance markets with reputable insurers of good standing; and/or

- (b) the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

(other than, in each case, by reason of one or more actions of the Contractor and/or any sub-contractors of the Contractor (of any tier)) then Clause 58.1.2 (Unavailability of Terms or Conditions) shall apply.

- 58.1.2 If it is agreed or determined that Clause 58.1.1 (Unavailability of Terms or Conditions) applies then the Authority shall waive the Contractor's obligations in Clause 55 (Required Insurances) and/or Schedule 10 (Required Insurances) in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Contract as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Clause 58.1.1 (Unavailability of Terms or Conditions) continue to apply to such Insurance Term.
- 58.1.3 To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Contract, the costs of such insurance shall be subject to the premium costs sharing mechanism set out at Part 5 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances).
- 58.1.4 The Contractor shall notify the Authority as soon as reasonably practicable and in any event within five (5) Business Days of becoming aware that Clause 58.1.1(a) and/or Clause 58.1.1(b) (Unavailability of Terms or Conditions) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
- 58.1.5 In the event that Clause 58.1.1(a) and/or Clause 58.1.1(b) (Unavailability of Terms or Conditions) apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four Months to establish whether Clause 58.1.1(a) and/or

Clause 58.1.1(b) (Unavailability of Terms or Conditions) remain applicable to the Insurance Term. As soon as the Contractor is aware that Clause 58.1.1(a) and/or Clause 58.1.1(b) (Unavailability of Terms or Conditions) has ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.

59. INSURANCE REVIEW PROCEDURE

The provisions of Part 6 (Insurance Premium Risk Sharing) of Schedule 10 (Required Insurances) shall apply in respect of insurance premia.

PART XI - DISPUTES AND REMEDIES

60. DISPUTE RESOLUTION

The provisions in Schedule 22 (Dispute Resolution Procedure) shall apply in respect of dispute resolution.

61. INDEMNITIES

61.1 The Contractor shall, subject to Clause 61.2 (Contractor Not Responsible) and Clause 62.7 (Maximum Liability), be responsible for, and shall release and indemnify the Authority, on demand from and against Indemnified Losses in relation to:

61.1.1 death or personal injury;

61.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible ("Authority Property") but excluding the land and buildings forming part of any Facility);

61.1.3 breach of an Authority statutory duty as at the Commencement Date; and

61.1.4 third party actions, claims and/or demands brought against the Authority or any Authority Related Party,

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the assets or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's property adjoining the Villiers Road Site of the Contractor, a subcontractor of the Contractor (of any tier), their employees or agents.

61.2 Contractor Not Responsible

The Contractor shall not be responsible or be obliged to indemnify the Authority for:

61.2.1 any of the matters referred to in Clauses 61.1.1 to 61.1.4 (Indemnities) (inclusive) that arises as a direct result of the Contractor acting on the instruction of the Authority;

61.2.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party or by the breach of the Authority of its obligations under this Contract;

61.2.3 any claims made under 61.1.2 to 61.1.3 (Indemnities) to the extent that the Required Insurances taken out by the Contractor provide an indemnity against the loss giving rise to the claim; or

61.2.4 any claims under Clauses 61.1.2 to 61.1.3 (Indemnities) to the extent that the Required Insurances do not provide an indemnity against the loss giving rise to that claim but only to the extent that

the aggregate of such claims exceed [REDACTED]
[REDACTED] (Indexed) during the Contract Period;

61.2.5 losses arising from a Force Majeure Event which shall be borne by the Authority and the Contractor each to its own losses;

61.2.6 losses or liabilities arising in relation to tradable Landfill Allowances (or any fines imposed under the Waste Emissions and Trading Act 2003 and associated regulations (or any other legislation from time to time) in respect of Landfilling of Contract Waste without possessing any required Tradable Landfill Allowances) or any actual or deemed loss of income in connection with the trading of Tradable Landfill Allowances;

61.2.7 Payment mechanism deductions and other items accounted for in the payment mechanism.

61.3 Notification of Claims

Where either Party (the "Indemnified Party") wishes to make a claim (other than in relation to a claim by a third party in which case Clause 63 (Conduct of Claims) shall apply) under this Contract against the other (the "Indemnifying Party"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

61.4 Mitigation

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Contract.

61.5 An indemnity by either party under any provisions of this Contract shall be without limitation to any indemnity by that party under any other provisions of this Contract.

62. SOLE REMEDY

62.1 Common Law Rights of the Contractor

62.1.1 Without prejudice to any entitlement of the Contractor:

(a) to specific performance of any obligation under this Contract; or

(b) to injunctive relief; or

(c) to other discretionary remedies of the court;

the Contractor's sole remedy in relation to matters for which an express right or remedy is stated in this Contract shall be that right or remedy and the Contractor shall have no additional right or remedy arising by common law, in equity, by statute or otherwise.

62.1.2 The Contractor's sole remedy in relation to any Compensation Event in respect of any Facility shall be the operation of Clause 39.3 (Compensation Event).

62.2 Common Law Rights of the Authority

Subject to:

62.2.1 any other express right of the Authority pursuant to this Contract; and

62.2.2 the Authority's right to claim, on termination of this Contract, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Contract by the Contractor, save to the extent that the same has already been recovered by the Authority pursuant to this Contract or has been taken into account to calculate any compensation payable by the Authority pursuant to Clauses 66 (Compensation on Termination for Authority Default), 68 (Compensation on Termination for Contractor Default), 70 (Compensation on Termination for Force Majeure), 72 (Compensation on Corrupt Gifts and Fraud), 74 (Compensation on Voluntary Termination by the Authority) or 76 (Compensation on Termination for Breach of the Refinancing Provisions);

the sole remedy of the Authority in respect of a failure to provide the Interim Service or the Services in accordance with this Contract shall be the operation of Schedule 4A (Interim Services Payment Mechanism) or Schedule 4 (Payment Mechanism) as the case may be.

62.3 Nothing in Clause 62.2 (Common Law Rights of the Authority) shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

62.4 No Breach

The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is as a result of the Authority's breach of its obligations hereunder.

62.5 Indirect Losses

Save where stated to the contrary, the indemnities under this Contract shall not apply and (without prejudice to the Authority's rights under Schedule 4 (Payment Mechanism)) there shall be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is for Indirect Losses. The Authority agrees that, notwithstanding the foregoing, any Losses of the Contractor arising under the Sub-Contracts as originally executed (or as amended in accordance with the terms of this Contract) which are not of themselves Indirect Losses, shall not be excluded from such a claim by virtue of this Clause.

62.6 No Double Recovery

Notwithstanding any other provision of this Contract, neither Party shall be entitled to recover compensation under this Contract or any of the Ancillary Documents or any other agreement in relation to the Project in respect of any loss that it has incurred (or any failure of the other Party) to the extent that it has already been compensated in full in respect of that loss or failure pursuant to this Contract, any of the Ancillary Documents or otherwise.

62.7 Maximum Liability

The Contractor's maximum aggregate liability to the Authority in relation to any claims and losses (whether direct, indirect or consequential arising from breach, termination or expiry of the Contract or other act, default, omission, negligence, misrepresentation or otherwise) in respect of the Project (other than claims under Clause 61.1 (Indemnities) which shall be limited as set out in Clause 61.2 (Contractor Not Responsible)) shall, when aggregated with any claims which are capped under the limitations in Clause 61.2.4 (Contractor Not Responsible), be limited to [REDACTED] pounds [REDACTED] (Indexed) ("the Liability Cap") provided that the Liability Cap shall be reduced to the extent of any amounts that the Authority claims and recovers under the Parent Company Guarantee and provided further that nothing in this clause shall limit or exclude the liability of the Contractor for:

- 62.7.1 claims arising for death, personal injury, fraud or fraudulent misrepresentation;
- 62.7.2 any amounts from the Contractor to the Authority by way of deductions or the operation of the provisions of Schedule 4 (Payment Mechanism);
- 62.7.3 for the Contractor's liability to contribute under Clause 44 (Change in Law);
- 62.7.4 for the Contractor's liability to pay to the Authority the Authority's share of any refinancing gain arising under Clause 52 (Refinancing);
- 62.7.5 any claims or liability of the Contractor for rent due under the terms of the Leases.

62.8 Works

- 62.8.1 Subject to Clauses 20.5 (Interim Services), 61.1 (Indemnities) and 62.8.2 (Works) and Part XII (Termination and Compensation on Termination), the Contractor shall not have any liability to the Authority in relation to any claims and losses whether direct, indirect or consequential arising from any breach, act, omission, default, negligence or misrepresentation in relation to the Works prior to their completion.
- 62.8.2 In the event that the Contractor fails to complete the Works in accordance with the Construction Programme (as may be amended from time to time in accordance with this Contract) or Abandons the Works, without prejudice to any right of termination that the

Authority may have, the Authority shall be entitled to claim the amount of its reasonable costs, Direct Losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of such breach by the Contractor, save to the extent that the same has already been recovered by the Authority pursuant to this Contract or has been taken into account to calculate any compensation payable by the Authority pursuant to this Contract.

63. CONDUCT OF CLAIMS

63.1 Conduct of Claims

This Clause 63 (Conduct of Claims) shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract, of claims made by a third person against a Party having (or claiming to have) the benefit of the indemnity. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "Beneficiary" and the Party giving the indemnity is referred to as the "Indemnifier". Accordingly:

- 63.1.1 if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Contract and any of the Ancillary Documents, or in relation to involvement in any investigation or proceedings by any auditor, inspector or ombudsman, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable together with such further information and documentation he or she may require and in any event within twenty (20) Business Days of receipt of the same;
- 63.1.2 subject to Clause 63.1.3 (Conduct of Claims), on the giving of a notice by the Beneficiary pursuant to Clause 63.1.1 (Conduct of Claims) above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a sufficient indemnity to its reasonable satisfaction against all costs, charges and expenses, actions, demands, proceedings, claims whatsoever that it may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim;
- 63.1.3 with respect to any claim conducted by the Indemnifier pursuant to Clause 63.1.2 (Conduct of Claims) above:
 - (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
 - (c) the Indemnifier shall not pay or settle such claims without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- 63.1.4 the Beneficiary shall (without prejudice to its duty to mitigate) be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
- (a) the Indemnifier is not entitled to take conduct of the claim in accordance with Clause 63.1.2 (Conduct of Claims) above; or
 - (b) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Business Days of the notice from the Beneficiary under Clause 63.1.1 (Conduct of Claims) above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
 - (c) the Indemnifier fails to comply in any material respect with the provisions of Clause 63.1.3 (Conduct of Claims) above within twenty (20) Business Days of notice from the Beneficiary.
- 63.1.5 the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which Clause 63.1.2 (Conduct of Claims) above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Clause 63.1.5 (Conduct of Claims), then the Indemnifier shall be released from any liability under its indemnity under Clause 61.1 (Indemnities) and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to Clause 63.1.2 (Conduct of Claims) in respect of such claim;
- 63.1.6 if the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and

- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Contract from being recovered from the Indemnifier); and

63.1.7 any person taking any of the steps contemplated by this Clause 63.1 (Conduct of Claims) shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.

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

64. NOT USED

PART XII - TERMINATION AND COMPENSATION ON TERMINATION

65. TERMINATION FOR AUTHORITY DEFAULT

65.1 Termination on Authority Default

- 65.1.1 If an Authority Default has occurred and the Contractor wishes to terminate this Contract, the Contractor must serve a termination notice on the Authority within thirty (30) Business Days of becoming aware of the Authority Default.
- 65.1.2 The termination notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.
- 65.1.3 The Contract will terminate on the day falling thirty (30) Business Days after the date the Authority receives the termination notice, unless the Authority rectifies the Authority Default within thirty (30) Business Days of receipt of the termination notice.

66. COMPENSATION ON TERMINATION FOR AUTHORITY DEFAULT

The provisions of Part 2 (Compensation following Authority Default) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Authority Default.

67. TERMINATION FOR CONTRACTOR DEFAULT

Subject to Clause 67.1 (Rectification) if a Contractor Default has occurred and the Authority wishes to terminate the Contract it must serve a termination notice on the Contractor.

67.1 Rectification

67.1.1 The termination notice must specify:

- (a) the type and nature of Contractor Default that has occurred, giving reasonable details; and
- (b) that in the case of any Contractor Default referred to in limbs (a), (g) and (r) of the definition of Contractor Default this Contract will terminate on the day falling forty (40) Business Days after the date the Contractor receives the termination notice, unless:
 - (i) in the case of any Contractor Default falling under limb (a) of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within twenty (20) Business Days after the date the Contractor receives the termination notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or

- (ii) in the case of any Contractor Default falling under limbs (a), (g) and (r) of the definition of Contractor Default the Contractor rectifies the Contractor Default within forty (40) Business Days after the date the Contractor receives the termination notice; or
- (c) in the case of any other Contractor Default (not being limbs (a), (g) and (r) of the definition of Contractor Default), this Contract will terminate on the date falling twenty (20) Business Days after the date the Contractor receives the termination notice.

67.1.2 If the Contractor either rectifies the Contractor Default within the time period specified in the termination notice, or implements the rectification programme, if applicable, in accordance with its terms, the termination notice will be deemed to be revoked and the Contract will continue.

67.1.3 If:

- (a) in the case of a Contractor Default within limb (a) of the definition of that term no acceptable rectification programme has been put forward pursuant to Clause 67.1.1(b)(i) (Rectification) and the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice; or
- (b) in the case of a Contractor Default within limbs (g) and (r) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice,

the Authority may give notice stating that the Contract will terminate on the date falling ten (10) Business Days after the date of receipt of such notice.

67.2 If the Contractor fails to implement any rectification programme in accordance with its terms, this Contract will terminate on the date falling ten (10) Business Days after the date of notification to the Contractor.

67.3 The Authority agrees that prior to determining whether to exercise any right of termination in respect of limbs (g), (n) and (p) of the definition of Contractor Default it shall, acting reasonably and in good faith by reference to the nature of the breach, give all due consideration to taking action other than termination of this Contract (including exercising its other contractual rights and remedies under this Contract (having regard to the nature of such rights and remedies)) to deal with the breach of circumstances giving rise to the breach.

67.4 Persistent Breach

67.4.1 If a particular breach during the Services Period (other than any breach for which adjustments and/or deductions in accordance with Schedule 4 (Payment Mechanism) could have been made) has

occurred more than three (3) times in any six (6) Month period then the Authority may serve a notice on the Contractor:

- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of the breach; and
- (c) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

67.4.2 If, following service of a warning notice the breach specified has occurred continuously for twenty (20) Business Days or recurred three (3) or more times within the six (6) Month period after the date of service of the formal warning notice, then the Authority may serve another notice on the Contractor:

- (a) specifying that it is a Final Warning Notice;
- (b) stating that the breach specified has been the subject of a warning notice served within the twelve (12) Month period prior to the date of service of the Final Warning Notice; and
- (c) stating that if the breach continues or recurs three (3) or more times within the six (6) Month period after the date of service of the Final Warning Notice, this Contract may be terminated.

67.4.3 A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.

68. **COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT**

68.1 The provisions of Part 3 (Compensation on Termination for Contractor Default) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Contractor Default.

69. **TERMINATION ON FORCE MAJEURE**

69.1 **Obligations**

No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out such obligations by that Force Majeure Event or the consequences of that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Contract for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to Clauses 69.5 (Unable to Agree) or 69.7 (Notice to Continue). The provisions of this Clause 69 (Termination on Force Majeure) shall not affect any claim by a Party for a sum due under the Contract arising prior to the Force Majeure Event or for any claim by a Party for a sum due under the terms of

the Contract in respect of the performance or part performance of obligations (including the performance of part of the Interim Services or Services) that are not affected by the Force Majeure Event.

69.2 Ability to Make Deductions

Nothing in Clause 69.1 (Obligations) shall affect any entitlement to make any adjustments and/or deductions under Clause 45 (Invoicing and Payment) in accordance with Schedule 4 (Payment Mechanism) in the period in respect of which the Force Majeure Event is subsisting.

69.3 Notification for Force Majeure

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

69.4 Consultation

If in the Authority's reasonable opinion (which shall be promptly notified to the Contractor):

69.4.1 the Force Majeure Event will have a material impact on the costs and/or obligations of the Authority in relation to the Works, the Interim Services and/or the Services, then as soon as practicable following the notification provided in accordance with Clause 69.3 (Notification for Force Majeure), the Contractor shall consult with the Authority in good faith and the Parties shall use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract; or

69.4.2 the Force Majeure Event will not have a material impact upon the costs or obligations of the Authority, then the Contractor shall in good faith notify the Authority of any mitigation measures it proposes to use or has used to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

69.5 Unable to Agree

If no such terms are agreed pursuant to Clause 69.4.1 (Consultation) on or before the date falling one hundred and twenty (120) Business Days after the date of the commencement of the Force Majeure Event and/or, in the case of either the circumstances in Clause 69.4.1 or 69.4.2 (Consultation) such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and eighty (180) Business Days, then, subject to Clause 69.6 (Consequences of Termination), either Party may terminate this Contract by giving twenty (20) Business Days written notice to the other Party.

69.6 Consequences of Termination

If this Contract is terminated under Clause 69.5 (Unable to Agree) or Clause 69.7 (Notice to Continue):

69.6.1



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

69.7 Notice to Continue

If the Contractor gives notice to the Authority under Clause 69.5 (Unable to Agree) that it wishes to terminate this Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority gives the Contractor such notice, then:

69.7.1 the Authority shall pay to the Contractor, the Unitary Charge and Third Party Income in accordance with paragraph 6 (Principles relating to Third Party Income) of Schedule 19 (Revision of Base Case and Custody) from the day after the date on which this Contract would have terminated under Clause 69.5 (Unable to Agree) as if the Interim Service or the Services (as the case may be) were being fully provided; and

69.7.2 this Contract will not terminate until expiry of written notice of at least twenty (20) Business Days from the Authority to the Contractor that it wishes this Contract to terminate.

69.8 Mitigation

The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

69.9 Cessation of Force Majeure Event

The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

70. COMPENSATION ON TERMINATION FOR FORCE MAJEURE

The provisions of Clause 69.6 (Consequences of Termination) shall apply in respect of Compensation on Termination for Force Majeure.

71. TERMINATION ON CORRUPT GIFTS AND FRAUD

71.1 Corrupts Gifts and Fraud

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

71.2 Termination for Corrupt Gifts and Fraud

71.2.1 If the Contractor or the Construction Sub-Contractor (or anyone employed by or acting on behalf of the Construction Sub-Contractor), or an Associated Company of the Contractor, commits any Prohibited Act, then the Authority shall be entitled to act in accordance with the provisions of this Clause 71.2 (Termination for Corrupt Gifts and Fraud).

71.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Contract by giving notice to the Contractor.

71.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person.

71.2.4 If the Prohibited Act is committed by the Construction Sub-Contractor or by an employee of the Construction Sub-Contractor not acting independently of the Construction Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within two (2) years of receipt of such notice the Contractor terminates the relevant Ancillary Documents and procures the performance of such part of the Works and/or the Interim Service and/or Services by another person.

71.2.5 If the Prohibited Act is committed by an employee of the Construction Sub-Contractor acting independently of the Construction Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such notice the Construction Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or the Interim Services and/or Services by another person.

71.2.6 If the Prohibited Act is committed by any other persons not specified in Clauses 71.2.2 to 71.2.5 (Termination for Corrupt Gifts

and Fraud), then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days of receipt of such notice the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Construction Sub-Contractor) and (if necessary) procures the performance of such part of the Works and/or the Interim Services and/or Services by another person.

71.2.7 Any notice of termination under this Clause 71 (Termination for Corrupt Gifts and Fraud) shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate, in accordance with the applicable provision of this Clause;
- (d) whether the Authority has chosen to exercise its option to have the Assets transferred from the Contractor to it as provided for in Part 3 (Compensation on Termination for Contractor Default, Corrupt Gifts and Fraud and Breach of Refinancing Provisions) of Schedule 17 (Compensation on Termination).

72. COMPENSATION ON TERMINATION FOR CORRUPT GIFTS AND FRAUD

72.1 The provisions of Part 4 (Compensation following Corrupt Gifts and Fraud) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Corrupt Gifts and Fraud.

73. VOLUNTARY TERMINATION BY THE AUTHORITY

73.1 The Authority may terminate this Contract at any time on or before the Expiry Date by complying with its obligations under Clause 73.2 (Voluntary Termination by the Authority) below.

73.2 If the Authority wishes to terminate this Contract under this Clause 73 (Voluntary Termination by the Authority), it must give a notice to the Contractor stating:

73.2.1 that the Authority is terminating this Contract under this Clause 73 (Voluntary Termination by the Authority); and

73.2.2 that this Contract will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice.

73.3 On termination, the Contractor shall transfer its rights, title and interest in and to the Assets to the Authority or as directed by the Authority.

73.4 This Contract will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice referred to in Clause 73.2 (Voluntary Termination by the Authority) above.

74. COMPENSATION ON VOLUNTARY TERMINATION BY THE AUTHORITY

The provisions of Part 2 (Compensation following Authority Voluntary Termination) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Voluntary Termination by the Authority.

75. TERMINATION FOR BREACH OF REFINANCING PROVISIONS

75.1 If the Contractor wilfully breaches its obligations under Clause 52.1 (Refinancing) then the Authority may terminate this Contract at any time on or before the Expiry Date by complying with its obligations under Clauses 75.2 to 75.4 (Termination for Breach of Refinancing Provisions) below.

75.2 If the Authority wishes to terminate the Contract under Clause 75.1 (Termination for Breach of Refinancing Provisions), it must give notice to the Contractor stating:

75.2.1 that the Authority is terminating the Contract under Clause 75.1 (Termination for Breach of Refinancing Provisions);

75.2.2 that this Contract will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice; and

75.2.3 whether the Authority has chosen to exercise its option under Clause 75.3 (Termination for Breach of Refinancing Provisions) below.

75.3 On termination, the Contractor shall transfer to the Authority or as directed by the Authority all of its rights, title and interest in and to the Assets in accordance with Clause 80 (Consequences of termination or expiry).

75.4 This Contract shall terminate on the date falling twenty (20) Business Days after the date of receipt of the notice referred to in Clause 75.2 (Termination for Breach of Refinancing Provisions) above.

76. COMPENSATION ON TERMINATION FOR BREACH OF THE REFINANCING PROVISIONS

The provisions of Part 3 (Compensation following Breach of Refinancing Provisions) of Schedule 17 (Compensation on Termination) shall apply in respect of Compensation on Termination for Breach of the Refinancing Provisions.

77. CALCULATION AND PAYMENT OF EARLY TERMINATION PAYMENTS

The provisions of Part 7 (General) of Schedule 17 (Compensation on Termination) shall apply in respect of the calculation and payment of early termination payments.

78. CONTINUING OBLIGATIONS

78.1 Save as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract:

78.1.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date; and

78.1.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under Clauses 10 (Land Issues), 36 (Employment Matters), 45 (Invoicing and Payment), 47 (Late Payments), Part XII (Termination and Compensation on Termination), 54 (Contractor's Records and Provision of Information), 55 (Required Insurances), 56 (Reinstatement), 57 (Uninsurability), 60 (Dispute Resolution), 61 (Indemnities), 62.7 (Maximum Liability), 85 (Freedom of Information), 87 (Intellectual Property), 98 (Notices), and 100 (Governing Law and Jurisdiction) or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequence of such termination.

PART XIII - EXPIRY OR EARLY TERMINATION

79. SURVEYS ON EXPIRY

79.1 Final Survey

Solely in relation to the Waste Transfer Station:

79.1.1 eighteen (18) Months prior to the Expiry Date, the Authority shall be entitled to carry out a final survey of the Assets to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under Clause 26.1 (Maintenance); and

79.1.2 the Authority shall notify the Contractor in writing a minimum of five (5) Business Days in advance of the date it wishes to carry out or procure the carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

79.2 Minimisation of Disruption

Where the Authority carries out the final survey in relation to the Waste Transfer Station, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey. The cost of the final survey shall be borne by the Authority.

79.3 Results of Survey

If the final survey of the Waste Transfer Station shows that the Contractor has not complied with or is not complying with its obligations under Clause 26.1.3 (Maintenance), the Authority shall:

79.3.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the relevant Assets to the standard it would have been in if the Contractor had complied or was complying with its obligations under Clause 26.1.3 (Maintenance) (the "Required Standard");

79.3.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and

79.3.3 recover the cost of the survey from the Contractor by means of a deduction from the next payment of the Unitary Charge.

79.4 Maintenance Work

The Contractor shall carry out such rectification and/or maintenance work notified pursuant to Clause 79.3.1 (Results of Survey) (the "Outstanding Work") in order to reach the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Works shall be at its own expense.

80. CONSEQUENCES OF TERMINATION OR EXPIRY

80.1 Transfer of documents etc to the Authority

Solely in relation to the Waste Transfer Station, the Contractor shall within twenty (20) Business Days of the Expiry Date (or, if earlier the Termination Date) hand over to the Authority all documents (or complete and accurate copies thereof), records, books, data and/or information in the possession, custody or power of the Contractor relating to and/or touching upon the Assets, the design, installation, maintenance and/or replacement of the Assets and the carrying out of the Service at the Waste Transfer Station other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Service after the Termination Date or the Expiry Date (as the case may be). Documents, records, books, data and/or information kept or stored on computer shall be surrendered, released and/or handed-over to the Authority by whatever means and in whatever format the Authority may reasonably require.

80.2 Provision of Information

The Contractor shall, solely in relation to the Waste Transfer Station, (subject to any condition imposed on the Contractor or any Sub-Contractor by Legislation):

80.2.1 following the service of a Termination Notice;

80.2.2 following termination of this Contract when a Termination Notice is not served;

80.2.3 at any time during the Contract Period immediately upon a reasonable request from the Authority; and

80.2.4 no later than six (6) Months and no earlier than twelve (12) Months before the Expiry Date,

supply to the Authority all information reasonably required by the Authority to carry out the Services (including information on the identity, terms and conditions of employment of all employees of the Contractor or any sub-contractor (including the Sub-Contractors) employed in the provision of the Services at the Waste Transfer Station (and to whom TUPE may apply as identified in accordance with Schedule 20(Employment and Pensions)) and information relating to the Assets and the Equipment and the Contractor warrants that, to the best of its knowledge and belief, such information is accurate in all material respects.

80.3 Transfer of Assets

- 80.3.1 Subject to Clause 80.3.2 (Transfer of Assets) below and unless the Authority elects in writing to the contrary, the Contractor shall transfer its rights, title and interest in and to the Assets and Equipment to the Authority (or any person nominated by the Authority), on and with effect from the Expiry Date or, if earlier, the Termination Date (as the case may be) for no additional payment and in accordance with the Handback Requirements. For the avoidance of doubt, upon the expiry or earlier termination of this Contract, the Authority shall have no right under this Contract to require the Contractor to transfer its right, title and interest in and to the Key Facility;
- 80.3.2 Where the Authority has made a request as referred to in Clause 80.3.3 (Transfer of Assets) below, the Contractor's ability to transfer the Waste Transfer Station Environmental Permit to a New Contractor or the Authority is subject to the Environment Agency approving the New Contractor or the Authority as a competent operator of the Waste Transfer Station and accordingly the Authority shall cooperate (and shall procure that any New Contractor acts reasonably in cooperating) with the Contractor in liaising with the Environment Agency in order to facilitate the transfer of the Environmental Permit;
- 80.3.3 The Authority may request that the Contractor fulfils its obligations under Clause 80.3.1 (Transfer of Assets) by surrendering the Environmental Permit held by the Contractor in respect of the Waste Transfer Station in accordance with all applicable Guidance.

PART XIV – GENERAL

81. ASSIGNMENT AND SUBCONTRACTING

81.1 Restrictions on Transfer of this Contract by the Authority

The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of the Contract and having the legal capacity, power and authority to become a Party to and to perform the obligations of the Authority under this Contract being:

- 81.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- 81.1.2 any local authority (which shall include, for the avoidance of doubt, any Joint Waste Authority established pursuant to Section 205 of the Local Government and Public Involvement in Health Act 2007) which has sufficient financial standing or financial resources to perform the obligations of the Authority under this Contract;
- 81.1.3 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

81.2 Restriction on the Contractor

Subject to Clause 81.3 (Exception), the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Authority.

81.3 Exception

- 81.3.1 The provisions of Clause 81.2 (Restriction on the Contractor) do not apply to the grant of any security for any loan made to the Contractor.
- 81.3.2 Subject to Clause 7.4 (Changes to Sub-Contracts) and Clause 81.5 (Refusal of Consent), nothing in this Contract shall prohibit the Contractor from providing or procuring the provision of the Works the Interim Services or the Services from a Sub-Contractor having the legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Sub-Contractor under the relevant Sub-Contract and whose identity has been notified to the Authority (and, in the case of the Construction Sub-Contractor only, who the Authority has approved

in writing, such approval not to be unreasonably withheld, and to be given (or withheld) within twenty (20) Business Days of notice) prior to the appointment of such Sub-Contractor, provided that the Contractor shall remain primarily and directly liable for the Contractor's obligations under this Contract. By entering into this Contract, the Authority approves the Sub-Contractors appointed by the Contractor as at the Commencement Date.

81.4 Contractor's Obligations

The Contractor shall perform its obligations under and observe all the terms of any Sub-Contract with a Sub-Contractor.

81.5 Refusal of Consent

The Authority shall be entitled to refuse to give consent pursuant to Clause 81.3.2 (Exception) where, in the Authority's reasonable opinion:

- 81.5.1 the proposed new or replacement sub-contract does not include provisions acceptable to the Authority (acting reasonably) in respect of the assignment of the replacement sub-contract provided that reasonable provisions allowing an assignment for the purposes of a bona fide internal restructuring within the proposed replacement sub-contractor's group of companies shall be deemed to be acceptable to the Authority where the assignee remains within the proposed replacement sub-contractor's group of companies and that if it ceases to be such a group company there are appropriate obligations requiring the assignee to assign the sub-contract to a company within the proposed replacement sub-contractor's group of companies;
- 81.5.2 the proposed new or replacement sub-contract contains terms materially less advantageous to the Authority than the original Sub-Contract;
- 81.5.3 the proposed new or replacement sub-contractor does not have the competence, technical ability or sufficient financial standing to satisfactorily carry out the Works, the Interim Services or the Services proposing to be sub-let or sub-contracted to it;
- 81.5.4 the proposed new or replacement sub-contractor will not fully and properly perform all the duties, obligations or responsibilities of the Contractor to be sub-contracted to it;
- 81.5.5 the proposed new or replacement sub-contractor is not (so far as applicable to the proposed replacement sub-contractor's obligations under the replacement sub-contract) subject to provisions equivalent to those set out in the Payment Mechanism;
- 81.5.6 the proposed new or replacement sub-contractor is not being engaged in accordance with terms and conditions which are consistent with Good Industry Practice; and

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

save that, without prejudice to the provisions of Clause 81.5 (Refusal of Consent), the Authority shall not be entitled to refuse to give such consent on the basis of Clause 81.5.5 if:

- (a) the replacement of the Sub-Contractor has been necessitated on account of default on the part of a Sub-Contractor in circumstances where the Contractor is entitled to terminate the relevant Sub-Contract and it is reasonable to do so having regard to such circumstances; and
- (b) the Contractor can demonstrate that it has used reasonable endeavours to ensure that the proposed replacement Sub-Contractor is (so far as it is applicable to the subcontracted services) subject to provisions equivalent to those set out in the Payment Mechanism, provided that notwithstanding the foregoing, no replacement of any sub-contract shall have the effect of increasing the Authority's liabilities on early termination or otherwise of this Contract unless otherwise agreed in writing by the Parties.

81.6 Liability

The sub-contracting by the Contractor of any of the Works, Interim Services or the Services shall not relieve the Contractor of any liability under this Contract for any breach of the obligations arising under this Contract, or for the actions of negligence and/or defaults by any Contractor Related Party. The Contractor shall not be released from any of its obligations under this Contract as a result of the termination of the appointment of a Sub-Contractor for any reason.

81.7 Prohibition

The Contractor shall procure that no Sub-Contractor will sub-contract to any person any of its duties, obligations or responsibilities where one or more of the grounds set out in Clauses 81.5.3, 81.5.4, 81.5.6 and 81.5.7 (Refusal of Consent) apply to the person to whom the work is proposing to be sub-contracted.

81.8 Sub-Contractors

Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority at any establishments of the Authority.

81.9 Collateral Warranties

The Contractor shall:

- 81.9.1 prior to the Contractor engaging a sub-contractor to deliver the Initial Waste Transfer Station Works, either:

- (a) deliver a collateral warranty in favour of the Authority in respect of the Initial Waste Transfer Station Works being substantially in the form set out in Part A of Schedule 25 (Form of Collateral Warranty) from such counterparty party (approved by the Authority in its absolute discretion) having sufficient financial strength to support the obligations under the collateral warranty; or
- (b) deliver to the Authority an alternative form of security (such as a performance bond or guarantee) as the Authority may approve (acting reasonably);

81.9.2 not engage any new or any replacement construction sub-contractor in connection with the Initial Waste Transfer Station Works (where the Construction Sub-Contractor does not exercise the option under the Construction Sub-Contract to deliver the Initial Waste Transfer Station Works) unless such person has delivered to the Authority a duly executed agreement substantially in the form of the collateral warranty set out in Part A of Schedule 25 (Form of Collateral Warranty) duly executed as a deed and in each case such collateral warranty must be delivered to the Authority before such entity carries out or commences any of its obligations under the relevant contract or appointment (unless otherwise agreed between the Parties);

81.9.3 not engage any construction sub-contractor in connection with the Waste Transfer Station Refurbishment Works unless such person has delivered to the Authority a duly executed agreement substantially in the form of the collateral warranty set out in Part B of Schedule 25 (Form of Collateral Warranty) duly executed as a deed and such collateral warranty must be delivered to the Authority before such entity carries out or commences any of its obligations under the relevant contract or appointment (unless otherwise agreed between the Parties);

81.9.4 not engage any new or any replacement construction sub-contractor in connection with the Waste Transfer Station Refurbishment Works unless such person has delivered to the Authority a duly executed agreement substantially in the form of the collateral warranty set out in Part B of Schedule 25 (Form of Collateral Warranty) duly executed as a deed and in each case such collateral warranty must be delivered to the Authority before such entity carries out or commences any of its obligations under the relevant contract or appointment (unless otherwise agreed between the Parties).

81.9A Replacement of Sub-Contractors

The rights set out in Clause 81.9A (Replacement of Sub-Contractors) may be exercised on no more than two (2) occasions during the Contract Period and during the same period the rights set out in Clause 81.9A.3 (Replacement of Sub-Contractors) may be exercised no more than once. Where the proposed sub-contractor to replace the defaulting sub-contractor of the Contractor or the Construction Sub-Contractor (as the case may be) is either a shareholder or Associated Company of that defaulting sub-contractor, then the rights

contained in Clauses 81.9A.1 and 81.9A.3 (Replacement of Sub-Contractors) shall only be exercised with the prior written consent of the Authority (not to be unreasonably withheld or delayed).

81.9A.1 On the substitution or replacement of a defaulting sub-contractor to the Contractor, the Contractor may elect that, for the purposes of Clause 67 (Termination on Contractor Default) only:

81.9A.1.1 any accrued Non Performance Points; and/or

81.9A.1.2 any warning notices or Final Warning Notices in respect of Clause 67.4 (Persistent Breach), and/or

81.9A.1.3 any Non-Performance Warning Notice, any Serious Service Failure Notice or any Non-Performance Contractor Default Notice,

in each case relating to the relevant Interim Services or Services in respect of which the sub-contractor to the Contractor is being replaced, shall be cancelled. The Contractor shall notify the Authority on or before the appointment of any such substitute or replacement sub-contractor to the Contractor whether it elects for this Clause 81.9A.1 (Replacement of Sub-Contractors) to apply on that occasion.

81.9A.2 Where an election is made pursuant to Clause 81.9A.1 (Replacement of Sub-Contractors) on the substitution or replacement of a defaulting sub-contractor to the Contractor then, for the purposes of Clause 67 (Termination on Contractor Default) only:

81.9A.2.1 no Performance Deductions, Non-Performance Deductions or Non Performance Points shall accrue for the purposes of limbs (n), (p) and (q) of the definition of Contractor Default;

81.9A.2.2 no warning notices or Final Warning Notices in respect of Clause 67.4 (Persistent Breach) shall accrue for the purposes of limb (b) of the definition of Contractor Default,

81.9A.2.3 no Serious Service Failure Notice, Non-Performance Failure Contractor Default Notice, Non-Performance Contractor Default Notice shall accrue;

in respect of an Interim Service or a Service during a period of two (2) months from the date on which that Interim Service or Service is first provided by the replacement or substitute sub-contractor to the Contractor as appropriate. Deductions may still be made from the Monthly Unitary Charge during that period.

81.9A.3 On the substitution or replacement of the defaulting Construction Sub-Contractor or a defaulting sub-contractor to the Construction Sub-

Contractor (in both cases provided that the Contractor is acting in compliance with Clause 7.3 (Ancillary Documents)), the Contractor may elect that, for the purposes of Clause 67 (Termination on Contractor Default) only, any warning notices or Final Warning Notices in respect of Clause 67.4 (Persistent Breach) in each case relating to the relevant Works in respect of which the Construction Sub-Contractor or any sub-contractor to the Construction Sub-Contractor is being replaced, shall be cancelled. Subject to Clause 81.9A.1 (Replacement of Sub-Contractors), the Contractor shall notify the Authority on or before the appointment of any such substitute or replacement Construction Sub-Contractor or sub-contractor whether it elects for this Clause 81.9A.3 (Replacement of Sub-Contractors) to apply on that occasion.

81.9A.4 Where an election is made pursuant to Clause 81.9A.3 (Replacement of Sub-Contractors) on the substitution or replacement of the defaulting Construction Sub-Contractor or a defaulting sub-contractor to the Construction Sub-Contractor then, for the purposes of Clause 67 (Termination on Contractor Default) only no warning notices or Final Warning Notices in respect of Clause 67.3 (Termination for Persistent Breach by the Contractor) shall accrue for the purposes of limb (b) of the definition of Contractor Default in respect of the Works during a period of two (2) months from the date on which such Works are first provided by the replacement or substitute Construction Sub-Contractor or sub-contractor as appropriate.

81.10 Successors and Assigns

This Contract and the Ancillary Documents shall be binding on and shall enure to the benefit of the Contractor and the Authority and their respective successors and permitted assigns.

82. CHANGE OF OWNERSHIP

82.1 The Contractor represents and warrants to the Authority that at the date of the Contract the legal and beneficial ownership of the Contractor is as set out in Schedule 6 (Contractor Warranted Data) and that, other than any Shareholder pre-emption rights, no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor.

82.2 The Contractor shall inform the Authority as soon as reasonably practicable (and in any event, within twenty (20) Business Days) of any Change of Ownership occurring.

82.3 The Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, request that the Contractor inform it as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the Authority's request for details of any Change of Ownership.

- 82.4 The Contractor's obligations under Clauses 82.1, 82.2 and 82.3 (Change of Ownership) above shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiries.
- 82.5 The Contractor shall obtain the Authority's prior written consent (which may be given subject to conditions) to any Restricted Share Transfer of the Contractor.
- 82.6 No Change of Ownership may occur during the Lock In Period.
- 82.7 Any Change of Ownership arising as a consequence of:
- 82.7.1 the grant or enforcement of security in relation to any of the shares of the Contractor, provided that any document conferring security over any shares has been approved by the Authority (such approval not to be unreasonably withheld or delayed);
 - 82.7.2 any change in beneficial or legal ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or
 - 82.7.3 any transfer of shares or of any interest in shares by a person to its Affiliate,
- shall be disregarded for the purpose of Clause 82.6 (Change of Ownership) above.
- 82.8 Where during the Lock-in Period, the holder of any shares in the Contractor is an Affiliate of Viridor Limited and that holder ceases to be an Affiliate of Viridor Limited, it shall be a breach of Clause 82.6 (Change of Ownership) if the shares held by that holder are not within twenty (20) Business Days of that holder ceasing to be an Affiliate of Viridor Limited transferred to Viridor Limited or an Affiliate of Viridor Limited.

83. COMPLIANCE WITH LEGISLATION

83.1 Legislation

The Contractor shall perform its obligations under this Contract and any Ancillary Documents in accordance with all applicable Legislation and Guidance from time to time in force subject to any consequential effect or otherwise referred to in Clause 44 (Change in Law).

83.2 Duty to Comply with Legislation

Without prejudice to the generality of Clause 44 (Change in Law) and Clause 83.1 (Legislation), the Contractor shall:

- 83.2.1 give all notices;
- 83.2.2 obtain and maintain in full force and effect; and
- 83.2.3 pay all fees required to be paid or given,

by any Legislation and/or Guidance and/or in relation to all Consents relevant to the provision of the Works and Service and as required for the proper performance of the Contractor's duties and obligations under this Contract and under any of the Ancillary Documents.

84. CONFIDENTIALITY

- 84.1 The Parties agree that the provisions of this Contract and the Ancillary Documents shall, subject to Clause 84.2 (Confidentiality) below, not be treated as Confidential Information and may be disclosed without restriction.
- 84.2 Clause 84.1 (Confidentiality) above shall not apply to provisions of this Contract or any of the Ancillary Documents or the Contractor's tender documents designated as Commercially Sensitive Information and listed in Part 1 or Part 2 of Schedule 23 (Commercially Sensitive Information) to this Contract which shall, subject to Clause 84.4 (Confidentiality) below, be kept confidential for the periods specified in Part 1 and Part 2 of Schedule 23 (Commercially Sensitive Information). The Parties agree that the provisions of the Waste Law List shall not be regarded as Commercially Sensitive Information.
- 84.3 The Parties shall keep confidential all Confidential Information received by one party from the other party relating to this Contract (which shall for the avoidance of doubt include the Contractor's tender documents) and Ancillary Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.
- 84.4 Clauses 84.2 and 84.3 (Confidentiality) shall not apply to:
- 84.4.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Contract for the performance of those obligations;
 - 84.4.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause;
 - 84.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its subcontractors;
 - 84.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
 - 84.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

- 84.4.6 any provision of information to the Parties' own professional advisers or insurance advisers or where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Contractor in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- 84.4.7 any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Waste Transfer Station Works and/or in relation to the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:
- (a) any proposed new contractor, its advisers and lenders, should the Authority decide to retender the Contract; or
 - (b) any person in connection with Clause 34 (Market Testing);
- 84.4.8 any registration or recording of the Consents and property registration required;
- 84.4.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract but only to the extent that the Authority has secured a duty of confidentiality from any such aforementioned advisers or persons; or
- 84.4.10 any disclosure for the purpose of:
- (a) the examination and certification of the Authority's or the Contractor's accounts;
 - (b) any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (c) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (d) (without prejudice to the generality of Clause 84.4.4 (Confidentiality) above) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither Clause 84.4.2 nor Clause 84.4.10(d) (Confidentiality) above shall permit disclosure of Confidential Information otherwise prohibited by Clause 84.3 (Confidentiality) above where that information is exempt from disclosure under section 41 of the FOIA;

84.4.11 any disclosure by the Authority to WCAs in the Contract Area.

84.4A Where disclosure is permitted under Clause 84.4 (Confidentiality), other than Clauses 84.4.2, 84.4.4, 84.4.5, 84.4.8 and 84.4.10 (Confidentiality), the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

84.5 Audit

For the purposes of:

84.5.1 the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Authority's accounts);

84.5.2 the examination and certification of the Authority's accounts;

84.5.3 an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authority has performed its function,

the District Auditor and the Audit Commission may examine such documents as he or it may reasonably require which are owned, held or otherwise within the control of the Contractor and/or any first tier Sub-Contractor and may require the Contractor and/or any first tier Sub-Contractor to produce such oral or written explanations as he considers necessary.

84.6 Authority Consent

The Contractor shall not make use of this Contract or any information issued or provided by, or on behalf of, the Authority in connection with this Contract otherwise than for the purpose of this Contract, except with the written consent of the Authority.

84.7 Prior Consent

Where the Contractor, in carrying out its obligations under this Contract, is provided with information relating to a member of the public, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought and obtained the prior written consent of such person and the prior written consent of the Authority.

84.8 Delivery to the Authority

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to a member of the public and which came into its possession as a result of delivering the Waste Transfer Station Works and/or the Interim Services and/or the Services including any documents in the possession, custody or control of the Construction Sub-Contractor are delivered up to the Authority.

84.9 Audit Commission

The Parties acknowledge that the Audit Commission has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

84.10 Official Secrets Act

The provisions of this Clause 84 (Confidentiality) are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

85. FREEDOM OF INFORMATION

85.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall use reasonable endeavours to facilitate (where required) the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 85.2 to 85.7 (Freedom of Information) inclusive below.

85.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:

85.2.1 provide the Authority with a copy of all such Information in the form that the Authority reasonably requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and

85.2.2 provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

85.3 Following notification under Clause 85.2 (Freedom of Information), and up until such time as the Contractor has provided the Authority with all the Information specified in Clause 85.2.1 (Freedom of Information), the Contractor may make representations on behalf of the Contractor and the Sub-Contractors to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided by the Authority in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

85.3.1 whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

85.3.2 whether Information is to be disclosed in response to a Request for Information; and

in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.

- 85.4 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Authority to inspect such Information as reasonably requested from time to time.
- 85.5 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within three (3) Business Days of receiving it.
- 85.6 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Regulations.
- 85.7 In the event of a request from the Authority pursuant to Clause 85.2.2 (Freedom of Information) above, the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request, the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Authority is itself entitled to reimbursement of such costs in accordance with the Authority's own FOIA policy from time to time.
- 85.8 The Contractor acknowledges that (notwithstanding the provisions of Clause 84 (Confidentiality)) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:
- 85.8.1 in certain circumstances without consulting with the Contractor;
- 85.8.2 following consultation with the Contractor and having taken their views into account,

provided always that where Clause 85.8.1 (Freedom of Information) above applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

86. PUBLIC RELATIONS AND PUBLICITY

86.1 Restriction

The Contractor shall not by itself, its employees or agents and shall procure that its Sub-Contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project without the prior written approval of the Authority.

86.2 Photographs

No facilities to photograph or film in or upon the Villiers Road Site shall be given or permitted by the Contractor unless the Authority has given its prior written approval.

87. INTELLECTUAL PROPERTY

87.1 Licence from the Contractor to the Authority

Subject to Clause 87.1B (Intellectual Property), the Contractor hereby grants to the Authority, or shall (in respect of any Intellectual Property Rights owned by a Contractor Related Party) procure the grant to the Authority of, a transferable, non-exclusive, royalty-free, perpetual, irrevocable licence in respect of the Intellectual Property Rights (other than those assigned to the Authority pursuant to Clause 87.3 (Assignment to the Authority)) arising or used under this Contract and/or relating to the Contractor Materials (including, without limitation, the Intellectual Property Rights subsisting in the Contractor Materials and any other Intellectual Property Rights subsisting in computer software or in any systems developed or used by or for the Contractor identifying difficulties with the Waste Transfer Station and/or the delivery of the Interim Services and/or the Services).

87.1A Any licence to use granted under Clause 87.1 (Licence from the Contractor to the Authority) shall include, without limitation, a right to use, amend, copy, extend or modify any of the Contractor Materials. The Authority shall be permitted to grant sub-licences on the same terms, mutatis mutandis, as those of the licence granted by the Contractor to the Authority under this Clause 87.1 (Licence from the Contractor to the Authority) and the licence granted under Clause 87.1 (Licence from the Contractor to the Authority) shall be transferable to third parties having or acquiring an interest in the Assets and/or the Service or any part thereof. Without prejudice to the foregoing, the Contractor warrants, represents and undertakes that in relation to any such Intellectual Property Rights owned by a third party it shall procure the right to grant the licence set out in Clause 87.1 (Licence from the Contractor to the Authority) or shall procure that the owner of the Intellectual Property Rights directly grants to the Authority the licence set out in Clause 87.1 (Licence from the Contractor to the Authority).

87.1B This Clause 87 (Intellectual Property) shall not apply to any Intellectual Property Rights (other than those assigned to the Authority pursuant to

Clause 87.3 (Assignment to the Authority)) arising or used under this Contract exclusively in relation to the Key Facility and/or exclusively relating to the Contractor Materials (including, without limitation, the Intellectual Property Rights subsisting in the Contractor Materials and any other Intellectual Property Rights subsisting in computer software or in any systems developed or used by or for the Contractor identifying difficulties with the Facilities and/or the delivery of the Services) in respect of the Key Facility.

87.2 Ownership of Trade Marks and Data

The Contractor acknowledges that the Authority is or (where such rights have not yet been created) will be the proprietor of the Authority Project Intellectual Property.

87.3 Assignment to the Authority

The Contractor hereby undertakes to assign to the Authority all rights, title and interest in and to any goodwill generated by the Contractor and/or any Contractor Related Party through the use of the Trade Marks, with the intent that such Intellectual Property Rights and goodwill shall be deemed to vest in the Authority forthwith upon the same coming into existence.

87.4 Copies of licensed materials to be made available to the Authority

The Contractor shall promptly deliver to the Authority, at the Authority's request and expense, a copy of any Contractor Materials so requested by the Authority in respect of which it is granted a licence pursuant to Clause 87.1 (Licence from the Contractor to the Authority) including, for the avoidance of doubt, a complete and up-to-date set of software manuals and software licences if the Authority needs copies of such Contractor Materials to enjoy its rights under this Contract.

87.5 Further assurance by the Contractor

The Contractor shall, at the Authority's expense, sign, execute and do (and use its reasonable endeavours to procure any third party properly executes all documents and does) all acts and things as the Authority may reasonably require to fully and effectively enable the Authority to obtain the benefit of the licence granted under Clause 87.1 (Licence from the Contractor to the Authority) and/or the rights assigned to it pursuant to Clause 87.3 (Assignment to the Authority).

87.6 Licence to use Trade Marks and Authority Project Intellectual Property

The Authority hereby grants to the Contractor for the Contract Period and solely for the purposes of the Contractor carrying out its obligations under the Contract or exercising its rights under the Contract:

87.6.1 a non-exclusive, non-transferable, royalty-free licence to use and copy (subject to Clause 87.7 (Directions of Authority)) the Trade Marks; and

87.6.2 a non-exclusive, non-transferable, royalty-free, licence to use and copy any other Authority Project Intellectual Property.

The licence granted to the Contractor under this Clause 87.6 (Licence to use Trade Marks and Authority Project Intellectual Property) shall include the right for the Contractor to grant a sub-licence to any Contractor Related Party in relation to activities carried out pursuant to this Contract on terms no less onerous than those set out in this Contract.

87.7 Directions of Authority

The Contractor shall observe, and shall procure that all Contractor Related Parties observe, all reasonable written directions given by the Authority from time to time in relation to the permitted form and manner of use and representation of the Trade Marks.

87.8 Materials which come into being in the future

Where any of the Contractor Materials referred to in this Clause 87 (Intellectual Property) has yet to come into existence, the provisions of this Clause 87 (Intellectual Property) shall apply to such Contractor Materials immediately upon the same coming into existence.

87.9 Consequences of Termination/Expiry

Upon expiry or earlier termination of this Contract (howsoever caused):

87.9.1 the licence granted by the Authority to the Contractor pursuant to Clause 87.6 (Licence to use Trade Marks and Authority Project Intellectual Property) shall cease to have effect; and

87.9.2 the Contractor shall cease use of the Trade Marks and shall (or, in respect of any such references used by a Contractor Related Party, shall use reasonable endeavours to), at the request of the Authority, remove all references to the Trade Marks from any items, livery, vehicles, buildings, letterhead, systems or documents in the power, possession or control of the Contractor or any Contractor Related Party. For this purpose, the Parties shall (acting reasonably) agree the time and manner of any required action.

88. QUALITY MANAGEMENT SYSTEMS

88.1 The Contractor shall procure that all aspects of the Waste Transfer Station Works and the Services are the subject of, and are conducted in accordance with the approved quality assurance systems as provided for in the Authority's Requirements.

89. DATA PROTECTION

89.1 General

89.1.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Project.

89.1.2 The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Project and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

89.2 No Disclosure

89.2.1 The Contractor shall not disclose Personal Data to any third parties other than:

- (a) to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works, the Interim Services and/or the Services; or
- (b) to the extent required under a court order,

provided that disclosure under Clause 89.2.1(a) (No Disclosure) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 89.2.1 (No Disclosure) and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data which either the Contractor or a Sub-Contractor is required to make under Clause 89.2.1(b) (No Disclosure) immediately upon becoming aware of such a requirement.

89.2.2 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

89.2.3 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub-Contractors referred to in Clause 89.2.2 (No Disclosure). Within twenty (20) Business Days of such a request, the Contractor shall supply or procure the supply of written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

89.3 The Contractor shall indemnify and keep indemnified the Authority against all Direct Losses incurred by it in respect of any breach of this Clause 89 (Data Protection) by the Contractor and/or any act or omission of any Sub-Contractor.

90. CONSENTS AND APPROVALS

90.1 Good Faith and Diligent Pursuance of Obligations

Each Party shall and shall procure that any representative(s) appointed upon its behalf pursuant to this Contract shall without prejudice to any otherwise unqualified right of the Authority act in good faith and deal in a timely and diligent manner in relation to the carrying of any service, duty or obligation under this Contract and any of the Ancillary Documents.

90.2 Contractor Obligations

Neither the giving of any approval, inspection, knowledge of the terms of any contract or document nor the review of any document or course of action by, or on behalf of, the Authority or any person authorised by the Authority pursuant to this Contract and any of the Ancillary Documents shall relieve the Contractor of any of its obligations under this Contract or any of the Ancillary Documents.

90.3 Examination by the Authority or its Representatives

Without limitation to Clause 90.2 (Contractor Obligations), no examination or lack of examination by the Authority or any person authorised on its behalf, of the Contractor's drawings, documents, calculations or details relating to the design, construction, completion, commissioning and testing of the Facility(ies) or the management or provision of the Service or otherwise nor any comment, rejection or approval expressed by such person in regard thereto, either with or without modifications, shall in any respect relieve or absolve the Contractor from any obligations or liability under or in connection with this Contract and any of the Ancillary Documents.

91. COSTS AND EXPENSES

Except where expressed otherwise, each party shall bear its own costs and expenses (including advisers' fees and expenses) in connection with the preparation, negotiation, execution and completion of this Contract and the Ancillary Documents.

92. ECONOMIC AND MONETARY UNION

92.1 Continuity of Contracts

Without prejudice to Article 3 of Regulation (EC) No. 103/97 of 15 June 1997 of the Authority of Ministers of the European Union, the introduction of the euro in the United Kingdom shall not, of itself:

92.1.1 have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under this Contract or any of the Ancillary Documents; or

92.1.2 give any party to this Contract or any Ancillary Document the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under this Contract or any of the Ancillary Documents.

92.2 Sterling References

If, following the introduction of the euro, Sterling is substituted by the euro as the currency of the United Kingdom, then all references in this Contract and any of the Ancillary Documents to Sterling or £ shall be construed as references to euro or € (as the case may be), at the agreed Sterling-euro conversion rate on the date of that substitution. PROVIDED that the provisions of this Clause 92 (Economic and Monetary Union) shall not apply

during any transitional period when Sterling is a sub-unit of the euro, unless the Parties otherwise agree.

92.3 Consequential Changes

Without prejudice to Clauses 92.1 (Continuity of Contracts) and 92.2 (Sterling References) the Parties shall negotiate in good faith in order to agree any amendments to this Contract and/or any of the Ancillary Documents which the Authority determines to be reasonably necessary as a result of the introduction of the euro (and, if relevant, so as to ensure that the terms of this Contract and any of the Ancillary Documents reflect then current market practices and conventions relating to the introduction of the euro).

93. WAIVER

93.1 Waiver to be Written

No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

93.2 Extent of Waiver

No waiver under Clause 93.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

94. NO AGENCY

94.1 No Partnership or Employment

Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

94.2 Power to Bind

Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having the authority or power to bind the Authority in any way.

94.3 Deemed Knowledge

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Contractor Related Party.

95. ENTIRE AGREEMENT

95.1 Prior Representations etc Superseded

Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject

matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

95.2 Acknowledgements

Each of the Parties acknowledges that:

95.2.1 subject to Clause 5.4 (Contractor Warranty), it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

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

96. SEVERABILITY

If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

97. COUNTERPARTS

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

98. NOTICES

98.1 Form and Service of Notices

All notices under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post, email (to the Authority only), facsimile (to the Contractor only) or by hand, or leaving the same at:

Contractor

The Company Secretary of the Contractor

Peninsula House
Rydon Lane
Exeter

Authority

The contract manager from time to time of the Authority (as at the date of this Contract being Malcolm Kendall, Head of Environmental & Leisure)

London Borough of Croydon
Taberner House
Park Lane

Devon
EX2 7HR

Croydon
CR9 3JS

FAX:

EMAIL:

01392 420083

Malcolm.Kendall@croydon.gov.uk

Copied to:

Contractor's Representative

Director of Public Safety & Public
Realm from time to time of the
Authority (as at the date of this
Contract being Anthony Brooks)

42 Kings Hill Avenue
Kings Hill
West Malling
Kent
ME194AJ

18th Floor
North West Quadrant
Taberner House
Park Lane
Croydon
CR9 3JS

EMAIL:

Anthony.Brooks@croydon.gov.uk

98.2 Change of Details

Either Party to this Contract (and either the Authority's Representative or the Contractor's Representative) may change its nominated address, email address or facsimile number (as relevant) by prior notice to the other Party.

98.3 Notices by Post

Notices given by post shall be effective upon the earlier of actual receipt and two (2) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices delivered to the Authority only by email shall be deemed to have been received at 9.00 am on the Business Day after sending provided it has been despatched in a legible and complete form to the correct e-mail address without an error message. Notices given by facsimile to the Contractor only shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

98.3.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

98.3.2 by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

99. RIGHTS OF THIRD PARTIES EXCLUSION


No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Contract.

100. GOVERNING LAW AND JURISDICTION

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

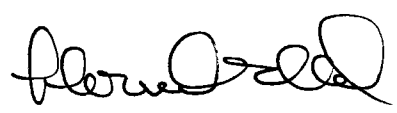
THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.


^H
THE COMMON SEAL OF
The MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF CROYDON
was hereto affixed in the presence of:

Authorised Signatory 

Seal Number 740939

EXECUTED AS A DEED by
VIRIDOR SOUTH LONDON LIMITED
acting by:


Director


Director/~~Company Secretary~~