

DATED \_\_\_\_\_ 2012

**BARNSELY METROPOLITAN BOROUGH COUNCIL (1)**

and

**DONCASTER BOROUGH COUNCIL (2)**

and

**ROTHERHAM BOROUGH COUNCIL (3)**

and

**3SE (BARNSELY, DONCASTER & ROTHERHAM) LIMITED (4)**

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**PROJECT AGREEMENT**

**RELATING TO THE BARNSELY, DONCASTER AND ROTHERHAM WASTE  
PARTNERSHIP PFI PROJECT**

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**BETWEEN**

- (1) **BARNSLEY METROPOLITAN BOROUGH COUNCIL** whose principal office is at The Town Hall, Barnsley, South Yorkshire S70 2TA ("**Barnsley**");
- (2) **DONCASTER BOROUGH COUNCIL** whose principal office is at PO Box 71, Copley House, Waterdale, Doncaster DN1 3EQ ("**Doncaster**");
- (3) **ROTHERHAM BOROUGH COUNCIL** whose principal office is at Riverside House, Main Street, Rotherham S60 1AE ("**Rotherham**");

Barnsley, Doncaster and Rotherham (together the "**Councils**" and each a "**Council**"); and

- (4) **3SE (BARNSLEY, DONCASTER & ROTTERHAM) LIMITED** a company incorporated under the laws of England and Wales with registered number 0 7820886, whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes MK1 1BU (the "**Contractor**" which expression shall include its successors in title and assigns to the extent permitted under this Contract),

each referred to as a "**Party**" and together the "**Parties**".

**BACKGROUND**

- (A) The Councils are the WCAs and WDAs for the boroughs of Barnsley, Doncaster and Rotherham with responsibilities and powers in relation to waste under the EPA.
- (B) The Councils wish to procure the services of a private sector contractor to provide certain waste management functions with a view to assisting the Councils in discharging their statutory obligations and in meeting their statutory targets.
- (C) The lead authority for the procurement of this Contract is Barnsley but all the Councils will be actively involved in its management. The relationship between the Councils is governed by two (2) Inter-Authority Agreements.
- (D) This Contract is let under the Government's Private Finance Initiative.
- (E) The Councils have tendered this Contract in accordance with the Public Contracts Regulations 2006 and in accordance with their responsibilities under Part 2 of the EPA and have selected the Contractor as having provided the most economically advantageous tender to provide the Works and the Service.

(F) This Contract will be a certified contract for the purposes of the Act.

## PART I - PRELIMINARY

### 1 DEFINITIONS

1.1 In this Contract, unless the context otherwise requires:

<b>12 Month Revision Period</b>	has the meaning set out in Clause 39.3.6 (Significant Collection Changes: Impact on Recycling and Composting Default);
<b>1954 Act</b>	has the meaning set out in Clause 18.6.15 (Grant of Leases);
<b>1999 Act</b>	means the Local Government Act 1999 (as amended by Local Government and Public Involvement in Health Act 2007);
<b>2009 Order</b>	means the Renewables Obligation Order 2009 (as amended);
<b>2010 Order</b>	means the Feed -in Tariffs (Specified Maximum Capacity and Functions) Order 2010 (as amended);
<b>Abandon</b>	means not to carry out any Works contemplated by the Construction Programme at a Site for twenty (20) consecutive Business Days or during sixty (60) Business Days (whether consecutive or not) in any Contract Year;
<b>Acceptance Test Certificate</b>	means the certificate issued by the Independent Certifier to certify that the Acceptance Tests in respect of the ITS Facility and the AD Facility have been passed;
<b>Acceptance Testing Plan</b>	has the meaning given to it in paragraph 20.1 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);

<b>Acceptance Tests</b>	means the tests described as such in Schedule 9 (Acceptance Tests);
<b>Access Road (Grange Lane)</b>	means the " <b>Access Road</b> " as defined in the Lease (Grange Lane);
<b>Access to Information Legislation</b>	means: <ul style="list-style-type: none"> <li>(a) the provisions of Part V and Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006; and</li> <li>(b) the Local Authorities (Executive Arrangements) (Access to Information) (Amendment) Regulations 2006 and the Relevant Authorities (Standards Committees) (Amendment) Regulations 2006;</li> </ul>
<b>Act</b>	means the Local Government (Contracts) Act 1997;
<b>Active Landfill</b>	means any Landfill site capable of accepting Active Waste;
<b>Active Landfill Tax Rate</b>	means the rate of Landfill Tax applicable to the disposal of material, other than Qualifying Material, at the time the disposal is made;
<b>Active Waste</b>	means Contract Waste which is not Inactive Waste and attracts Landfill Tax at the higher rate pursuant to section 42 of the Finance Act 1996;
<b>Actual AD MWh</b>	means the actual number of MWh of energy produced by the AD Facility;
<b>Actual Services Commencement Date</b>	has the meaning set out in the SRF Offtake Contract;
<b>Actual Community Liaison Adjustment</b>	has the meaning as set out in paragraph 20 of Schedule 4 (Payment Mechanism);

**Actual Third Party Revenue** has the meaning given to in paragraph 54.2.7 of Part 9 of Schedule 4 (Payment Mechanism);

**AD Facility** means the anaerobic digestion facility and associated infrastructure to be built at the Site (Bolton Road) which forms part of the Works;

**Additional Permitted Borrowing** means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be amended, whether or not with the approval of the Councils) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Agent is not in material breach of its obligations under clause 11.5.3 of the Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is (i) invested as part of any Qualifying Variation or (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at the date of this Contract, disregarding any subsequent amendment or (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Councils have agreed that its liabilities on a termination may be increased pursuant to Clause 9.3 (Changes to Financing Agreements), shall not be counted as Additional Permitted Borrowing;

<b>Additional Permitted Borrowings Limit</b>	means an amount equal to:
	<ul style="list-style-type: none"> <li>(a) ten per cent (10%) of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is reduced to fifty per cent (50%) or less of the Original Senior Commitment; and thereafter;</li> <li>(b) the higher of: <ul style="list-style-type: none"> <li>(i) five per cent (5%) of the Original Senior Commitment; and</li> <li>(ii) the amount of any Additional Permitted Borrowing outstanding on the last day of the period referred to in limb (a) above;</li> </ul> </li> </ul>
<b>Adjoining Owners</b>	means all owners and occupiers of any Adjoining Property;
<b>Adjoining Property</b>	means any land and/or property adjoining or in the neighbourhood of the Sites and each and every part thereof including all Conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;
<b>Adjudicator</b>	means the person selected in accordance with Clause 104 (Dispute Resolution) to consider a dispute referred to him/her;
<b>Adjusted Estimated Fair Value of the Contract</b>	means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

- (a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Councils are entitled to set off or deduct under Clause 56.6 (Set Off);

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the Estimated Fair Value of the Contract is calculated;
- (ii) any insurance proceeds and other amounts owing to the Contractor (and which the Contractor is entitled to retain), to the extent not included in (i); and
- (iii) the Post Termination Service Amounts (if a negative number), to the extent that:

(A) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and

(B) the Councils have received such amounts in accordance with the Contract or such amounts are standing to the credit of the Joint Insurance Account;

**Adjusted Highest Compliant Tender Price**

means the Highest Compliant Tender Price less the aggregate of:

- (a) any Post Termination Service Amounts paid to the Contractor to date;

- (b) the Tender Costs; and
- (c) amounts that the Councils are entitled to set off or deduct under Clause 56.6 (Set Off);

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest priced Compliant Tender is received;
  - (ii) any insurance proceeds and other amounts owing to the Contractor, to the extent not included in (i); and
  - (iii) the Post Termination Service Amounts (if a negative number), to the extent that;
- (A) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
- (B) the Councils have received such amounts in accordance with the Contract;

**Administrative Area**

means the area covered by the administrative boroughs of Doncaster, Barnsley and Rotherham as they exist at the Commencement Date (as shown on the map set out in Part 1 of Schedule 31 (Administrative Area and Baseline Collection Coverage)) as modified by any statutory change to the area covered by such boroughs;

<b>Adverse Ground Conditions</b>	means any below ground obstructions or impediments, other than Contamination and/or naturally occurring ground obstructions or impediments, which have any adverse impact on the ability of the Construction Sub-Contractor (including as to increased cost) to carry out the Works beyond the tasks and activities described and costed by the Construction Sub-Contractor as set out in Schedule 20 (Ground Conditions and Contamination Scope);
<b>Adverse Rights</b>	means all (if any) rights of light and air and other rights and easements whatever (including any rights and easements in respect of Conduits) and all (if any) other restrictions enjoyed over a Site by any Adjoining Property or Adjoining Owners or other third party (howsoever such rights and/or easements were acquired and irrespective of whether such rights and/or easements were known by the Contractor and/or the Councils at the date of this Contract);
<b>Affected Party</b>	has the meaning given to it in the definition of Force Majeure Event;
<b>Affiliate</b>	means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and " <b>holding company</b> " and " <b>subsidiary</b> " shall have the meaning given to them in section 115 9 of the Companies Act 2006, save that for the purposes of determining whether one (1) entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
<b>Aftercare Plan</b>	has the meaning given to it in paragraph 4.2 of Part 5 (Handback Requirements) of Schedule 1 (Output Specification);

<b>Agent</b>	means Lloyds TSB Bank PLC in its capacity as agent for the Senior Lenders under the Senior Financing Agreements;
<b>Agreed Abatement</b>	has the meaning given to it in Schedule 32 (Change Protocol);
<b>All Inclusive Active Landfill Gatefee Rate</b>	has the meaning given to it in IALGR in Part 11 of Schedule 4 (Payment Mechanism);
<b>All Reasonable Endeavours</b>	has the meaning set out in Clause 20.2.1 (Meaning of All Reasonable Endeavours) in respect of the ITSAD Facility and Clause 20.19.1 (Meaning of All Reasonable Endeavours) in respect of the s36 Consent and paragraph 4.1 of Schedule 37 (Approach to Permit Risk) in respect of Environmental Permits;
<b>Alternative SRF Charged Account</b>	means the bank account in the name of the Contractor having account number 00415729 and sort code 30-00-02 and held with Lloyds TSB Bank PLC, established by the Contractor pursuant to Clause 79.6.1 [REDACTED];
<b>Alternative SRF Funds</b>	has the meaning given to it in Clause 79.6.1 [REDACTED];
<b>Alternative SRF Plan</b>	has the meaning set out in Clause 79.2.1 [REDACTED];
<b>Amended Reinstatement Outline</b>	has the meaning given to it in Clause 64.15.4(c) (Reinstatement);
<b>Ancillary Documents</b>	means those documents to which the Councils are not a party and which are listed in Schedule 21 (Ancillary Documents) as they may be amended or replaced from time to time;
<b>Ancillary Rights</b>	means:

- (a) possession of the Site (Bolton Road) by means of a licence to enter and remain upon those parts of the Site (Bolton Road) that the Contractor and/or any Contractor Related Party requires access to in order to carry out the Works and/or provide the Service; and
- (b) such rights of access to and egress from the Site (Bolton Road) as are necessary for the Contractor and any Contractor Related Party to perform their obligations and exercise their rights under this Contract and in particular for the purposes of implementing the Works and providing the Service;

**Annual Environmental Report** has the meaning given in paragraph 1.1 of Schedule 6 (Annual Environmental Report);

**Annual Service Plan** has the meaning given in Clause 61 (Best Value);

**Annual Service Report** has the meaning given in Clause 61.2.1 (Best Value);

**Annual Service Report Change Notice** has the meaning given to it in Clause 61.2.3 (Annual Service Report and Annual Service Plan);

**Annual Service Report Date** means the date as referred to in paragraph 15.10 of Schedule 1 (Output Specification), in each Year of the Contract Period;

**[REDACTED]**

**[REDACTED]**

**APB Distribution** means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first day of that period;

<b>Appeal Contingency (Ferrybridge)</b>	means three hundred thousand pounds (£300,000);
<b>Appeal Contingency (ITSAD)</b>	means three hundred thousand pounds (£300,000);
<b>Appropriate Limit</b>	has the meaning set out in Clause 102.7 (Freedom of Information);
<b>Approved Purposes</b>	has the meaning given to it in Clause 67.1 (Project Data);
<b>Architectural Enhancement</b>	<p>means any divergence from the Base Design Proposal for the ITSAD Facility, being a requirement to:</p> <ul style="list-style-type: none"> <li>(a) reduce the height of the ITSAD Facility and/or sink the ITSAD Facility for reasons of its visual impact;</li> <li>(b) materially change the external shape of the ITSAD Facility for reasons of its visual impact; or</li> <li>(c) modify the appearance or specification of any external construction material used in the ITSAD Facility for reasons of its visual impact,</li> </ul> <p>provided that the requirement for divergence does not result from any:</p> <ul style="list-style-type: none"> <li>(i) functional deficiency;</li> <li>(ii) architectural deficiency;</li> <li>(iii) failure to take proper consideration of any recommendations that came out of any review by the Commission for Architecture and the Built Environment;</li> </ul> <p>or</p>

(iv) the Contractor's failure to ensure that the Base Design Proposal was of a standard that a reasonably experienced and prudent waste contractor in consultation with a planning consultant experienced in making similar planning applications would have provided for designing a similar facility for construction at the same Site taking into account all relevant available planning policies;

<b>Architectural Enhancement Costs</b>	has the meaning set out in Clause 20.17.2 (Planning Permissions);
<b>ARE Failure</b>	has the meaning given in Clause 20.1.6 (Contractor to Obtain Planning Permission);
<b>AREP Failure</b>	has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>AREP Rectification Notice</b>	has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>ARE Rectification Notice</b>	has the meaning given in Clause 20.1.6 (Contractor to Obtain Planning Permission);
<b>As Built Drawings</b>	means drawings, technical information, models, operation and maintenance manuals and technical information of a like nature to encompass the method of construction, manufacture, operation and maintenance of each element of the ITSAD Facility in sufficient detail to allow a competent technical person acting reasonably to understand all material elements of the construction of the ITSAD Facility and to maintain, dismantle, reassemble, adjust and operate all plant and equipment forming the same;

**Assets**

means all assets and rights to enable the Councils or a successor contractor to own, operate and maintain the Project in accordance with this Contract, including:

- (a) any land or buildings;
- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights ;  
and
- (f) any intellectual property rights,

but excluding any assets and rights in respect of which the Councils are full legal and beneficial owner and, for the avoidance of doubt, any such assets and rights of the SRF Offtaker which are used for the provision of the SRF Offtake Services;

**Assigned Employees**

has the meaning set out in Clause 74.15.1(a) (Retendering);

**Associated Company**

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

**Authorised Officer**

means the officer appointed by the Councils pursuant to Clause 16 (Advisers and Representatives);

<b>Authorised Vehicles</b>	means any individual vehicle of the Councils or other vehicle which has (pursuant to Annex 5 of Schedule 40 (Waste Acceptance Protocol)) been approved by the Councils for the delivery of Contract Waste into any Facility;
<b>Background Information</b>	means all and any materials, documents, drawings, plans, surveys, models or other information relating in any way to the Project and made available by the Councils or their agents to the Contractor in connection with the preparation of this Contract and during the process of competitive tender and in any subsequent period of negotiation prior to the date hereof including in ter alia all such materials, documents, drawings, plans, surveys, models or other information provided in connection with pre-qualification for that process;
<b>Bank Agency Fee</b>	means the fee referred to in clause 11.3 of the Facility Agreement;
<b>Bank Technical Advisor Costs</b>	means the fees, costs and expenses referred to in clause 16.4 of the Facility Agreement;
<b>Base Case</b>	means the financial model agreed between the Parties prior to the date of this Contract and attached in Schedule 7 [REDACTED] (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Unitary Charge;
<b>Base Case (CLA)</b>	means a version of the Base Case as adjusted with the agreement of the Parties (acting reasonably) to show the impact (in accordance with the Financing Agreements) of the early repayment of part of the outstanding Senior Debt through funds advanced to the Contractor under the Contingent Loan Agreement;

**Base Case Equity IRR** means the real (post -Contractor tax, pre-shareholder tax) blended IRR as shown in the Base Case being %;

**Base Design Proposal** means in relation to the ITSAD Facility, the basic design proposals for such facility set out in Part 3 (Design) of Schedule 2 (Works Delivery Plan), Part 1 (Final Design Data) of Schedule 8 (Design) and Part 2 (Design Development Programme) of Schedule 8 (Design);

**Base Senior Debt Termination Amount** means, subject to Clause 9.3 (Changes to the Financing Agreements):

- (a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account, the Distribution Account and the Alternative SRF Charged Account) held by or on behalf of the Contractor on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Councils to the Contractor as a result of enforcing any other rights they may have;

**Base Tonnage Payment**

shall have the meaning given to BTP in Part 3 of Schedule 4 (Payment Mechanism);

<b>Base Tonnage Payment Forecast</b>	shall have the meaning given to BTPF in Part 2 of Schedule 4 (Payment Mechanism);
<b>Base Tonnage Payment Index</b>	means the amount calculated in accordance with paragraph 29 of Part 2 of Schedule 4 (Payment Mechanism);
<b>Base Tonnage Payment Price</b>	shall have the meaning given to it in Table 3 of Schedule 4 (Payment Mechanism);
<b>Base Tonnage Payment Price Band</b>	shall have the meaning given to it in Table 3 of Part 3 of Schedule 4 (Payment Mechanism);
<b>Baseline Collection Coverage</b>	means the materials collected at the kerbside in the Administrative Area as set out in Part 1 and Part 2 of Schedule 31 (Administrative Area and Baseline Collection Coverage) as at the date of this Contract;
<b>Baseline Recycling and Composting Performance</b>	has the meaning given to such term in Clause 39.3.1 (Significant Collections Changes: Impact on Recycling and Composting Deductions);
<b>BCIS</b>	has the meaning set out in Schedule 43 (EPC Escalation);
<b>BCIS Blended Index</b>	has the meaning set out in Schedule 43 (EPC Escalation);
<b>BDR Waste Disposal Limited</b>	means a company incorporated under the laws of England and Wales with registered number 02692495, whose registered office is at Ground Floor West, 900 Pavilion Drive, Northampton Business Park, Northampton NN4 7RG;
<b>Beneficiary</b>	has the meaning set out in Clause 97.1.1 (Conduct of Control of Claims);
<b>Best Value Duty</b>	means the duty imposed on the Councils by section 3 of the 1999 Act in relation to, inter alia, the Service;

<b>Bid Date</b>	means 1 April 2011;
<b>Biomass</b>	means fuel used in a generating station where: <ul style="list-style-type: none"> <li>(a) at least ninety per cent (90%) of its energy content is derived from relevant material (that is to say, material which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae), and</li> <li>(b) if fossil fuel forms part of such fuel: <ul style="list-style-type: none"> <li>(i) the fossil fuel is present as a result of a process; <ul style="list-style-type: none"> <li>(aa) to which such relevant material has been subject, and</li> <li>(bb) the undertaking of which has caused the fossil fuel to be present in, on or with such relevant material even though that was not the object of the process; or</li> </ul> </li> <li>(ii) the fossil fuel forming part of such fuel was not added to it with a view to its being used as a fuel;</li> </ul> </li> </ul>
<b>Bring Site</b>	means a site for depositing recyclable materials located throughout the Administrative Area at convenient areas such as supermarkets;
<b>Business Day</b>	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
<b>Capital Contribution</b>	means the payment which the Councils are obliged to make in accordance with Clause 55.1 (Capital Contribution);

<b>Capital Expenditure</b>	means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
<b>CDM Regulations</b>	means the Construction (Design and Management) Regulations 2007;
<b>CELO</b>	means community education liaison officer;
<b>Certificate of Title (Bolton Road)</b>	means the Certificate of Title in the agreed form set out in Part 2 of Schedule 38 (Title Matters);
<b>Certificate of Title (Grange Lane)</b>	means the Certificate of Title in the agreed form set out in Part 3 of Schedule 38 (Title Matters);
<b>Certificates of Title</b>	means the Certificate of Title (Bolton Road) and the Certificate of Title (Grange Lane);
<b>Certification Period</b>	means the period in which the Certification Requirements must be satisfied for a contract to be a certified contract for the purposes of the Act;
<b>Certification Requirements</b>	means the certification requirements which must be satisfied by the Councils with respect to this Contract for it to be a certified contract for the purposes of the Act;
<b>Chairman</b>	has the meaning given to it in paragraph 1.1 of Schedule 34 (Liaison Procedure);
<b>Challenge Period</b>	means the expiry of the later of: <ul style="list-style-type: none"> <li>(a) the period prescribed by law during which a third party may institute a challenge which could result in the quashing or modification of the relevant decision of the Planning Authority, Permitting Authority or the Secretary of State (as relevant); and</li> </ul>

- (b) where a challenge is initiated within the period in limb (a) above, the period up to and including the final determination or withdrawal of that challenge plus five (5) Business Days;

**Change in Costs**

means in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon actual or anticipated costs, losses or liabilities of the Contractor and/or any Sub-Contractors and/or the SRF Offtaker or any other offtaker pursuant to the Alternative SRF Plan (without double counting) and, in the case of the SRF Offtaker or any other offtaker pursuant to the Alternative SRF Plan, by reference to the Councils' Proportion of such sums calculated pursuant to Clause 120.12 (Ferrybridge Increase in Costs/Capital Expenditure) including, as relevant, the following:

- (a) the reasonable costs of complying with the requirements of Clauses 31 (Effect of a Compensation Event), 54 (Change in Law), 73 (Councils Step In), 120 (Revision and Custody of Financial Model) and/or Parts 2 to 5 of Schedule 32 (Change Protocol) including the reasonable costs of preparation of design and estimates;
- (b) the costs of continued employment of, or making redundant, staff who are no longer required;
- (c) the costs of employing additional staff;
- (d) reasonable professional fees;

- (e) the costs to the Contractor of financing any Relevant Event (and the consequences thereof) including commitment fees and capital costs interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Unitary Charge;
- (f) the effects on costs of implementation of any insurance, reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) operating costs, or life cycle, maintenance or replacement costs;
- (h) Capital Expenditure (or, in the case of the Relevant Event which is a Qualifying Change in Law arising under limb (c) of such definition, Capital Expenditure for which the Councils are responsible);
- (i) the costs required to ensure continued compliance with the Financing Agreements;
- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (k) Losses, including reasonable legal expenses on any indemnity basis,

provided that notwithstanding anything to the contrary in the remainder of this definition, the financial consequences of a Relevant Event will not be compensated to the extent that such Relevant Event directly causes the SRF Offtaker to incur costs or suffer Losses, save to the extent expressly provided for at Clause 120.12 (Ferrybridge Increase in Costs/Capital Expenditure) or to the extent resulting in an adjustment of the gate fee or a contractual right of the SRF Offtaker to claim compensation under the SRF Offtake Contract in accordance with the express terms of such contract;

**Change in Law**

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

- (a) Legislation, other than any Legislation which on the date of this Contract has been published:
  - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) as a proposal in the Official Journal of the European Union;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

<b>Change in Revenue</b>	means in respect of any Relevant Event the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated income of the Contractor and/or any Sub-Contractor (but not the SRF Offtaker) including amounts payable subject to Clause 57 (Third Party Revenue) (without double counting);
<b>Change of Ownership</b>	means: <ul style="list-style-type: none"> <li>(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor and/or Holdco (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or</li> <li>(b) any other arrangements that have or may have or which result in the same effect as limb (a) above;</li> </ul>
<b>Change Protocol</b>	means the procedure set out in Schedule 32 (Change Protocol);
<b>CHP</b>	means combined heat and power;
<b>CHPQA</b>	means the Quality Assurance for Combined Heat and Power scheme, administered by the Department for Energy and Climate Change;
<b>Civil (Birse Civils Limited) Package</b>	means the design and build activities set out in the Building Sub-Contract (as defined in the Construction Contract);
<b>Claim</b>	has the meaning set out in Clause 97.1.2 (Conduct and Control of Claims);

**Clinical Waste**

has the meaning as defined in regulation 1(2) of the Controlled Waste Regulations 1992 (SI 1992/588) as used in paragraph 2 of Schedule 40 (Waste Acceptance Protocol) as:

- (a) any waste which consists wholly or partly of human or animal tissue, blood, other body fluids, excretion, drugs or other pharmaceutical products, swabs or dressings, or syringes, needles or other sharp instruments, being waste which unless rendered safe may prove hazardous to any person coming into contact with it; and
- (b) any other waste arising from medical, nursing, dental, veterinary, pharmaceutical or similar practice, investigation treatment, care, teaching or research, or the collection of blood for transfusion, being waste which may cause infection to any person coming into contact with it;

**CMMS**

has the meaning given to it in paragraph 2.1 of Schedule 13 (Planned Maintenance);

**Code of Conduct**

means the Contractor's code of conduct for its Staff set out in the Human Resources Plan;

<b>Collateral Warranty</b>	means a collateral warranty or direct agreement executed as a deed between the Councils and (as the case may be) the Construction Sub-Contractor, a member of the Professional Team, or the Operating Sub-Contractor or the counterparty to the Operating Sub-Contractor under the 4Recycling Offtake Contract (as defined in the Operating Sub-Contract) in the relevant form as set out in Schedule 12 (Sub-Contractor Direct Agreements) and Schedule 15 (Collateral Warranties), or any offtakers which form part of an Alternative SRF Plan in any other form, or in each case such other form as the Contractor and the Councils may agree in writing all acting reasonably;
<b>Commencement Date</b>	means the date on which this Contract is executed by the Parties;
<b>Commercial Waste</b>	has the meaning given to it in section 75(7) of the EPA;
<b>Commercially Sensitive Information</b>	means the sub-set of Confidential Information listed in column 1 of Part 1 and column 1 of Part 2 of Schedule 29 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 29 (Commercially Sensitive Information);
<b>Commissioning and Interim Service Payment</b>	shall have the meaning given to CISP in Part 1 (Commissioning Payment and Interim Service Payment) of Schedule 4 (Payment Mechanism) where the Commissioning and Interim Service Payment is calculated specifically for Contract Month, m-1, and will follow the same calculation for any Contract Month, m;

<b>Commissioning Payment</b>	shall have the meaning given to CP in Part 1 (Commissioning Payment and Interim Service Payment) of Schedule 4 (Payment Mechanism) where the Commissioning Payment is calculated specifically for Contract Month, m-1, and will follow the same calculation for any Contract Month, m;
<b>Commissioning Payment Price</b>	shall have the meaning given to CPP in Part 1 of Schedule 4 (Payment Mechanism);
<b>Commissioning Performance Deduction</b>	shall have the meaning given to CPD in Part 1 (Commissioning Payment and Interim Service Payment) of Schedule 4 (Payment Mechanism) where the Commissioning Performance Deductions are calculated specifically for Contract Month, m -1, and will follow the same calculation for any Contract Month, m;
<b>Commissioning Performance Standard</b>	means the parameters outlining failure to achieve the requirements of the Output Specification as listed in Table 3A of Schedule 5 (Performance and Monitoring);
<b>Commissioning Performance Standard Failure</b>	means each event measured in accordance with the Commissioning Performance Standard monitoring and reporting process where the Contractor fails to meet a Commissioning Performance Standard;
<b>Commissioning Period</b>	means the period between the Readiness Date and the Service Commencement Date;
<b>Commissioning Plan</b>	means the detailed plan developed from the Outline Commissioning Plan in accordance with the Output Specification;
<b>Commissioning Report</b>	has the meaning given in paragraph 21.1 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);

<b>Commissioning Waste</b>		means Contract Waste accepted by the Contractor at the ITS Facility during the Commissioning Period;
<b>Commitment Fee</b>		means the fee payable pursuant to clause 11.1 of the Facility Agreement;
<b>Communication Protocol</b>		means the communications protocol set out in Schedule 36 (Communications Strategy);
<b>Communications Strategy</b>		means the approach to communications set out in Schedule 36 (Communications Strategy);
<b>Community Adjustment</b>	<b>Liaison</b>	means the amount calculated in accordance with Part 5 of Schedule 4 (Payment Mechanism);
<b>Community Adjustment Monthly Payment</b>	<b>Liaison</b>	shall have the meaning given to CLA <sub>m</sub> in Part 2 of Schedule 4 (Payment Mechanism);
<b>Community Adjustment Reconciliation</b>	<b>Liaison</b>	shall have the meaning given to RCLA in Part 2 of Schedule 4 (Payment Mechanism);
<b>Community Liaison Plan</b>		has the meaning given to it in paragraph 6 of Schedule 36 (Communications Strategy);
<b>Comparable Mechanism</b>		means an upside sharing mechanism which is at least equivalent (in economic terms) to that contained in Part 12 of Schedule 4 (Payment Mechanism), or any other upside sharing arrangements proposed to be entered into with offtaker(s) which are to form part of an Alternative SRF Plan;
<b>Compensation Date</b>		means either: <ul style="list-style-type: none"> <li>(a) if Clause 84.2 (Retendering Procedure) applies, the earlier of: <ul style="list-style-type: none"> <li>(i) the date that the New Contract is entered into; and</li> </ul> </li> </ul>

- (ii) the date on which the Councils pay the Adjusted Highest Compliant Tender Price to the Contractor; or
- (b) if Clause 84.3 (No Retendering Procedure) applies, the date that the Adjusted Estimated Fair Value of the Contract has been agreed or determined;

**Compensation Event**

means:

- (a) in respect of the period from the date of this Contract until the Service Commencement Date, a breach by the Councils of any of their obligations under this Contract; and
- (b) in respect of the period from the date of this Contract until the Service Commencement Date, any Judicial Review Injunction; and
- (c) in respect of the Contract Period, a Title Compensation Event or a breach of the warranty at Clause 15.8 (Title Matters); and
- (d) Not Used; and
- (e) the occurrence of any of the events listed at Clause 20.15.1 (Delays and Extensions of Time) provided that the Parties agree that the Change in Costs attributable to such an event shall be limited (without double counting as between limbs (e) and (h)) to:
  - (i) additional Commitment Fees in excess of those included in the Base Case and incurred as a direct consequence of such delay;
  - (ii) swap reprofiling costs/income (if any) incurred by the Contractor in adjusting

the interest rate hedging arrangements as a result of changes to the dates for the drawdown and repayment of the Senior Debt and Equity Bridge Facility as a direct consequence of such delay. For the avoidance of doubt where income is generated from adjusting such arrangements the full benefit of such income shall be for the account of the Councils;

- (ii) additional Letter of Credit charges and Performance Bond charges incurred as a direct consequence of such delay not exceeding, in aggregate with the amount in limb (h) (iii) below, the amounts set out in the table below:

Month	Maximum cumulative exposure for the Councils (for Months 1- 15)
1	£26,500
2	£53,000
3	£66,250
4	£106,000
5	£132,500
6	£132,500
7	£185,500
8	£198,750
9	£198,750
10	£265,000
11	£265,000
12	£265,000
13	£265,000
14	£265,000
15	£265,000

and

- (f) any opening up of any part of the Works for inspection in accordance with Clause 29.1 (Right of Inspection); and
- (g) a failure to make a payment in accordance with Clause 55.1 (Capital Contribution); and
- (h) the occurrence of any of the events listed as a Permit Delay at paragraph 12.1 of Schedule 37 (Approach to Permit Risk) provided that the Parties agree that the Change in Costs attributable to such an event shall be limited (without double counting as between limbs (e) and (h)) to:
  - (i) additional Commitment Fees in excess of those included in the Base Case and incurred as a direct consequence of such delay;
  - (ii) swap reprofiling costs/income (if any) incurred by the Contractor in adjusting the interest rate hedging arrangements as a result of changes to the dates for the drawdown and repayment of the Senior Debt and Equity Bridge Facility as a direct consequence of such delay. For the avoidance of doubt where income is generated from adjusting such arrangements the full benefit of such income shall be for the account of the Councils;
  - (iii) additional Letter of Credit charges and Performance Bond charges incurred as a direct consequence of such delay not exceeding, in aggregate with the amount in limb (e)(iii) above, the amounts set

out in the table below:

Month	Maximum cumulative exposure for the Councils (for Months 1- 15)
1	£26,500
2	£53,000
3	£66,250
4	£106,000
5	£132,500
6	£132,500
7	£185,500
8	£198,750
9	£198,750
10	£265,000
11	£265,000
12	£265,000
13	£265,000
14	£265,000
15	£265,000

;

**Compensation Event TPR Adjustment** has the meaning set out in Clause 120.4.3 (Revision and Custody of Financial Model);

**Compliant Tender** means any tender submitted by a Compliant Tenderer that meets the qualification criteria notified under Clause 84.2 (Retendering Procedure);

**Compliant Tenderer** means a tenderer who is a Suitable Substitute Contractor;

**Complaints Procedure** has the meaning given in paragraph 14.1.1 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);

**Composting** means the production of biocompost material from Contract Waste and its use for:

(a) the restoration/treatment of land that results in a benefit to agriculture or ecological improvement or such other environmentally acceptable use identified by the Contractor which shall not include Landfill; or

(b) Recycling,

and the expressions " **Compost**" and " **Composted**" shall be construed accordingly;

**Conduits**

means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues, and all other conducting media appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus;

**Confidential Information**

means:

(a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Project Intellectual Property and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and

(b) Commercially Sensitive Information;

**Conservation Management Plan**

means the conservation management plan in the form set out in Part 4 of Schedule 6 (Title Matters);

**Construction Contract**

means the contract between the Contractor and the Construction Sub-Contractor relating to the Works;

<b>Construction Dispute</b>	<b>Contract</b>	has the meaning set out in Clause 104.15.1 (Dispute Resolution);
<b>Construction Documents</b>		means (other than the Construction Programme) the plans, drawings, designs, specifications and any other documentation whether paper based or in computer readable form relating to the Works such as plans, drawings, designs, specifications and any other documentation contained in the Works Delivery Plan and any variations thereto pursuant to the Change Protocol;
<b>Construction Panel</b>		has the meaning given to it in Clause 104.4.1 (Dispute Resolution);
<b>Construction Programme</b>		means the programme for the carrying out the Works as contained in Schedule 2 (Works Delivery Plan);
<b>Construction Sub-Contractor</b>		means the person performing the construction or development obligations in relation to the Works;
<b>Contamination</b>		means all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);
<b>Contingency Plan</b>		means the contingency arrangements described in paragraph 4.4 of Part 3 (Service Requirements) of Schedule 1 (Output Specification) set out in paragraph 30 (Contingency Plan) of Schedule 3 (Service Delivery Plan);
<b>Contingency Delivery Point</b>		means the point of delivery of Contract Waste as defined within the Contingency Plan;

<b>Contingent Liabilities</b>	<b>Funding</b>	<p>means the contingent or future liabilities to subscribe for equity or subordinated debt (if any) other than pursuant to the Contingent Loan Agreement or the Letter of Credit (Contingent Loan Agreement) (as the case may be) at the relevant time of the:</p> <ul style="list-style-type: none"> <li>(a) Shareholders; and/or</li> <li>(b) the Subordinated Lender; and/or</li> <li>(c) any other parties providing equity or subordinated debt,</li> </ul> <p>owed under any of the Financing Agreements to the Contractor, Holdco and/or the Senior Lenders together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;</p>
<b>Contingent Loan Agreement</b>		<p>means a thirty million pound (£30,000,000) loan agreement made on or about the date hereof between (1) Shanks PFI Investments Limited (registered number 03158124) and (2) the Contractor;</p>
<b>Contingent Loan Termination Amount</b>		<p>means all amounts outstanding at the Termination Date, including interest and default interest accrued as at that date, from Shanks PFI Investments Limited (registered number 03158124) to the Contractor in respect of the Contingent Loan Agreement or advanced pursuant to the Letter of Credit (Contingent Loan Agreement);</p>
<b>Contract</b>		<p>means this agreement (main body) executed by the Parties and all its Schedules;</p>

<b>Contract Month</b>	means each successive Month in a Contract Year save that: <ul style="list-style-type: none"> <li>(a) the first Contract Month shall start on the Commencement Date and end on the final day of the Month in which the Commencement Date occurs; and</li> <li>(b) the final Contract Month shall start on the first day of the Contract Month in which the Contract Period ends and end on the final day of the Contract Period;</li> </ul>
<b>Contract Period</b>	means the period from the Commencement Date to the Expiry Date, or if applicable, the Termination Date;
<b>Contract Price</b>	means as defined in the Construction Contract;
<b>Contract Targets</b>	has the meaning given in paragraph 2.3 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);
<b>Contract Waste</b>	means: <ul style="list-style-type: none"> <li>(a) residual waste described in section 75(5) of the EPA collected by or on behalf of the Councils;</li> <li>(b) Commercial Waste collected by or on behalf of the Councils;</li> <li>(c) all waste from the Councils' Household Waste Recycling Centres delivered to the Facilities by or on behalf of the Councils;</li> <li>(d) litter and refuse from the cleansing of all public highways, public areas, footpaths, footways, public parks and like areas, collected by or on behalf of the Councils;</li> </ul>

- (e) grounds maintenance waste collected by or on behalf of the Councils, including but not limited to fine turf clippings, brushings from shrub pruning, hedge cuttings, litter and dog bin waste; and
- (f) waste delivered to the Facilities by registered charities where such delivery has been authorised by the Councils;

**Contract Waste Forecast** means the amount referred to in paragraphs 14 and 15 of Part 2 of Schedule 4 (Payment Mechanism);

**Contract Waste Landfill Tax Rate** means the amount calculated in accordance with Part 2 of Schedule 4 (Payment Mechanism);

**Contract Waste Shortfall** has the meaning given to it in Clause 38.7.2 (Substitute Waste);

**Contract Year** means:

- (a) the First Contract Year;
- (b) following the expiry of the First Contract Year but before the commencement of the Final Contract Year each period within the Contract Period commencing on 1 April and ending on 31 March; and
- (c) the Final Contract Year;

**Contractor Change** has the meaning given to it in the Change Protocol;

**Contractor Change Notice** has the meaning given to it in the Change Protocol;

**Contractor Default** means one of the following events:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Service;
- (b) a Persistent Breach occurs;
- (c) a court makes an order that the Contractor or Holdco be wound up or a resolution for a voluntary winding-up of the Contractor or Holdco is passed;
- (d) any receiver or manager in respect of the Contractor or Holdco is appointed or possession is taken by or on behalf of any creditor of any property of the Contractor or Holdco that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 1985 in respect of the Contractor or Holdco;
- (f) an administration order is made, or an administrator is appointed in respect of the Contractor or Holdco;
- (g) a breach of Clause 24.2 (Sub-Contractor Direct Agreements and Collateral Warranties) occurs and/or a breach of the obligation at Clause 24.1.1 (Engagement of Construction Sub-Contractor and Operating Sub-Contractor) and/or a breach of Clause 9.2.1 (Changes to Ancillary Documents);

- (h) a breach by the Contractor of its obligations in Clause 99.2 (Restrictions on the Contractor) occurs;
- (i) subject to Clause 64.16 (Risks that become Uninsurable) a breach by the Contractor of its obligation to take out and maintain the Required Insurances;
- (j) a breach of Clauses 100.1.5 and/or 100.2.1 and/or 100.2.3 (Change of Ownership) occurs;
- (k) the Contractor Abandons the Works at any time;
- (l) failure to commence the Works at the Site (Bolton Road) by such date as is **[REDACTED]** after the Planned Works Commencement Date;
- (m) the Readiness Test Certificate for the ITS Facility has not been issued by the Readiness Long Stop Date;
- (n) Not Used;
- (o) the Acceptance Test Certificate has not been issued by the Long Stop Date;
- (p) the accumulation of **[REDACTED]** or more Performance Points (for Termination) in any period of twelve (12) consecutive Months following the Service Commencement Date;
- (q) the accumulation of Performance Deductions equal or greater than **[REDACTED]** in any period of twelve (12) consecutive Months following the Service Commencement Date;

- (r) either the ITS Facility or the TLS Facility is Unavailable for a period of [REDACTED] in each case following the Service Commencement Date;
- (s) the Contractor fails to achieve:
  - (i) the Recycling and Composting Termination Trigger in any two (2) Contract Years in any rolling period of three (3) Contract Years following the Service Commencement Date;
  - (ii) the MSW Diversion Termination Trigger in any two (2) Contract Years in any rolling period of three (3) Contract Years following the Service Commencement Date;
- (t) Non-Acceptance of Contract Waste by the Contractor is equal to or exceeds [REDACTED] following the Service Commencement Date;
- (u) a Wilful Default (as such term is defined in the SRF Offtake Contract) of the SRF Offtaker under the SRF Offtake Contract which occurs prior to the Actual Services Commencement Date;
- (v) a failure of the Net Worth Test pursuant to Clauses 122.2 or 122.3 or 122.4 (Net Worth Test) which the Contractor has been unable to rectify in accordance with Clause 122.5 (Replacement Security);

**Contractor Related Party** means:

- (a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person;
- (b) any Sub-Contractor or sub -contractor of the Contractor of any tier and any of their officers, servants or agents; and
- (c) any person on or at any of the Sites at the express or implied invitation of the Contractor, other than the Councils or any Councils' Related Party;

**Contractor Warranted Data** means the information relating to the Contractor and HoldCo contained in Schedule 28 (Contractor and Holdco Information);

**Contractor's Representative** means the manager appointed by the Contractor to act as the Contractor's agent in connection with the provision of the Service pursuant to Clause 16 (Advisers and Representatives);

**Contractor's Share** means the percentage figure corresponding to that part of the Cumulative Capital Expenditure at the relevant time, as shown in the second column of the table set out in Schedule 10 (Cumulative Capital Expenditure);

**COSHH** means the Control of Substances Hazardous to Health Regulations 2002 (SI 2002/2677);

**Councils' Change** has the meaning given to it in the Change Protocol;

**Councils' Change Notice** has the meaning given to it in the Change Protocol;

**Councils' Default** means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Contractor and/or shares of Holdco by the Councils or other Relevant Authority;
- (b) a failure by the Councils to make payment of any amount of money equal to or exceeding one (1) Month's Monthly Unitary Charge (before Deductions) that is due and payable by the Councils under this Contract within thirty (30) days of service of a formal written demand by the Contractor, where that amount fell due and payable not less than one (1) (or more) Months prior to the date of service of the written demand;
- (c) a breach by the Councils of their obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of two (2) Months; or
- (d) a breach by the Councils of Clause 99.1 (Restrictions on the Councils) occurs;

<b>Councils' Termination Sum</b>	<b>Default</b>	means the amount calculated in accordance with Clause 81.1 (Compensation on Councils' Default);
<b>Councils' Property</b>		has the meaning given to it in Clause 95.1.1(b) (Indemnity);
<b>Councils' Policies</b>		means the policies of the Councils set out in Schedule 27 (Councils' Policies);
<b>Councils' Proportion</b>		means:

- (a) where the relevant Estimated Change in Project Costs relates to two (2) process lines of the Ferrybridge Facility, twenty-four per cent (24%); or
- (b) where the relevant Estimated Change in Project Costs relates to one (1) process line of the Ferrybridge Facility, the lower of:
  - (i) forty-eight per cent (48%) of the actual Estimated Change in Project Costs; and
  - (ii) twenty-four per cent (24%) of the Estimated Change in Project Costs had the Estimated Change in Project Costs related to the two (2) process lines of the Ferrybridge Facility,

provided that if the capacity of the Ferrybridge Facility is increased by an expansion of the Ferrybridge Facility following the date of this Contract, these proportions shall be amended so that the Councils' Proportion is equal to that proportion of the capacity of the Ferrybridge Facility used for Project SRF. For the purposes of this calculation

- (aa) the annual capacity of the Ferrybridge Facility (both before and after any such expansion) shall be determined on the basis of the hourly fuel throughput that would be required to reach the design thermal input based on a Net CV of 13.5MJ/kg (irrespective of the design case used for any part of the Ferrybridge Facility) multiplied by eight thousand (8,000) operating hours; and

(bb) the proportion of the capacity of the Ferrybridge Facility used for Project SRF shall be:

(aaa) if the Relevant Event occurs within (3) Years of the Actual Services Commencement Date, the average of the actual amount of Project SRF delivered by or on behalf of the Contractor to the SRF Offtake Contract in the preceding Contract Years being the Contract Period or part thereof; and

(bbb) if the Relevant Event occurs three (3) or more Years from the Actual Services Commencement Date, the average of the actual amount of Project SRF delivered by or on behalf of the Contractor to the SRF Offtaker pursuant to the SRF Offtake Contract in the preceding three (3) Contract Years as a proportion of the total expanded capacity of the Ferrybridge Facility.

For the avoidance of doubt, the recalculated Councils' proportion shall not exceed twenty-four per cent (24%);

**Councils' Related Party**

means any officer, agent or employee of the Councils acting in the course of his office or employment including any contractor or sub-contractor of any tier of the Councils (other than the Contractor or any Contractor Related Party);

**Councils' Representative**

means the representative appointed by the Councils pursuant to Clause 16 (Advisers and Representatives);

<b>Councils' Risk Management Policies</b>		means the policies of the Councils referred to in Schedule 27 (Councils' Policies) to this Contract as may be amended from time to time pursuant to Clause 65.1.2 (Councils' Risk Management Policies);
<b>Councils' Safety Adviser</b>		means Mr Sean Fiander, Senior Health and Safety Officer, Environment & Development Services, Rotherham Borough Council or any replacement officer notified in writing from time to time;
<b>Councils' Share</b>		has the meaning set out in Clause 49.4.1 (Third Party Waste Contracts);
<b>Councils' Confirmation</b>	<b>Stage 2</b>	has the meaning given to such term in Schedule 32 (Change Protocol);
<b>Covenantor</b>		has the meaning set out Clause 97.1.3 (Conduct and Control of Claims);
<b>Critical Path</b>		means the key sequence of actions which must be completed in order for a project to complete in time;
<b>Cumulative Expenditure</b>	<b>Capital</b>	means the aggregate of: <ul style="list-style-type: none"> <li>(a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect during the Service Period; and</li> <li>(b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under Clause 54.1 (Qualifying Change in Law);</li> </ul>

<b>Daily Waste Inspection Log</b>	means the information that shall recorded on the daily waste inspection log, in sufficient detail to identify the vehicle and record the nature and origin of the load, which the driver will be required to sign as set out in paragraph 6 of Annex 1 of Schedule 40 (Waste Acceptance Protocol);
<b>Day</b>	means each period of twenty -four (24) hours from midnight to midnight;
<b>Debt Service Reserve Account</b>	has the meaning given to such term in the Facility Agreement;
<b>Decision Date</b>	means the date of an Equal Pay Ruling;
<b>Deductions</b>	means all negative adjustments to the Monthly Unitary Charge or Unitary Charge as provided for in Schedule 4 (Payment Mechanism) including: <ul style="list-style-type: none"> <li>(a) Commissioning Performance Deductions;</li> <li>(b) Interim Service Performance Deductions;</li> <li>(c) Performance Deductions;</li> <li>(d) Not Used;</li> <li>(e) Mileage Deductions;</li> <li>(f) Interim Service Mileage Deductions;</li> <li>(g) Recycling Deductions; and</li> <li>(h) Ratchets;</li> </ul>
<b>Deductions Cap</b>	shall have the meaning given to it in Appendix 1 in Part 13 of Schedule 4 (Payment Mechanism);
<b>Deemed New Contract</b>	means an agreement on the same terms and conditions as this Contract, as at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated prior to the Service Commencement Date, then the Planned Service Commencement Date shall be extended by a period to allow a New Contractor to achieve Service Commencement;
- (b) any warning notices, Final Warning Notices, any amount accumulated pursuant to Ratchets, Deductions and Performance Points shall, for the purposes of termination only, and without prejudice to the rights of the Councils to make financial deductions, be cancelled;
- (c) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date; and

(d) the inclusion of a provision confirming that in the event that any New Contractor Rectification Works are required (in relation to a Facility that has, at the Termination Date, had the Acceptance Test Certificate issued) to enable the New Contractor to provide the Service to the full specification and standards required by this Contract, then provided that the New Contractor complies with the New Contractor Rectification Plan the Councils shall not exercise their right to terminate the Contract under Clause 83 (Termination on Contractor Default) by reason of any failure to achieve some or all of the specification and/or standards required by this Contract during the New Contractor Rectification Period solely as a consequence of the New Contractor Rectification Works being required. Such provision shall for the avoidance of doubt not affect the Councils' entitlement to make adjustments and/or Deductions in accordance with Schedule 4 (Payment Mechanism) as a result of failure to achieve the specification and/or standards required by this Contract during the New Contractor Rectification Period;

**Deemed Refusal**

means any failure to determine a Planning Application by the Planning Authority within the statutory period which would entitle the Contractor to appeal against the deemed refusal of that Planning Application or any other period which the Contractor and the Planning Authority may agree shall constitute the period for determination of the Planning Application for the purpose of any appeal by the Contractor;

<b>Default Interest</b>	means any increased margin that is payable to the Senior Lenders or which accrues as a result of any payment due to the Senior Lenders not being made on the date on which it is due;
<b>Default Interest Rate</b>	means two per cent (2%) over LIBOR;
<b>Defects Liability Period</b>	means the period from the Commencement Date until the later to expire of the period during which the Construction Sub-Contractor is obliged to rectify defects under the Construction Contract and the period during which the construction contractor for the Ferrybridge Facility is obliged to rectify defects in the Ferrybridge Facility;
<b>Defined Audit Trail</b>	means the documentary evidence (whether paper based or in an electronic format) containing the information set out in Schedule 5 (Performance and Monitoring);
<b>Defra</b>	means the Department for Environment, Food and Rural Affairs;
<b>Design Data</b>	means in relation to the ITSAD Facility only, all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Project in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Works and/or the Service or the performance of the Contractor's obligations under this Contract;
<b>Design Programme</b>	<b>Development</b> means the Contractor's programme for development of the Base Design Proposal pursuant to Clause 25 (Development and Submission of Designs) as set out in Part 2 (Design Development Programme) of Schedule 8 (Design) as updated from time to time;

<b>Direct Agreement</b>	means the direct agreement dated on or about the date of this Contract and made between (amongst others) the Councils, the Contractor and the Agent in the form set out in Schedule 18 (Funder Direct Agreement);
<b>Direct Losses</b>	means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law including any loss of Third Party Revenue and/or foreseeable losses under this Contract and the Contractor's liability to its Construction Sub-Contractor and the Operating Sub - Contractor for foreseeable losses under the terms of the Construction Contract and the Operating Sub - Contract (without double counting) in each case, to avoid doubt, excluding Indirect Losses;
<b>Directive</b>	means the EC Acquired Rights Directive 77/187 as amended;
<b>Disclosed TLS Permit</b>	means the Environmental Permit for the TLS Facility set out in Schedule 45 (Disclosed TLS Permit);
<b>Discriminatory Change in Law</b>	means a Change in Law, the terms of which apply expressly to: <ul style="list-style-type: none"> <li>(a) the Project and not to similar projects procured under the PFI;</li> <li>(b) the Contractor and not to other persons; and/or</li> <li>(c) PFI Contractors and not to other persons;</li> </ul>
<b>Dispute Resolution Procedure</b>	means the procedure for the resolution of disputes as set out in Clause 104 (Dispute Resolution);

## **Distribution**

means:

- (a) whether in cash or in kind, any:
  - (i) dividend or other distribution in respect of share capital;
  - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
  - (iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);
  - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
  - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms, or
- (b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

provided the advance of any monies under or pursuant to the Contingent Loan Agreement or the Letter of Credit (Contingent Loan Agreement), or the repayment of any amounts pursuant to the Contingent Loan Agreement shall not constitute a **"Distribution"** for the purpose of this definition;

<b>Distribution Account</b>	has the meaning given to such term in the Facility Agreement;
<b>DPA</b>	means the Data Protection Act 1998;
<b>Draft Annual Service Report</b>	has the meaning given in paragraph 15.9 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);
<b>Draft Commissioning Report</b>	has the meaning given in paragraph 21.1 of Part 2 (Construction Works) of Schedule 1 (Output Specification);
<b>Draft Monthly Service Report</b>	has the meaning given in paragraph 15.8 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);
<b>Draft Revised Project Plan</b>	means a draft revised project plan proposed pursuant to Clause 20.12.1 (Revised Project Plan);
<b>Drainage Dyke</b>	means the part of the drainage dyke which is located on the Site (Bolton Road);
<b>Ecodeco</b>	means Sistema Ecodeco UK Limited, a company incorporated under the laws of England and Wales with company number 05049191 whose registered office is at Matrix House, 12 -16 Lionel Road, Canvey Island, Essex SS8 9DE which expression shall include its successors in title and assigns;

<b>Ecodeco Operational Licence</b>	means the operational licence dated on or about the date of this Contract between Ecodeco S.R.L., the Contractor, the Construction Sub-Contractor, the Operating Sub-Contractor and the Councils;
<b>Ecodeco S.R.L.</b>	means Ecodeco S.R.L. (Italian fiscal code n.01255650168) of Corso di Porta Vittoria n. 4 20122, Milan, Italy which expression shall include its successors in title and assigns;
<b>EEA</b>	means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
<b>Electricity Indexation Factor</b>	has the meaning given to it in paragraph 30.3 of Part 2 of Schedule 4 (Payment Mechanism);
<b>Emergency</b>	means an event causing or, in the reasonable opinion of a Party, threatening to cause death or serious injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services, or preventing the Service operating under normal circumstances and requiring mobilisation and organisation of the emergency services (and whether or not an Emergency has arisen shall be determined in the case of any dispute by the Councils acting reasonably);
<b>Employee Code of Conduct</b>	means as set out in the Councils' Policies;
<b>Employee Liability Information</b>	means the employee liability information to be provided pursuant to Regulation 11 of TUPE;

<b>Energy Recovery</b>		means the recovery of useful energy in the form of heat an/or electric power from waste which includes combined heat and power, combustion of Landfill gas and gas produced during anaerobic digestion;
<b>Enforced Closure</b>		means the closure of a Facility to the reception of Contract Waste which is required by Law and/or any Environmental Permit and/or in accordance with the lawful instructions of a Relevant Authority;
<b>Environment</b>		means all or any of the media of air, water and land (wherever occurring) and living organisms (including man) or systems supported by those media and, in relation to the media of air and water, includes the air and water within buildings and the air and water within other natural or man-made structures above or below or within ground;
<b>Environment Agency</b>		means the Environment Agency of England and Wales or any successor from time to time;
<b>Environmental Control Plan</b>	<b>Impact</b>	has the meaning given in paragraph 18.1 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);
<b>Environmental Regulations</b>	<b>Information</b>	means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
<b>Environmental Laws</b>		means any provision of any Law which: <ul style="list-style-type: none"> <li>(a) concerns or has as its purpose or effect the protection of the Environment or the prevention, control or remedying of pollution of the Environment or of harm to the Environment or human health; and/or</li> </ul>

- (b) relates to the presence, manufacturing, processing treatment, keeping, handling, use, possession, disposal or transportation of, or is otherwise applicable in relation to, waste or hazardous or harmful material; and/or
- (c) relates to, or is applicable in relation to, the release, spillage, deposit, escape, discharge, leakage or emission of waste or any hazardous or harmful material;

**Environmental Liabilities** means all or any of the following arising from or as a result of Environmental Matters:

- (a) actions, claims, demands and proceedings taken or made against the Councils;
- (b) all costs, damages, expenses, liabilities and losses incurred by the Councils;
- (c) fines and penalties,

insofar as they relate to and arise from the state or condition of any of the Sites;

**Environmental Management System** means a management system in compliance with ISO14001 as referred to in paragraph 15.1 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);

**Environmental Matters** means any matters relating to the pollution or protection of the Environment which cause significant harm to or are for the protection of human health and safety;

**Environmental Permit** means a permit required pursuant to the Environmental Permitting Regulations in respect of the ITSAD Facility, the TLS Facility or the Ferrybridge Facility;

<b>Environmental Permitting Regulations</b>	means the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675);
<b>EPA</b>	means the Environmental Protection Act 1990;
<b>Equal Pay Legislation</b>	means all and any anti -discrimination and equal pay opportunities laws, including but not limited to the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Equal Treatment Directive (Recast) Directive 06/54/EC), Article 117 of the Treaty of Rome, the Disability Discrimination Act 1995, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2002), the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2002, the Employment Equality (Age) Regulations 2006, the Equality Act 2006 and the Equality Act 2010;
<b>Equal Pay Ruling</b>	means: <ul style="list-style-type: none"> <li>(a) a determination by an employment tribunal or court of competent jurisdiction or the settlement or compromise to which the Councils shall have consented in either case relating to any claim brought by any Transferring Employee on before or after the Service Transfer Date under Equal Pay Legislation that the terms and conditions of employment of the Transferring Employee relating to Pay contravene the Equal Pay Legislation; and/or</li> </ul>

- (b) in relation to any Transferring Employee (in relation to their period of employment until the Service Transfer Date) any alteration to the salaries and paycales prescribed by the NJC terms and conditions in order to settle, address or compromise threatened or extant claim under the Equal Pay Legislation against local authority employers and/or employers engaged as at the date of this Contract or substantially engaged in the provision of services to local authority employers;

**Equipment**

means any plant and equipment that is:

- (a) purchased, leased or taken on hire purchase or other similar arrangement by the Contractor and/or the Operating Sub-Contractor; and
- (b) wholly or mainly dedicated to the provision of the Service,

but excluding any plant or equipment of the SRF Offtaker;

**Equipment List**

means a list detailing all Equipment that is, at the time the list is prepared, in the possession, ownership or control of the Contractor or the Operating Sub-Contractor;

**Equity Bridge Facility**

means the equity bridge loan facility to be made available to the Contract or by the Senior Lenders pursuant to the Facility Agreement;

**Equity IRR**

means the projected blended rate of return to the Relevant Persons over the full term of the Contract, having regard to Distributions made and projected to be made;

<b>Equity Subscription Agreement</b>	has the meaning given to it in the Facility Agreement;
<b>ERT Relevant Amount</b>	has the meaning given to it in Clause 64.19.3 (Economic Reinstatement Test);
<b>Estimated Change in Project Costs</b>	means in respect of any Relevant Event the aggregate of any estimated Change in Costs and/or (without double counting) Change in Revenue (as relevant);
<b>Estimated Fair Value of the Contract</b>	means the amount determined in accordance with Clause 84.3 (No Retendering Procedure) that a third party would pay to the Councils as the market value of the Deemed New Contract;
<b>Euro Effective Date</b>	has the meaning set out in Clause 119.2.7 (EMU Continuity of Contract);
<b>Excess Costs</b>	has the meaning set out in Clause 20.7 (Planning Permissions);
<b>Excess Costs (Ferrybridge)</b>	has the meaning set out in Clause 20.22.1 (Planning Permissions);
<b>Excusing Cause</b>	means those events listed in Clause 33 (Excusing Causes);
<b>Exempt Refinancing</b>	means: <ul style="list-style-type: none"> <li>(a) any Refinancing that was fully taken into account in the calculation of the Unit ary Charge;</li> <li>(b) a change in taxation or change in accounting treatment;</li> <li>(c) the exercise of rights, waivers, Necessary Consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:</li> </ul>

- (i) breach of representations and warranties or undertakings;
- (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Councils);
- (iii) late or non-provision of information, Necessary Consents or licences;
- (iv) amendments to Sub-Contracts or the SRF Offtake Contract;
- (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements);
- (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements and which are given as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the Construction Programme and which are notified in writing by the Contractor or the Senior Lenders to the Councils prior to being given;

- (vii) changes to milestones for drawdown which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the Construction Programme and which are notified in writing by the Contractor or the Senior Lenders to the Councils prior to being given;
  - (viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements; or
  - (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;
- (d) any amendment, variation or supplement of any agreement approved by the Councils as part of any Qualifying Variation under this Contract;
- (e) any sale of shares in the Contractor or Holdco by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor or Holdco provided that this paragraph (e) shall, in respect of shares in Holdco, only apply for so long as Holdco holds one hundred per cent (100%) of the issued share capital of the Contractor;

- (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements (excluding the Contingent Loan Agreement (save in accordance with limb (i) below)) or securitisation of the Subordinated Lenders' existing rights and/or interest under the Subordinated Financing Agreements (excluding the Contingent Loan Agreement (save in accordance with limb (i) below));
- (g) any Qualifying Bank Transaction; or
- (h) the payment of the Capital Contribution (or any part of it);
- (i) early repayment of all or part of outstanding Senior Debt either through funds advanced to the Contractor under the Contingent Loan Agreement, the Letter of Credit (Contingent Loan Agreement) or through payment of the Senior Debt Discharge Amount from the Alternative SRF Funds pursuant to Clause 79.6.2 [REDACTED];

**Expiry Date** means the twenty -fifth (25<sup>th</sup>) anniversary of the Planned Service Commencement Date (as such Expiry Date may be extended pursuant to Clause 11.3 (Duration of Contract));

**Extension of Contract Period** has the meaning set out in Clause 11.3 (Duration of Contract);

**Facility** means the ITS Facility, the AD Facility or the TLS Facility, and "**Facilities**" will refer to any of them where the context so requires;

<b>Facility Agreement</b>	means the facilities agreement dated on or about the date of this Contract made between the Contractor, Holdco, Lloyds TSB Bank PLC and Sumitomo Mitsui Banking Corporation Europe but, without prejudice to Clause 9.3.2 (Changes to Financing Agreements), as the same may be amended as allowed by Clause 9.3.1 (Changes to Financing Agreements);
<b>Fair Value</b>	means the amount at which an asset or liability could be exchanged in an arms length transaction between informed and willing parties, other than in a forced liquidation or sale;
<b>Feed-in Tariff Scheme</b>	means the Government programme governed by the 2010 Order to promote the uptake of small scale renewable and low carbon electricity generation technologies in the United Kingdom;
<b>Fees Regulations</b>	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
<b>Ferrybridge Clear Planning and Permit Date</b>	means the date on which: <ul style="list-style-type: none"> <li>(a) the Challenge Period has expired in relation to a Satisfactory s36 Consent (or an Unsatisfactory s36 Consent which has been rendered a Satisfactory s36 Consent pursuant to Clause 20 (Planning Permissions)) and such s36 Consent has not been dismissed, withdrawn, quashed or defeated; and</li> </ul>

(b) the Challenge Period has expired in relation to a Satisfactory Permit for the Ferrybridge Facility (or an Unsatisfactory Permit for the Ferrybridge Facility which has rendered a Satisfactory Permit pursuant to paragraph 10.1(b) of Schedule 37 (Approach to Permit Risk)) and such Environmental Permit has not been dismissed, withdrawn, quashed or defeated,

and to avoid doubt, where any s36 Consent or Environmental Permit is dismissed, withdrawn, quashed or defeated in or before the expiry of the relevant Challenge Period the Ferrybridge Clear Planning and Permit Date will be deemed not to have occurred;

**Ferrybridge Consent**

has the meaning given to that term in the SRF Offtake Contract;

**Ferrybridge Facility**

means the multi-fuel facility at Ferrybridge as described in the SRF Offtake Contract at which SRF derived from Contract Waste will be processed using two (2) process lines in accordance with the terms of the SRF Offtake Contract;

**Ferrybridge Works**

means the works to construct the Ferrybridge Facility (including design, works necessary for obtaining access to the site, commissioning and conduct of the acceptance tests);

**FGT Residue**

means flue gas treatment residue;

**Final Contract Year**

means the period from 1 April occurring immediately prior to the end of the Contract Period until the Expiry Date or if applicable, the Termination Date;

<b>Final Employee List</b>	has the meaning set out in Clause 74.5 (Final Employee List);
<b>Final Equipment List</b>	has the meaning given to it in Clause 50.1.5 (Equipment);
<b>Final Monthly Commissioning Data Report</b>	has the meaning given in paragraph 21.7 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);
<b>Final Warning Notice</b>	means the notice described in Clause 82.1 (Persistent Breach);
<b>Financial Close</b>	has the meaning given to it in the Senior Financing Agreements;
<b>Financial Model</b>	has the meaning given to it in the Senior Financing Agreements;
<b>Financing Agreements</b>	means all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement)), the Initial Financing Agreements and any agreements or instruments to be entered into by the Contractor or any of its Associated Companies relating to the rescheduling of their indebtedness or any Refinancing);
<b>Financing Default</b>	means any event of default under the Facility Agreement where the Agent has taken any of the actions set out in clause 25.5 and/or (c) of the Facility Agreement;
<b>Financial Indebtedness</b>	means, for the purposes of Clause 122 (Net Worth Test), any indebtedness for or in respect of:  (a) monies borrowed;

- (b) any acceptance credit (including any dematerialised equivalent);
- (c) any bond, note, debenture, loan stock or other similar instrument;
- (d) any agreement treated as a finance or capital lease in accordance with IAS 17;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark-to-market value of the derivative transaction will be used to calculate its amount);
- (g) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing;
- (h) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or
- (i) without double counting, any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above paragraphs;

**Fire Strategy**

has the meaning given in paragraph 13.2 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);

<b>First Contract Year</b>	means the period from the Commencement Date to the following 31 March;
<b>First Contractors</b>	means the contractors, namely: <ul style="list-style-type: none"> <li>(a) Veolia and Sterecycle, with whom each of the Councils initially contracted; and</li> <li>(b) BDR Waste Disposal Limited with whom Barnsley initially contracted,</li> </ul> for the provision of services which are similar to the Service;
<b>First Employee List</b>	has the meaning given to it in Clause 74.4 (Employment Costs);
<b>Fixed Annual Charge</b>	shall have the meaning given to FAC in Part 13 of Schedule 4 (Payment Mechanism);
<b>Fixed Monthly Charge</b>	shall have the meaning given to FMC in Part 2 of Schedule 4 (Payment Mechanism);
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such act;
<b>FOIA Code</b>	has the meaning set out in Clause 102.8 (Freedom of Information);
<b>Force Majeure Event</b>	means the occurrence after the date of this Contract of: <ul style="list-style-type: none"> <li>(a) war, civil war, armed conflict or terrorism; or</li> </ul>

- (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of any actions of or breach by the Contractor or its sub-contractors of any tier except where such actions of or breach by the Contractor constitute solely the receipt or treatment by the Contractor or any Sub-Contractors of Contract Waste or Third Party Waste containing nuclear chemical or biological contamination in accordance with this Contract; or
- (c) pressure waves caused by devices travelling at supersonic speeds,

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

**Force Majeure Termination Sum** means the amount calculated in accordance with Clause 86.1 (Compensation on Termination for Force Majeure);

**Force Majeure TPR Adjustment** has the meaning set out in Clause 120.4.6 (Revision and Custody of Financial Model);

**Full Indexation Factor** shall have the meaning given to FIF in Part 2 of Schedule 4 (Payment Mechanism);

**Future Service Provider** has the meaning given to it in Clause 74.12 (Contractor Indemnities);

**General Change in Law** means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law or a Qualifying Change in Law (other than a limb (c) of that definition);

<b>Gilt A</b>	means the real yield to maturity as at Financial Close on a benchmark government gilt instrument of the same maturity as the average life as determined from the Base Case as at Financial Close of the Senior Debt;
<b>Gilt B</b>	means the real yield to maturity as at the Termination Date on a benchmark government gilt instrument of the same maturity as the average life as determined from the Base Case as at the Termination Date of the Senior Debt outstanding on that date;
<b>Good Industry Practice</b>	means the exercise of that degree of skill, diligence, prudence and foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that of the Contractor, the Construction Sub-Contractor or the Operating Sub-Contractor (as the case may be) under the same or similar circumstances at the relevant time for such exercise;
<b>Grange Lane Baseline Standard</b>	has the meaning given to it in Clause 52.2 (Maintenance of the Site (Grange Lane));
<b>Grange Lane Update Works</b>	has the meaning given to it in Clause 52.2 (Maintenance of the Site (Grange Lane));
<b>Ground Conditions Costs</b>	has the meaning given to it in Clause 19 (Adverse Contamination and Ground Conditions);
<b>Group</b>	means Shanks Group plc and its Subsidiaries;
<b>Guaranteed Minimum Tonnage</b>	means one hundred and eighty thousand (180,000) tonnes of Contract Waste per Contract Year pro rata for the Contract Year in which Service Commencement occurs and the Final Contract Year (as the case may be);

<b>Guaranteed Third Party Revenue</b>	means the amounts as set out in the Base Case and Appendix 2 of Schedule 4 (Payment Mechanism);
<b>Guidance</b>	means any applicable guidance or direction with which the Contractor is bound to comply;
<b>Handback Plan</b>	has the meaning given in paragraph 1.1 of Part 5 (Handback Requirements) of Schedule 1 (Output Specification);
<b>Handback Requirements</b>	means the requirements set out in Part 5 of Schedule 1 (Output Specification);
<b>Harm</b>	means actual or potential harm, offence, damage or interference to the environment, ecosystems, land, water, any flora, fauna, any person or property (real or personal);
<b>Haulage Rate for Mileage Deductions</b>	means the amounts set out in Table 6 of Part 8 of Schedule 4 (Payment Mechanism);
<b>Haulage Rate or HR</b>	has the meaning given to it in paragraph 53 of Part 8 of Schedule 4 (Payment Mechanism);
<b>Hazardous Material</b>	means any substance, whether in solid, liquid or gaseous form, which is capable of causing harm to human health or to the Environment whether on its own or in combination with any other substance;
<b>Hazardous Waste</b>	has the meaning attributed to it under the Hazardous Waste (England and Wales) Regulations 2005 as referred to in Schedule 40 (Waste Acceptance Protocol);
<b>Health and Safety File</b>	has the meaning given in Clause 28.3 (Duties under the CDM Regulations);

<b>Highest Compliant Tender Price</b>	means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, zero (0);
<b>Holdco</b>	means 3SE (Barnsley, Doncaster & Rotherham) Holdings Limited, a company incorporated under the laws of England and Wales with registered number 07820781, whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes MK1 1BU;
<b>Holding Company</b>	has the meaning given to it in section 1159 of the Companies Act 2006;
<b>Household Waste</b>	has the meaning given to it in section 75(5) of the EPA and Schedules 1 and 2 of the Controlled Waste Regulations 1992 (SI 1992/588);
<b>Household Waste Recycling Centre or HWRC Site</b>	means a place provided by the Councils at which residents may deposit their Household Waste, for Recycling and Recovery and disposal of any residual wastes;
<b>Human Resources Plan</b>	has the meaning given in paragraph 19.9 of Part 3 (Service Requirements) of Schedule 1 (Output Specification);
<b>IAS 17</b>	means International Accounting Standard 17;

<b>ICIS Heren UK Power Index</b>	means the "Heren Monthly UK Power Heren Index" published by ICIS Heren or, failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such other adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better no worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;
<b>IFRS</b>	means International Financial Reporting Standards;
<b>Inactive Waste</b>	means Contract Waste which attracts Landfill Tax at the lower rate as a consequence of being Qualifying Material;
<b>Independent Certifier</b>	means Currie & Brown UK Limited, Dashwood House, 69 Old Broad Street, London EC2M 1QS or such other person who is jointly appointed from time to time as such by the Councils and the Contractor in accordance with Clause 35 (Certification of Completion of the Works);
<b>Increased O&amp;M Costs</b>	has the meaning given to it in Clause 79.6.6 <b>Error! Reference source not found. [REDACTED]</b> ;
<b>Independent Certifier's Appointment</b>	means an agreement for the appointment of the Independent Certifier in the form set out in Schedule 11 (Independent Certifier's Appointment) together with such amendments made to such form in accordance with Clause 35 (Certification of Completion of the Works);

<b>Indirect Losses</b>	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature provided always that notwithstanding the foregoing, any: <ul style="list-style-type: none"> <li>(a) breakage costs under Off Take Contracts or Third Party Waste Contracts meeting the requirements of Clause 49 (Off Take Contracts and Third Party Waste Contracts); or</li> <li>(b) loss of Unitary Charge or Third Party Revenue or any other revenue under this Contract,</li> </ul> shall not be excluded by reason of this definition;
<b>Inflation Index</b>	means RPIX;
<b>Information</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>Information Commissioner</b>	has the meaning given in the FOIA;
<b>Initial Financing Agreements</b>	means the Financing Agreements put in place upon signature of this Contract which are listed in Schedule 19 (Financing Agreements) copies of which have been initialled by the Parties for the purposes of identification;
<b>Instalment Dates</b>	has the meaning set out in Clause 93.2 (Method of Payment);
<b>Insurance Term</b>	means any terms and/or conditions required to be included in a policy of insurance by Clauses 64.1 and 64.2 (Insurance) and/or Schedule 17A (Required Insurances) but excluding any risk;
<b>Insurance Undertaking</b>	has the meaning given in the rules from time to time of the Financial Services Authority;

<b>Intellectual Property</b>	means copyright, domain names, design rights, database rights, semi-conductor topographical rights, patents, trade marks (registered or unregistered), service marks, registered designs or any applications thereof, and all other intellectual or industrial property rights of a similar nature and whether subsisting in the United Kingdom or any other part of the world;
<b>Inter-Authority Agreements</b>	means the two (2) agreements entered into by each of the Councils on or prior to the date of this Contract as amended by the Councils from time to time;
<b>Interim Contingency Delivery Point</b>	means the point of delivery during the Interim Service Period of Contract Waste as defined within the Contingency Plan;
<b>Interim Performance Framework</b>	has the meaning set out in Table 3B of Schedule 5 (Performance and Monitoring);
<b>Interim Project Report</b>	means the report provided by the Contractor to the Councils upon the occurrence of a Financing Default pursuant to Clause 70.10 (Contractor's Records). The report shall include details of the following: <ul style="list-style-type: none"> <li>(a) <b>Annually</b> <ul style="list-style-type: none"> <li>(i) financial statements (annual audited accounts) for the Contractor and other material Project parties (including the Construction Sub-Contractor, the Operating Sub-Contractor and the SRF Offtaker);</li> <li>(ii) summary of Project performance in the previous Contract Year;</li> <li>(iii) statement of compliance with the Facility Agreement;</li> </ul> </li> </ul>

(b) **On each payment date (or as otherwise reasonably required)**

- (i) updated Financial Model; and
- (ii) updated annual budget;

(c) **Works period (prior to Service Period)**

- (i) monthly construction reports; and
- (ii) quarterly management accounts;

(d) **Service Period**

- (i) quarterly operating reports; and
- (ii) quarterly management accounts;

**Interim Service**

means the acceptance and handling of Contract Waste at the Site (Grange Lane), any Interim Service Facility or any Cont ingency Delivery Point during the Interim Service Period;

**Interim Service Facility**

means a facility which forms part of the Interim Service;

**Interim Service Fee**

shall have the meaning given to ISF in Part 1 of Schedule 4 (Payment Mechanism);

**Interim Service Mileage Deductions**

shall have the meaning given to ISMD in Part 1 (Commissioning Payment and Interim Service Payment) of Schedule 4 (Payment Mechanism) where the I nterim Service Mileage Deductions are calculated specifically for Contract Month, m -1, and will follow the same calculation for any Contract Month, m;

<b>Interim Service Payment</b>	shall have the meaning given to ISP in Part 1 (Commissioning Payment and Interim Service Payment) of Schedule 4 (Payment Mechanism) where the Interim Service Payment is calculated specifically for Contract Month, m-1, and will follow the same calculation for any Contract Month, m;
<b>Interim Service Performance Deductions</b>	shall have the meaning given to ISD in Part 1 (Commissioning Payment and Interim Service Payment) of Schedule 4 (Payment Mechanism) where the Interim Service Performance Deductions are calculated specifically for Contract Month, m -1, and will follow the same calculation for any Contract Month, m;
<b>Interim Service Period</b>	means the period from 1 July 2015 until the earlier of the Termination Date and the Service Commencement Date;
<b>Interim Service Plan</b>	has the meaning set out in sections 22.7 to 22.9 (inclusive) of Schedule 3 (Service Delivery Plan);
<b>Intervening Contract</b>	means a contract with the Councils for the provision of services which are similar to the Service, at times after they are provided under a contract with the First Contractor and before they are to be provided by the Contractor;
<b>IRR</b>	means internal rate of return;

<b>Irrecoverable VAT</b>	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 Service or any other the obligations or provisions under the 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 H M Revenue and Customs in respect of such input VAT;
<b>ISTAT Inflation Index</b>	has the meaning set out in Schedule 43 (EPC Escalation);
<b>ITSAD Facility</b>	means the ITS Facility and the AD Facility including associated plant and amenities to be designed, constructed, tested and commissioned at the Site (Bolton Road) pursuant to this Contract;
<b>ITS Facility</b>	means the twin line mechanical biological treatment plant (together with all its supporting infrastructure) with a process capacity of two hundred and fifty thousand (250,000) tonnes per annum designed to shred and biodry incoming wastes and including a high recycling refinement section to Recover Recyclable Materials (including but not limited to metals, plastics, glass and stone, fines) and to produce SRF) to be designed, constructed, tested and commissioned at the Site (Bolton Road) pursuant to the Contract;
<b>ITS System</b>	has the meaning given to it in the Ecodeco Operational Licence;
<b>JLI</b>	means John Laing Investments Limited a company incorporated under the laws of England and Wales with registered number 00780225, whose registered office is at Allington House, 150 Victoria Street, London SW1E 5LB;

**JLI Net Worth**

is calculated as follows:

(a) the total assets of JLI,

minus

(b) the total liabilities of JLI after eliminating all liabilities arising from parent company funding,

all as reflected in the most recent audited balance sheet of JLI at the time of determination provided such audit of the relevant financial statements is unqualified;

**Joint Insurance Account**

means the joint bank account in the names of the Councils and the Contractor, having account number 00420706 and sort code 30 -00-02 and held with Lloyds TSB Bank PLC;

**Joint Insurance Account Agreement**

means the agreement in the form set out in Schedule 30 (Joint Insurance Account Agreement);

**Joint Ventures**

means, for the purposes of Clause 122 (Net Worth Test), any joint venture entity or business which is a joint venture or an associate for the purposes of Financial Reporting Standard 9 (as issued by the Financial Accounting Standards Board 1997, "Financial Reporting Standard 9: Associates and Joint Ventures") but in respect of which neither Shanks Group plc nor any of its Subsidiaries is able to exercise legal control in such a way as to be able to require that surplus cashflow generated by such entity is remitted to Shanks Group plc and/or NW Subsidiary in a manner to allow such cash to be freely available to Shanks Group plc and/or its NW Subsidiaries for the purposes of servicing Financial Indebtedness;

<b>Judicial Review Challenge</b>	means proceedings brought under Part 54 of the Civil Procedure Rules or by any party other than the Contractor under section 288 of the Planning Act in respect of the s36 Consent or in respect of the Planning Permission;
<b>Judicial Review Injunction</b>	means any interim injunction or interim mandatory order granted in connection with or as part of a Judicial Review Challenge which prevents, delays or hinders or otherwise affects the performance of the Works or Service;
<b>Judicial Review Proceedings</b>	has the meaning set out in Clause 20.5.1 (Planning Permissions);
<b>Junior Debt</b>	means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;
<b>Key Component</b>	means: <ul style="list-style-type: none"> <li>(a) in respect of the Works: primary shredder, trommel, cranes, MRF components, long press, grab, gas engine and transformers; and</li> <li>(b) in respect of the Ferrybridge Works: boilers, turbines, transformers, cranes, stack and flue gas treatment equipment;</li> </ul>
<b>Key Financial Indicators</b>	means the key financial indicators set out in Clause 120.9 (Key Financial Indicators);

<b>Landfill</b>	(a) for the purposes of Landfill Tax has the meaning attributed to it by section 65(1) of the Finance Act 1996; and  (b) for all other purposes has the meaning given to it in Waste Emissions Trading Act 2003,  and " <b>Landfilled</b> " and " <b>Landfilling</b> " shall be interpreted accordingly;
<b>Landfill Directive</b>	has the meaning given in Council Directive 1999/31/EC;
<b>Landfill Diversion Target</b>	means the target for diverting Contract Waste from Landfill in the relevant Contract Year as set out in Table 3.3.1 of Part 3 of Schedule 1 (Output Specification);
<b>Landfill Gatefee</b>	shall have the meaning given to LGF in Part 11 of Schedule 4 (Payment Mechanism);
<b>Landfill Gatefee Payment</b>	shall have the meaning given to LGP in Part 11 of Schedule 4 (Payment Mechanism);
<b>Landfill Haulage Rate</b>	shall have the meaning given to LHR in Part 11 of Schedule 4 (Payment Mechanism);
<b>Landfill Site Mileage</b>	shall have the meaning given to LSM in Part 11 of Schedule 4 (Payment Mechanism);
<b>Landfill Tax</b>	has the meaning set out in section 39(1) of the Finance Act 1996;
<b>Landfill Tax Gain Sharing Payment</b>	has the meaning as defined in paragraph 56 of Schedule 4 (Payment Mechanism);
<b>Landfill Tax Payment</b>	means the amount calculated in accordance with Part 10 of Schedule 4 (Payment Mechanism);

**Landfill Tax Sharing Payment** means the amount calculated in accordance with Part 10 of Schedule 4 (Payment Mechanism);

**Laws** means any applicable law, statute, statutory instrument, standards, law, proclamation, order, resolution, regulation, notice, judgement, determination, rule by -law, directive, code of conduct or other instrument or requirement in each case as aforesaid having the force of law within any national or local jurisdiction issued, declared, passed or given effect to in any manner by H M Parliament, the legislative making institutions of the European Union, any court, tribunal or other person or body exercising judicial functions or any Commission of Inquiry, local authority, statutory undertaker or Relevant Authority or any other body or person having such powers and any exercise of the Royal Prerogative and " **Law**" shall be interpreted accordingly;

**Lead Authority** means Rotherham Borough Council or such other of the Councils as the Contractor shall have been notified by the Councils in writing has been appointed Lead Authority pursuant to the Inter - Authority Agreement;

**Leading Counsel (Planning)** means counsel experienced in town and country planning matters and practising at the town and country planning bar who:

- (a) shall be agreed upon by the Parties or, in default of agreement shall be of fifteen (15) Years' call and identified by the Chairman of the Planning and Environmental Bar Association or his deputy; and
- (b) accepts instructions to provide an opinion pursuant to Clause 20 (Planning Permissions);

<b>Leading Counsel (Permit)</b>	has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>Lease (Bolton Road)</b>	means the Lease in the agreed form set out in Part 1 of Schedule 14 (Property Agreements);
<b>Lease (Grange Lane)</b>	means the Lease in the agreed form set out in Part 2 of Schedule 14 (Property Agreements);
<b>Lease (Grange Lane) Completion Date</b>	means 1 July 2015 or the Service Commencement Date as determined in accordance with Clause 18.6 (Grant of Leases);
<b>Leases</b>	means the Lease (Bolton Road) and the Lease (Grange Lane) in the form set out in Parts 1 and 2 of Schedule 14 (Property Agreements) and " Lease" means either of them;
<b>Legal Requirements</b>	means the requirements of any present or future Legislation;
<b>Legislation</b>	means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;
<b>Letter of Credit</b>	has the meaning given to Acceptable Security in the Equity Subscription Agreement;
<b>Letter of Credit (Contingent Loan Agreement)</b>	means a thirty million pound (£30,000,000) letter of credit in respect of the obligations of Shanks PFI Investments Limited (registered number 03158124) under the Contingent Loan Agreement;
<b>Levy Exemption Certificate</b>	means a certificate issued pursuant to the Levy Exemptions Certificate Regime;

<b>Levy Exemption Certificate Regime</b>	means the legislative or regulatory regime established by the Climate Change Levy (General) Regulations 2001 (SI 2001/83 8) (as amended), the primary legislation under which such regulations are made and any other subordinate legislation or guidance thereto;
<b>LGPS</b>	means the Local Government Pension Scheme;
<b>Liability Period</b>	means each consecutive period of five (5) Years during the Contract Period, where the first liability period shall be the five (5) Year period commencing on date of this Contract, the second liability period shall be the five (5) Year period commencing on expiry of the first liability period, the third liability period shall be the five (5) Year period commencing on expiry of the second liability period and so on;
<b>Liaison Committee</b>	has the meaning given to it in paragraph 1.1 of Schedule 34 (Liaison Procedure);
<b>LIBOR</b>	means the London Interbank Offered Rate;
<b>Liquid Market</b>	means that there are sufficient willing parties (being at least two (2) parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to the Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value provided always that any vehicle controlled and established by the Senior Lenders specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether there are sufficient willing parties in the market for such purposes;

<b>Loan Life Cover Ratio</b>	has the meaning given to such term in the Senior Financing Agreements;
<b>Local Authority</b>	means any local authority or WCA other than the Councils;
<b>Local Emergency Plan</b>	the plan produced by the Contractor and approved in writing by the Councils (at their discretion) for responding to and dealing with civil defence, emergencies and disasters as updated or amended with the agreement of the Councils from time to time;
<b>Local Government Pension Scheme</b>	means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time;
<b>Lock-In Period</b>	means the period expiring on the date that is twelve (12) Months after the Service Commencement Date;
<b>Long Stop Date</b>	<b>[REDACTED]</b>
<b>Losses</b>	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or at common law or in connection with judgments, proceedings, internal costs or demands;
<b>LRA Account</b>	has the meaning given to it in the Facility Agreement;
<b>M&amp;E (Celtic Bioenergy) Package</b>	means the design and build activities set out in the AD Construction Contract (as defined in the Construction Contract);

<b>M&amp;E (Ecodeco) Package</b>	<b>(Process Plant</b>	means the design and build activities set out in the Technology Sub-Contract (as defined in the Construction Contract);
<b>Maintenance Notice</b>	<b>Rectification</b>	has the meaning given to it in Clause 29.4.6 (Rights of Access);
<b>Maintenance Plan</b>	<b>Rectification</b>	has the meaning given to it in Clause 29.4.6 (Rights of Access);
<b>Management System</b>	<b>Information</b>	means the system for recording, managing and monitoring the Works and the Service and all payment related information in relation to the Project produced by the Contractor in accordance with Good Industry Practice and approved by the Councils as referred to in paragraph 3.15 of Schedule 1 (Output Specification);
<b>Market Tested Service</b>		means the Landfill Gatefee and the Landfill Haulage Rate;
<b>Market Testing</b>		means the process described in Clause 60 (Market Testing) and the term " <b>Market Tested</b> " shall be construed accordingly;
<b>Market Testing Date</b>		means 1 August 2018 and then every five (5) Years from the date of conclusion of the previous Market Testing;
<b>Market Value Deduction Amount</b>		means for any Month or part of a Month, an amount equal to the aggregate of: <ul style="list-style-type: none"> <li>(a) the Mileage Deductions that were made to the Unitary Charge under Schedule 4 (Payment Mechanism);</li> </ul>

(b) any other amounts which would have been payable by the Contractor to the Councils in accordance with Clause 38.3 (Indemnity for Non-Acceptance) had such indemnity been in effect,

in the Month immediately preceding the Termination Date, less an amount equal to the aggregate of:

- (i) any Mileage Deductions;
- (ii) any other amounts which would have been payable by the Contractor to the Councils in accordance with Clause 38.3 (Indemnity for Non -Acceptance) had such indemnity been in effect,

that were made for any performance failures at the Termination Date which have subsequently been remedied whether as a result of the Councils incurring Rectification Costs or otherwise;

**Marketing Plan**

has the meaning given in paragraph 11.4 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);

**Maximum Tonnage**

means two hundred and eighty thousand (280,000) tonnes of Contract Waste per Contract Year pro rata for the Contract Year in which Service Commencement occurs or the Final Contract Year (as the case may be);

**Maximum Unitary Charge**

means, in respect of a Month, the Monthly Unitary Charge payable in respect of that Month before any Deductions under the Payment Mechanism but allowing for indexation in accordance with Schedule 4 (Payment Mechanism);

<b>Medium or High Value Change</b>	has the meaning as set out in Schedule 32 (Change Protocol);
<b>Mileage Deduction</b>	means the amount calculated in accordance with Part 8 of Schedule 4 (Payment Mechanism);
<b>Mileage Deductions Cap</b>	shall have the meaning given to in Appendix 1 in Part 13 of Schedule 4 (Payment Mechanism);
<b>Mobilisation Plan</b>	has the meaning given in paragraph 4.2 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);
<b>Monitoring Frequency</b>	has the meaning given to it in Schedule 5 (Performance and Monitoring);
<b>Month</b>	means a calendar month;
<b>Monthly Adjustments</b>	shall have the meaning given to MA in Part 2 of Schedule 4 (Payment Mechanism);
<b>Monthly Commissioning Data Report</b>	has the meaning given in paragraph 21.7 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);
<b>Monthly Construction Progress Report</b>	has the meaning given in paragraph 17.1 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);
<b>Monthly Invoice</b>	has the meaning given in Clause 56.2.2 (Invoicing and Payment Arrangements);
<b>Monthly Service Report</b>	has the meaning given in paragraph 15.8 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);
<b>Monthly Unitary Charge</b>	means the calculation set out in Part 2 of Schedule 4 (Payment Mechanism);
<b>MRF</b>	means materials recovery facility;

<b>MSW</b>	means waste collected by or on behalf of a local authority;
<b>MSW Diversion Target</b>	means the target for diverting MSW delivered to the Contractor from Landfill in the relevant Contract Year as set out in column (d) of Table 3.3.1(a) of Part 3 of Schedule 1 (Output Specification);
<b>[REDACTED]</b>	<b>[REDACTED]</b>
<b>MSW to Landfill Diversion %</b>	means the MSW Diversion Target % for the relevant Contract Year as set out in Appendix 3 to Schedule 4 (Payment Mechanism);
<b>MVC Confirmation Notice</b>	means a Confirmation Notice (as such term is defined in Schedule 32 (Change Protocol)) being issued by the Councils pursuant to paragraph 4.1 of Part 3 of Schedule 32 (Change Protocol);
<b>Named Employee</b>	has the meaning set out in Clause 76.2.1 (Criminal Records Bureau);
<b>National Indicators</b>	means the indicators set out in "The New Performance Framework for Local Authorities and Local Authority Partnerships: Single Set of National Indicators" published by the Department for Communities and Local Government in October 2007, as may be varied, superseded or replaced from time to time;
<b>National Non-Domestic Rates</b>	means the National Non-Domestic Rates (or successor or replacement thereof) as contained in the Local Government Finance Act 1988;
<b>NCWP or Non-Contract Waste Plan</b>	has the meaning given in paragraph 9.2 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);

<b>Necessary Consents</b>	means all rights, agreements, approvals, necessary consents, permits, licenses, facilities, permissions and certificates lawfully and necessarily required from any competent regulatory or licensing authority or any other persons whatsoever in connection with the Works or the Service and required for the performance of any of the Contractor's obligations under this Contract as varied from time to time;
<b>Necessary Consents List</b>	has the meaning set out in Clause 21.5.1 (Necessary Consents);
<b>Net Ground Conditions Costs</b>	has the meaning given to it in Clause 19.9.1(f) (Adverse Ground Conditions and Contamination);
<b>Net Present Value</b>	means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;
<b>Net Worth</b>	means, at the time of any determination (without depreciation): <ul style="list-style-type: none"> <li>(a) the total assets of Shanks Group plc shown as assets on its consolidated balance sheet after eliminating all amounts properly attributable to the assets of Project Companies (but including those of Joint Ventures) and after eliminating all amounts properly attributable to minority interests, if any, in the assets of Subsidiaries; plus</li> </ul>

- (b) an amount sufficient to offset in full the amount of any pension deficit or, as the case may be, minus an amount sufficient to offset in full the amount of any pension surplus, in either case reflected in the relevant balance sheet; minus
- (c) the total liabilities of Shanks Group plc after eliminating all liabilities properly attributable to the assets of the Project Companies (but including those of Joint Ventures) shown as liabilities on the face of its consolidated balance sheet (ignoring the notes thereto); minus/plus (as the case may be)
- (d) the sum of deferred tax liabilities arising from the pension scheme or, the sum of deferred tax assets arising from the pension scheme as recognised in the relevant balance sheet,

all as reflected in the most recent consolidated balance sheet of Shanks Group plc most recent at the time of the determination;

**Net Worth Test**

means the test set out at Clause 122 (Net Worth Test);

**New Contract**

means an agreement on the same terms and conditions as this Contract at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated prior to the Service Commencement Date, then the Planned Service Commencement Date shall be extended by a period to allow a New Contractor to achieve Service Commencement;

- (b) any warning notices, Final Warning Notices, any amount accumulated pursuant to Ratchets, Deductions and Performance Points shall, for the purposes of termination only, and without prejudice to the rights of the Councils to make financial deductions, be cancelled;
- (c) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date;
- (d) the inclusion of a provision confirming that in the event that any New Contractor Rectification Works are required (in relation to a Facility that has, at the Termination Date, had the Acceptance Test Certificate issued) to enable the New Contractor to achieve the full specification and standards required by this Contract then provided the New Contractor complies with the New Contractor Rectification Plan for the New Contractor Rectification Period the Councils shall not exercise their rights to terminate the Contract under Clause 83 (Termination on Contractor Default) by reason of any failure to achieve some or all of the specification and/or standards required by this Contract during the New Contractor Rectification Period solely as a consequence of the New Contractor Rectification Works being required. Such provision shall for the avoidance of doubt not affect the Councils' entitlement to make adjustments and/or Deductions in accordance with Schedule 4 (Payment Mechanism) as a result of failure to achieve the specification and/or standards required by this Contract during the New Contractor Rectification Period;

and

- (e) any other amendments which do not adversely affect the Contractor;

**New Contractor** means the person who has entered or who will enter into the New Contract with the Councils;

**New Contractor Rectification Period** means such period as is reasonable in the circumstances from the date of the New Contract to allow the New Contractor to carry out the New Contractor Rectification Works as shall be agreed by the Parties or in default of agreement determined pursuant to Clause 104 (Dispute Resolution);

**New Contractor Rectification Plan** means the rectification plan to be implemented by the New Contractor setting out the New Contractor Rectification Works and timescales;

**New Contractor Rectification Works** means such works (including new and rectification works) and implementation of such new systems as shall be required to enable the New Contractor to achieve the standards and targets set out in Schedule 1 (Output Specification);

**New Employees** means those new employees employed by the Contractor to provide the Service who will be working alongside the Transferring Employees;

**Non-Acceptance**

means that in relation to deliveries of the tonnages of Contract Waste notified pursuant to Clause 35.3.5 (Testing and Commissioning), or in relation to all deliveries of Contract Waste during the Interim Service Period and the Service Period, the Contractor has not accepted the relevant Contract Waste at the entrance of the Facility or Contingency Delivery Point (or Interim Service Facility in relation to the Interim Service) to which such waste was delivered by or on behalf of the Councils (as the case may be) provided that for the purposes of this definition:

- (a) the Contractor will be deemed to have not accepted such waste where one (1) or more Authorised Vehicles are not able to gain access to the entrance to the Facility or Contingency Delivery Point (as the case may be) where the Contractor has failed to implement the Contingency Plan; and
- (b) Non-Acceptance will not arise in relation to loads which the Contractor has not accepted pursuant to express rejection rights in the Waste Acceptance Protocol,

and "Not Accept" and "Not Accepted" will be construed accordingly;

**Non-Authorised Vehicle Acceptance Procedure**

means the procedure as set out in Schedule 40 (Waste Acceptance Protocol);

**Non-Conforming Waste**

means Contract Waste defined as such in the Waste Acceptance Protocol;

**Non-Contract Waste**

means any waste delivered to the Facilities by or on behalf of the Councils which may be accepted pursuant to the Waste Acceptance Protocol but which is not Contract Waste;

<b>Non-Ferrybridge Service</b>	means all elements of the Service, save for those for which the SRF Offtaker is responsible under the terms of the SRF Offtake Contract;
<b>Non Refuse Collection Vehicle</b>	means an Authorised Vehicle which is not a Refuse Collection Vehicle;
<b>Normal Opening Hours</b>	has the meaning given in paragraph 6.3 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);
<b>Notice Date</b>	means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the Parties pursuant to Clause 84.3 (No Retendering Procedure);
<b>Notice of Non-Completion</b>	has the meaning set out in Clause 35.3.11(b) (Certification of Completion of the Works);
<b>Notifiable Financings</b>	shall mean any Refinancing described in limb (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the Contractor's or any Associated Company's ability to carry out any such refinancing or other arrangement which would have a similar effect;
<b>NW Subsidiary</b>	has the meaning given to Subsidiary, provided that, for the purposes of Clause 122 (Net Worth Test), only: <ul style="list-style-type: none"> <li>(a) this definition shall only include a Project Company for the purposes of preparing the consolidated financial statements of the Operating Sub-Contractor's Guarantor; and</li> </ul>

- (b) notwithstanding the foregoing, for the purposes of determining the Net Worth, the interest of Shanks Group plc and its Subsidiaries in the assets and liabilities of a Joint Venture will be included as required by IFRS;

**Off-Site Expenditure**

means any costs or expenses relating to Off-Site Works to the extent such costs or expenses have an aggregate value in excess of:

- (a) in respect of the ITSAD Facility, one hundred and fifty thousand pounds (£150,000); or
- (b) in respect of the Ferrybridge Facility, two million pounds (£2,000,000);

**Off-Site Works**

means any works relating to land outside the Site (Bolton Road) or the Ferrybridge Facility in order to comply with or fulfil any requirement or obligation or condition of any Planning Permission or the s36 Consent, as the case may be, associated planning agreement or agreement with any highway authority; or Relevant Authority (including agreements under section 38 of the Highways Act 1980, section 104 of the Water Industry Act 1991 and section 106 of the Town and Country Planning Act 1990), but disregarding for the purposes of this definition:

- (a) in the case of the Site (Bolton Road), the works set out at Part 1 of Schedule 41 (Off-Site Works not amounting to Off-Site Expenditure); and
- (b) in the case of the Ferrybridge Facility, the works set out at Part 2 of Schedule 41 (Off-Site Works not amounting to Off-Site Expenditure);

<b>Off Take Contracts</b>	means the contract or contracts for the sale of biocompost produced at the AD Facility and any other contracts for the outputs of the ITS Facility which have a term of five (5) Years or more (except for the SRF Offtake Contract);
<b>O&amp;M Reconciliation Amount</b>	has the meaning given to in Clause 79.8 [REDACTED];
<b>Open Book Basis</b>	<p>means an accounting system in accordance with best accountancy practice available at the time of rectifying the Contamination and/or Adverse Ground Conditions showing in detail:</p> <ul style="list-style-type: none"> <li>(a) the build up to any cost (which in any event shall be calculated on a pass through cost basis and not include additional overheads or margins by the Contractor or the Construction Sub-Contractor or their Sub-Contractors) which cost may include but not be limited to any preliminary sums;</li> <li>(b) direct labour and indirect labour costs all analysed to identify appropriate categories such as administration, applications for payment received from and payments made to the Construction Sub-Contractor and its sub-contractors, invoices from and payments made to the Professional Team and/or any external advisors;</li> <li>(c) the cashflow analysis for the activities performed under Clause 19 (Adverse Contamination and Ground Conditions); and</li> <li>(d) any revenue expenditure not detailed above at limbs (a) to (c) and all such details shall be made available to the Councils as required on</li> </ul>

reasonable prior request;

<b>Operating Manuals</b>	means the operating manuals required to explain the operation and maintenance of the ITSAD Facility and to provide the elements of the Non -Ferrybridge Services which will be carried out at the I TSAD Facility;
<b>Operating Sub-Contract</b>	the contract between the Contractor and the Operating Sub-Contractor relating to the Service, as amended from time to time in accordance with the terms of this Contract;
<b>Operating Sub-Contract Dispute</b>	has the meaning set out in Clause 104.15.2 (Dispute Resolution);
<b>Operating Sub-Contractor</b>	means Shanks Waste Management Limited or such other person appointed from time to time to carry out the Service in accordance with the terms of this Contract;
<b>Operating Sub-Contractor's Guarantor</b>	means Shanks Group plc (incorporated in Scotland with number SC 077438) or any replacement guarantor of the Operator Sub -Contractor's obligations and liabilities under the Operating Sub -Contract;
<b>Operational Panel</b>	has the meaning given to it in Clause 104.4.1 (Dispute Resolution);
<b>Operator SRF Termination Amount</b>	has the meaning given to such term in the Operating Sub-Contract;
<b>Option Period</b>	has the meaning set out in Clause 64.17.3 (Insurance);

<b>Original Employee</b>	means those employees of the Councils who as a result of the application of the Regulations, in relation to what was done for the purposes of carrying out the Contract between the Councils and the First Contractor, became employees of someone other than the Councils;
<b>Original Group Accounts</b>	means the audited consolidated accounts of Shanks Group plc provided to the Councils as at the Commencement Date;
<b>Original Senior Commitment</b>	means the amount committed under the Senior Financing Agreements as at Financial Close (as adjusted to take into account any Qualifying Variation);
<b>Original Shareholders</b>	means Shanks PFI Investments Limited (company number 03158124) and SSE Generation Limited (company number 02310571);
<b>Other Adjustments</b>	shall have the meaning given to OA in Part 12 of Schedule 4 (Payment Mechanism);
<b>Outline Commissioning Plan</b>	means the plan provided by the Contractor in accordance with the Output Specification as set out in the Works Delivery Plan;
<b>Outline Substitute Waste Plan</b>	means the plan contained in Schedule 23 (Outline Substitute Waste Plan);
<b>Output Specification</b>	means the specification contained in Schedule 1 (Output Specification) setting out the Councils' requirements;
<b>Outstanding Principal</b>	means the principal amount outstanding at the Termination Date of each borrowing under the Senior Financing Agreements (other than any borrowing under the Equity Bridge Facility);

<b>Overview and Scrutiny Meetings</b>	means meetings of the Councils' overview and scrutiny panel(s) held in accordance with the provisions of the Local Government Act 2000;
<b>Parties</b>	means the Councils and the Contractor and " <b>Party</b> " shall mean any of them;
<b>Pay</b>	the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which a Transferring Employee receives either directly or indirectly in respect of his or her employment with a Council;
<b>Payment Mechanism</b>	means the mechanism for payment and performance of the Contractor produced by the Councils as set out in Schedule 4 (Payment Mechanism);
<b>Performance Bond</b>	has the meaning given to such term in the Construction Contract (as the same may be replaced or extended from time to time);
<b>Performance Deduction</b>	means the amount calculated in accordance with Part 6 of Schedule 4 (Payment Mechanism);
<b>Performance Measurement Framework</b>	has the meaning given to it in Figure 1 of Schedule 5 (Performance and Monitoring)
<b>Performance Monitoring Report</b>	has the meaning given in Schedule 5 (Performance and Monitoring);
<b>Performance Point</b>	has the meaning given in Schedule 5 (Performance and Monitoring);
<b>Performance Standards</b>	means the parameters outlining failure to achieve the requirements of the Output Specification as listed in Schedule 5 (Performance and Monitoring);

<b>Performance Benchmarking Exercise</b>	<b>Standard</b>	means the benchmarking exercise to be undertaken in relation to the Service in accordance with Clause 61.4 (Performance Standard Benchmarking);
<b>Performance Failure</b>	<b>Standard</b>	means each event measured in accordance with the Performance Standard monitoring and reporting process where the Contractor fails to meet a Performance Standard;
<b>Permit Challenge Period</b>		has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>Permit Deemed Refusal</b>		has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>Permit Delay</b>		has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>Permit Excess Costs</b>		has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>Permit Long Stop Date</b>		has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>Permit Proceedings</b>		has the meaning given to it in Schedule 37 (Approach to Permit Risk);
<b>Permitted Borrowing</b>		means, without double counting, any: <ul style="list-style-type: none"> <li>(a) advance to the Contractor under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of Clause 9.3.2(a));</li> <li>(b) Additional Permitted Borrowing;</li> <li>(c) Not Used; and</li> </ul>

(d) interest on the above amounts and (disregarding any amendments that have not been approved for the purposes of Clause 9.3.2(a)), in respect of the original Senior Financing Agreements only (as entered into at the date of this Contract, prior to any subsequent amendment), other amounts accrued or payable under the terms of such original Senior Financing Agreements,

except where the amount referred to in limbs (a) to (d) above is or is being used to fund a payment of Default Interest or any Additional Permitted Borrowing;

**Permitting Authority**

means the relevant competent regulatory authority for the purposes of the issuing of an Environmental Permit;

**Persistent Breach**

means a breach for which a Final Warning Notice (referred to in Clause 82.2 (Persistent Breach)) has been issued, which has continued for more than thirty (30) Days or recurred in three (3) or more Months within the six (6) Month period after the date on which such Final Warning Notice is served on the Contractor;

**Personal Data**

means personal data as defined in the DPA which is supplied to the Contractor by the Councils or obtained by the Contractor in the course of performing the Service;

**PFI**

means the Government's Private Finance Initiative or any similar replacement initiative;

**PFI Contractor**

means a person that has contracted with the Government, a local authority or other public or statutory body to provide services under the PFI;

<b>Physical Damage Policies</b>	has the meaning set out in Clause 64.15 (Reinstatement);
<b>Planned Maintenance</b>	means the planned maintenance requirements described in Clause 52 (Maintenance) and Schedule 13 (Planned Maintenance), as varied from time to time in accordance with this Contract;
<b>Planned Maintenance Plan</b>	means a plan of Planned Maintenance to be submitted by the Contractor to the Councils' Representative in accordance with the provisions of Schedule 13 (Planned Maintenance);
<b>Planned Maintenance Programme</b>	means a programme of Planned Maintenance to be submitted by the Contractor to the Councils' Representative in accordance with the provisions of Schedule 13 (Planned Maintenance);
<b>Planned Readiness Date</b>	means the date falling six (6) Months prior to the Planned Service Commencement Date or such other date as the Parties may agree or as amended from time to time in accordance with the terms of this Contract;
<b>Planned Service Commencement Date</b>	means 1 July 2015 or such later date as the Parties may agree or as amended from time to time in accordance with the terms of this Contract;
<b>Planned Works Commencement Date</b>	means 1 October 2012 or such later date as the Parties may agree or as amended from time to time in accordance with the terms of this Contract;
<b>Planning Act</b>	means the Town and Country Planning Act 1990;

<b>Planning Agreement</b>	means an agreement made pursuant to: <ul style="list-style-type: none"> <li>(a) section 106 of the Town and Country Planning Act 1990; or</li> <li>(b) section 38 or section 278 of the Highways Act 1980; or</li> <li>(c) section 104 of the Water Industry Act 1991 or any other provision of a similar intent within the meaning of the Water Act 1989, with an appropriate authority for the supply of water or the drainage of foul water from the relevant Site;</li> </ul>
<b>Planning Application</b>	means any planning application submitted or to be submitted by or on behalf of the Contractor and/or any Sub-Contractor pursuant to Clause 20 (Planning Permissions) to the appropriate Planning Authority in respect of the Works (or any part of the Works) (including any amendment to such application) pursuant to the Planning Act;
<b>Planning Authority</b>	means the relevant authority for the purposes of the Planning Act;
<b>Planning Long Stop Date (Ferrybridge)</b>	means 1 May 2013;
<b>Planning Long Stop Date (ITSAD)</b>	means 1 October 2013;
<b>Planning Permission</b>	means any planning permission granted pursuant to any Planning Application for the Works being in every case either: <ul style="list-style-type: none"> <li>(a) detailed planning permission; or</li> </ul>

- (b) outline planning permission together with such approvals of reserved matters as are required to enable the Contractor to commence the Works,

in every case granted by the Planning Authority, the Secretary of State or an inspector appointed by him for that purpose;

**Post Termination Service Amount**

means for the purposes of Clause 84.2 (Retendering Procedure), for the whole or any part of a Month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Unitary Charge:

- (a) assuming that the higher of: (i) actual average monthly tonnage of waste accepted by the Contractor at a Facility or a Contingency Delivery Point over the previous twelve (12) Months and (ii) Guaranteed Minimum Tonnage is delivered, pro rata during such period, which would have been payable in that Month under the Contract;

- (b) including any Third Party Revenue actually received by the Councils less any costs (and depreciation and other charges) incurred in generating such Third Party Revenue had this Contract not been terminated,

less an amount equal to the aggregate of:

- (i) the Market Value Deduction Amount for that Month;
- (ii) the Rectification Costs incurred by the Councils in that Month;
- (iii) any Councils' share of Third Party Revenue; and

- (iv) (where relevant), the amount by which the Post Termination Service Amount for the previous Month was less than zero (0);

**Pre-Refinancing Equity IRR** means the nominal post -tax (i.e. post Contractor tax pre Shareholder tax for the Contractor but pre -tax for the Shareholders) Equity IRR calculated immediately prior to the Refinancing;

**Price Proposal** has the meaning set out in Clause 60.5 (Adjustment to Unitary Charge);

**Proceedings** means any of the following:

- (a) a calling in or determination by the Secretary of State or any inspector appointed by him of the Planning Application under section 77 of the Planning Act;
  - (i) an appeal against refusal (including Deemed Refusal) of any Planning Application;
  - (ii) an application seeking to remove or modify any conditions imposed by the Planning Permission;
  - (iii) an appeal against refusal including Deemed Refusal of any application seeking to remove or modify any conditions imposed by the Planning Permission; and
  - (iv) an application to the court pursuant to section 288 of the Planning Act;

**Product** means material prepared by the Contractor for presentation to the market for beneficial use;

**Professional Team**

means:

- (a) Birse Civils Limited, a company incorporated under the laws of England and Wales with company number 00637008 whose registered office is at 3 Grimston Grange, Sherburn Road, Tadcaster, North Yorkshire LS24 9BX; and
- (b) Jones Celtic Bioenergy Limited, a company incorporated in Ireland with company number 503569 and having its registered office is at Waterways House, Grand Canal Quay, Dublin 2, Ireland; and
- (c) Sistema Ecodeco UK Limited, a company incorporated under the laws of England and Wales with company number 05049191 whose registered office is at Matrix House, 12 -16 Lionel Road, Canvey Island, Essex SS8 9DE;

**Prohibited Act**

means:

- (a) offering giving or agreeing to give to any servant of the Councils any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Councils; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Councils;

- (b) entering into this Contract or any other contract with the Councils in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Councils;
- (c) committing any offence:
  - (i) under the Bribery Act 2010 or the Prevention of Corruption Acts 1889 - 1916;
  - (ii) under Legislation creating offences in respect of fraudulent acts, or
  - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Councils; or
  - (iv) defrauding or attempting to defraud or conspiring to defraud the Councils;

**Project** means the provision of waste management services to the Councils by the Contractor as contemplated by this Contract including the carrying out of the Works and the provision of the Service;

**Project Accounts** means accounts referred to in and required to be established under the Senior Financing Agreements;

**Project Company** means, for the purposes of Clause 122 (Net Worth Test), any NW Subsidiary or subsidiary undertaking of Shanks Group plc:

- (a) tendering for or engaging in the provision of waste management services or similar or complementary business (as " **Project Operating Company**"); or
- (b) all or substantially all of whose business is holding investments in a Project Operating Company (whether by way of shares, loan or otherwise),

provided that:

- (i) neither Shanks Group plc nor any of its Subsidiaries (excluding any such Project Company) has liability in excess of fifty thousand pounds (£50,000) (or its equivalent) for any Financial Indebtedness of such company;
- (ii) neither Shanks Group plc nor any of its Subsidiaries (excluding any such Project Company) has liability in excess of five hundred thousand pounds (£500,000) (or its equivalent) for any Financial Indebtedness of all Project Companies in aggregate other than liabilities which solely arise in connection:
  - (A) with the Security Interests and are limited to the assets upon which such Security Interests are attached; and
  - (B) with the charge dated 9 June 2004 granted by Shanks Waste Management Limited in favour of ABN AMRO Bank N.V.;

- (iii) neither Shanks Group plc nor any of its Subsidiaries has given any form of assurance, undertaking or support other than where the recourse is limited to a claim for damages (not being liquidated damages required to be calculated in a specified way in excess of five hundred thousand pounds (£500,000) (or its equivalent) for any Project Company) for breach of an obligation by any Project Company provided that the obligation is not in any way a guarantee, indemnity or other assurance against financial loss or an obligation to ensure compliance of the Project Company with a financial ratio or other test of financial condition; and
- (iv) all or substantially all of the relevant entity's business (either directly or by way of project operating companies in which it holds investments) is consistent with the general business of the Group; and
- (v) such company shall at all times be considered a Project Company for the purposes of this Contract from the date that financial statements in respect of Shanks Group plc are first delivered by the Contractor following the acquisition of an interest in or incorporation of such company by Shanks Group plc or any of its Subsidiaries;

<b>Project Data</b>	means in relation to the Facilities only all data, materials and documents of any nature acquired or brought into existence in any manner whatsoever by the Contractor for the purposes of the Project and which might reasonably be required by the Councils for the purposes of exercising their rights or performing their obligations or statutory duties, except for off-the-shelf software (including weighbridge and tracking systems) which the Contractor is not entitled to assign or transfer;
<b>Project Documents</b>	means this Contract, the Direct Agreement, the SRF Offtake Councils Direct Agreement, the Independent Certifier's Deed of Appointment, the Collateral Warranties and any other agreements entered into by the Contractor and the Councils which are listed in Schedule 24 (Project Documents);
<b>Project Intellectual Property</b>	means the Intellectual Property which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by the Contractor or any Sub-Contractor or by other third parties (for and on behalf of or for the benefit of the Contractor) for the purposes of the design, construction, operation, maintenance, improvement and/or testing of the ITSAD Facility or the performance of any of the obligations of the Contractor pursuant to this Contract other than in respect of the Ferrybridge Works or any services to be performed under the SRF Offtake Contract;
<b>Project Operating Company</b>	has the meaning given to such term in limb (a) of the definition of Project Company;
<b>Project SRF</b>	has the meaning given to such term in the SRF Offtake Contract;

<b>Property Agreements</b>	means the agreements listed in Schedule 14 (Property Agreements);
<b>Proposed Site Timetable</b>	means the dates set out in Schedule 22 (Proposed Site Timetable);
<b>Proposed Workforce</b>	has the meaning set out in Clause 74.7(a) (Workforce Information);
<b>Protester Action</b>	means any picketing, demonstration, blockade, embargo or other protester action (other than as a result of industrial action which affects only the employees of the Contractor or its Sub-Contractors or the SRF Offtaker) which affects the Works, the Ferrybridge Works and/or access to either or both of the Facilities and/or the Ferrybridge Facility;
<b>Qualification Criteria</b>	<p>means the criteria that the Councils require tenderers to meet as part of the Tender Process, which (subject to compliance with the procurement regulations) shall be:</p> <ul style="list-style-type: none"> <li>(a) the New Contract terms;</li> <li>(b) tenderers demonstrating they have the financial ability to pay the capital sum tendered for the New Contract and the financial ability to deliver the Works and/or the Service (as appropriate) for the price tendered;</li> <li>(c) the tenderers only bidding on the basis of a single capital payment to be made on the date of the New Contract;</li> <li>(d) the tenderer (either itself or through the proposed sub-contractors) being experienced in providing the Works and/or Service or similar services;</li> </ul>

- (e) the technical solution being proposed by the tenderers is capable of delivery and the tenderer (either itself or through the proposed sub-contractors) being technically capable of delivery of the Works and/or Service;
- (f) any other tender criteria agreed by the Councils and the Contractor;
- (g) tenderers being required to submit tenders which comply with the terms of Clause 84.2 (Retendering Procedure); and
- (h) where the retendering requires tenderers who are offering alternative SRF arrangements to also bid a price for taking a novation of the SRF Offtake Contract, such tenderers being required to ensure that the alternative SRF arrangements being offered are on terms which allow the Councils to take a novation or otherwise take the benefit of such arrangements on early termination of the New Contract;

**Qualifying Bank Transaction** means:

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Financing Agreements in favour of:

- (i) any other Senior Lender;
- (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
- (iii) a local authority or public authority;
- (iv) a trustee of a charitable trust which has (or has had at any time during the previous two (2) Years) assets of at least ten million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);
- (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two (2) Years) at least fifty (50) members and assets under management of at least ten million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);
- (vi) an EEA or Swiss Insurance Undertaking;
- (vii) a Regulated Collective Investment Scheme; or

(viii) Not Used;

(ix) any other institution in respect of which the prior written consent of the Councils has been given;

(c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Contractor or Holdco, whether by way of security or otherwise, in favour of (i) any other Senior Lender (ii) any institution specified in limbs (b) (ii) to (vii) above or (iii) any other institution in respect of which the prior written consent of the Councils has been given;

**Qualifying Change in Law** means:

(a) a Discriminatory Change in Law;

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

(c) a General Change in Law which comes into effect during the Service Period and which involves Capital Expenditure,

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

(d) any Legislation or Guidance coming into effect after the date of this Contract giving effect to any document listed in the Waste Law List and/or any policy or proposal contained in any such document; and/or

- (e) any change to or revocation of any condition of an Environmental Permit for a Facility or the Ferrybridge Facility other than where such change arises as a result of:
  - (i) the acts or omissions of the Contractor or any Contractor Related Party (save for acts or omissions undertaken in accordance with and to perform the Contractor's obligations under this Contract); or
  - (ii) any breach of the Contract by the Contractor or any Contractor Related Party,

provided that, in the case of the SRF Offtaker only, a Change in Law referred to in this definition shall only be a Qualifying Change in Law if and to the extent that:

- (aa) it is a Qualifying Change in Law which applies to the processing of waste or waste derived materials in energy from waste or other thermal treatment facilities and it gives rise to Capital Expenditure at the Ferrybridge Facility, in which case Clause 120.12.1 (Ferrybridge Increase in Costs/Capital Expenditure) will apply; and/or

- (bb) it is a change in Tax (or any Law having the effect of Tax) which applies to the processing of waste or waste-derived materials in energy from waste or other thermal treatment or power generation facilities, in circumstances where such Tax is implemented by reference to MW/hr, tonnage, or emission levels (or where such Tax is implemented by reference to another benchmark (e.g. profits) then only to the extent that the Contractor has provided the Councils with sufficient information to demonstrate the baseline costs and revenues which are affected by the relevant change in such Tax) in which case Clause 120.12.2 (Ferrybridge Increase in Costs/Capital Expenditure) will apply; and/or
- (cc) it is a Change in Law pursuant to limb (d) of the definition of Specific Change in Law in which case Clause 120.12.2 (Ferrybridge Increase in Costs/Capital Expenditure) will apply;

<b>Qualifying Change in Law TPR Adjustment</b>	has the meaning set out in Clause 120.4.1 (Revisions and Custody of Financial Model);
<b>Qualifying Material</b>	means those materials listed in column 2 of the Schedule to the Landfill Tax (Qualifying Materials) Order 2011 (SI 2011/1017) which are Qualifying Materials for the purpose of section 42(2) of the Finance Act 1996;
<b>Qualifying Refinancing</b>	means any Refinancing that will give rise to a Refinancing Gain greater than zero (0) that is not an Exempt Refinancing;
<b>Qualifying Variation</b>	means either:

(a) a change in the Works and/or the Service in respect of which either a Councils' Change Notice or a Contractor Change Notice has been served and, in the case of:

(i) a Councils' Change Notice, the Councils have confirmed the change and, where the Contractor is not funding all or part of the required Capital Expenditure, the Councils have agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; and

(ii) Contractor Change Notice, the change has been accepted by the Councils; or

(b) a Qualifying Change in Law,

and in respect of which any documents or amendments to the Project Documents which are required to give effect to such change in the Works and/or Service or Qualifying Change in Law have become unconditional in all respects;

**Quality Management System** has the meaning given in paragraph 14.1 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);

**Quality Manual** means the quality manual in force from time to time reflecting a quality management system in relation to the Service or any aspect hereof provided in accordance with Clause 47 (Quality Assurance);

**Quarantine Area ITSAD** has the meaning given to it in paragraph 1 of Annex 2 of Schedule 40 (Waste Acceptance Protocol);

**Quarantine Area TLS** has the meaning given to it in paragraph 1 of Annex 4 of Schedule 40 (Waste Acceptance Protocol);

<b>Quarter</b>	means a three (3) Month period starting on 1 April, 1 July, 1 October or 1 January;
<b>Ratchet</b>	shall have the meaning given to it in Part 6 of Schedule 4 (Payment Mechanism);
<b>Ratchet for Authorised End User</b>	shall have the meaning given to R <sub>AEU</sub> in Part 6 of Schedule 4 (Payment Mechanism);
<b>Ratchet for Complaints Procedure</b>	shall have the meaning given to R <sub>CP</sub> in Part 6 of Schedule 4 (Payment Mechanism);
<b>Ratchet for External Communications</b>	shall have the meaning given to R <sub>EC</sub> in Part 6 of Schedule 4 (Payment Mechanism);
<b>Ratchet for Health and Safety</b>	shall have the meaning given to R <sub>HS</sub> in Part 6 of Schedule 4 (Payment Mechanism);
<b>Ratchet for Monthly Service Report</b>	shall have the meaning given to R <sub>PMR</sub> in Part 6 of Schedule 4 (Payment Mechanism);
<b>Ratchet for Non- Conforming Waste</b>	shall have the meaning given to R <sub>NCW</sub> in Part 6 of Schedule 4 (Payment Mechanism);
<b>Ratchet for Normal Opening Hours</b>	shall have the meaning given to R <sub>NOH</sub> in Part 6 of Schedule 4 (Payment Mechanism);
<b>Ratchets Cap</b>	shall have the meaning given to in Appendix 1 in Part 13 of Schedule 4 (Payment Mechanism);
<b>Readiness Date</b>	means in respect of each of the ITS Facility and the AD Facility the date on which the Readiness Test Certificate is issued or in the event of referral for determination under the Dispute Resolution Procedure pursuant to Clause 35.5.1 (Effect of issue of Test Certificate) the date upon which it is deemed that the ITS Facility or the AD Facility have passed the Readiness Tests;

<b>Readiness Long Stop Date</b>	means such date as is three (3) Months before the Long Stop Date;
<b>Readiness Test Certificate</b>	means the certificate issued by the Independent Certifier that the Readiness Tests have been passed;
<b>Readiness Tests</b>	means the tests so described in Schedule 9 (Acceptance Tests);
<b>Real Base Case Project IRR</b>	means the real pre -tax project IRR as set out in the Base Case;
<b>Recipient</b>	has the meaning set out in Clause 56.7.2 (Payment);
<b>Reconciliation for Base Tonnage Payment</b>	shall have the meaning given to RBTP in Part 2 of Schedule 4 (Payment Mechanism);
<b>Reconciliation for Landfill Gatefee Payment</b>	shall have the meaning given to RLGP in Part 2 of Schedule 4 (Payment Mechanism);
<b>Reconciliation for Landfill Tax Payment</b>	shall have the meaning given to RLTP in Part 2 of Schedule 4 (Payment Mechanism);
<b>Recovered Materials</b>	means material separated from Contract Waste by or on behalf of the Contractor that has a beneficial use;
<b>Recovery</b>	has the meaning given to it in the Waste Strategy 2000 as meaning obtaining value from waste through re-use, Recycling, Composting, other means of material recovery (such as anaerobic digestion) or Energy Recovery (combustion with direct or indirect use of the energy produced, manufacture, of refuse derived fuel, gasification, pyrolysis and other technologies). In addition certain operations are defined as recovery operations in Annex 11B of Council Directive 91/156/EEC of 18th March 1991 amending Directive 75/442/EEC on waste and " <b>Recover</b> " and " <b>Recovered</b> " shall be construed accordingly;

<b>Rectification Costs</b>	means, for the purposes of any Termination Date that occurs during the Service Period, an amount equal to the reasonable and proper costs incurred by the Councils in a particular Month or part of a Month in ensuring that the Service is available;
<b>Rectification Period</b>	has the meaning as set out in Tables 3, 3A and 3B in Schedule 5 (Performance and Monitoring);
<b>Recyclable Material</b>	means any waste materials capable of being Recycled;
<b>Recycling</b>	means the separation from Contract Waste of any materials that can be presented to the market for beneficial use and "Recycle" and "Recycled" shall be construed accordingly;
<b>Recycling and Composting Performance</b>	means the tonnage of Contract Waste (as referred to in limbs (a) and (b) of such definition only) Recycled or Composted by (or on behalf of) the Contractor in a Contract Year as a percentage of the tonnage of Contract Waste (as referred to in limbs (a) and (b) of such definition only) received by the Contractor in that Contract Year;
<b>Recycling and Composting Target</b>	means the fixed percentages set out in Table 3.2.1 of Part 3 of Schedule 1(Output Specification);
<b>[REDACTED]</b>	<b>[REDACTED]</b>
<b>Recycling Deduction</b>	shall have the meaning given to it in Part 7 of Schedule 4 (Payment Mechanism);
<b>Reduced O&amp;M Costs</b>	has the meaning given to it in Clause 79.6.8 <b>[REDACTED]</b> ;
<b>Referring Party</b>	has the meaning given to it in Clause 104.6 (Dispute Resolution);

## **Refinancing**

means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement)));
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement)));
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreements (other than any Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement))) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement))) or the contracts, revenues or assets of the Contractor whether by way of security or otherwise; or

- (d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of limbs (a) to (c) above or which has the effect of limiting the Contractor's or any Associated Company's ability to carry out any of limbs (a) to (c) above;

**Refinancing Gain**

means an amount equal to the greater of zero (0) and  $(A - B) - C$ , where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of the Contract following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of the Contract following the Refinancing; and

C = any adjustment required to raise the Pre - Refinancing Equity IRR to the Threshold Equity IRR;

<b>Refinancing Notice</b>	has the meaning set out in Clause 59.9.1 (Refinancing);
<b>Refuse Collection Vehicle</b>	a rigid bodied Authorised Vehicle capable of automatically discharging its single load;
<b>Regulated Collective Investment Scheme</b>	has the meaning given in the rules from time to time of the Financial Services Authority;
<b>Reinstatement Outline</b>	has the meaning given to it in Clause 64.15.4(a) (Reinstatement);
<b>Reinstatement Plan</b>	has the meaning given to it in Clause 64.15.4(e) (Reinstatement);
<b>Reinstatement Works</b>	has the meaning given to it in Clause 64.15.4(a) (Reinstatement);
<b>Rejects</b>	means materials delivered from Contract Waste, Third Party Waste and/or Non-Contract Waste which are rejected in accordance with Schedule 40 (Waste Acceptance Protocol);
<b>Relevant Authority</b>	means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
<b>Relevant Delivery Event</b>	has the meaning given to it in paragraph 4.1 of Schedule 40 (Waste Acceptance Protocol);
<b>Relevant Discharge Terms</b>	means the terms set out in paragraph 1 of Schedule 16 (Relevant Discharge Terms);
<b>Relevant Employees</b>	means the employees who are the subject of a Relevant Transfer;

<b>Relevant Event</b>	means a Councils' Change, a Qualifying Change of Law, a Compensation Event or any other matter as a result of which there may be a revision of the Unitary Charge in accordance with Clause 120 (Revision and Custody of Financial Model);
<b>Relevant Incident</b>	has the meaning given to it in Clause 64.15.4 (Reinstatement);
<b>Relevant Payment</b>	has the meaning set out in Clause 64.17.3 (Insurance);
<b>Relevant Person</b>	means a Shareholder and any of its Affiliates;
<b>Relevant Proceeds</b>	has the meaning given to it in Clause 64.15.4(f)(ii) (Reinstatement);
<b>Relevant Service Transfer Date</b>	means a transfer on one or more dates agreed by the Parties (each a " <b>Relevant Service Transfer Date</b> ") to the Contractor of responsibility for provision of (or procuring the provision by Sub-Contractors of) the Services in accordance with this Contract;
<b>Relevant Transfer</b>	means a relevant transfer for the purposes of TUPE;
<b>Relevant Transfer Date</b>	the date on which any eligible Councils' employees transfer to the Contractor and/or one or more Sub-Contractor by virtue of a Relevant Transfer;
<b>Relief Event</b>	means: <ul style="list-style-type: none"> <li>(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion;</li> </ul>

- (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services (but excluding for the avoidance of doubt the Councils as purchaser);
- (c) any accidental loss or damage:
  - (i) to:
    - (A) the Site (Bolton Road) and/or the Works; or
    - (B) the Site (Grange Lane); or
    - (C) the Ferrybridge Works; and/or
  - (ii) to any Key Component in transit to the Site (Bolton Road) or to the site of the Ferrybridge Works; and/or
  - (iii) to any transmission conduits and/or roads servicing the Works, the Ferrybridge Works, any Site or the site of the Ferrybridge Works or the Ferrybridge Facility;
- (d) any failure or shortage of power, fuel or transport;
- (e) any blockade or embargo which does not constitute a Force Majeure Event;

(f) subject to Clause 20.1 (Contractor to Obtain Planning Permission), in the period prior to the Planning Long Stop Date (ITSAD) or the Planning Long Stop Date (Ferrybridge) (as applicable), any Proceedings, any Judicial Review Challenge, or any delay in obtaining, any failure to obtain or absence of any Satisfactory Planning Permission for the ITSAD Facility or Satisfactory s36 Consent for the Ferrybridge Facility such delay to be assessed in relation to the Proposed Site Timetable for such facility;

(g) any:

(i) official or unofficial strike;

(ii) lockout;

(iii) go-slow; or

(iv) other dispute;

generally affecting the haulage, construction, electricity generation or waste management industry or a significant sector of it (but in the case of electricity generation in relation to the Ferrybridge Facility only);

(h) the occurrence of Protester Action provided that the Contractor has complied with its obligations pursuant to Clause 65.4 (Protester Action);

(i) the discovery of any human remains, fossils, antiquities and/or unexploded ordnance at any Site(s) at any time prior to the Service Commencement Date; or

- (j) the delivery to a Facility as part of a delivery of Contract Waste or Third Party Waste during the Service Period of munitions, hazardous materials or human remains which directly results in Enforced Closure provided that the Contractor has (in all material respects) complied with the Waste Acceptance Protocol;
- (k) a deemed Relief Event pursuant to Clause 19.7.1 (Adverse Ground Conditions and Contamination);
- (l) a deemed Relief Event pursuant to Clause 19.7.3 (Adverse Ground Condition and Contamination);
- (m) a deemed Relief Event pursuant to Clause 79.2.1 [REDACTED], and
- (n) a deemed Relief Event pursuant to Clause 79.2.4(a) [REDACTED],

unless:

- (i) any of the events listed in limbs (a) to (i) inclusive and/or limbs (k) to (n) arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any of its sub-contractors; or
- (ii) in the case of limb (j) above such delivery has arisen (directly or indirectly) as a result of the negligence of the Contractor or any of its sub-contractors;

**Remedial Action**

means:

- (a) action which is required to prevent, remove, remedy, clean up, abate, treat or mitigate the presence or effect of any Contamination; and/or
- (b) action which is required to carry out investigative, preparatory or monitoring work in relation to any Contamination and/or
- (c) obtaining any legal and other professional advice as is required in relation to limbs (a) and (b);

**Remuneration Costs** has the meaning set out in Clause 74.7 (Workforce Information);

**Renewable Heat Incentive Regime** means the scheme to facilitate and encourage the renewable generation of heat established by the Renewable Heat Incentive Scheme Regulations 2011 (SI 2011/2860) (as amended);

**Renewables and CHP Register** means the electronic register administered by Ofgem for the purposes managing the Feed-in Tariff Scheme and the Renewables Obligation Scheme, including the making of applications for accreditation pursuant to the Feed-in Tariff Scheme and the Renewables Obligation Scheme;

**Renewables Obligation Certificate Regime** means the regime implemented by the Renewables Obligations Order 2009 (SI 2009/785) as amended by the Renewables Obligations (Amendment) Order 2010 (SI 2010/1107) all pursuant to sections 32 to 32M of the Electricity Act 1989 as introduced by the Energy Act 2008;

<b>Renewables Scheme</b>	<b>Obligation</b>	means the Government programme governed by the 2009 Order to encourage the generation of electricity from certain renewable sources in England and Wales;
<b>Reorganisation Costs</b>		has the meaning set out in Clause 74.7 (Workforce Information);
<b>Replacement Security</b>		means either: <ul style="list-style-type: none"> <li>(a) a replacement guarantor of the obligations of the Operating Sub-Contractor under the Operating Sub-Contract who does not fail the applicable Net Worth Test; or</li> <li>(b) a letter of credit and/or on -demand performance bond (in both cases, from a Suitable Provider) under which the aggregate sum of the amounts which may be drawn is (and will remain at all times) equal to or greater than the Operator SRF Termination Amount;</li> </ul>

**Replacement  
(Delisting)**

**Security** means either:

- (a) a replacement guarantor of the obligations of the Operating Sub -Contractor under the Operating Sub-Contract who is listed on the London Stock Exchange (or any replacement or successor stock exchange or any Recognised Investment Exchange (as defined by the Financial Services Authority), Recognised Overseas Investment Exchange (as defined by the Financial Services Authority) or Designated Investment Exchange (as defined by the Financial Services Authority) and whose Net Worth (as such definition is modified (with the Parties acting reasonably and in good faith) to refer to the replacement guarantor instead of Shanks Group plc) is not less than two hundred million pounds (£200,000,000) (indexed); or
- (b) the aggregate sum of the amounts which may be drawn from a letter of credit and/or on - demand performance bond (in both cases, from a Suitable Provider) under which the aggregate sum of the amounts which may be drawn is (and will remain at all times) equal to or greater than the Operator SRF Termination Amount;

**Requests for Information**

shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term " **request**" shall apply);

**Required Action**

has the meaning given to it in Clause 73.3 (Councils' Step-In);

<b>Required Insurances</b>	means those insurances that the Contractor is obliged to take out and maintain pursuant to Clauses 64.1 (Insurance) and 64.2 (Insurance);
<b>Residues</b>	means materials derived from the processing of Contract Waste, Third Party Waste and/or Non - Contract Waste which is not a Product;
<b>Responding Party</b>	has the meaning given to it in Clause 104.5 (Dispute Resolution);
<b>Restricted Share Transfer</b>	<p>means any transfer of shares in the Contractor or Holdco:</p> <ul style="list-style-type: none"> <li>(a) during the Lock-In Period; or</li> <li>(b) to any person whose business activities wholly or substantially comprise gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons; or</li> <li>(c) to any person whose activities are, in the reasonable opinion of the Councils, incompatible with the provision of residual waste treatment services by a public authority (having regard to the provision of such services at the relevant time);</li> </ul>
<b>Retendering Information</b>	has the meaning set out in Clause 74.15.1(a) (Retendering);
<b>Retention Fund Account</b>	means an account in the joint names of the Councils and the Contractor for the purposes of rectification and/or maintenance work which is required pursuant to Clause 94 (Treatment of Assets on Expiry of Service Period);

<b>Retention Fund Account Adjustment</b>	shall have the meaning given to RFAA in Part 12 of Schedule 4 (Payment Mechanism);
<b>Return Date</b>	has the meaning given to it in Clause 74.16.2 (Termination of Contract);
<b>Returning Employees</b>	has the meaning set out in Clause 74.16.2 (Termination of Contract);
<b>Review</b>	has the meaning set out in Clause 37.6 (Environment Agency and other Relevant Authorities);
<b>Review Procedure</b>	means the procedure set out in Schedule 35 (Review Procedure);
<b>Reviewable Design Data</b>	means the items of Design Data listed in the Appendix to the Review Procedure;
<b>Reviewed Design Document</b>	means the Reviewable Design Data in relation to which the Contractor has or is deemed to have no comment as have become or been deemed to become a reviewed design document pursuant to the operation of Clause 25 (Development and Submission of Designs);
<b>Revised Project</b>	means the Project as varied by the Revised Project Plan;
<b>Revised Project Costs</b>	means the adjustment of the Unitary Charge calculated in accordance with the provisions of the Change Protocol;
<b>Revised Project Dates</b>	has the meaning given in Clauses 20.15.3 (Delays and Extension of Time);
<b>Revised Project Plan</b>	means a modified Draft Revised Project Plan notified to the Councils in accordance with Clause 20.12.6 (Revised Project Plan);

**Revised Project Plan Costs**

means the Revised Project Costs in respect of the Revised Project Plan;

**Revised Senior Debt Termination Amount**

means, subject to Clause 9.3 (Changes to Financing Agreements);

(a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing; and

(b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, or, in the case of early termination or interest rate hedging arrangements only, as a result of termination of this Contract subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount of the amounts below):

(i) all credit balances on any bank accounts (but excluding the Joint Insurance Account, the Distributions Account and the Alternative SRF Charged Account) held by or on behalf of the Contractor on the Termination Date;

- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, or, in the case of early termination of interest hedging arrangements only, as a result of termination of this Contract;
- (iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Councils to the Contractor as a result of enforcing any other rights they may have; and
- (v) all APB Distributions;

<b>RIDDOR</b>	means the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations 1995 (SI 1995/3163);
<b>ROC Accreditation Date</b>	has the meaning given in Clause 55.3.5(b) (Contractor's Obligations in relation to the Renewables Obligations Scheme);
<b>ROC Price Gain</b>	has the meaning given to in paragraph 54.2.1 of Part 9 of Schedule 4 (Payment Mechanism);
<b>ROC Price Loss Management</b>	has the meaning given to in paragraph 54.2.2 of Part 9 of Schedule 4 (Payment Mechanism);

<b>ROC Price Upside Available</b>	has the meaning given to in paragraph 54.2.9 of Part 9 of Schedule 4 (Payment Mechanism);
<b>ROC Price Upside/(Downside</b>	has the meaning given to in paragraph 54.2.5 of Part 9 of Schedule 4 (Payment Mechanism);
<b>ROC Price Upside Used</b>	has the meaning given to in paragraph 54.2.6 of Part 9 of Schedule 4 (Payment Mechanism);
<b>RO Application</b>	means the Contractor's application for accreditation under the Renewables Obligation Scheme made using the Renewables and CHP Register;
<b>ROCs</b>	means Renewables Obligation Certificates;
<b>RoHS Directive</b>	has the meaning given in paragraph 3.1 of Schedule 33 (Waste Law List);
<b>ROO-FIT Application</b>	means the Contractor's application for accreditation under the Feed-in Tariff Scheme made using the Renewables and CHP Register;
<b>RPIX</b>	means the index published in Table 38 (RPI all items – excluding mortgage interest payments (RPIX)) reference CHMK published by the Office for National Statistics in the Detailed CPI and RPI Reference Tables which can be found on their website ( <a href="http://www.ons.gov.uk">http://www.ons.gov.uk</a> ) or, failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such other adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better no worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such a greement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

**s36 Application**

means the application made in relation to the Ferrybridge Facility dated 27 October 2009 and submitted to the Secretary of State pursuant to section 36 of the Electricity Act 1989 together with any application in relation to the Ferrybridge Facility for deemed planning permission pursuant to section 90 of the Town and Country Planning Act 1990 or any subsequent resubmission of such application with modifications;

**s36 Consent**

means the consent granted by the Secretary of State for Energy and Climate Change dated 31 October 2011 reference 12.04.09/24C granting consent to the construction of a multi-fuel generating station;

**s36 Consent Failure**

has the meaning given in Clause 20.25.1 (Failure to Obtain s36 Consent);

**s36 Leading Counsel**

means counsel experienced in applications and appeals both under the Electricity Act 1989 and the Town and Country Planning Act 1990 (as amended) and practising at the planning and environmental bar of England and Wales who:

- (a) shall be agreed upon by the Parties or, in default of agreement, shall be of fifteen (15) Years' call and identified by the Chairman of the Planning and Environmental Bar Association or his deputy; and
- (b) accepts instructions to provide an opinion pursuant to Clause 20 (Planning Permissions);

**s36 Proceedings**

means any of the following:

- (a) a public inquiry seeking approval for the s36 Application;

- (b) an application to the court pursuant to section 288 of the Planning Act; and
- (c) an application or appeal seeking to remove or modify any conditions imposed by the s36 Consent;

**Satisfactory Permit**

means an Environmental Permit which does not impose on the applicant by way of condition or other obligation any requirement which renders the Contractor unable to perform all or any of the Works and/or the Service as required to be provided in accordance with the Output Specification, Works Delivery Plan and/or Service Delivery Plan or its intended operation of the ITSAD Facility (as set out in the application for the Environmental Permit) or the SRF Offtaker unable to perform all or any of its obligations under the SRF Offtake Contract or its intended operation of the Ferrybridge Facility (as set out in the s36 Application and/or the application for the Environmental Permit) and an "**Unsatisfactory Permit**" is a permit which is not a Satisfactory Permit;

**Satisfactory  
Permission**

**Planning**

means a Planning Permission for the ITSAD Facility, together with any associated planning agreement or agreement with any Relevant Authority which is a permission for the description of the development which is the subject of the Planning Application for the ITSAD Facility and does not impose on the Contractor by way of condition or other obligation any of the following requirements:

- (a) a requirement to obtain the agreement of a third party in respect of land outside the Site (Bolton Road) other than:

- (i) statutory undertakers in respect of any utility; and
  - (ii) a highway authority;
- (b) a requirement to incur Off-Site Expenditure;
- (c) a requirement which renders the Contractor unable to deliver or perform all or any part of the Service to be provided by or at the ITSAD Facility in accordance with the Service Delivery Plan because it has or would, if implemented, one (1) or more of the following effects:
- (i) restricts the level of noise or odour at the boundary of the site to a level below that set out in the Service Delivery Plan or;
  - (ii) prevents the ITSAD Facility from operating in accordance with the Output Specification and the Service Delivery Plan or;
  - (iii) restricts the number of waste carrying vehicle movements to and from the Site (Bolton Road) to less than the minimum inward movements of waste carrying vehicles per day as set out in the transport movement plans in Figures 4 and 5 of the Planning Application reference number RB 2011/1539 (Rotherham as Planning Authority) or is inconsistent with the transport plan set out in the Works Delivery Plan or;

- (iv) would require any Contract Waste to be delivered other than by road vehicles alone;
- (d) restricts the hours of delivery of Contract Waste to the Site (Bolton Road) to hours other than as set out in the Planning Application reference number RB 2011/1539 (Rotherham as Planning Authority);
- (e) would cause the Contractor to be in breach of the Environmental Permit for the ITSAD Facility;
- (f) means the planning permission will expire prior to 2 September 2046; and
- (g) restricts tonnage levels of Contract Waste to be received and/or processed at the ITSAD Facility to an aggregate level which would be below two hundred and sixty -five thousand (265,000) tonnes per Year;
- (h) restricts the ability to source Commercial Waste within the Administrative Area or restricts the tonnage of Commercial Waste which may be treated at the ITSAD Facility to an amount below seventy thousand (70,000) tonnes per Year;

**Satisfactory s36 Consent**

means a s36 Consent which is a consent for the description of the development which is the subject of the s36 Application and does not impose on the SRF Offtaker (or other applicant) by way of condition or other obligation any of the following requirements:

- (a) a requirement to obtain the agreement of a third party in respect of land outside the Ferrybridge Planning Site as submitted in the s36 Application other than:
  - (i) statutory undertakers in respect of any utility; or
  - (ii) a highway authority;
- (b) a requirement to incur Off-Site Expenditure;
- (c) a requirement which has one (1) or more of the following effects:
  - (i) materially adversely affects the operation of the Ferrybridge Facility as envisaged in the s36 Application and/or the Ferrybridge "C" power station within which the Ferrybridge Facility will be constructed, including preventing either of them from being operational to its full capacity;
  - (ii) restricts the number of SRF or other fuel carrying vehicle movements to and from the Ferrybridge Facility to less than the number set out in the s36 Application;
  - (iii) restricts the manner in which SRF may be delivered to the Ferrybridge Facility such that the delivery arrangements in the s36 Application cannot be met and/or the quantities of SRF anticipated in the Base Case cannot be delivered;

- (iv) imposes operating and/or delivery times on the Ferrybridge Facility which are more restrictive than the opening hours or hours of delivery of SRF to the Ferrybridge Facility as set out in the s36 Application;
- (v) would, if implemented, put the SRF Offtaker (or any other person) in breach of the Environmental Permit for the Ferrybridge Facility;
- (vi) restricts the types of materials which may be processed such that the processing of Project SRF would be a breach of the s36 Consent; or
- (vii) restricts the number of years of operation of the Ferrybridge Facility to less than forty-five (45),

and an " **Unsatisfactory s36 Consent** " is a s36 Consent which is not a Satisfactory s36 Consent;

**Satisfactory TLS Permit**

means a TLS Permit which is adequate for the purposes of the provision of the Service at the Site (Grange Lane) in accordance with the terms of this Contract;

**Schedules**

means the Schedules to this Contract;

**Secondary Materials**

means materials imported for use in processing of waste;

**Secured Finance Party**

has the meaning given to it in Schedule 18 (Funder Direct Agreement);

<b>Security Interest</b>	means, for the purposes of Clause 122 (Net Worth Test), any security interest created in favour of a lender to a Project Company over any interest (whether constituted by shares, loans or otherwise) owned by a member of Shanks Group plc, or one of its Subsidiaries, in such Project Company;
<b>Senior Debt</b>	means the financing provided by the Senior Lenders under the Senior Financing Agreements;
<b>Senior Debt Amount</b>	means all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing);
<b>Senior Debt Discharge Amount</b>	has the meaning given to such term in Clause 79.6.2 [REDACTED];
<b>Senior Debt Discharge Date</b>	has the meaning given to such term in the Direct Agreement;
<b>Senior Debt Discharge Date (SRF)</b>	has the meaning given to such term in Clause 79.6.2 [REDACTED];
<b>Senior Debt Element of the Unitary Charge</b>	means in any Contract Month an amount equal to one sixth (1/6) of the sum of the following amounts: <ul style="list-style-type: none"> <li>(a) the Senior Debt Interest payment forecast to be made in the Base Case, or following the early repayment of part of the outstanding Senior Debt through funds advanced to the Contractor under the Contingent Loan Agreement, in the Base Case (CLA), in the relevant semi-annual period as set out in rows 58 and 60 of the "Workings" worksheet; and</li> <li>(b) the Senior Debt Principal payment forecast to be made in the Base Case, or following the</li> </ul>

early repayment of part of the outstanding Senior Debt through funds advanced to the Contractor under the Contingent Loan Agreement, in the Base Case (CLA), in the relevant semi-annual period as set out in row 61 of the "Workings" worksheet; and

(c) the amounts which would have been paid in the relevant semi-annual period into the Debt Service Reserve Account in accordance with the terms of the Senior Financing Agreements had the Senior Debt Discharge Date (SRF) not occurred and repayment of the Senior Debt had continued in accordance with the terms of the Senior Financing Agreements and the debt repayment profile forecast in the Base Case; and

(d) the costs, fees and expenses which would have been payable by the Contractor to or at the direction of the Agent or Senior Lenders in the relevant semi-annual period had the Senior Debt Discharge Date (SRF) not occurred and repayment of the Senior Debt had continued in accordance with the terms of the Senior Financing Agreements and the debt repayment profile forecast in the Base Case including but not limited to saved Commitment Fees as a consequence of no longer being required to maintain a Change in Law Reserve Facility, saved Bank Agency Fees and saved Bank Technical Advisor Costs;

**Senior Debt Interest**

means interest payable pursuant to clause 8.2 of the Facility Agreement;

**Senior Debt Principal**

means the amount of principal outstanding under the

	Senior Financing Agreements;
<b>Senior Debt Rate</b>	means the non-default interest rate payable pursuant to the Facility Agreement;
<b>Senior Financing Agreements</b>	means the Initial Financing Agreements as at the date of this Contract, without prejudice to Clause 9.3.2 (Changes to Financing Agreement), as the same may be amended as allowed by Clause 9.3.1 (Changes to Financing Agreements);
<b>Senior Lender</b>	means a person providing finance to the Contractor under the Senior Financing Agreements;
<b>Service</b>	means the whole of the services or any element of them to be provided by the Contractor pursuant to this Contract which are necessary for the Contractor to undertake in order to comply with the Output Specification, Service Delivery Plan, Schedule 5 (Performance and Monitoring) to this Contract and the other provisions of this Contract;
<b>Service Commencement</b>	means the commencement of the Service at the ITSAD Facility in accordance with Clause 35.2.2 (Service Commencement Date);
<b>Service Commencement Date</b>	means the date on which Service Commencement occurs;
<b>Service Delivery Plan</b>	means the plans in Schedule 3 (Service Delivery Plan) which sets out the method of performing the Service to meet the Councils' requirements set out in the Output Specification as amended from time to time in accordance with the terms of this Contract;
<b>Service Deduction Category</b>	means the category of Performance Standard Failure as set out in Schedule 5 (Performance and Monitoring);

<b>Service Period</b>	means the period from the Service Commencement Date to the earlier of either the Expiry Date or the Termination Date;
<b>Service Transfer Date</b>	the transfer on a date agreed by the Parties to the Contractor of responsibility for provision of (or procuring the provision by Sub -Contractors or sub-contractors of) the Service in accordance with the Contract;
<b>Service Users</b>	means those users who consume or benefit from the Service;
<b>Shanks Waste Management Limited</b>	means a company incorporated under the laws of England and Wales with registered number 02393309, whose registered office is at Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire MK1 1BU;
<b>Shanks PFI Investments Limited</b>	means a company incorporated under the laws of England and Wales with registered number 03158124, whose registered office is at Dunedin House, Auckland Park, Mount Farm Bletchley, Milton Keynes, Buckinghamshire MK1 1BU;
<b>Shareholder</b>	means any person from time to time holding share capital in the Contractor or its Holdco;
<b>Shutdown Period</b>	means the time when the ITS Facility cannot process Contract Waste (or other wastes) (where the same is notified to the Councils) for the purpose of undertaking significant maintenance, repairs and/or cleaning;
<b>Shortfall Period</b>	has the meaning set out in Clause 38.7.3 (Acceptance of Waste);

<b>Significant Collection Change</b>	has the meaning given to such term in Clause 39.2.1 (Significant Collection Changes: Impact on Composting Deduction);
<b>Significant Collection Change Notice</b>	has the meaning given to such term in Clause 39.3.1 (Significant Collection Changes: Impact on Composting Deduction);
<b>Site (Bolton Road)</b>	means the land made available to the Contractor for the Project which is outlined in red on the plan annexed to the Lease (Bolton Road) and which shall include all buildings, plant and structures on the land from time to time (including the ITSAD Facility);
<b>Site (Grange Lane)</b>	means the land made available to the Contractor for the Project which is outlined in blue on the plan annexed to the Lease (Grange Lane) and which shall include all buildings, plant and structures on the land from time to time (including the TLS Facility);
<b>Sites</b>	means the Site (Grange Lane) and the Site (Bolton Road) and reference to "Site" shall refer to either of them, as the context requires;
<b>Site Conditions</b>	means the conditions of the Site(s) including Adverse Ground Conditions, Contamination, climatic, hydrological, hydro-geological, ecological, environmental, geotechnical and archaeological conditions;
<b>Site Investigation Report (Bolton Road)</b>	means the reports issued by Entec (refs: 09155i1 dated April 2009, 09211i1 dated June 2009, 09233i1 dated June 2009 and 25207R010i2 dated June 2010) in respect of the ground conditions at the Site (Bolton Road);

<b>Site Manager</b>	means the person designated by the Contractor to manage any Waste Reception Point as referred to in paragraph 19.3 of Part 3 (Service Requirements) of Schedule 1 (Output Specification);
<b>Site Rules and Conditions</b>	means the site rules and conditions drawn up by the Contractor in respect of each Facility as set out in Schedule 3 (Service Delivery Plan);
<b>Site Waste Management Plan</b>	has the meaning given to it in paragraph 4.3.1 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification);
<b>Snagging Items</b>	means minor defects, deficiencies or omissions of a snagging nature which do not prevent the Independent Certifier from issuing the Readiness Test Certificate and/or the Acceptance Test Certificate (as the case may be);
<b>Snagging List</b>	means the list to be prepared by the Independent Certifier in accordance with Clause 35.6.1 (Snagging Items) containing Snagging Items;
<b>Snagging Programme</b>	has the meaning set out in Clause 35.6.1 (Certification of Completion of the Works);
<b>Specific Change in Law</b>	means: <ul style="list-style-type: none"> <li>(a) any Change in Law which specifically refers to: <ul style="list-style-type: none"> <li>(i) the provision of any services the same as or similar to any part of the Service or the services to be provided by the SRF Offtaker pursuant to the SRF Offtake Contract; and/or</li> </ul> </li> </ul>

- (ii) the construction, operation and/or maintenance of premises the same as or similar to any of the Facilities and/or the Ferrybridge Facility for the provision of any services the same as or similar to the Service or the services to be provided by the SRF Offtaker pursuant to the SRF Offtake Contract; and/or
  - (iii) the holding of shares in companies whose main business is providing services the same as or similar to the Service, or the services to be provided by the SRF Offtaker pursuant to the SRF Offtake Contract, or the construction operation and maintenance of premises the same as or similar to any of the Facilities and/or the Ferrybridge Facility for the provision of any service the same as or similar to any part of the Service, or the services to be provided by the SRF Offtaker pursuant to the SRF Offtake Contract; and/or
  - (iv) emissions from industrial facilities; and/or
- (b) any Change in Law which discriminates against the sale of electricity generated from a thermal treatment facility; and/or
  - (c) in relation to the AD Facility only, any Change in Law which relates to any change to or revocation of the Renewable Heat Incentive Regime or the Feed -In Tariff Scheme or any replacement of all or part of any such regimes; and/or

- (d) any Change in Law which relates to any change to or revocation of the Levy Exemption Certificate Regime or replacement of all or part of any such regime;
- (e) in relation to the AD Facility only, any Change in Law which relates to any change to or revocation of the Renewables Obligations Certificate Regime or any replacement of all or part of any such regime;

<b>SRF</b>	means solid recovered fuel derived from waste;
<b>SRF Contract Price</b>	means the Contract Price as defined in the SRF Offtake Contract;
<b>SRF Electricity Price Share</b>	has the meaning given to it in paragraph 60 of Part 12 of Schedule 4 (Payment Mechanism);
<b>SRF Offtake Contract</b>	means the SRF offtake agreement as set out in Schedule 39 [REDACTED] between the Operating Sub-Contractor and the SRF Offtaker dated on or around the date of this Contract, as amended from time to time in accordance with its terms but subject always to Clause 79 [REDACTED];
<b>SRF Offtake Services</b>	means the elements of the Service for which the SRF Offtaker is responsible under the terms of the SRF Offtake Contract;
<b>SRF Offtaker</b>	means Ferrybridge MFE Limited whose registered office is at 55 Vastern Road, Reading, Berkshire, RG1 8BU with company number 07712297;
<b>SRF Offtake Facility</b>	means the Ferrybridge Facility or such facilities operated by offtakers pursuant to an Alternative SRF Plan;

<b>SRF Offtake Facility Fuel Mix</b>	means all solid recovered fuels refuse derived fuels and bio-mass fuels processed in the relevant Year as referred to in Schedule 4 (Payment Mechanism);
<b>SRF Offtake Upside Sharing</b>	shall have the meaning given to SRFOs in Part 12 of Schedule 4 (Payment Mechanism);
<b>SRF Offtake Councils Direct Agreement</b>	means the direct agreement between the Councils, the SRF Offtaker, the Operating Sub -Contractor and the Operating Sub-Contractor's Guarantor in the form set out in Schedule 12 (Sub-Contractor Direct Agreements);
<b>SRF Offtaker Dispute</b>	has the meaning set out in Clause 104.15.3 (Dispute Resolution);
<b>SRF Specification</b>	has the meaning given to that term in the SRF Offtake Contract;
<b>SSE</b>	means SSE plc, a company incorporated under the laws of Scotland with company number SC117119 whose registered office is at Inveralmond House, 200 Dunkeld Road, Perth, Perthshire PH1 3AQ;
<b>Staff</b>	means all personnel employed by the Contractor and/or Sub-Contractors and used by the Contractor or Sub-Contractors from time to time in the performance of the Works and the Service;
<b>Statutory Guidance</b>	means the Department of the Environment, Transport and the Regions Circular 02/2000;
<b>Statutory Nuisances</b>	means the statutory nuisances as defined under sections 79 to 82 of the EPA;

**Sterecycle**

means Sterecycle (Rotherham) Limited, a company incorporated under the laws of England and Wales with company number 04393028 whose registered office is at 2<sup>nd</sup> floor, 125 Kensington High Street, London W8 5SF;

**Sub-Contractor Breakage Costs**

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

- (a) the Losses are incurred in connection with the Project and in respect of the provision of services or the completion of works, including:
  - (i) any Losses or any materials or goods ordered (that cannot be cancelled without incurring any Losses) under the Sub-Contracts or the SRF Offtake Contract (being limited to the amounts specified or referred to in the SRF Offtake Contract);
  - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;
  - (iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project;
  - (iv) redundancy payments,

except that where this definition applies following termination of this Contract pursuant to Clause 20.14 (Termination as a Result of Planning Failure), Clause 20.27 (Termination as a Result of s36 Consent Failure) or paragraph 11 (Failure to obtain an Environmental Permit) of Schedule 37 (Approach to Permit Risk) the Councils' liability to compensate the Contractor for Losses arising under paragraph (a) above shall be no greater than zero (0); and

(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and

(c) the Contractor and the relevant Sub-Contractor and/or the SRF Offtaker has each used its reasonable endeavours to mitigate the Losses,

Losses as referred to in this definition may, without prejudice to the generality of the other provisions of this definition, include Losses which relate to the breakage or cancellation of Off Take Contracts or Third Party Waste Contracts but only to the extent that the terms of such Off Take Contracts or Third Party Waste Contracts are in compliance with Clause 49 (Off Take Contracts and Third Party Waste Contracts) and such contracts cannot be cancelled without incurring such Losses;

<b>Sub-Contractor Agreement</b>	<b>Direct</b>	means a collateral warranty between the Councils and each of the Construction Sub -Contractor and the Operating Sub-Contractor (as the case may be) in the relevant form set out in Schedule 12 (Sub-Contractor Direct Agreements) or such other form as the Contractor and the Councils may agree in writing all acting reasonably;
<b>Sub-Contractors</b>		means each of the counterparties of the Contractor to the Construction Contract and the Operating Sub - Contract or any person engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Works and/or Service (or any of them) (for the avoidance of doubt, other than the SRF Offtaker). References to sub - contractors means sub-contractors (of any tier) of the Contractor and excludes the SRF Offtaker unless expressly provided to the contrary;
<b>Sub-Contracts</b>		means the contracts entered into between the Contractor and the Sub-Contractors;
<b>Submitted Item</b>		has the meaning given to it in paragraph 1.2 of Schedule 35 (Review Procedure);
<b>Subordinated Agreements</b>	<b>Financing</b>	means any Acceptable Letter of Credit, Borrower Loan Notes, Borrower Loan Note Instrument, Construction Guarantee, Holdco Loan Notes, Holdco Loan Note Instrument, O & M Guarantee, the Contingent Loan Agreement, the Letter of Credit (Contingent Loan Agreement), the SRF Offtake Guarantee and Suitable Replacement Security each as defined in the Senior Financing Agreements;
<b>Subordinated Lender</b>		means a person providing finance under a Subordinated Financing Agreement;

<b>Subsidiary</b>	has the meaning given to it in section 1159 of the Companies Act 2006;
<b>Substitute Waste</b>	means, subject to Clause 38.8 (Acceptance of Waste), waste which the Contractor or any Contractor Related Party procures for processing at the ITS Facility (to the extent it is permitted to do so in accordance with the terms of the Planning Permission, the Environmental Permit and this Contract) pursuant to the service of a Substitute Waste Notice;
<b>Substitute Waste Amount</b>	means an amount calculated as being the number of tonnes of Substitute Waste contracted for by the Contractor in a Contract Year multiplied by the Substitute Waste Price;
<b>Substitute Waste Contract</b>	means each contract entered into by the Contractor or the Operating Sub-Contractor and the Substitute Waste Contractor provided that any such contracts entered into with Affiliates of the Contractor or the Operating Sub-Contractor shall be excluded unless they have been entered into on an arms length basis;
<b>Substitute Waste Contractor</b>	means a person providing Substitute Waste;
<b>Substitute Waste Notice</b>	has the meaning given to it in Clause 38.7 (Acceptance of Waste);
<b>Substitute Waste Plan</b>	means the plan for the procuring of Substitute Waste developed from the Outline Substitute Waste Plan and updated in accordance with Clause 38.6 (Acceptance of Waste);
<b>Substitute Waste Price</b>	means the gate fee per tonne payable by each Substitute Waste Contractor under or in connection with the relevant Substitute Waste Contract;

<b>Substitute Waste Specification</b>	means waste which is the same or substantially similar to the waste described at limbs (a) and/or (b) of the definition of Contract Waste;
<b>Successful Tenderer</b>	has the meaning set out in Clause 60.7 (No Valid Tenders);
<b>Suitable Provider</b>	means a financial institution acceptable to the Councils (acting reasonably) save that any financial institution with a rating from Standard & Poor's of at least A grade (or equivalent) will be deemed to be a Suitable Provider;
<b>Suitable Contractor</b>	<p><b>Substitute</b> means a person approved by the Councils (such approval not to be unreasonably withheld or delayed) as:</p> <ul style="list-style-type: none"> <li>(a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Contract; and</li> <li>(b) employing persons who have the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract;</li> </ul>
<b>Supplier</b>	has the meaning set out in Clause 56.7.2 (Payment);
<b>Tax</b>	means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of the Contract and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

<b>Tender Costs</b>	means the reasonable and proper costs of the Councils incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;
<b>Tender Process</b>	means the process by which the Councils request tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with Clause 84.2 (Retendering Procedure);
<b>Tender Process Monitor</b>	means a third party appointed by the Contractor under Clause 84.2.1(g) (Retendering Procedure);
<b>Termination Date</b>	means any date of early termination of this Contract in accordance with the provisions of this Contract;
<b>Termination Date Discount Rate</b>	<p>means a discount rate expressed as:</p> $(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1+i) - 1,$ <p>where:</p> <p>real base case project IRR is the real pre-tax project IRR as set out in the Base Case being</p> <p style="text-align: right;">%;</p> <p>"i" is the agreed assumed forecast rate of increase in the Inflation Index as set out in the Contract for the remaining term of the Contract;</p>

<b>Termination Sum</b>	means any compensation payable by the Councils to the Contractor on an early termination of the Contract under Clauses 81 (Compensation on Councils' Default), 84 (Compensation on Termination on Contractor Default), 86 (Compensation on Termination for Force Majeure), 88 (Compensation on Termination on Corrupt Gifts and Fraud), 90 (Compensation on Voluntary Termination) or 92 (Compensation on Termination for Breach of the Refinancing Provisions) (excluding the Adjusted Highest Compliant Tender Price);
<b>Test Certificate</b>	means the Readiness Test Certificate or the Acceptance Test Certificate as appropriate;
<b>Tests</b>	means the Readiness Tests and the Acceptance Tests;
<b>Third Party Consents</b>	<p>means in relation to any Adverse Right which would or might be interfered with by the carrying out of the Works or Service, the consent in writing of all Adjoining Owners and other third parties entitled to or interested in the Adverse Right in question to either:</p> <ul style="list-style-type: none"> <li>(a) the removal or diversion (whether temporarily or permanently) of the subject matter of the Adverse Right in question; or</li> <li>(b) the carrying out of the Works or Service notwithstanding such interference,</li> </ul> <p>such consent in each case to be on terms previously approved in writing by the Councils (such approval not to be unreasonably withheld or delayed);</p>

<b>Third Party Revenue</b>	<p>means the Contractor's and/or the Operating Sub - Contractor's income from third parties (other than the Councils under the Contract) associated with the Project (except in relation to the processing of SRF) including without limitation the revenue derived from the sale of or making arrangements in relation to:</p> <ul style="list-style-type: none"> <li>(a) Recyclable Materials produced by the ITS Facility;</li> <li>(b) electricity generated by the AD Facility; and</li> <li>(c) the acceptance of Third Party Waste at the ITSAD Facility (excluding where such Third Party Revenue is derived from any gate fee received in relation to Substitute Waste where, for the avoidance of doubt, Clause 38.9 (Acceptance of Waste) shall apply)),</li> </ul> <p>less in each case the marginal costs of generating such income;</p>
<b>Third Party Revenue Gain</b>	has the meaning given to in paragraph 54.2.3 of Part 9 of Schedule 4 (Payment Mechanism);
<b>Third Party Revenue Share</b>	shall have the meaning given to TPRS in Part 9 of Schedule 4 (Payment Mechanism);
<b>Third Party Revenue Upside Available</b>	has the meaning given to in paragraph 54.2.4 of Part 9 of Schedule 4 (Payment Mechanism);
<b>Third Party Revenue Upside Used</b>	Has the meaning as set out in paragraph 54.2 of Part 9 of Schedule 4 (Payment Mechanism);

<b>Third Party Waste</b>	means all waste received at the Facilities other than any waste delivered by or on behalf of the Councils but, in respect of Clause 38.10 (Acceptance of Waste) only, the definition shall only apply to such waste which, if secured, would have been Substitute Waste;
<b>Third Party Waste Contracts</b>	means contracts entered into by the Contractor and/or the Operating Sub -Contractor in respect of Third Party Waste excluding Off Take Contracts and the SRF Offtake Contract;
<b>Threshold Equity IRR</b>	means the nominal (post -Contractor tax, pre -shareholder tax) Equity IRR as shown in the Base Case being [REDACTED];
<b>TIM or Total Information Management system</b>	has the meaning given to it in paragraph 2 of Annex 1 of Schedule 40 (Waste Acceptance Protocol);
<b>Title Compensation Event</b>	means the title matters set out at Part 5 of Schedule 38 (Title Matters);
<b>TLS Facility</b>	means the waste transfer station at the Site (Grange Lane) and all supporting infrastructure including associated plant and amenities;
<b>TLS Facility Monthly Payment</b>	shall have the meaning given to TLS <sub>m</sub> in Part 2 of Schedule 4 (Payment Mechanism);
<b>TLS Permit</b>	means any Environmental Permit in connection with waste management activities at the TLS Facility;
<b>TPI (AD)</b>	means the Third Party Revenue in relation to energy production at the AD Facility;
<b>TPI (General)</b>	means the Third Party Revenue excluding any SRF Offtake Upside sharing pursuant to paragraphs 59 and 60 of Schedule 4 (Payment Mechanism) and excluding TPI (AD);

**Traffic Management Contingency Plan** has the meaning given in paragraph 7.5 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);

**Traffic Management Plan** has the meaning given in paragraph 7.1 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);

**Transfer Loading Station Facility Payment** shall have the meaning given to TLS in Part 13 of Schedule 4 (Payment Mechanism);

**Transferring Employee** means an employee of the Councils (excluding any person engaged by the Councils as an independent contractor or persons employed by any sub-contractor engaged by the Councils) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out this Contract between the Councils and the Contractor, a contract of employment with someone other than the Councils;

**Transferring Original Employee** means an Original Employee:

- (a) whose contract of employment becomes, by virtue of the application of TUPE in relation to what is done for the purposes of carrying out a contract between the Councils and the Contractor, a contract of employment with someone other than his existing employer; and
- (b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of TUPE in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than his existing employer;

<b>TUPE</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) and or any other regulations enacted for the purpose of implementing the Directive into English law;
<b>Turnaround Time</b>	means the time taken from the Authorised Vehicle being weighed in at the weighbridge at a Facility to the Authorised Vehicle being weighed empty once it has deposited its load in accordance with the Waste Acceptance Protocol as referred to in paragraph 6.11 of Part 3 (Service Requirements) of Schedule 1 (Output Specification);
<b>Turnaround Time Deductions</b>	means the relevant amounts set out in Table 4 of Part 6 of Schedule 4 (Payment Mechanism);
<b>Unacceptable SRF</b>	has the meaning given to that term in the SRF Offtake Contract;
<b>Unavailable</b>	means that during the Commissioning Period in respect of the ITS Facility or during the Interim Service Period in respect of the TLS Facility or during the Service Period in respect of the Facilities, the Contractor has notified the Councils that it is implementing the Contingency Plan in respect of the relevant Facility or Facilities for any reason (for so long and to the extent stated in such notice);
<b>Underfunded</b>	has the meaning given to it in Clause 79.6.4 [REDACTED];
<b>Unexpired Term</b>	means the period from the Termination Date to the Expiry Date (assuming no extension pursuant to Clause 11.3 (Duration of Contract));
<b>Uninsurable</b>	means, in relation to a risk, either that:

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

**Uninsurable Liability Risk** has the meaning set out in Clause 64.17.2(e) (Insurance);

**Unitary Charge** means the calculation set out in Part 2 of Schedule 4 (Payment Mechanism);

**Unsatisfactory Permit** means an Environmental Permit that is not a Satisfactory Permit;

**Unsatisfactory Planning Permission** means a Planning Permission that is not a Satisfactory Planning Permission;

**Unsuitable** means a person who persistently carries out his duties incompetently or negligently or persists in any conduct which is prejudicial to safety, health or the protection of the Environment such that the Contractor or the relevant sub-contractor is entitled by law to carry out disciplinary procedures and "Unsuitability" shall be construed accordingly;

**VAT** means any value added taxes;

**Variable Tonnage Charge** shall have the meaning given to VTC in Part 2 and Part 13 of Schedule 4 (Payment Mechanism);

<b>Veolia</b>	means Veolia ES Sheffield Limited, a company incorporated under the laws of England and Wales with company number 03709317 whose registered office is at 8 <sup>th</sup> Floor, 210 Pentonville Road, London N1 9JY;
<b>Visitor</b>	means any person visiting a Facility at the express or implied invitation or authorisation of the Contractor or the Councils as referred to in paragraph 12 of Part 3 (Service Requirements) of Schedule 1 (Output Specification);
<b>Voluntary Principles</b>	means either: <ul style="list-style-type: none"> <li>(i) the Cabinet Office Statement of Principles of Good Employment Practice for Government Contracting Authorities and Suppliers dated December 2010 (as amended or replaced from time to time); or</li> <li>(ii) where any similar or equivalent principles of good employment practice are introduced in respect of local authority service contracts, such similar or equivalent principles (as amended or replaced from time to time);</li> </ul>
<b>Waste Acceptance Protocol</b>	means the protocol for acceptance of Contract Waste at each Facility set out in Schedule 40 (Waste Acceptance Protocol);
<b>Waste Composition Audit</b>	has the meaning given in paragraph 3.5 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);

<b>Waste Composition Report</b>	has the meaning given in paragraph 3.6 of Part 3 (Services Requirements) of Schedule 1 (Output Specification);
<b>Waste Law List</b>	means the anticipated Changes in Law set out in Schedule 33 (Waste Law List);
<b>Waste Minimisation Plan</b>	means the plan produced by the Councils that sets out the Councils' plans for waste minimisation activity within their waste minimisation strategy and which is reviewed and updated annually by the Councils;
<b>Waste Reception Point</b>	means any Facility or Contingency Delivery Point provided or nominated by the Contractor for the receipt of Contract Waste;
<b>WCA</b>	means a Waste Collection Authority as defined by section 30(2) of the EPA;
<b>WDA</b>	means a Waste Disposal Authority as defined by section 30(3) of the EPA;
<b>WEEE</b>	means waste electrical and electronic equipment as defined in EU Directive 2002/96/EC;
<b>WEEE Directive</b>	has the meaning given to it in paragraph 3.1 of the Waste Law List;
<b>Wilful Default</b>	has the meaning as set out in the SRF Offtake Contract;
<b>Works</b>	means the works to be undertaken by the Contractor to construct and develop the ITSAD Facility in accordance with the Works Delivery Plan and this Contract;

<b>Works Commencement Date</b>	means the date upon which the Contractor commences physical works at the Site (Bolton Road) or if earlier the date upon which the Contractor takes occupation of the Site (Bolton Road);
<b>Works Delivery Plan</b>	means the construction and development works plan for the ITSAD Facility contained in Schedule 2 (Works Delivery Plan);
<b>Works Period</b>	means the period from the Works Commencement Date to the Service Commencement Date;
<b>Works Programme</b>	has the meaning given in paragraph 16.1 of Part 2 (Construction Works Requirements) of Schedule 1 (Output Specification); and
<b>Year</b>	means a calendar year.

## **2 INTERPRETATION AND JOINT AND SEVERAL LIABILITY**

- 2.1 In this Contract, except where the context otherwise requires:
- 2.1.1 the masculine includes the feminine and vice versa;
  - 2.1.2 the singular includes the plural and vice versa;
  - 2.1.3 a reference in this Contract to any Clause, sub-Clause, paragraph, Schedule or Annex is, except where it is expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, Schedule or Annex of this Contract;
  - 2.1.4 save where expressly provided for in this Contract to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment, or supplement to such document;
  - 2.1.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;

- 2.1.6 references to any documents being "**in the agreed form**" means such documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
- 2.1.7 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 2.1.8 headings are for convenience of reference only;
- 2.1.9 words preceding "**include**", "**includes**", "**including**" and "**included**" shall be construed without limitation by the words which follow those words; and
- 2.1.10 where in any Clause of this Contract there is a reference to "**and/or**" such reference shall include any one (1) or more of the matters, events or circumstances referred to in that Clause.
- 2.2 This Contract is entered into under the PFI. 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.
- 2.3 Each of the Councils has entered into this Contract as a co-obligor of each of the other Councils on a joint and several basis.
- 2.4 The Councils shall each be jointly and severally liable for the obligations and liabilities of the Councils or any individual Council arising under or in connection with the entering into, performance or non-performance of this Contract by the Councils and the Contractor may take action against, or release or compromise the liability of any Council or grant time or any other indulgence to any Council without in each case affecting the liability of any other Council.
- 2.5 If any liability of any one (1) or more but not all of the Councils is or becomes illegal or invalid or unenforceable in any respect, such matter will not affect the liabilities of the other Councils under this Contract.
- 2.6 Each Council shall be deemed to be aware of each matter arising under or in connection with this Contract of which any other Council is aware.

- 2.7 Without prejudice to Clause 16.8 (Authority of Councils' Representative) the Lead Authority shall have full authority to act on behalf of the other two (2) Councils in connection with this Contract and the Contractor and the Contractor's Representative shall be entitled to treat any act of the Lead Authority as being expressly authorised by all three (3) Councils and the Contractor and the Contractor's Representative shall not be required to determine whether or how any such authority has in fact been given.
- 2.8 Where any sum is payable by the Contractor to the Councils under this Contract and such payment has been made to the Lead Authority it will discharge the debt to each and all of the Councils.
- 2.9 Where any demand, notice or communication is served on the Contractor by the Lead Authority in accordance with the provisions of this Contract it shall be deemed to have been served by all of the Councils.

#### **2.10 Various roles of the Councils**

The obligations of the Councils under this Contract are obligations of each of the Councils in their capacity as a contracting counterparty and waste disposal authority (in accordance with section 30(2) of the EPA) and, without prejudice to the remedies and contractual rights of the Contractor in respect of a risk, liability or obligation expressly provided in this Contract as being a risk, liability or obligation of the Councils, and:

- 2.10.1 without prejudice to the Councils' duties and powers, nothing in this Contract shall operate as an obligation upon or in any other way fetter or constrain the Councils in any other capacity; and
- 2.10.2 the exercise by the Councils of their duties and powers in any other capacity shall not lead to any liability under this Contract (howsoever arising) on the part of the Councils to the Contractor, save to the extent of such remedies and contractual rights of the Contractor.

### **3 INDEXATION**

References to amounts expressed to be "**indexed**" are references to such amounts multiplied by

Index<sup>1</sup>

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Index<sup>2</sup>

where Index<sup>1</sup> is the value of RPIX most recently published prior to the relevant calculation date, and Index<sup>2</sup> is the value of RPIX on 28 February 2011 being 230.5.

#### **4 CO-OPERATION**

The Parties acknowledge that the Project will require the long term co-operation and assistance of both Parties to deliver a successful outcome and subject to any express provisions in this Contract to the contrary each Party agrees to co-operate with and provide information and assistance to the other in a timely manner and (subject to any obligation in respect of confidentiality and Commercially Sensitive Information) to share information and data.

#### **5 PRECEDENCE OF DOCUMENTATION**

5.1 In the event of any inconsistency between the main body of this Contract and the Schedules, or between any of the Schedules, the conflict shall be resolved according the following descending order of priority:

5.1.1 the main body of this Contract including the definitions;

5.1.2 Schedule 1 (Output Specification);

5.1.3 Schedule 4 (Payment Mechanism);

5.1.4 Schedule 5 (Performance and Monitoring);

5.1.5 Schedule 3 (Service Delivery Plan);

5.1.6 Schedule 8 (Design);

5.1.7 the Schedules excluding Schedule 3 (Service Delivery Plan) (and any others referred to above); and

5.1.8 the Leases.

#### **6 NOT USED**

#### **7 LIAISON PROCEDURE**

The Parties shall comply with the provisions of Schedule 34 (Liaison Procedure).

## **8 LOCAL GOVERNMENT (CONTRACTS) ACT 1997**

### **8.1 Certification Requirements**

The Certification Requirements are intended to be satisfied by the Councils with respect to this Contract and the Direct Agreement before the end of the Certification Period relating to each agreement to be a certified contract for the purposes of the Act.

### **8.2 Contractor's Consent**

The Contractor hereby consents to the issue by the Councils of certificates under section 3 of the Act in respect of this Contract and the Direct Agreement. In respect of the certificate issued by each Council, the two (2) other Councils (as the case may be) hereby consent to the issue by the third Council of a certificate under section 3 of the Local Government (Contracts) Act 1997 in respect of this Contract.

### **8.3 Failure to issue a Certificate**

If a certificate is not issued by the Councils pursuant to Clause 8.2 (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 Councils within five (5) Business Days of such date to terminate this Contract, whereupon the Councils shall pay to the Contractor an amount equal to the Councils' Default Termination Sum.

### **8.4 Relevant Discharge Terms**

The Relevant Discharge Terms set out in Schedule 16 (Relevant Discharge Terms) shall apply in the event that this Contract is held to be ultra vires in any proceedings for judicial review or audit review.

## **9 ANCILLARY DOCUMENTS AND FINANCING AGREEMENTS**

### **9.1 Delivery of Ancillary Documents and Financing Agreements**

9.1.1 The Contractor has provided to the Councils copies of the Ancillary Documents and of the Financing Agreements.

9.1.2 Without prejudice to the provisions of Clauses 9.2 or 9.3, or to the definition of Senior Financing Agreements, if at any time an amendment is made to any Ancillary Document or Financing Agreement, or the Contractor enters into a new Ancillary Document or Financing Agreement (or any agreement which

affects the interpretation or application of any Ancillary Document or Financing Agreement), the Contractor shall deliver to the Councils a conformed copy of each such amendment or agreement within ten (10) Days of the date of its execution or creation (as the case may be), certified as a true copy of the original by an officer of the Contractor.

## **9.2 Changes to Ancillary Documents**

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

- (a) terminate or agree to the termination of all or part of any Ancillary Document;
- (b) make or agree to any material variation of any Ancillary Document;
- (c) 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 a Ancillary Document in any material respect departs from its obligations (or waives or allows to lapse any rights they may have in a material aspect), under any Ancillary Document; or
- (d) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Ancillary Document

unless the proposed course of action (and any relevant documentation) has been submitted to the Councils' 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 Councils' Representative of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the Parties, and the Contractor has complied with Clause 99 (Assignment).

## **9.3 Changes to Financing Agreements**

9.3.1 Without prejudice to the other provisions of this Clause 9 (Ancillary Documents and Financing Agreements) and Clause 59 (Refinancing), the Contractor shall not without the prior written consent of the Councils, enter into any new Financing Agreements or terminate, amend, waive its rights or

otherwise deal with the Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of the Contractor to perform its obligations under the Ancillary Documents or this Contract.

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

- (a) the Contractor has obtained the prior written consent of the Councils to such increased liability for the purposes of this Clause 9.3 (Changes to Financing Agreements); or
- (b) it is Permitted Borrowing (where for the purposes of this Clause 9.3.2(b) only, Permitted Borrowing shall also include amounts advanced pursuant to the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement) used solely for the purpose of pre-payment of outstanding Senior Debt).

In the event of any conflict between the provisions of this Clause 9.3.2 and any other provision of this Contract, the provisions of this Clause 9.3.2 shall prevail.

## 10 NOT USED

## 11 DURATION OF CONTRACT

11.1 This Contract and the rights and obligations of the Parties to this Contract shall take effect on the Commencement Date.

11.2 The Service Period will commence on the Service Commencement Date and terminate on the earlier of:

11.2.1 the Expiry Date; and

11.2.2 the Termination Date.

11.3 Subject to Clause 11.5, on or before a date falling no later than twelve (12) Months prior to the Expiry Date the Councils shall at their sole discretion have the option to give written notice to the Contractor extending the Expiry Date by a period of five (5) Years (the "**Extension of Contract Period**") and on the Councils giving such written notice this Contract shall remain in full force and effect upon the same terms and

conditions save as specified at Clause 11.4 below until the expiry of the Extension of Contract Period or the Termination Date.

11.4 If the Councils exercise their right to extend this Contract under Clause 11.3 then the following amendments shall be made to this Contract's terms and conditions:

11.4.1 the Unitary Charge shall be calculated by reference to the actual operating costs (which shall include, for the avoidance of doubt insurance, rent and offtake disposal) for the Facilities at the time (to be agreed or determined on an open book basis) plus a margin of eight per cent (8%) and a reasonable and proper amount for the management costs of the Contractor which shall not exceed one hundred thousand pounds (£100,000) (indexed) per annum; and

11.4.2 the Handback Requirements shall be amended to reduce by five (5) Years the residual life requirement for the Assets on the expiry of the Extension of Contract Period; and

11.4.3 if the SRF Offtake Contract is still in force then the Contractor shall procure an extension of the SRF Offtake Contract by a period equal to the Extension of the Contract Period upon the same commercial terms immediately prior to the original Expiry Date but with the SRF Fee revised on the basis set out in the SRF Offtake Councils Direct Agreement.

11.5 The extension of the Expiry Date in accordance with Clause 11.3 shall be conditional on either:

11.5.1 the final survey carried in accordance with Clause 94.1 (Surveys on Expiry) concluding that the Assets have been and are being maintained by the Contractor in accordance with its obligations under Clause 52 (Maintenance); or

11.5.2 the Contractor completing any rectification and/or maintenance work in accordance with the requirements of Clause 94 (Treatment of Assets on Expiry of Service Period (Handback)).

## **12 CONTINUING OBLIGATIONS**

12.1 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:

- 12.1.1 termination of this Contract shall be without prejudice to any accrued rights and obligations under this Contract as at the Termination Date; and
- 12.1.2 termination of this Contract shall not affect the continuing rights of the Councils and the Contractor under Clause 20.7 (Excess Costs above the Appeal Contingency (ITSAD)), Clause 20.22 (Excess Costs above the Appeal Contingency (Ferrybridge)), Clause 56.1 (Unitary Charge), Clause 63 (Audit Access), Clause 70 (Contractor's Records), Clause 81 (Compensation on Councils' Default), Clause 84 (Compensation on Termination on Contractor Default), Clause 86 (Compensation on Termination for Force Majeure), Clause 88 (Compensation on Termination on Corrupt Gifts and Fraud), Clause 90 (Compensation on Voluntary Termination), Clause 92 (Compensation on Termination for Breach of the Refinancing Provisions), Clause 94 (Treatment of Assets on Expiry of Service Period (Handback)), Clause 99 (Assignment), Clause 102 (Freedom of Information), Clause 104 (Dispute Resolution), Clause 105 (Public Relations and Publicity), Clause 110 (Law of the Contract and Jurisdiction), Clause 115 (Notices), Schedule 4 (Payment Mechanism), Schedule 16 (Relevant Discharge Terms) and paragraph 8 (Excess Costs above Appeal Contingency) of Schedule 37 (Approach to Permit Risk) 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 consequences of such termination.

### **13 NOT USED**

### **14 INTERIM SERVICE**

- 14.1 Where, no more than eighteen (18) Months and no fewer than fourteen (14) Months before 1 July 2015, the Parties, acting reasonably, agree that the ITSAD Facility is unlikely to achieve Service Commencement by the Planned Service Commencement Date and the TLS Facility is, or is likely to, be Unavailable to accept all Contract Waste from the Planned Service Commencement Date, then the Parties shall meet together as often as may be necessary:
- 14.1.1 to consider any changes required to any existing Interim Service Plan (including confirmation by the Contractor of its proposed Interim Service Facilities and/or Interim Contingency Delivery Points provided that where the Contractor is unable to use its identified Interim Contingency Delivery Points then, where practicable, Authorised Vehicles will be sent to alternative

facilities within an additional diverted distance from the ITSAD Facility and/or TLS Facility assuming a maximum twenty-five (25) mile round trip basis); and

14.1.2 to discuss and seek to agree any amendment to the Interim Service Period; and

14.1.3 to discuss and seek to agree the basis for a revised Interim Service Payment during the Interim Service Period where either the ITSAD Facility or the TLS Facility are Unavailable (and for the avoidance of doubt where the TLS Facility is available to accept Contract Waste the Interim Service Payment shall be paid in accordance with Clause 56.2 (Invoicing and Payment Arrangements)).

14.2 At any time up to 27 June 2014, the Councils may notify the Contractor in writing that they require the Contractor to provide the Interim Service in the event that Service Commencement is not achieved by 1 July 2015. In the event that such notice is served, the Contractor shall provide the Interim Service in accordance with the terms of the Interim Service Plan and the Councils shall pay the Interim Service Payment in accordance with Clause 56.2 (Invoicing and Payment Arrangements).

14.3 The Contractor shall use reasonable endeavours to contract with operators of third party facilities or Landfill sites which form part of the Interim Service on the basis that the Interim Performance Framework will apply to all deliveries of Contract Waste. In the event that such operators require a premium for accepting such performance framework, the Contractor shall notify the Councils of such premium prior to directing any deliveries to the relevant third party facility or Landfill site. Following receipt of such notice, the Councils may notify the Contractor at any time that it wishes to pay such premium, upon which the Interim Service Payment will be increased by such premium. In the event that the third party operator has required a premium but the Contractor has not received such notification from the Councils, the Contractor shall contract with the third party operator on the basis that the Interim Performance Framework does not apply.

14.4 Notwithstanding anything else in this Contract, the Councils shall have no right to terminate this Contract on the grounds of Contractor Default for any reason arising out of or directly connected with the Interim Service.

14.5 In relation to the Interim Service, the Councils shall not be entitled to make any Deductions from the Interim Service Payment other than Interim Service Performance Deductions (where the Interim Performance Framework applies at the relevant Interim Service Facility pursuant to Clause 14.3) and Interim Service Mileage Deductions in accordance with paragraph 10 of Part 1 of Schedule 4 (Payment Mechanism) (but in the case of Interim Service Mileage Deductions, only to the extent that the distance to the relevant Interim Service Facility is greater than the distance which would have been travelled to the relevant Facility (in each case from the relevant collection point(s)).

14.6

14.6.1 The Contractor undertakes to the Councils that it shall use All Reasonable Endeavours to obtain a Satisfactory TLS Permit in the name of the Contractor or the Operating Sub -Contractor to enable it to deliver certain parts of the Non-Ferrybridge Service at the TLS Facility.

14.6.2 For the purposes of Clause 14.6.1 "**All Reasonable Endeavours**" shall have the meaning ascribed to that term in paragraph 4 of Schedule 37 (Approach to Permit Risk), provided however:

(a) the Contractor shall not be obliged to incur any external or third party costs in commencing, pursuing or defending any Permit Proceedings in respect of the TLS Facility unless the Councils have been previously notified of such costs (in reasonable detail) and the Councils have agreed to reimburse all such costs;

(b) limb (d) shall be disregarded and replaced by the words:

"(d) (subject to the Parties pre-agreeing such costs) meet the reasonable and proper costs of any Permit Proceedings, such costs to include the cost of instructing Leading Counsel (Permit) (including for the purposes of deciding whether to initiate or pursue Permit Proceedings) and the cost of securing the services of any expert witness considered necessary for the purpose of such Permit Proceedings, and the Councils shall reimburse the Contractor for such pre-agreed costs within ten (10) Business Days of the Contractor incurring such costs; and"

(c) Environmental Permit shall mean the TLS Permit.

14.6.3 The Councils shall use reasonable endeavours to:

- (a) procure that the holder of the TLS Permit takes all steps necessary to secure the transfer of such permit to the Contractor or the Operating Sub-Contractor (as such party shall be specified by the Contractor), or the surrender of such permit and the issue of a new permit on the same terms to the Contractor or the Operating Sub -Contractor (as such party shall be specified by the Contractor); and/or
- (b) co-operate with and assist the Contractor in applying for a new TLS Permit,

so that such transfer or issue (as applicable) of the TLS Permit is completed on the Lease (Grange Lane) Completion Date or, failing that, as soon as possible thereafter.

14.7 The Contractor confirms that the Disclosed TLS Permit will be a Satisfactory TLS Permit if it is transferred to the Contractor or the Operating Sub -Contractor (as directed by the Contractor) or a new TLS Permit is issued to the Contractor or the Operating Sub-Contractor (in each case) on substantially the same terms and conditions as the Disclosed TLS Permit.

14.8 In the event that an Excusing Cause as referred to in Clause 33.1.2(j) (Excusing Causes) occurs, then until the Contractor or the Operating Sub -Contractor (as applicable) is the holder of a Satisfactory TLS Permit for the TLS Facility, the Councils shall not deliver or allow the delivery of Contract Waste to the TLS Facility. Instead, the Councils shall deliver Contract Waste directly to the Interim Service Facility (as directed by the Contractor) or, following the Service Commencement Date, the ITSAD Facility.

14.9 Not Used.

## **15 WARRANTIES AND GENERAL OBLIGATIONS OF THE PARTIES**

### **15.1 Status of Warranties**

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

## 15.2 Contractor Warranties

The Contractor warrants, represents and undertakes to the Councils that as at the date of this Contract:

- 15.2.1 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;
- 15.2.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Ancillary Documents;
- 15.2.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Ancillary Documents has been taken or, in the case of any Ancillary Document executed after the date of this Contract, will be taken before such execution;
- 15.2.4 the obligations expressed to be assumed by the Contractor under the Ancillary Documents are, or in the case of any Ancillary Document executed after the date of this Contract will be, legal, valid, binding and enforceable to the extent permitted by law and each Ancillary Document is or will be in the proper form for enforcement in England;
- 15.2.5 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;
- 15.2.6 the Contractor Warranted Data is true and accurate in all respects;

- 15.2.7 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;
- 15.2.8 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Project Document;
- 15.2.9 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 Project Document;
- 15.2.10 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;
- 15.2.11 each of the Ancillary Documents is or, when executed, will be in full force and effect and constitutes or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties thereto;
- 15.2.12 the copies of the Ancillary Documents which the Contractor has delivered, or, when executed, will deliver to the Councils are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Ancillary Documents which would materially affect the interpretation or application of any of the Ancillary Documents; and
- 15.2.13 in entering this Contract it has not committed any Prohibited Act.
- 15.3 The Contractor shall, promptly following the same being obtained or entered into (as the case may be) provide evidence to the reasonable satisfaction of the Councils that it has duly and properly:

- 15.3.1 obtained all Necessary Consents to enable it to procure the design and construction of and to operate and to maintain the Facilities in accordance with this Contract;
- 15.3.2 entered into a construction contract (other than the Construction Contract) and promptly provide a copy of each and any amendments thereto or replacements thereof to the Councils; and
- 15.3.3 entered into agreements (other than the Operating Sub -Contract) to procure the supply, installation, maintenance and operation of all plant and Equipment which are material to the full operation of the ITSAD Facility in accordance with the terms of this Contract and (save in respect of any documentation supplied under Clause 15.3.2) promptly provide complete copies of the same and any amendments thereto or replacements thereof to the Councils.

**15.4 Not Used**

**15.5 Not Used**

**15.6 Councils Liabilities to be Excluded**

- 15.6.1 Subject to Clauses 15.7 and 15.8 and the Contractor's rights to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to a Title Compensation Event, the Councils do not give any warranty or undertaking or make any representation (either express or implied) as to the completeness, accuracy or fitness for any purpose of any of the Background Information or any omission in respect thereof.
- 15.6.2 Subject to Clauses 15.7 and 15.8 and the Contractor's rights to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to a Title Compensation Event, the Councils and their agents or servants shall not be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation in any of the Background Information or any omission in respect thereof to the extent that the Contractor has failed to satisfy itself as to the nature and extent of the risks assumed by it in relation to the Project.
- 15.6.3 Subject to Clauses 15.7 and 15.8 and the Contractor's rights to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to a Title Compensation Event, nothing in this Contract or the Background

Information or otherwise shall constitute or imply a warranty, undertaking or representation by or on the part of the Councils as to the fitness and suitability of the Sites or any part thereof for the Works or for any other purpose.

15.7 Nothing in Clause 15.6 and Clause 15.8 and the Contractor's rights to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to a Title Compensation Event shall exclude any liability which the Councils or any of their agents or servants would otherwise have to the Contractor in respect of any fraudulent misrepresentation made prior to the date of this Contract.

#### **15.8 Title Matters**

The Councils warrant to the Contractor on the terms set out in Part 1 of Schedule 38 (Title Matters) provided that no inaccuracies or omissions in any information which is the subject matter of such warranties shall be capable of giving rise to a Councils' Default.

15.9 Subject and without prejudice to Clauses 15.7, 15.8 and 34 (Fossils and Antiquities) and the Contractor's rights to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to a Title Compensation Event the Contractor shall be deemed to have:

15.9.1 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

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

- (a) information as to the nature, location and condition of the Site (including hydrological, geological, hydrogeological, geotechnical and sub-surface conditions);
- (b) (without prejudice to the Councils' obligation to provide the Guaranteed Minimum Tonnage) current and projected tonnages, trends and composition of Contract Waste; and
- (c) information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures;

15.9.3 satisfied itself in relation to:

- (a) means of access to and through the Sites, the possibility of interference by any person with such access and the times and methods of working necessary to prevent any nuisance whether public or private to any third party;
- (b) the boundaries of and the rights exercisable in relation to the Sites;
- (c) the extent and nature of work and materials necessary for conducting and completing the Works;
- (d) the state and condition of the Sites; and
- (e) all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Works.

15.10 Subject and without prejudice to Clauses 15.7 and 15.8 and the Contractor's rights to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to a Title Compensation Event (and except for any express provisions of this Contract having the contrary effect) the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Councils on grounds that any Background Information, where obtained from the Councils or otherwise is incorrect or insufficient and it shall make its own enquiries as to the accuracy and adequacy of that information.

#### **15.11 General Obligations of the Councils**

The Councils undertake to the Contractor that in relation to this Project:

15.11.1 they will, to the extent that any Necessary Consents concern the carrying out of the Works and/or the Service, comply with all Necessary Consents applicable to any or all of them;

15.11.2 save as is required in the proper performance of their statutory duties (but subject to Clause 2.10 (Various Roles of the Councils)) and save as is expressly authorised under this Contract, they will not wilfully impede or wilfully interfere with the Contractor or any Contractor Related Party in the performance of its obligations under this Contract; and

- 15.11.3 procure that they and all Councils Related Parties comply with the Construction Sub-Contractor's site regulations in relation to the Works and the Site Rules and Conditions in relation to the deliveries of Contract Waste to each Facility or any Contingency Delivery Point;

## **16 ADVISERS AND REPRESENTATIVES**

### **16.1 Contractor's Representative**

- 16.1.1 The Contractor shall appoint a Contractor's Representative throughout the Contract Period, the identity of whom from time to time shall be notified in writing to the Councils' Representative. The identity of the Contractor's Representative shall be approved by the Councils' Representative, and the Councils reserve the right to reject the appointment of any person as the Contractor's Representative who does not in the opinion of the Councils have appropriate experience in the management of services similar to the Service or who is otherwise unsuitable for such appointment. The Contractor shall ensure that the Contractor's Representative is available at all times during which the Service is being performed and carried out.
- 16.1.2 The Contractor's Representative shall hold some suitable and relevant qualifications and/or have recent practical and relevant experience of managing services similar to the Service. At the time of proposing the Contractor's Representative the Contractor shall submit a curriculum vitae to the Councils' Representative detailing the experience and qualifications of the proposed Contractor's Representative.
- 16.1.3 The Contractor shall provide a sufficient number of supervisory employees in addition to the Contractor's Representative to ensure that the Contractor's employees engaged in and about the provision of the Service at the Facilities are at all times adequately supervised in order properly to perform their duties in connection with the Contract.

### **16.2 Authority of Contractor's Representative**

Save in relation to matters connected with Clause 53 (Changes to the Works or Services), Part VIII (Termination), Clause 99 (Assignment) and Clause 117 (Amendments):

16.2.1 the Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract; and

16.2.2 the Councils shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor (save for acts undertaken after the Contractor has notified the Councils' Representative that such authority has been revoked) and the Councils shall not be required to determine whether any such authority has in fact or in law been given.

### **16.3 Replacement of Contractor's Representative**

The Contractor may by notice to the Councils change the Contractor's Representative. Where the Contractor wishes to do so, it shall by written notice to the Councils 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 Councils (such approval not to be unreasonably withheld or delayed).

### **16.4 Absence of Appointment of Contractor's Representative**

16.4.1 If at any time the Councils' Representative:

- (a) has not received notification from the Contractor of the identity of the Contractor's Representative; or
- (b) has received notification from the Contractor that the Contractor's Representative has been removed and does not immediately receive notification of the replacement of such person by the appointment of a new Contractor's Representative (as appropriate),

the Contractor shall be deemed to have appointed and properly notified the Councils' Representative of the appointment as Contractor's Representative of the Managing Director of the Contractor and in default of appointment of a Managing Director of the Contractor any other director of the Contractor until such time as the Contractor properly notifies the Councils' Representative of an appointment under Clause 16.3 (Replacement of Contractor's Representative).

## **16.5 Councils' Representative**

The Councils shall appoint throughout the Contract Period a Councils' Representative to liaise with the Contractor's Representative and shall keep the Contractor informed of the identity from time to time of the Councils' Representative.

## **16.6 Removal of Councils' Representative**

The Councils may remove or replace the Councils' Representative from time to time and must give written notice to the Contractor promptly after so doing.

## **16.7 Absence of Appointment of the Councils' Representative**

16.7.1 If at any time the Contractor shall:

- (a) not have received notification from the Councils of the identity of the Councils' Representative; or
- (b) have received notification from the Councils that the Councils' Representative has been removed and does not receive notification immediately of the replacement of such person by the appointment of a new Councils' Representative,

the Councils shall be deemed to have appointed and properly notified the Contractor of the appointment as Councils' Representative of BDR Manager c/o Rotherham Borough Council from time to time of the Councils to be the Councils' Representative until such time as the Councils properly notify the Contractor of the appointment of a replacement or alternative Councils' Representative in accordance with Clauses 16.6 or 16.10.

## **16.8 Authority of Councils' Representative**

16.8.1 Subject to Clause 16.8.2, the Councils' Representative shall have full authority, save where any matter is expressly reserved to the Councils, to act on behalf of the Councils in connection with this Contract and the Contractor and the Contractor's Representative shall be entitled (subject to the saving words in this Clause) to treat any act of the Councils' Representative as being expressly authorised by the Councils (save for acts undertaken after the Councils have notified the Contractor that such authority has been revoked)

and the Contractor and the Contractor's Representative shall not be required to determine whether any such authority has in fact or in law been given.

16.8.2 The Councils' Representative shall have no authority to amend or alter any terms of this Contract.

#### **16.9 Councils' Representative's Power to Delegate**

The Councils' Representative may from time to time delegate to any Authorised Officer any of the powers he is entitled to exercise pursuant to this Contract.

#### **16.10 Councils' Representative to give Notice of Appointment of Authorised Officer**

The Councils' Representative shall give notice in writing to the Contractor of the appointment of any Authorised Officer specifying the extent of the powers of the Councils' Representative which the Councils' Representative is delegating to the Authorised Officer and subject to Clause 16.8 if no extent or limit of powers are specified in the notice then the Authorised Officer may exercise all of the powers which the Councils' Representative is able to delegate pursuant to Clause 16.9.

#### **16.11 Reliance on Notice of Appointment**

The Contractor may treat any notice given pursuant to Clause 16.10 as conclusive evidence of the lawful appointment of such Authorised Officer until such time as the Councils' Representative notifies the Contractor of the revocation of such appointment and the Contractor may treat any act of the Authorised Officer prior to receipt of such notice of revocation as being expressly authorised by the Councils' Representative and further the Contractor shall not be required to determine whether any such authority has in fact or in law been given.

#### **16.12 Communications to be Given in Writing**

Subject to any express provisions in this Contract to the contrary, all instructions, decisions, opinions and other communications from the Councils' Representative and/or Authorised Officer (as the case may be) to the Contractor or the Contractor's Representative or from the Contractor or Contractor's Representative to the Councils' Representative and/or Authorised Officer which are intended to have a binding effect on the Contractor or the Councils (as the case may be) shall be in writing or, if given orally, shall be confirmed in writing no later than the next Business Day.

**16.13 Conflict Between Councils, Councils' Representative and Authorised Officer**

Where the instructions of the Councils' Representative and those of any appointed Authorised Officer conflict, the matter shall be referred to the Councils' Representative for resolution, without prejudice to any action taken by the Contractor in reliance on any resolution, decision, opinion or other communication before the conflict becomes apparent.

**16.14 Contractor to provide with Councils' Representative with contact information**

The Contractor shall provide the Councils' Representative, subject to any other supervening and unavoidable legal obligations, with the name, address, e-mail address, facsimile and telephone number(s) and, if any, mobile telephone number(s) of all management or other specialist staff who are employed in a senior capacity by the Contractor and promptly update the Councils' Representative with any changes.

**16.15 Plant and Equipment to be operated by licensed/trained people**

The Contractor shall ensure that plant and Equipment are only operated by persons who are licensed and/or trained to do so or are under proper tuition and supervision from such licensed and/or trained persons.

**PART II – THE WORKS**

**17 PRINCIPAL OBLIGATIONS**

17.1 Subject to Clause 20 (Planning Permissions) and Clause 21 (Necessary Consents) the Contractor shall commence the Works on or before the Planned Works Commencement Date and shall thereafter carry out and complete the Works in accordance with this Contract using all skill, care and diligence as would a competent professional carrying out professional services of a similar scope, nature and complexity.

17.2 The Contractor shall achieve Service Commencement on or before the Planned Service Commencement Date.

17.3 The Contractor shall procure the carrying out of the design (including preparation of the Base Design Proposal), engineering, project management, contract administration, planning, supervising, quantity surveying, testing and commissioning and commence, provide and complete the Works:

17.3.1 in accordance with the Output Specification;

- 17.3.2 in accordance with the Works Delivery Plan;
- 17.3.3 in accordance with the Construction Documents;
- 17.3.4 in accordance with the requirements of all Necessary Consents and Legal Requirements and for the avoidance of doubt including but not limited to statutory notices;
- 17.3.5 in accordance with Good Industry Practice and Guidance;
- 17.3.6 with all due diligence;
- 17.3.7 with suitable materials in accordance with Clause 27.2 (Materials); and
- 17.3.8 ensuring that the Works are free from all material defects.

## **18 LAND ISSUES**

### **18.1 Site Security For Site (Bolton Road)**

Subject to Clause 19 (Adverse Ground Conditions and Contamination) on the Works Commencement Date the Councils shall ensure that the Site (Bolton Road) is in no worse condition than described in the Site Investigation Report (Bolton Road) and that there are no visible materials at the Site which were not present at the date of the site investigation referred to in the Site Investigation Report (Bolton Road).

- 18.2 From the date of this Contract until the Works Commencement Date the Councils shall be responsible for the security of the Site (Bolton Road).

### **18.3 Access to and occupation of the Site (Bolton Road) prior to the Works Commencement Date**

18.3.1 Subject to Clauses 18.3.2 and 18.3.3, the Councils shall allow the Contractor and the Contractor Related Parties to enter and remain on the Site (Bolton Road) as often as reasonably necessary with all necessary plant, machinery and equipment at all reasonable times in the period prior to the Works Commencement Date:

- (a) to carry out surveys, environmental, soil and other tests, investigations and inspections and measurements;
- (b) for the preparation of an environmental impact or other studies; and

- (c) for all purposes in connection with obtaining a Planning Permission or an Environmental Permit.

#### 18.3.2 **Notification of Access**

Before exercising the rights in Clause 18.3.1 the Contractor shall:

- (a) give reasonable prior written notice to the Councils of the date on which it wishes to exercise such rights; and
- (b) give notice to the Councils of any works to be carried out on the Site (Bolton Road) in the exercise of such rights and obtain the Councils' prior written approval to them, such approval not to be unreasonably withheld or delayed.

#### 18.3.3 **Compliance by Contractor Related Parties**

The Contractor shall procure that the Contractor Related Parties comply with the provisions of Clause 18.3.2 before exercising the rights in Clause 18.3.1.

#### 18.3.4 **Contractor's obligations**

The Contractor agrees with the Councils:

- (a) to make good any physical damage to the Site (Bolton Road) caused in the exercise of the rights in Clause 18.3.1 where requested by the Councils; and
- (b) to take all proper and sufficient precautions during the exercise of the rights:
  - (i) to maintain the structural integrity of the Site (Bolton Road) and any adjoining premises;
  - (ii) not to infringe, interrupt or destroy any rights, easements, privileges or services enjoyed by the Site (Bolton Road) or any neighbouring or adjoining premises of which the Contractor is aware;
  - (iii) to cause as little inconvenience as reasonably practicable to the Councils and any tenants or other occupiers of the Site (Bolton Road) or adjoining premises; and

- (c) that on completion of any bore hole or trial pits, the bore holes are properly plugged and the trial pits are back-filled only with materials which have been excavated in creating those trial pits and until plugged and back-filled respectively not to leave unattended at any time any bore hole or trial pit.

**18.4 Access to and occupation of the Site (Bolton Road) from the Works Commencement Date**

- 18.4.1 The Contractor shall provide the Councils with at least twenty (20) Business Days written notice of the Works Commencement Date. From the Works Commencement Date until the date of grant of the Lease (Bolton Road) in accordance with this Clause 18 (or, if applicable, the Termination Date), the Councils hereby grant the Ancillary Rights to the Contractor and the Contractor Related Parties.
- 18.4.2 If at any time the Contractor requires access to or any interest in any land which does not form part of the Site (Bolton Road) or any additional rights beyond those which the Contractor has the benefit of in relation to any part of the Site (Bolton Road), the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Contractor.
- 18.4.3 The Ancillary Rights (granted pursuant to Clause 18.4.1) and the rights granted to the Contractor pursuant to Clause 18.3 will automatically cease and determine upon the earlier of the date when the Lease (Bolton Road) is completed and the Termination Date and the Contractor shall as soon as practicable following the Termination Date vacate and remove its effects from the Site (Bolton Road) (and shall ensure that the Contractor Related Parties do the same) and leave or ensure that the Site (Bolton Road) is left in a tidy condition.
- 18.4.4 The Ancillary Rights granted by Clause 18.4.1:
  - (a) shall not operate or be deemed to operate as a demise of the Site (Bolton Road) or any parts thereof and, prior to the grant of the Lease (Bolton Road), neither the Contractor nor any Contractor Related Party shall have or be entitled to any estate right title or interest in the Site (Bolton Road) or any parts thereof but shall occupy the Site (Bolton Road) or any parts thereof as a licensee only; and

(b) are personal to the Contractor and the Contractor Related Parties.

## **18.5 Vacant Possession**

18.5.1 The Councils shall grant the Lease (Grange Lane) with legal and physical vacant possession.

18.5.2 The Councils shall grant the Lease (Bolton Road) with legal and physical vacant possession.

## **18.6 Grant of Leases**

18.6.1 Subject to Clause 18.6.2, the Councils shall grant the Lease (Grange Lane) and the Contractor shall accept the Lease (Grange Lane) on the Lease (Grange Lane) Completion Date provided that the Councils have served a notice on the Contractor pursuant to Clause 14.1 (Interim Service) and provided further that the Councils shall not be in breach of this Clause if the failure to grant the Lease (Grange Lane) on the Lease (Grange Lane) Completion Date arises from any act or default on the part of the Contractor.

18.6.2 If the Councils shall not have served a notice on the Contractor pursuant to Clause 14.1 (Interim Service), the Councils shall grant the Lease (Grange Lane) and the Contractor shall accept the Lease (Grange Lane) on the Service Commencement Date.

18.6.3 The term of the Lease (Grange Lane) will commence on the Lease (Grange Lane) Completion Date and shall expire on the Expiry Date unless terminated on the Termination Date if applicable.

18.6.4 Not Used.

18.6.5 Not Used.

18.6.6 Not Used.

18.6.7 Not Used.

18.6.8 The Parties acknowledge that it may be necessary to vary the rights excepted and reserved and the rights granted in the Lease (Bolton Road) in order to reflect the physical configuration of the access to the ITSAD Facility and the Drainage Dyke and the Parties (acting reasonably) will seek to agree such

changes as may be required by the other Party to this Contract to reflect such physical configuration and any dispute relating to the variation of the rights excepted and reserved and the rights granted shall be determined in accordance with Clause 104 (Dispute Resolution).

- 18.6.9 The Councils shall grant the Lease (Bolton Road) and the Contractor shall accept the Lease (Bolton Road) on the Service Commencement Date
- 18.6.10 The term of the Lease (Bolton Road) shall commence on the Service Commencement Date and shall expire on the Expiry Date or, if applicable, the Termination Date.
- 18.6.11 Completion of the Leases shall take place at the offices of the Councils' solicitors or otherwise as they may reasonably direct.
- 18.6.12 The Standard Commercial Property Conditions (second edition) shall apply to the agreement to grant the Leases herein to the extent they are applicable to the grant of a lease and save insofar as such conditions are inconsistent with the terms of this Contract, in which case the terms of this Contract shall prevail.
- 18.6.13 Not less than twenty (20) Business Days prior to the Lease (Grange Lane) Completion Date or the Service Commencement Date (if Clause 18.6.2 applies) (in respect of the Lease (Grange Lane)) and the Service Commencement Date (in respect of the Lease (Bolton Road)) the Councils' Representative shall deliver an engrossment of the relevant counterpart Lease to the Contractor.
- 18.6.14 The Contractor shall execute and deliver to the Councils' Representative the relevant counterparts of the Leases as soon as practicable after receipt but, in any event, prior to the Lease (Grange Lane) Completion Date or the Service Commencement Date (if Clause 18.6.2 applies) (in respect of the Lease (Grange Lane)) and the Service Commencement Date (in respect of the Lease (Bolton Road)).
- 18.6.15 The Landlord and the Tenant have agreed that the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 (the "**1954 Act**") shall be excluded in relation to each of the tenancies to be created under this Contract.

18.6.16 The Parties acknowledge that a notice as required by section 38A(3) of the 1954 Act (as amended) has been served on the Contractor in respect of the tenancies to be created under this Clause 18 and the Contractor has made the statutory declarations as required by Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

**18.6.17 Registration**

(a) The Contractor shall apply for and procure registration of each Lease at the Land Registry and meet all fees in connection therewith as soon as reasonably practicable after the Lease (Grange Lane) Completion Date or the Service Commencement Date (if Clause 18.6.2 applies) (in respect of the Lease (Grange Lane)) and the Service Commencement Date (in respect of the Lease (Bolton Road)) and shall within ten (10) Business Days of completion of each such application supply copies of the leasehold register entries and title plan to the Councils' Representative.

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

18.6.18 Without prejudice to the provisions of Part VIII (Termination) of this Contract neither the Contractor nor any Contractor Related Party shall be entitled to any compensation pursuant to the Landlord and Tenant Act 1927 and/or the 1954 Act as a result of the expiry or earlier determination of any Lease save as set out in this Contract.

18.6.19 Without prejudice to Clause 15.8 (Title Matters) and the Contractor's right to claim compensation under Clause 31 (Effect of a Compensation Event) in respect of a Title Compensation Event, each Lease shall be granted subject to but where applicable with, the benefit (to the extent the Councils are 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 relevant Site;

- (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 relevant 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 relevant 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 orders proposals restrictions agreements notices or other matters whatsoever (whether registered or not before the date hereof) affecting or relating to the relevant 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 or leasehold titles to the Sites as at the date of this Contract.

18.6.20 The Councils consent to the entry of a unilateral notice in respect of this Contract in the register of the Councils' titles to the Site (Bolton Road) and the Site (Grange Lane) and agree that they shall not dispute or appeal against the Contractor's application for the same. The Contractor confirms that it will remove any unilateral notices registered by it in relation to this Contract in relation to each of the Sites as soon as practicable after the completion of the grant of the Lease of the relevant Site.

## **18.7 Title**

Subject and without prejudice to the Contractor's rights under Clause 15.8 (Title Matters) and the Contractor's right to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to any Title Compensation Event the Certificates of Title in respect of the Sites have been provided to the Contractor prior to the date of this Contract and the Contractor shall take the Leases with full knowledge of the matters disclosed therein and shall raise no requisition thereon or objection thereto, save in relation to any matters not referred to in the Certificates of Title which the Contractor becomes aware of after the date of this Contract.

## **18.8 Early Termination**

18.8.1 Subject to the provisions of the Direct Agreement, with effect from the Termination Date:

- (a) the Leases granted to the Contractor (or, if not granted at the time, the obligation to grant or assign the Leases) shall automatically cease and determine;
- (b) the Contractor shall as soon as practicable deliver the Leases to the Councils together with relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered titles relating to any underleases; and
- (c) the Contractor shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at the Land Registry and the Land Charges Registry in relation to the Leases.

## **18.9 Expiry of Contract**

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

## **18.10 Terms of the Leases**

The Parties shall comply with their respective obligations under the terms of each of the Lease (Grange Lane) and the Lease (Bolton Road) at all times with effect from the date of the grant of the relevant Leases.

## **18.11 No Chancel Repair Liability**

The Parties agree that, notwithstanding any other provision contained in this Contract or in the Leases, the Contractor shall have no liability to the Councils or any other party as a consequence of either or both of the Sites being located within a parish which has any

chancel repair liability and the Councils shall indemnify the Contractor against any liability to any third parties arising as a result of any such chancel repair obligation.

## **18.12 Appropriation of land for planning purposes**

18.12.1 On or before the Service Commencement Date, Rotherham shall appropriate for planning purposes any interests it holds in the Site (Bolton Road) which are not already held for such purposes in order to enable the operation of section 237 of the Town and Country Planning Act 1990 (as amended).

18.12.2 The Councils shall be responsible for the payment of any compensation payable to third parties pursuant to the provisions of section 237 of the Town and Country Planning Act 1990 (as amended) and shall indemnify the Contractor against any liability to pay compensation and any other liability to third parties arising as a result of or in connection with the exercise by the Councils (or any individual Council) of their powers under such statutory provisions, including:

- (a) the Contractor's costs (including any costs awarded against it) of any referral to the Lands Tribunal in connection with a claim for compensation and/or of any subsequent litigation in relation thereto;
- (b) any legal or other expenses which the Contractor is required to pay to a third party claiming compensation in relation to such statutory compensation and/or in connection with the negotiation of such statutory compensation.

## **18.13 Indemnity for works at Site (Bolton Road)**

The Councils shall indemnify and keep indemnified the Contractor against all Direct Losses arising out of or in connection with the carrying out and completion of the works referred to in paragraphs 5.1 and 5.2 of Schedule to the Lease (Bolton Road).

## **19 ADVERSE GROUND CONDITIONS AND CONTAMINATION**

### **Liability for Site Conditions and Contamination**

19.1 Without prejudice to the entitlement of the Contractor to apply for relief from its obligations and/or claim compensation under this Contract as the result of the occurrence of a Compensation Event set out at limbs (a) or (c) of such definition (and

subject to any express provisions to the contrary in this Clause 19 (Adverse Ground Conditions and Contamination)), all Site Conditions (including Adverse Ground Conditions) and Contamination and all and any costs and expenses howsoever arising in relation thereto (whether in respect of rectifying Adverse Ground Conditions or any Remedial Action or clean up of Contamination) shall be the sole responsibility of and for the account of the Contractor and without prejudice to any other obligation of the Contractor under this Contract the Contractor shall be deemed to have:

- 19.1.1 carried out a ground physical and geophysical investigation and to have inspected and examined the Site (Bolton Road) and its surroundings and (where applicable) any existing structures or works on, over or under the Site (Bolton Road);
- 19.1.2 satisfied itself as to the nature of the Site Conditions at or under the Site (Bolton Road), the ground, ecosystem, water table, drainage and the subsoil, the form and nature of the Site (Bolton Road), the load bearing and other relevant properties of the Site (Bolton Road), the risk of injury or damage to property affecting the Site (Bolton Road), 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;
- 19.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Sites);
- 19.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Councils, their employees and agents) with access to or use of, or rights in respect of, the Sites with particular regard to Adjoining Owners;
- 19.1.5 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;
- 19.1.6 reviewed and satisfied itself as to presence or absence of any Contamination at the Site (Bolton Road); and

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

19.2 Subject only to Clauses 19.4 (Site (Grange Lane)) and 19.9 (Site Bolton Road)), the Contractor shall not be entitled to make any claim in relation to Site Conditions, Adverse Ground Conditions or Contamination in respect of either Site against the Councils of any nature whatsoever on any grounds including the fact that incorrect or insufficient information on any matter relating to the Sites was given to it by any person whether or not the Councils their contractors or agents.

### **Contractor Hold Harmless**

19.3 Subject to Clauses 19.4 (Site (Grange Lane)), 19.6 (Liability for Higher Standards) and 19.9 (Site (Bolton Road)), the Contractor accepts full responsibility for all matters referred to in Clause 19.1 and the Contractor shall be responsible for and hold the Councils harmless therefrom and from dealing with any Site Conditions (including any Remedial Action) so that it shall at all times comply with its obligations under this Contract including complying with at its own cost any applicable Laws, Good Industry Practice and any Necessary Consents orders notices or directions of any regulatory body (whether served upon or made against any of the Councils or the Contractor).

### **Site (Grange Lane)**

19.4 Subject to Clauses 19.5 and 19.6 (Liability for Higher Standards) the Councils shall be responsible for all and any costs and expenses howsoever arising in relation to any rectification of unforeseen ground conditions and/or any Remedial Action in respect of Contamination which exist in or under any parts of the Site (Grange Lane) as at the Lease (Grange Lane) Completion Date;

19.5 Where pursuant to Clause 19.4 the Councils are responsible for such costs and expenses associated with any works of rectification of unforeseen ground conditions and/or Remedial Action in respect of Contamination at the Site (Grange Lane) and where such works of rectification and/or Remedial Action is carried out after the Lease (Grange Lane) Completion Date:

19.5.1 such unforeseen ground conditions and/or Contamination shall be deemed to be an Excusing Cause and any work or change to the Service required or instructed to be done in consequence of it, shall be deemed to be a Councils' Change which, notwithstanding any provisions in Schedule 32 (Change

Protocol) to the contrary, the Councils shall not be entitled to withdraw and which may not be deemed to be withdrawn for any reason; and

19.5.2 the Councils shall further hold the Contractor harmless from such works of rectification and/or Remedial Action and shall indemnify the Contractor in respect of all Direct Losses (including the costs of the Change arising in connection with the Councils' Change referred to above) suffered or incurred by the Contractor resulting from such unforeseen ground conditions and/or Contamination,

provided that the Contractor (and not the Councils) shall be responsible for such costs and expenses to the extent that any unforeseen ground conditions and/or Contamination which existed prior to the Lease (Grange Lane) Completion Date have been aggravated as a result of the negligent act or negligent omission of the Contractor or a Contractor Related Party.

#### **Liability for Higher Standards**

19.6 The Councils will not be liable to the Contractor under Clause 19.4 (Site (Grange Lane)), and the Contractor will not be liable to the Councils under Clauses 19.3 (Contractor Hold Harmless) and/or 19.7 (Off Site Contamination Source), to the extent that Losses claimed relate to any works of rectification in respect of Adverse Ground Conditions or to any Remedial Action in respect of Contamination in respect of the Sites which are to a standard that is higher than is necessary at the relevant time to comply with applicable Environmental Laws (as such Environmental Laws relate to the relevant Site), Good Industry Practice and Necessary Consents.

#### **Off-Site Contamination Source**

19.7 Subject to Clauses 19.4 (Site (Grange Lane)), 19.6 (Liability for Higher Standards) and 19.9 (Site (Bolton Road)), to the extent that any part(s) of the Sites suffer from or are affected by Contamination arising from a source off the Site (whether or not on Adjoining Property) the Contractor shall be responsible for all and any costs and expenses howsoever arising relating to such Contamination and the following provisions shall apply:

19.7.1 where (in relation to the Site (Bolton Road)) any such matter arises on or after the Works Commencement Date but prior to the Service Commencement Date, it shall be deemed to be a Relief Event for a reasonable period (to be

agreed between the Parties acting reasonably) for the purposes of this Contract; and

19.7.2 where (in relation to the Site (Bolton Road)) any such matter arises in the period following the earlier of 1 July 2015 and the Readiness Date it shall be deemed to be an Excusing Cause that shall apply for a reasonable period (to be agreed between the Parties acting reasonably) but any work required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute a Councils' Change; and

19.7.3 where (in relation to the Site (Grange Lane)) any such matter arises in the period:

(a) from 1 July 2015 until the Service Commencement Date it shall be deemed to be Relief Event; and

(b) from the Lease (Grange Lane) Completion Date it shall be deemed to be an Excusing Cause that shall apply for a reasonable period (to be agreed between the Parties acting reasonably) but any work required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute a Councils' Change.

#### **Handback of Assets on Expiry**

19.8 Upon the Expiry Date (or on such earlier date as the Contract may terminate in accordance with this Contract) each of the Sites shall be handed back to the Councils in accordance with Clause 94 (Treatment of Assets at Expiry) and any Handback Requirements in such a state and condition so as to comply with all Laws, Guidance, Good Industry Practice and Necessary Consents.

#### **Site (Bolton Road)**

19.9

19.9.1 If, at any time on or after the Planned Works Commencement Date, the Contractor identifies Contamination and/or Adverse Ground Conditions at the Site (Bolton Road) which exceed the quantities referred to at paragraphs 1 and 2 or costs or expenses which exceed the quantities referred to at paragraph 3 in each case of Schedule 20 (Ground Conditions and Contamination Scope) it shall promptly and in any event within five (5) Business Days thereof notify

the Councils of the same and thereafter provide to the Councils such detailed information as they (acting reasonably) require in respect of the nature thereof and the projected costs of all elements of any rectification works associated therewith (including any impact upon the Construction Programme and any measures proposed to be taken by the Contractor to mitigate the impact thereof). Within five (5) Business Days of receipt by the Councils of such information as they reasonably require:

- (a) the Parties acting in good faith shall seek to agree the costs of any works of rectification of any such Adverse Ground Conditions and/or Remedial Action in respect of any such Contamination to the standard required by this Contract and to enable the Construction Sub-Contractor and its sub-contractors to perform the Works so as to minimise additional expenditure or delay acknowledging the extent of Works undertaken during the previous week, and the Contractor's programme of Works for the coming week and subsequently to achieve Service Commencement on or before the Planned Service Commencement Date or if that date is not reasonably practicable then with the minimum delay and in any event prior to the Long Stop Date;
- (b) the Contractor shall acting reasonably and at all reasonable times provide the Councils with such information (on an Open Book Basis) as they reasonably require and shall use reasonable endeavours to mitigate the costs of any works of rectification of any such Adverse Ground Conditions and/or Remedial Action in respect of any such Contamination to the standard required by this Contract such mitigation to include:
  - (i) maximising the use of material already on the Site (Bolton Road);
  - (ii) using the minimum amount of appropriate materials; and
  - (iii) using appropriate materials which offer the best value for money;
- (c) for the avoidance of doubt the Councils shall review and negotiate the costs referred to in limb (a) above with the Contractor;
- (d) Not Used;

- (e) Not Used;
- (f) the Parties shall (acting reasonably) within the period described at Clause 19.1 above and in accordance with Clause 19.9.1(a) and Clause 19.9.1(b) seek to agree any costs of any tasks which are necessary to rectify all such Adverse Ground Conditions and/or undertake Remedial Action in respect of all such Contamination to a standard which complies with all Laws, Guidance, Good Industry Practice and Necessary Consents and the requirements of this Clause 19 and if the Parties have failed to agree such costs within such five (5) Business Day period then either Party may refer such matter for determination in accordance with the Dispute Resolution Procedure. The amount by which such costs and expenses exceed the Anticipated Rectification/Remediation Costs in connection with the works which will be carried out as a result of the discovery of quantities greater than those referred to at paragraphs 1 and 2 and/or costs or expenses which exceed the amounts referred to at paragraph 3 in each case of Schedule 20 (Ground Conditions and Contamination Scope) is the "**Net Ground Conditions Costs**";
- (g) the Contractor shall at all times maintain and at all reasonable times make available to the Councils (by way of copies thereof and/or inspection) a full record of particulars of the relevant works and all cost associated therewith of performing the obligations of the Contractor under this Clause 19;
- (h) the Contractor shall from time to time and when requested by the Councils to do so provide a summary of any of the costs of the Contractor referred to above in respect of each notice served and in aggregate including details of any unused amount of the quantities referred to at paragraphs 1 and 2 and/or costs and expenses referred to at paragraph 3 of Schedule 20 (Ground Conditions and Contamination Scope) and/or the Anticipated Remediation/Rectification Costs in such form and detail as the Councils may reasonably require together with explanations as required by the Councils to monitor the performance by the Contractor of its obligations under this Contract and further:

- (i) in the event that the Contractor fails to comply with this Clause 19.9.1(h) this shall be a valid ground for the Councils to withhold payment of amounts otherwise due in respect of the Councils' share of Net Ground Conditions Costs until such time as the Contractor fully complies with the provisions of this Clause 19.9.1(h)); and
- (ii) in the event that it is agreed between the Parties or determined that any adjustment is required in order to rectify any overpayment or underpayment in respect of the Councils share of Net Ground Conditions Costs such amount as represents the adjustment shall be paid by the relevant Party within twenty (20) Business Days thereof; and
- (iii) the Contractor shall provide such facilities as the Councils may reasonably require for its representatives to visit where the records setting out the Open Book Basis are held and to examine and copy the records maintained under Clause 19.9.1(g).

19.10 To the extent that any part(s) of the Site (Bolton Road) suffers from or is affected by Contamination or Adverse Ground Conditions the Contractor shall subject to payment by the Councils of its share of the Net Ground Conditions Costs (as calculated in accordance with Clause 19.10.3) be responsible for all and any costs and expenses howsoever arising relating to works of rectification in respect of such Adverse Ground Conditions and Remedial Action in respect of such Contamination and the following provisions shall apply:

19.10.1 where (in relation to the Site (Bolton Road)) any such matter arises prior to the Service Commencement Date, it shall be deemed to be a Relief Event for a reasonable period (to be agreed between the Parties acting reasonably) but any work required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute a Councils' Change; and

19.10.2 where (in relation to the Site (Bolton Road)) any such matter arises in the period following the earlier of 1 July 2015 and the Readiness Date it shall be deemed to be an Excusing Cause that shall apply for a reasonable period (to be agreed between the Parties acting reasonably) but any work required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute a Councils' Change;

### **Apportionment of Net Ground Conditions Cost - Adverse Ground Conditions and Contamination**

19.10.3 The Parties hereby agree that the Net Ground Conditions Costs in respect of the Sites shall be borne by the Parties in accordance with the table below:

**[REDACTED]**

The Councils shall be liable for and shall pay their share of any such agreed Net Ground Conditions Costs to the Contractor within five (5) Business Days of the same being agreed or determined or, if later, the date on which payment is due to the Construction Sub-Contractor, provided that the Councils' aggregate maximum liability shall not exceed five hundred and ninety-seven thousand five hundred pounds (£597,500) above which all costs and expenses shall be for the account of the Contractor.

### **Statutory Apportionment of Liability**

19.11 The Councils and the Contractor confirm and accept that the provisions of this Clause 19 are intended to be an agreement on liability between them for the purposes of paragraph D38 of the Statutory Guidance (or its equivalent), and that the Relevant Authority shall as between the Parties make such determinations on the questions of exclusion, apportionment and attribution of all Environmental Liabilities in any way relating to Contamination in respect of any of the Sites (including any Remedial Action) as shall give effect to the terms of this Clause 19.

### **Storage of Materials**

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

19.13 The Contractor shall maintain a COSHH register in relation to the Facilities and shall ensure that a copy of the register is held at the Facilities, at the Contractor's registered office and that a copy is given to the Councils. The Councils shall notify the Contractor

of any items which it or any Councils' Related Party is using or storing at any of the Sites and which are required to be included in such register.

## **20 PLANNING PERMISSIONS**

### **20.1 Contractor to Obtain Planning Permission**

- 20.1.1 The Contractor undertakes to the Councils that (subject to the provisions of this Clause 20):
- (a) it shall use All Reasonable Endeavours to obtain a Satisfactory Planning Permission to enable it to undertake the relevant Works and to deliver the Non-Ferrybridge Service at the ITSAD Facility; and
  - (b) the Contractor shall in pursuing any relevant Planning Permission use all reasonable endeavours to commence the works by Planned Works Commencement Date and to obtain the Planning Permission by the Planning Long Stop Date (ITSAD) in respect of the Site (Bolton Road).
- 20.1.2 The Contractor shall bear the costs of obtaining and of implementing and complying with the provisions and conditions of a Satisfactory Planning Permission (other than the Councils' internal costs and any costs relating to Proceedings in the name of the Contractor which exceed the Appraisal Contingency (ITSAD) and in respect of which the Councils have given prior written consent that such costs may be incurred in accordance with Clause 20.4 below).
- 20.1.3 The Contractor shall provide to the Councils on a quarterly basis a written summary of:
- (a) the steps taken by the Contractor in the preceding quarter in compliance with its obligations under this Clause 20.1; and
  - (b) a written summary of those steps which it anticipates taking in the following quarter in order to comply with its obligations under this Clause 20.1.
- 20.1.4 Without limiting the Contractor's obligations under this Clause 20.1 the Councils may within five (5) Business Days after receipt of such summary notify the Contractor of any further measures which they believe the

Contractor should take in order to comply with its obligations under Clause 20.1 and the Contractor shall give due consideration to any such suggestions of the Councils.

20.1.5 Without prejudice to the Contractor's obligations under this Clause 20 the Councils shall at the reasonable written request of the Contractor confirm in writing (on not more than a quarterly basis) whether the Councils believe that, in their opinion, the Contractor has up to the date of the Contractor's request fully complied with its obligations set out in Clause 20.1.1 to use All Reasonable Endeavours to obtain a Satisfactory Planning Permission. At the same time as the Contractor makes any such request the Contractor shall provide the Councils with supporting information regarding the steps which it has taken in order to obtain a Satisfactory Planning Permission and the Councils' confirmation shall be solely based on such information.

20.1.6 Where the Councils confirm in writing that in their opinion the Contractor has not complied with its obligations under Clause 20.1.1 at any time ("**ARE Failure**"), the Councils shall give reasons for such opinion, including reasonable details of the ARE Failure and:

- (a) the Contractor may provide to the Councils a written summary of steps that it has taken (or that it intends to take) in order to rectify an ARE Failure ("**ARE Rectification Notice**"), together with any supporting information; and
- (b) the Councils shall, as soon as reasonably practicable and, in any event, within twenty (20) Business Days of receipt of an ARE Rectification Notice, provide written confirmation as to whether, in the Councils' opinion (acting reasonably) and based upon (i) the ARE Rectification Notice and the supporting information provided therewith and (ii) any other information which the Councils ought reasonably to have been aware of, the Contractor has or has not rectified the ARE Failure; and
- (c) if the Councils confirm in writing that in their opinion the ARE Failure has not been rectified, then the Contractor shall be entitled to provide a further ARE Rectification Notice and the provisions of this Clause 20.1.6 shall apply.

20.1.7 Where:

- (a) the Councils confirm in writing that in their opinion the Contractor has complied with its obligations in Clause 20.1.1 to use All Reasonable Endeavours up to the date of the Contractor's request; or
- (b) the Councils confirm that the ARE Failure has been rectified pursuant to Clause 20.1.6(c) or it has been determined through the Dispute Resolution Procedure that the ARE Failure has been rectified;
- (c) or the Contractor has made a request pursuant to Clause 20.1.5 and the Councils have failed to respond to such request in accordance with Clause 20.1.6 within twenty (20) Business Days

the Contractor shall be considered to have used All Reasonable Endeavours up until the date of the Contractor's request pursuant to Clause 20.1.5 only.

## **20.2 Meaning of All Reasonable Endeavours**

20.2.1 For the purposes of this Clause 20, "**All Reasonable Endeavours**" in relation to the ITSAD Facility means that the Contractor shall:

- (a) in relation to the preparation, submission and process of any Planning Application made in the name of the Contractor incur all reasonably necessary expenditure and do all the things reasonably necessary (including the commencement and prosecution or defence of Proceedings in accordance with and subject to the provisions hereof) and in doing so shall exercise all proper care and skill to secure or procure the grant of a Satisfactory Planning Permission;
- (b) prepare all documentation and supporting information in accordance with good planning practice;
- (c) respond to all queries of the Planning Authority promptly;
- (d) (subject to Clause 20.6) meet the costs of any Proceedings such costs to include the cost of instructing Leading Counsel (Planning) (including for the purposes of deciding whether to initiate or pursue Proceedings) and securing the services of any expert witnesses considered necessary for the purpose of such Proceedings; and

- (e) provide forthwith copies to the Councils of all instructions (including enclosures) given to Leading Counsel (Planning) and opinions received from Leading Counsel (Planning) relating to such Proceedings in respect of any Planning Permission sought. The Councils' Representative shall be entitled to attend any conference with Leading Counsel (Planning) and the Contractor shall endeavour when arranging such conference to agree a convenient time for attendance by the Councils' Representative.

### **20.3 Obligations of the Contractor**

The Contractor shall:

- 20.3.1 not cause or permit any Affiliate, associated or holding company of the Contractor or any entity or any third party over which it has control to object or procure any objection to any Planning Application; and
- 20.3.2 not vary any Planning Application without the prior written consent of the Councils' Representative (which consent shall not be unreasonably withheld or delayed) and where the Contractor has obtained such consent and varies any Planning Application the Contractor shall inform the Councils' Representative of the variation to the Planning Application and (where appropriate and/or applicable) provide to the Councils' Representative any documents or letters relating to such variation.

### **20.4 Proceedings**

- 20.4.1 If, in respect of the ITSAD Facility, the relevant Planning Authority:
  - (a) resolves to or is minded to grant permission for a Planning Application and that Planning Application is called in by the Secretary of State under section 77 of the Planning Act; or
  - (b) refuses to grant permission for a Planning Application (including any refusal on any re-determination of a Planning Application following the quashing of a decision to grant permission for such Planning Application), or an inspector appointed by the Secretary of State refuses to grant permission on appeal under section 77 of the Planning Act or there is a Deemed Refusal; or

- (c) grants permission for a Planning Application which is not a Satisfactory Planning Permission in circumstances where the Councils and the Contractor agree (or are unable to agree and it is determined pursuant to Clause 104 (Dispute Resolution)) that Proceedings may secure a Satisfactory Planning Permission; or
- (d) grants permission for a Planning Application in respect of which any condition or requirement is imposed which is unreasonable in the Contractor's reasonable opinion,

the Contractor shall take the opinion of Leading Counsel (Planning) as to the merits of pursuing any Proceedings (save where Clause 20.4.2(b) applies).

20.4.2 If:

- (a) Leading Counsel (Planning) advises the Contractor that there is a reasonable prospect of success in any Proceedings in order to obtain a Satisfactory Planning Permission or in order to remove any unreasonable condition or requirement referred to in Clause 20.4.1(d); or
- (b) the Parties agree to pursue Proceedings without referring the matter to Leading Counsel (Planning),

the Contractor shall seek the approval of the Councils to institute such Proceedings (which approval the Councils shall not unreasonably withhold or delay) and if the Councils grant such approval the Contractor shall pursue or defend such Proceedings until determination of such Proceedings unless subsequently in accordance with Clause 20.4.4(a) the Councils direct that such Proceedings shall cease to be pursued.

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

20.4.4 In the event that Leading Counsel (Planning) advises in an opinion which has been taken pursuant to Clause 20.4.2 or subsequently under Clause 20.4.3 that

there is no reasonable prospect of success the Councils shall by serving written notice on the Contractor on or before a date twenty-eight (28) Days from the date of receipt by the Councils of the opinion of Leading Counsel (Planning) either:

- (a) direct that the Contractor shall not pursue or shall cease to pursue the relevant Proceedings; or
- (b) direct that the Contractor institutes or continues the relevant Proceedings, and such a direction shall be treated as an approval to those Proceedings given pursuant to Clause 20.4.2,

and the Councils shall act reasonably in consultation with the Contractor before determining which direction to select.

20.4.5 If, pursuant to Clause 20.4.4 the Councils (acting reasonably in all cases):

- (a) do not give such approval to any Proceedings; or
- (b) direct that the Contractor should not pursue or should cease to pursue such Proceedings,

the Contractor may still institute or continue to pursue those Proceedings, subject to service of prior written notice of its intention to do so upon the Councils within twenty-eight (28) Days of the date of receipt of the Councils' notice under Clause 20.4.4 and the Contractor will bear all the costs of instituting or continuing to pursue those Proceedings which it incurs from the date on which the Councils served a notice pursuant to Clause 20.4.4 and Clause 20.6 and Clause 20.8 will not apply to such costs which are incurred from such date.

20.4.6 The Contractor shall be entitled, in its absolute discretion, to cease to pursue any Proceedings which it institutes or continues pursuant to Clause 20.4.5 and in respect of which it has undertaken to bear the costs pursuant to Clause 20.4.5.

**20.5 Material Expenditure in Assisting the Councils in the case of Judicial Review Challenge**

- 20.5.1 If a third party makes a Judicial Review Challenge the Councils shall (but following consultation with the Contractor and having due regard to any representations of the Contractor) at their sole discretion determine whether to defend any proceedings that result from such Judicial Review Challenge (the "**Judicial Review Proceedings**") and where the Councils determine to defend such Judicial Review Proceedings the Councils shall (save as provided for in this Clause 20.5) be responsible for all costs incurred in connection with such defence.
- 20.5.2 Subject to Clause 20.5.3, the Contractor shall in relation to a Judicial Review Challenge provide to the Councils on written request all such assistance as they reasonably require and in doing so shall exercise all proper care and skill in accordance with the requirements of Clause 20.2.
- 20.5.3 Where the provision of assistance pursuant to Clause 20.5.2 will in the Contractor's reasonable opinion require the Contractor to incur material expense (on each individual occasion or in the aggregate) the Contractor shall in any event provide such assistance and the Councils shall reimburse the Contractor in an amount equal to those reasonable and proper expenses incurred in the provision of such assistance provided that:
- (a) the Contractor shall on receipt of each written request from the Councils pursuant to Clause 20.5.2 and in advance of the provision of assistance (unless otherwise agreed in writing) pursuant to Clause 20.5.3 notify the Councils that in their opinion Clause 20.5.3 applies and shall provide to the Councils for their written approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of the assistance including a detailed breakdown of the estimated cost of legal fees and all other professional fees and other disbursements (if any) together with details of all the legal and other professional advisers that the Contractor proposes to employ and the Contractor shall at no time be entitled to claim from the Councils any costs above such estimate and each element thereof or employ any additional or alternative legal or professional advisers

without the further approval of the Councils (such approval not to be unreasonably withheld or delayed); and

- (b) the Councils may in writing:
  - (i) modify any request for assistance and the Contractor shall on receipt of such modification from the Councils and in advance of the provision of the assistance requested under the modification (unless otherwise agreed in writing), follow the procedure in Clause 20.5.3 in respect of the modified request; or
  - (ii) withdraw or terminate the requirement for reasonable assistance at any time with seven (7) Days notice but without prejudice to the Councils' obligation under this Clause 20.5.3 to pay the Contractor's costs incurred up to and including the date of such withdrawal or termination.

20.5.4 Where the Councils are required to reimburse the Contractor pursuant to this Clause 20.5 for costs incurred pursuant to Clause 20.5.3 the Councils shall reimburse within twenty (20) Business Days of receipt of an invoice served by the Contractor subject to the Contractor providing satisfactory evidence to the Councils that the costs were reasonably and properly incurred and the Contractor complied with the requirements of this Clause 20.5.

## **20.6 Appeal Contingency (ITSAD)**

20.6.1 The Contractor will bear all costs of any Proceedings (including for the avoidance of doubt the costs of obtaining any Leading Counsel (Planning)'s opinion under Clause 20.4 relating to the ITSAD Facility up to the limit of the Appeal Contingency (ITSAD) (with such limit reduced by the amount of any costs in respect of Permit Proceedings relating to the ITSAD Facility and any previous Proceedings occurring on or after the Commencement Date under this Clause 20 for which the Contractor is responsible)) and the Councils shall indemnify the Contractor for nine -tenths of all amounts reasonably, properly and prudently spent or contracted to be spent by the Contractor in excess of such limit (reduced, as referred to above in respect of the ITSAD Facility) in the proper and diligent conduct of the Proceedings provided that:

- (a) the Contractor shall within twenty-eight (28) Days of the notification of a call-in or the decision to refuse Planning Permission or the occurrence of a Deemed Refusal or the grant of the Planning Permission (as the case may be) provide to the Councils for their approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such Proceedings including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements (if any) together with details of all the legal and other professional advisers that the Contractor proposes to employ and the Contractor shall at no time be entitled to claim from the Councils any costs above such estimate or employ any additional or alternative legal or professional advisers without the further approval of the Councils (such approval not to be unreasonably withheld or delayed); and
- (b) the Contractor shall use all reasonable endeavours to ensure that the costs of the Proceedings are kept to the minimum extent prudent and reasonable at all times.

20.6.2 To the extent that on the date when both a Satisfactory Planning Permission and a Satisfactory Permit for the ITSAD Facility have been obtained and the Challenge Period for each has elapsed and the Appeal Contingency (ITSAD) has not been used the Contractor shall pay the unused portion of the Appeal Contingency (ITSAD) to the Councils within twenty (20) Business Days of the Service Commencement Date.

## **20.7 Excess Costs above the Appeal Contingency (ITSAD)**

20.7.1 Where the Councils are required to indemnify the Contractor pursuant to Clause 20.6 for costs incurred over and above the amount of the Appeal Contingency (ITSAD) ("**Excess Costs**") the Councils shall reimburse the Contractor such Excess Costs together with any reasonable and proper financing costs associated with funding such Excess Costs subject to the Contractor providing satisfactory evidence to the Councils of such Excess Costs reasonably and properly incurred through any one of the following means (the choice of such means to be in the Councils' absolute discretion):

- (a) by way of an adjustment to the Unitary Charge in accordance with Clause 120 (Revision and Custody of Financial Model) for all or some part of the Service Period; or

- (b) by way of a lump sum payment made in one (1) or more instalment together with an adjustment to the Unitary Charge in accordance with Clause 120 (Revision and Custody of Financial Model); or
- (c) by way of a lump sum payment made in one (1) or more instalment in respect of the whole amount,

so that in any such case such Excess Costs are reimbursed by the Councils by the date falling three (3) years from the Service Commencement Date provided however in the event of any termination of this Contract pursuant to Clause 20.14 the Councils shall pay any unreimbursed Excess Costs to the Contractor within sixty (60) Business Days of such termination.

20.7.2 The Contractor shall promptly upon written request from the Councils provide such breakdown of costs as is reasonably practicable for whichever method of payment of Excess Costs as the Councils may request pursuant to Clause 20.7.1.

## **20.8 Costs Awarded in Proceedings**

20.8.1 If the Councils have indemnified the Contractor for its costs in respect of any Proceedings pursuant to Clause 20.6 any costs awarded to the Contractor in those Proceedings shall be retained by the Contractor up to:

- (a) the amount equal to the Appeal Contingency (ITSAD); and
- (b) where such awarded costs exceed an amount equal to the Appeal Contingency (ITSAD) such excess costs shall forthwith be divided between the Contractor and the Councils in the same proportion as the percentage of the total costs (including reasonable associated financing costs) of those Proceedings actually borne by the Contractor and the Councils respectively and all reimbursements to the Councils shall be by way of a lump sum payment within twenty (20) Business Days of the Contractor receiving such excess costs.

## **20.9 Interim Service**

In the event that Service Commencement has not been achieved on or before 1 July 2015 due to a delay in obtaining a Satisfactory Planning Permission, then Clause 14

(Interim Service) will apply and the Councils shall be deemed to have provided the notice in Clause 14.1 (Interim Service) on or before 27 June 2014.

## **20.10 Satisfactory Planning Permission**

20.10.1 Where by the Planning Long Stop Date (ITSAD) the Contractor obtains either:

- (a) a Satisfactory Planning Permission; or
- (b) an Unsatisfactory Planning Permission where the Councils have served a Councils' Change Notice to enable the Contractor:
  - (i) to comply with the Unsatisfactory Planning Permission without being in breach of this Contract; or
  - (ii) to render the Unsatisfactory Planning Permission a Satisfactory Planning Permission,

then from the date on which:

- (A) a Satisfactory Permit has been obtained for the ITSAD Facility; and
- (B) a Satisfactory Permit has been obtained for the Ferrybridge Facility; and
- (C) a Satisfactory s36 Consent has been obtained for the Ferrybridge Facility; and
- (D) the Challenge Period relating to each of the permits, consent and planning permission (specified in limbs (a), (A), (B) and (C) above) has elapsed,

the Contractor shall proceed to implement the Satisfactory Planning Permission at the Site (Bolton Road) from the Planned Works Commencement Date.

20.10.2 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of the Planning Permission for the ITSAD Facility the Contractor shall provide to the Councils a copy of the Planning Permission and will notify the Councils in writing whether or not the

Contractor considers the Planning Permission is a Satisfactory Planning Permission or is an Unsatisfactory Planning Permission.

20.10.3 If notwithstanding the expiry of the Challenge Period the Contractor considers that the Planning Permission will be an Unsatisfactory Planning Permission it shall provide to the Councils within fifteen (15) Business Days of the issue of the notice given pursuant to Clause 20.10.2:

- (a) full details of the grounds for such opinion; and
- (b) an indication of what action could be taken (if any) by the Contractor or the Councils to enable the Contractor to comply with the Planning Permission without being in breach of this Contract and to render it a Satisfactory Planning Permission or render compliance with such Unsatisfactory Planning Permission unnecessary including:
  - (i) initiating Proceedings; or
  - (ii) issuing a Councils' Change Notice to vary the Works and/or the Service.

20.10.4 If the Contractor fails to provide the notice pursuant to Clause 20.10.2 within fifteen (15) Business Days after issue of the Planning Permission then on the expiry of the Challenge Period for such submission, the Planning Permission shall be deemed to be a Satisfactory Planning Permission.

20.10.5 If the Contractor notifies the Councils that the Planning Permission is a Satisfactory Planning Permission or such a Planning Permission is deemed to be a Satisfactory Planning Permission in accordance Clause 20.10.4 then the provisions of Clause 20.10.1 shall apply.

20.10.6 If the Contractor notifies the Councils that the Planning Permission will on the expiry of the Challenge Period be an Unsatisfactory Planning Permission the Councils shall within ten (10) Business Days of receipt of the notice given pursuant to Clause 20.10.2 notify the Contractor in writing whether or not the Councils accept that the Planning Permission is or will be an Unsatisfactory Planning Permission and whether they accept the action indicated by the Contractor in the notice served pursuant to Clause 20.10.3 and in particular whether Proceedings will be likely to secure a Satisfactory Planning

Permission having regard to the grounds given by the Contractor in the notice served pursuant to Clause 20.10.3.

20.10.7 If the Councils do not accept within the ten (10) Business Days period set out in Clause 20.10.6 that the Planning Permission will on the expiry of the Challenge Period be an Unsatisfactory Planning Permission the matter may be referred at the instance of either Party for determination by an expert from the Operational Panel under Clause 104 (Dispute Resolution) as to whether the Planning Permission is a Satisfactory Planning Permission or Unsatisfactory Planning Permission.

20.10.8 If the Councils accept in accordance with Clause 20.10.6 or it is determined pursuant to Clause 104 (Dispute Resolution) that the Planning Permission is an Unsatisfactory Planning Permission and the Parties agree that Proceedings will not be likely to secure a Satisfactory Planning Permission the Councils may:

- (a) within thirty (30) Business Days after it is accepted by the Councils pursuant to Clause 20.10.6, or it is determined that a Planning Permission is an Unsatisfactory Planning Permission issue a Councils' Change Notice in respect of the Works or Service or other actions required which would, if implemented:
  - (i) enable the Contractor to comply with the terms of the Planning Permission which render it an Unsatisfactory Planning Permission without being in breach of this Contract, or to make it a Satisfactory Planning Permission or render compliance with such Unsatisfactory Planning Permission unnecessary; and
  - (ii) in each case upon confirmation and final implementation of the Councils' Change arising as a result of such Councils' Change Notice the Planning Permission shall be deemed to be a Satisfactory Planning Permission on the expiry of the relevant Challenge Period; or
- (b) require the Contractor to prepare a Revised Project Plan in which case the provisions of Clause 20.12 shall apply and the provisions of Clause 20.1 shall cease to apply.

20.10.9 If the Councils:

- (a) do not issue a Councils' Change Notice within the thirty (30) Business Day period set out in Clause 20.10.8(a) (or such longer period as may be agreed by the Parties); or
- (b) withdraw or are deemed to have withdrawn the Councils' Change Notice issued pursuant to Clause 20.10.8(a) in accordance with the terms of the Change Protocol,

then the Contractor shall prepare a Revised Project Plan in which case the provisions of Clause 20.12 shall apply and the provisions of Clause 20.1 shall cease to apply.

20.10.10 If:

- (a) the Councils accept or it is determined pursuant to Clause 104 (Dispute Resolution) that the Planning Permission is an Unsatisfactory Planning Permission; and
- (b) the Parties agree or it is determined that Proceedings may secure a Satisfactory Planning Permission,

the provisions of Clause 20.4 and Clause 20.6 shall apply and, if Proceedings are not instituted or are instituted but then withdrawn or determined leaving in place an Unsatisfactory Planning Permission, the Councils may either issue a Councils' Change Notice or require the Contractor to prepare a Revised Project Plan in accordance with the provisions of Clause 20.12.

## **20.11 Failure to Obtain Planning Permission**

At the earliest of:

20.11.1 the date when the Parties reasonably conclude that it will not be possible to obtain a Satisfactory Planning Permission by the Planning Long Stop Date (ITSAD); and

20.11.2 the Planning Long Stop Date (ITSAD), where at such date the Contractor has failed to obtain a Satisfactory Planning Permission; and

20.11.3 unless the Parties agree otherwise, the date at which Leading Counsel (Planning) advises under Clause 20.4.4 that there is no reasonable prospect of success in pursuing or continuing to pursue any Proceedings in order to obtain a Satisfactory Planning Permission, save where (and for so long as) the Councils have directed or the Contractor has chosen to initiate or continue to pursue those Proceedings under Clause 20.4 in which case Clauses 20.11.1, 20.11.2 or 20.11.4 shall apply; and

20.11.4 unless the Parties agree otherwise, the date at which Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory Planning Permission has not been obtained,

or where this Clause 20.11 applies pursuant to Clause 20.17.5(c), the Councils shall be obliged to notify the Contractor in writing to advise that they either:

- (a) wish to terminate the Contract under Clause 20.14 in which case the provisions of Clause 20.14.1 shall apply; or
- (b) wish the Contractor to propose a Revised Project Plan in which case the provisions of Clause 20.12 shall apply.

## **20.12 Revised Project Plan**

20.12.1 Where this Clause 20 applies, if the Contractor is requested to propose a Revised Project Plan then the Contractor shall provide, in accordance with the provisions of this Clause 20.12 a Draft Revised Project Plan in writing to the Councils within three (3) Months of such request (or any longer period agreed between the Parties).

20.12.2 In preparing the Draft Revised Project Plan the Contractor shall act in good faith and comply with Good Industry Practice with the objective of ensuring that it obtains best value for money for the Councils (taking into account all relevant circumstances including the requirement that the Contractor should be no worse off as a result of the implementation of the Revised Project Plan) when procuring any works, services, supplies, materials or equipment required in relation to the Revised Project. To the extent the Revised Project Plan requires carrying out of the Works at the Site (Bolton Road) or an alternative Site and any Revised Project Plan Costs are claimed as a result in respect of the costs arising out of delay in the Contractor obtaining a

Satisfactory Planning Permission which have a necessary and unavoidable consequential impact on the progress of the Works the Parties acknowledge and agree that the Contract Price under the Construction Contract is fixed until 31 October 2013 and thereafter shall only be increased in accordance with the escalator set out in Schedule 43 (EPC Escalation) of the Construction Contract.

20.12.3 The Draft Revised Project Plan shall set out:

- (a) the proposed technical solution(s) for the Revised Project;
- (b) a project plan for the Revised Project covering the same or similar issues as the Works Delivery Plan and Service Delivery Plan insofar as such issues are relevant to the Revised Project;
- (c) the proposed length of time and programme for the obtaining of any Necessary Consents;
- (d) the Contractor's opinion regarding the likelihood of being able to obtain the relevant Necessary Consents;
- (e) the interest(s) in land required for the Revised Project;
- (f) the Revised Project Plan Costs for the delivery of the Revised Project which shall be in accordance with Clause 20.12.2 with regard to delay costs in respect of the Works;
- (g) the Contractor's opinion as to the changes in the risk profile required as a result of the Revised Project;
- (h) details of the relief required by the Contractor from its obligations under this Contract;
- (i) amendments required to this Contract, the Project Documents, any Ancillary Documents and the SRF Offtake Contract;
- (j) any impact of the Revised Project on the provision of the Works and Service other than those which are the subject of the Revised Project Plan;

- (k) proposed acceptance tests for certification of completeness for any required works;
- (l) any impact on the Service Commencement Date and Planning Long Stop Date (ITSAD);
- (m) outline works delivery plans and/or service delivery plans or any amendments to the existing Works Delivery Plan and/or Service Delivery Plan as the case may be;
- (n) details of insurance arrangements required to cover any risks associated with the Revised Project;
- (o) the Contractor's opinion as to the compliance with Legislation of the Draft Revised Project Plan;
- (p) how the Contractor intends to finance the Revised Project; and
- (q) details of how the Contractor will dispose of the Contract Waste during the carrying out of the Revised Project Plan (and the costs of such disposal shall be included in the Revised Project Plan Costs).

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

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

affected by the Revised Project Plan, has been taken account of by the Contractor.

20.12.5 In any discussions which take place pursuant to Clause 20.12.4 the Councils may:

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

20.12.6 If the Contractor either accepts (such acceptance shall be at the sole discretion of the Contractor) any modifications suggested by the Councils or there are any amendments to the Draft Revised Project Plan following any competitive tenders for the relevant capital works in each case as arise pursuant to Clause 20.12.4 then the Contractor shall, as soon as reasonably practicable following either the acceptance by the Contractor of any modifications or following the completion of any competitive tender, notify the Councils of any consequential changes to the Draft Revised Project Plan.

20.12.7 The Councils shall by notice in writing to the Contractor within six (6) Months of receipt of the Draft Revised Project Plan pursuant to Clause 20.12.1 either:

- (a) accept the Revised Project Plan and the Parties shall proceed to implement the Revised Project Plan and the Parties shall execute such legal documentation as proposed by Clause 20.12.3(i) to give effect to the Revised Project Plan including adjustment to the Unitary Charge made in accordance with Clause 120 (Revision and Custody of Financial Model) to reflect the Revised Project Plan Costs; or
- (b) reject the Revised Project Plan provided that in the event that the Councils do not respond to such notice within the required time then the Councils shall be deemed to have rejected the Revised Project Plan and following such rejection or deemed rejection, the provisions of Clause 20.14.1 shall apply.

**20.13 Not Used**

**20.14 Termination as a Result of Planning Failure**

20.14.1 If:

- (a) the provisions of this Clause 20.14.1 apply pursuant to Clause 20.11; or
- (b) the Councils reject or are deemed to have rejected the Draft Revised Project Plan pursuant to Clause 20.12.7,

then either the Contractor (provided that it has complied with its obligation under Clause 20.1 to use All Reasonable Endeavours or is considered to have used All Reasonable Endeavours pursuant to Clause 20.1.7 to obtain the Satisfactory Planning Permission) or the Councils may serve written notice on the other Party specifying such Party's wish to terminate this Contract. In the event that any such notice of termination is served, this Contract shall terminate on the Day falling thirty (30) Business Days from the date of such notice of termination and the provisions of Clause 86 (Compensation on Termination for Force Majeure) shall apply as if such termination constituted a Force Majeure Event save that for the purposes of calculating the Force Majeure Termination Sum at Clause 86.2 (Compensation on Termination for Force Majeure):

- (i) limb (a) of Base Senior Debt Termination Amount shall be zero (0);
- (ii) Junior Debt shall be no greater than six million six hundred thousand pounds (£6,600,000); and
- (iii) Sub-Contractor Breakage Costs shall be zero (0),

provided that, for the purposes of calculating the Force Majeure Termination Sum on any termination pursuant to this Clause 20.14.1, any outstanding balance under the Equity Bridge Facility will be considered to be Junior Debt (notwithstanding that such definition is limited to funds advanced under the Subordinated Financing Agreements).

20.14.2 If the Contractor has not used All Reasonable Endeavours, the provisions of Clause 86 (Compensation on Termination for Force Majeure) shall not apply

and the Councils shall not be liable to the Contractor for any compensation on termination.

## **20.15 Delays and Extensions of Time**

20.15.1 If at the Planned Works Commencement Date and provided that it has complied with its obligations under Clause 20.1 to use All Reasonable Endeavours or is considered to have used All Reasonable Endeavours pursuant to Clause 20.1.7 to obtain a Satisfactory Planning Permission:

- (a) the Contractor has not obtained a Satisfactory Planning Permission for the ITSAD Facility; or
- (b) the Contractor has procured the grant of a Satisfactory Planning Permission, but the Challenge Period has not expired; or
- (c) the Ferrybridge Clear Planning and Permit Date has not occurred (and the Contractor has used (or is considered to have used) All Reasonable Endeavours to obtain a Satisfactory s36 Consent and a Satisfactory Permit for the Ferrybridge Facility,

such event shall be a Compensation Event.

20.15.2 Compliance with this Clause 20 shall be deemed to satisfy the provision of information requirements of Clauses 32.2 and 32.6 (Delays due to a Relief Event) where the Contractor is claiming relief pursuant to limb (f) of the definition of a Relief Event and the Contractor shall not additionally be required to comply with Clauses 32.2 and 32.6 (Delays due to a Relief Event) in respect of any such claim.

20.15.3 Notwithstanding Clause 20.15.1 the Contractor shall continue to comply with its obligations to use All Reasonable Endeavours to obtain the Satisfactory Planning Permission (unless those obligations shall cease to apply in accordance with Clauses 20.10, 20.12 or 20.14) and if the Contractor subsequently obtains a Satisfactory Planning Permission it shall promptly so notify the Councils and within ten (10) Business Days of such notification:

- (a) demonstrate to the Councils the delay (if any) in mobilisation and commencement of the construction of the ITSAD Facility by reference to the Proposed Site Timetable; and

- (b) propose to the Councils:
  - (i) a revised Planned Works Commencement Date; and
  - (ii) a revised Planned Service Commencement Date(together the "**Revised Project Dates**").

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

- (a) agree Revised Project Dates which are fair and reasonable in the circumstances having regard to the extent of the delay; and
- (b) disregard any delay caused by a breach, neglect or default of the Contractor; and
- (c) take account of the extent to which the Contractor should be able by acting in accordance with Good Industry Practice (and without being required to expend any sums), to mitigate the consequences of delay.

20.15.5 In default of notification of the proposed Revised Project Dates in accordance with Clause 20.15.3, or if the Parties fail to agree the Revised Project Dates within ten (10) Business Days of notification of such proposed Revised Project Dates, the Revised Project Dates shall be determined at the referral of either Party to the Dispute Resolution Procedure.

20.15.6 Once agreed or determined the Construction Programme and Works Delivery Plan shall be amended to reflect the Revised Project Dates.

## **20.16 Challenge Period and Judicial Review**

20.16.1 In the event that a Judicial Review Challenge is instituted in respect of a Planning Permission during the Challenge Period then any Planning Permission which would otherwise be deemed to be a Satisfactory Planning Permission shall be deemed to be and to have always been an Unsatisfactory Planning Permission until such time as the Judicial Review Challenge is dismissed, withdrawn, quashed or defeated.

20.16.2 Subject to Clause 2.10 (Various Roles of the Councils), nothing contained or implied in this Contract shall prejudice or affect the Councils' rights, powers,

duties and obligations in the exercise of their functions as Planning Authorities.

20.16.3 If following the expiry of the Challenge Period referred to in Clause 20.16.1 a third party makes an application for a Judicial Review Challenge in connection with the Satisfactory Planning Permission:

- (a) the Councils will (but following consultation with the Contractor) at their sole discretion determine whether to defend the Judicial Review Challenge and will be responsible for all costs incurred provided that the Councils shall give the Contractor a reasonable opportunity to make representations in respect of the same and shall have regard to (but shall not be bound by) any such representations in making any such determination; and
- (b) to the extent it is lawfully able to do so and such Judicial Review Challenge occurs after the Service Commencement Date, the Contractor shall continue to provide the Service.

20.16.4 Any Judicial Review Injunction shall be deemed to be a Compensation Event for the purposes of Clause 31 (Effect of a Compensation Event).

## **20.17 Architectural Enhancements**

20.17.1 Save where the Contractor has obtained the prior written consent of the Councils or is implementing a Councils' Change or a Contractor Change in accordance with the terms of this Contract (including pursuant to Clause 20.17.4), the Contractor shall not offer to a Relevant Authority to vary the Base Design Proposal or add to it in any material way or comply with or acquiesce to the imposition of any Architectural Enhancement or matter which would render a Planning Permission an Unsatisfactory Planning Permission.

20.17.2 If the Contractor becomes aware that an Architectural Enhancement is likely to be imposed upon the Contractor which will cause the Contractor to incur costs (including reasonable associated financing costs) ("**Architectural Enhancement Costs**") at any time before proceeding to submit or re-submit a Planning Application or implement conditions attached to the Planning

Permission or obligations contained in a Planning Agreement then the following provisions of this Clause 20.17 shall apply.

20.17.3 Without limiting in any way the application of the provisions of Clause 20.17.4, as soon as reasonably practicable and in any event within ten (10) Business Days of becoming aware that an Architectural Enhancement is likely to be imposed which would, if complied with, cause the Contractor to incur Architectural Enhancement Costs the Contractor shall notify the Councils in writing giving all details then available of the nature of the Architectural Enhancement and as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt by the Councils of such notice, the Contractor shall give to the Councils:

- (a) details of the divergence from the Base Design Proposal for the ITSAD Facility;
- (b) a provisional (non-binding) estimate of the Architectural Enhancement Costs;
- (c) an indication of the steps which the Contractor proposes to take and has taken pursuant to Clause 20.17.4 in respect of the Architectural Enhancement;
- (d) a provisional (non-binding) indication as to whether the Contractor is able to fund such Architectural Enhancement Costs itself such that reimbursements under Clause 20.17 may be by way of adjustment to the Unitary Charge; and
- (e) the Contractor's proposals to mitigate the impact of the Architectural Enhancement.

20.17.4 In the event that (whether or not previously identified by the Contractor pursuant to Clause 20.17.1 above) an Architectural Enhancement is required or imposed by any Planning Permission (or associated Planning Agreement) after submission of the Planning Application then the Contractor shall:

- (a) on the earlier of five (5) Business Days from the grant of the Planning Permission concerned (or if appropriate the notification of the Architectural Enhancement by other means) notify the Councils in writing of the nature of the Architectural Enhancement giving full

details and as soon as reasonably practicable and in any event within fifteen (15) Business Days of the grant of the Planning Permission concerned (or if appropriate the notification of the Architectural Enhancement by other means) provide to the Councils the information referred to in Clause 20.17.3 (whether by way of confirmation of previously provided information or otherwise);

- (b) within fifteen (15) Business Days of receipt of the information by the Councils pursuant to Clause 20.17.4(a) above (or such other longer period as is reasonable having regard to the nature and extent of the Architectural Enhancement proposed) give full details of the Architectural Enhancement Costs (including any costs of financing them) to be claimed by the Contractor for reimbursement by the Councils;
- (c) demonstrate in accordance with Part 6 of Schedule 32 (Change Protocol) that:
  - (i) the Architectural Enhancement is a divergence from the Base Design Proposal for the ITSAD Facility; and
  - (ii) the Base Design Proposal was of a standard that a reasonably experienced Contractor would have provided for designing a similar facility for construction at the same Site and taking into account all relevant planning policies; and
  - (iii) the Architectural Enhancement will cause the Contractor to incur the Architectural Enhancement Costs claimed; and
- (d) demonstrate that it has used reasonable endeavours to minimise the Architectural Enhancement Costs and any financing costs; and
- (e) where the Councils specifically identify the need for such information as part of its request under this Clause 20.17.4(e), the Contractor shall provide such breakdown of costs as is reasonably practicable for each of the specified methods of payment set out in Clause 20.17.6.

20.17.5 In the event that an Architectural Enhancement is required or imposed by any Planning Permission (or associated Planning Agreement) and the Architectural Enhancement Costs have been demonstrated by the Contractor

in accordance with the requirements of Clauses 20.17.4(b) and 20.17.4(d), the Councils shall, without unreasonable delay and in any event within fifteen (15) Business Days from receipt of the details provided pursuant to Clause 20.17.4(e), select one of the following options by written notice to the Contractor:

- (a) direct the Contractor to accept the requirement for the imposition of the Architectural Enhancement and the Architectural Enhancement Costs shall be borne by the Councils in accordance with Clause 20.17.6 (Reimbursement of Architectural Enhancement Costs); or
- (b) direct the Contractor to seek the opinion of Leading Counsel (Planning) as to the merits of pursuing any Proceedings in order to remove the requirement for the imposition of the Architectural Enhancement and the provisions of Clause 20.4 shall apply to the seeking of such opinion except that if Leading Counsel (Planning) advises that there is no reasonable prospect of success in pursuing the relevant Proceedings to remove the requirement for or imposition of the Architectural Enhancement then the Councils shall as soon as reasonably practicable thereafter and in any event within fifteen (15) Business Days from the date of receipt of Leading Counsel (Planning)'s opinion pursuant to this Clause 20.17.5(b) notify in writing one of the options set out in Clause 20.17.5(a) or 20.17.5(c); or
- (c) refuse the Architectural Enhancement in which event Clause 20.11 shall apply.

#### **20.17.6 Reimbursement of Architectural Enhancement Costs**

In the event that the Councils have directed the Contractor to accept the Architectural Enhancement Costs under Clause 20.17.5 then the Councils shall reimburse the Contractor the Architectural Enhancement Costs demonstrated to its reasonable satisfaction to have been incurred, such reimbursements to be through any one of the following means (the choice of such means to be in the Councils' absolute discretion (but subject to paragraphs 5.1 and 5.2 of Part 1 of Schedule 32 (Change Protocol) as if such costs are arising out of a Medium or High Value Change):

- (a) by way of an adjustment to the Unitary Charge in accordance with Clause 120 (Revision and Custody of Financial Model) for all or part of the Service Period; or
- (b) by way of lump sum payment made in one or more instalments; or
- (c) by way of an extension to the Expiry Date to the extent necessary to allow the Contractor to recoup the Architectural Enhancement Costs through the Unitary Charge; or
- (d) a combination of one or more of the means set out in Clauses 20.17.6(a) to 20.17.6(c) above,

such Architectural Enhancement Costs and any costs of (or connected with) financing them (in the event that the Councils do not reimburse them as and when they are incurred) being calculated as if such matter was a Councils' Change under Clause 53 (Changes to the Works or Services) and any adjustment to the Unitary Charge being applied in accordance with the provisions of Clause 120 (Revision of Base Case and Custody of Financial Model) provided that in the event that the aggregate Architectural Enhancement Costs in respect of the ITSAD Facility exceeds ten per cent (10%) of the Contract Price then the Councils shall pay such Architectural Enhancement Costs in accordance with Clause 20.17.6(c) as and when such Architectural Enhancement Costs are incurred by the Contractor.

#### **20.17.7 Dispute Resolution**

In the event that the Parties fail to agree any matters in relation to this Clause 20.17 the provisions of Clause 104 (Dispute Resolution) shall apply.

### **20.18 Contractor to obtain s36 Consent in relation to the Ferrybridge Facility**

20.18.1 The Contractor undertakes to the Councils that (subject to the provisions of this Clause 20.18) it shall use All Reasonable Endeavours to obtain a Satisfactory s36 Consent by the Planning Long Stop Date (Ferrybridge) to enable it to deliver the SRF Offtake Services at the Ferrybridge Facility.

20.18.2 Subject to the provisions of this Clause 20 the Contractor shall bear the cost of obtaining, implementing and complying with the provisions and conditions of a Satisfactory s36 Consent other than any cost relating to s36 Proceedings

which exceed the Appeal Contingency (Ferrybridge) and which the Councils have directed the Contractor to institute or continue in accordance with Clause 20.20.4(b).

- 20.18.3 The Contractor shall provide to the Councils on a quarterly basis a written summary of:
- (a) the steps taken by the Contractor in the preceding quarter in compliance with its obligations under this Clause 20.18; and
  - (b) a written summary of those steps which it anticipates taking in the following quarter in order to comply with its obligations under this Clause 20.18.
- 20.18.4 Without limiting the Contractor's obligations under this Clause 20.18 the Councils may within five (5) Business Days after receipt of such summary notify the Contractor of any further measures which it believes the Contractor should take in order to comply with its obligations under Clause 20.18 and the Contractor shall give due consideration to any such suggestions of the Councils.
- 20.18.5 Without prejudice to the Contractor's obligations under this Clause 20.18 the Councils shall at the reasonable written request of the Contractor confirm in writing (on not more than a quarterly basis) whether the Councils believe that in their opinion the Contractor has up to the date of the Contractor's request fully complied with its obligations in Clause 20.18.1 to use All Reasonable Endeavours to obtain a Satisfactory s36 Consent. At the same time as the Contractor makes any such request the Contractor shall provide the Councils with supporting information regarding the steps which it has taken in order to obtain a Satisfactory s36 Consent and the Councils' confirmation shall be solely based on such information.
- 20.18.6 Where in response to a request made pursuant to Clause 20.18.5 the Councils confirm in writing that in their opinion the Contractor has not complied with its obligations under Clause 20.18.1 at any time (" **ARE Failure**") the Councils shall give reasons for such opinion including reasonable details of the ARE Failure and:

- (a) the Contractor may provide to the Councils a written summary of steps that it has taken (or that it intends to take) in order to rectify an ARE Failure ("**ARE Rectification Notice**") together with any supporting information; and
- (b) the Councils shall as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of an ARE Rectification Notice provide written confirmation as to whether in the Councils' opinion (acting reasonably) and based (i) upon the ARE Rectification Notice and the supporting information provided therewith and (ii) any other information which the Councils ought reasonably to have been aware of the Contractor has or has not rectified the ARE Failure; and
- (c) if the Councils confirm in writing that in their opinion the ARE Failure has not been rectified then the Contractor shall be entitled to provide a further ARE Rectification Notice and the provisions of this Clause 20.18.6 shall apply.

20.18.7 Where:

- (a) the Councils confirm in writing that in their opinion the Contractor has complied with its obligations in Clause 20.18.1 to use All Reasonable Endeavours up to the date of the Contractor's request; or
- (b) the Councils confirm pursuant to Clause 20.18.6(b) that the ARE Failure has been rectified or it has been determined that the ARE Failure has been rectified; or
- (c) the Contractor has made a request pursuant to Clause 20.18.5 and the Councils have failed to respond to such request within twenty (20) Business Days of receipt of such request,

the Contractor shall be considered to have used All Reasonable Endeavours up until the date of the Contractor's request pursuant to Clause 20.18.5 only.

## **20.19 Meaning of All Reasonable Endeavours**

20.19.1 For the purposes of this Clause 20 "**All Reasonable Endeavours**" in relation to the s36 Consent means that the Contractor shall:

- (a) in relation to the preparation, submission and process of the s36 Application incur all reasonably necessary expenditure to do all the things reasonably necessary (including the commencement and prosecution or defence of s36 Proceedings in accordance with and subject to the provisions of this Clause 20) and in doing so shall exercise all proper care and skill to secure or procure the grant of a Satisfactory s36 Consent; and
- (b) prepare all documentation and supporting information in accordance with good planning practice in respect of applications under section 36 of the Electricity Act 1989; and
- (c) respond to all queries of the Secretary of State promptly; and
- (d) subject to Clause 20.20.4(b) meet the costs of any s36 Proceedings, such costs to include the cost of instructing s36 Leading Counsel (including for the purposes of deciding whether to initiate or pursue s36 Proceedings) and securing the services of any expert witnesses considered necessary for the purpose of such s36 Proceedings; or
- (e) provide forthwith copies to the Councils of all instructions (including enclosures) given to s36 Leading Counsel and opinions received from s36 Leading Counsel relating to such s36 Proceedings. The Councils' Representative shall be entitled to attend any conference with s36 Leading Counsel and the Contractor shall endeavour when arranging such conference to agree a convenient time for attendance by the Councils' Representative.

20.19.2 The Councils confirm that they are satisfied that the Contractor has complied with its obligations under Clause 20.18 in the period prior to the date of this Contract.

20.19.3 The Contractor shall not cause or permit any Affiliate or holding company of the SRF Offtaker or any entity over which the SRF Offtaker has control to object or procure any objection to the s36 Application.

## **20.20 s36 Proceedings**

20.20.1 If in respect of the s36 Application:

- (a) the Secretary of State issues a letter refusing to grant a s36 Consent (including any refusal on any re -determination of the s36 Application following the quashing of a decision to grant a s36 Consent); or
- (b) the Secretary of State issues a letter indicating that a decision cannot be made in respect of the s36 Application without a public inquiry; or
- (c) the Secretary of State grants a s36 Consent which is an Unsatisfactory s36 Consent; or
- (d) the Secretary of State grants a s36 Consent which is the subject of an application to the court pursuant to section 288 of the Planning Act;
- (e) the Council of the City of Wakefield in its capacity as the local planning authority refuses to grant an application to remove modify or vary any condition imposed on a s36 Consent which would make such s36 Consent an Unsatisfactory s36 Consent if not removed modified or varied; or
- (f) the Council of the City of Wakefield in its capacity as t he local planning authority grants permission for the removal, modification or variation of any condition or requirement in a Satisfactory s36 Consent which would make such Satisfactory s36 Consent an Unsatisfactory s36 Consent,

in each case in circumstanc es where the Contractor believes that s36 Proceedings may secure a Satisfactory s36 Consent then the Contractor shall take the opinion of s36 Leading Counsel as to the merits of pursuing any s36 Proceedings (save where Clause 20.20.2(b) applies).

20.20.2 If pursuant to Clause 20.20.1:

- (a) s36 Leading Counsel advises the Contractor that there is a reasonable prospect of success in any s36 Proceedings in order to obtain a Satisfactory s36 Consent; or
- (b) the Parties agree that the Contractor will pursue s36 Proceedings without referring the matter to s36 Leading Counsel,

the Contractor shall pursue or defend such proceedings until determination of such Proceedings unless subsequently in accordance with Clause 20.20.4(a) or Clause 20.20.6 the Contractor ceases to pursue such Proceedings.

20.20.3 At any reasonable time after the commencement of any s36 Proceedings, the Councils may (acting reasonably) require the Contractor to take (or the Contractor may take) the opinion of s36 Leading Counsel as to the merits of continuing to pursue such s36 Proceedings and the Councils may require the Contractor to make such opinion available to the Councils (and if the Contractor takes the opinion of s36 Leading Counsel, it will notify the Councils of such the same).

20.20.4 In the event that s36 Leading Counsel advises in any opinion delivered pursuant to Clause 20.20.2 or subsequently under Clause 20.20.3 that there is no reasonable prospect of success the Councils shall by serving written notice on the Contractor on or before a date twenty-eight (28) Days from the date of receipt by the Councils of the advice of s36 Leading Counsel either:

- (a) direct that the Contractor shall not pursue or shall cease to pursue the relevant s36 Proceedings; or
- (b) direct that the Contractor institutes or continues the relevant s36 Proceedings,

and the Councils shall act reasonably in consultation with the Contractor before determining which direction to select.

20.20.5 If the Councils (acting reasonably in all cases) direct that the Contractor should not pursue or should cease to pursue s36 Proceedings, the Contractor may still institute or continue to pursue such s36 Proceedings and the Contractor will bear all the costs of instituting or continuing to pursue such s36 Proceedings which it incurs from the date on which it receives notice from the Councils pursuant to Clause 20.20.4(a).

20.20.6 The Contractor shall be entitled, in its absolute discretion, to cease to pursue any s36 Proceedings which it institutes or continues pursuant to Clause 20.20.5 (and such act shall not be deemed to be a failure to use All Reasonable Endeavours).

## **20.21 Appeal Contingency (Ferrybridge)**

20.21.1 The Contractor will bear all costs of any s36 Proceedings (including for the avoidance of doubt the costs of obtaining any s36 Leading Counsel's opinion under Clause 20.20) except that if the Councils direct the Contractor to institute or continue s36 Proceedings in accordance with Clause 20.20.4(b) then the Contractor will bear all such costs up to the limit of the Appeal Contingency (Ferrybridge) (with such limit reduced by the amount of any costs in respect of Permit Proceedings relating to the Ferrybridge Facility and any previous s36 Proceedings occurring on or after the Commencement Date under this Clause 20 for which the Contractor is responsible) and the Councils shall indemnify the Contractor for all amounts reasonably and prudently spent or contracted to be spent in excess of such limit in conduct of such s36 Proceedings provided that the Contractor shall:

- (a) within twenty-eight (28) Days of a direction pursuant to Clause 20.20.4(b) provide to the Councils for their approval (such approval not to be unreasonably withheld or delayed) a detailed estimate of the likely cost of such s36 Proceedings including a detailed breakdown of the estimated costs of legal fees and all other professional fees and other disbursements together with details of all the legal and other professional advisers that the Contractor proposes to employ and shall at no time be entitled to claim from the Councils any costs above such estimate or employ any additional or alternative legal or professional advisers without the further approval of the Councils (such approval not to be withheld or delayed); and
- (b) use all reasonable endeavours to ensure that the costs of the s36 Proceedings are kept to the minimum extent prudent and reasonable at all times.

## **20.22 Excess Costs above the Appeal Contingency (Ferrybridge)**

20.22.1 Where the Councils are required to indemnify the Contractor pursuant to Clause 20.21 for costs incurred over and above the amount of the Appeal Contingency (Ferrybridge) ("Excess Costs (Ferrybridge)") the Councils shall reimburse the Contractor such Excess Costs (Ferrybridge) together with any reasonable and proper financing costs subject to the Contractor providing satisfactory evidence to the Councils of such Excess Costs (Ferrybridge)

reasonably and properly incurred and all payments to the Contractor shall be through any one (1) of the following means the choice of such means to be in the Councils' absolute discretion:

- (a) by way of an adjustment to the Unitary Charge in accordance with Clause 120 (Revision and Custody of Financial Model) for the Service Period; or
- (b) by way of a lump sum payment (made in one (1) or more instalment(s)) together with an adjustment to the Unitary Charge in accordance with Clause 120 (Revision and Custody of the Financial Model); or
- (c) by way of a lump sum payment (made in one (1) or more instalment(s)) in respect of the whole amount,

so that, in any such case, such Excess Costs (Ferrybridge) are reimbursed by the Councils by the date falling three (3) years from the Service Commencement Date, provided however in the event of any termination of this Contract pursuant to Clause 20.27, the Councils shall pay any unreimbursed Excess Costs (Ferrybridge) to the Contractor within sixty (60) Business Days of such termination.

## **20.23 Costs Awarded in s36 Proceedings**

20.23.1 If the Councils have indemnified the Contractor for its costs in respect of any s36 Proceedings pursuant to Clause 20.21, any costs awarded to the Contractor in those s36 Proceedings shall be retained by the Contractor up to the amount equal to the Appeal Contingency (Ferrybridge) and where such awarded costs exceed the Appeal Contingency (Ferrybridge) they shall be paid to the Councils by way of a lump sum payment within twenty (20) Business Days of the Contractor receiving such costs.

## **20.24 Satisfactory s36 Consent**

20.24.1 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of the s36 Consent the Contractor shall provide to the Councils a copy of the s36 Consent and will notify the Councils in writing whether or not the Contractor considers the s36 Consent is a Satisfactory s36 Consent or an Unsatisfactory s36 Consent.

- 20.24.2 If the Contractor considers that the s36 Consent is an Unsatisfactory s36 Consent it may deem such Unsatisfactory s36 Consent to be a Satisfactory s36 Consent and shall within fifteen (15) Business Days of the issue of the notice given pursuant to Clause 20.24.1 notify the Councils of the same.
- 20.24.3 If the Contractor considers that the s36 Consent is an Unsatisfactory s36 Consent and does not issue a notice under Clause 20.24.2 it shall provide to the Councils within fifteen (15) Business Days of the issue of the notice given pursuant to Clause 20.24.1:
- (a) full details of the grounds for such opinion; and
  - (b) an indication of what action should be taken in order to achieve a Satisfactory s36 Consent.
- 20.24.4 If the Contractor fails to provide the notice pursuant to Clause 20.24.1 within such fifteen (15) Business Day period then on the expiry of the Challenge Period for the s36 Consent, the s36 Consent shall be deemed to be a Satisfactory s36 Consent.
- 20.24.5 If the Contractor notifies the Councils that the s36 Consent is an Unsatisfactory s36 Consent the Councils shall within twenty (20) Business Days of receipt of the notice given pursuant to Clause 20.24.3 notify the Contractor in writing whether or not the Councils accept that the s36 Consent is an Unsatisfactory s36 Consent and whether they accept the action indicated by the Contractor for achieving a Satisfactory s36 Consent and in particular whether s36 Proceedings will be likely to secure a Satisfactory s36 Consent having regard to the grounds given by the Contractor in the notice served pursuant to Clause 20.24.3.
- 20.24.6 If the Councils fail to provide the notice pursuant to Clause 20.24.5 within such twenty (20) Business Days period, then on expiry of the Challenge Period the s36 Consent shall be deemed to be an Unsatisfactory s36 Consent.
- 20.24.7 If the Councils notify the Contractor in accordance with Clause 20.24.5 that they do not accept that the s36 Consent is an Unsatisfactory s36 Consent and/or do not accept the action indicated by the Contractor for achieving a Satisfactory s36 Consent then the matter may be referred to s36 Leading Counsel for determination as to whether the s36 Consent is a Satisfactory s36

Consent or Unsatisfactory s36 Consent and/or whether s36 Proceedings would be likely to secure a Satisfactory s36 Consent.

20.24.8 If the Councils accept in accordance with Clause 20.24.5 or it is determined pursuant to Clause 20.24.7 that the s36 Consent is an Unsatisfactory s36 Consent and the Parties agree or it is determined pursuant to Clause 20.24.7 that s36 Proceedings will not be likely to secure a Satisfactory s36 Consent:

- (a) the Contractor may within thirty (30) Business Days after such acceptance or determination issue a Contractor Change Notice in respect of the Works or Service or other actions required which would if implemented (i) enable the Contractor to comply with such terms of the s36 Consent and (ii) render the Unsatisfactory s36 Consent a Satisfactory s36 Consent and in each case upon confirmation and final implementation of the Contractor's Change arising as a result of such Contractor Change Notice the s36 Consent shall be deemed to be a Satisfactory s36 Consent on expiry of the relevant Challenge Period; or
- (b) the Councils may require the Contractor to prepare a Revised Project Plan in which case the provisions of Clause 20.12 shall apply and the provisions of Clause 20.18 shall cease to apply.

20.24.9 If the Contractor:

- (a) does not issue a Contractor Change Notice within the thirty (30) Business Day period set out in Clause 20.24.8(a) (or such longer period as may be agreed between the Parties); or
- (b) withdraws or is deemed to have withdrawn a Contractor Change Notice issued pursuant to Clause 20.24.8(a),

then the Contractor shall prepare a Revised Project Plan in which case the provisions of Clause 20.12 shall apply and the provisions of Clause 20.18.1 shall cease to apply.

20.24.10 If:

- (a) the Councils accept or it is determined pursuant to Clause 20.24.7 that the s36 Consent is an Unsatisfactory s36 Consent; and

- (b) the Parties agree or it is determined that s36 Proceedings may secure a Satisfactory s36 Consent,

then the provisions of Clause 20.20 shall apply and if s36 Proceedings are not instituted or if instituted are withdrawn or determined leaving in place an Unsatisfactory s36 Consent the Councils may either:

- (i) require the Contractor to prepare a Revised Project Plan in which case the provisions of Clause 20.12 shall apply and the provisions of Clause 20.18 shall cease to apply; or
- (ii) give notice that they wish to terminate the Contract in accordance with Clause 20.27.

## **20.25 Failure to Obtain s36 Consent**

20.25.1 At the earlier of:

- (a) the date when the Parties reasonably conclude that it will not be possible to obtain a Satisfactory s36 Consent by the Planning Long Stop Date (Ferrybridge); and
- (b) the Planning Long Stop Date (Ferrybridge ) where at such date the Contractor has failed to obtain a Satisfactory s36 Consent; and
- (c) unless the Parties agree otherwise the date at which s36 Leading Counsel advises under Clause 20.20.4 or Clause 20.24.7 that there is no reasonable prospect of success in pursuing or continuing to pursue any s36 Proceedings in order to obtain a Satisfactory s36 Consent save where and for so long as the Councils have directed or the Contractor has chosen to initiate or continue to pursue those s36 Proceedings under Clause 20.20.4 (s36 Proceedings) or Clause 20.24.7 respectively; and
- (d) unless the Parties agree otherwise the date at which s36 Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory s36 Consent has not been obtained,

the Councils shall be obliged to notify the Contractor in writing that they either:

- (i) wish to terminate the Contract under Clause 20.27; or

- (ii) wish the Contractor to propose a Revised Project Plan in which case the provisions of Clause 20.12 shall apply and the provisions of Clause 20.18 shall cease to apply.

**20.26 Not Used**

**20.27 Termination as a Result of s36 Consent Failure**

20.27.1 If:

- (a) the provisions of this Clause 20.27 apply pursuant to Clause 20.25.1(d)(i); or
- (b) the provisions of this Clause 20.27 apply pursuant to Clause 20.24.10(b)(ii),

then the Contractor or the Councils may serve written notice on the other Party specifying such Party's wish to terminate the Contract. In the event that any such notice of termination is served the Contract shall terminate thirty (30) Business Days from the date of receipt of such notice of termination and (provided that it has complied with its obligation under Clause 20.18 to use All Reasonable Endeavours to obtain the Satisfactory s36 Consent or is considered to have used All Reasonable Endeavours pursuant to Clause 20.18) the provisions of Clause 86 (Compensation on Termination for Force Majeure) shall apply as if such termination constituted a Force Majeure Event save that for the purposes of calculating the Force Majeure Termination Sum at Clause 86 (Compensation on Termination for Force Majeure):

- (i) limb (a) of Base Senior Debt Termination Amount shall be zero (0);
- (ii) Junior Debt shall be no greater than six million six hundred thousand pounds (£6,600,000); and
- (iii) Sub-Contractor Breakage Costs shall be zero (0),

provided that, for the purposes of calculating the Force Majeure Termination Sum on any termination pursuant to this Clause 20.27.1, any outstanding balance under the Equity Bridge Facility will be considered to be Junior Debt

(notwithstanding that such definition is limited to funds advanced under the Subordinated Financing Agreements).

20.27.2 If the Contractor has not used All Reasonable Endeavours the provisions of Clause 86 (Compensation on Termination for Force Majeure) shall not apply and the Councils shall not be liable to the Contractor for any compensation on termination.

**20.28 Not Used**

**20.29 Judicial Review**

In the event that a Judicial Review Challenge is instituted in respect of a s36 Consent during the Challenge Period then any s36 Consent which would otherwise be deemed to be a Satisfactory s36 Consent shall be deemed to be and to have always been an Unsatisfactory s36 Consent until such time as the Judicial Review Challenge is dismissed, withdrawn, quashed or defeated.

**21 NECESSARY CONSENTS**

21.1 The Contractor and the Councils shall comply with their respective obligations as set out in Clause 20 (Planning Permissions) and Schedule 37 (Approach to Permit Risk).

21.2 Except as provided for in Clause 20 (Planning Permissions) and Schedule 37 (Approach to Permit Risk) the Contractor shall:

21.2.1 at its own expense obtain, implement and maintain and renew as necessary all Necessary Consents which may from time to time be required for the carrying out of the Works and the performance of the Service;

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

21.2.3 notify the Councils promptly of any notices received (whether from any Relevant Authority or any other person) relating in any way to any Necessary

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

- 21.3 The Contractor shall not (and shall procure that no other person under its control shall) without the prior written consent of the Councils (such consent not to be unreasonably withheld or delayed) apply for or agree to any material variation, relaxation or waiver of any Necessary Consents (whether obtained before or after the date of this Contract) or any condition attached to any Necessary Consent as from time to time varied, relaxed or waived.
- 21.4 When requested to do so by the Councils' Representative, the Contractor shall report to the Councils' Representative in accordance with Clause 20 (Planning Permissions) and Schedule 37 (Approach to Permit Risk) (where relevant) as to the progress of the application for any Planning Application, Environmental Permit, Planning Permission, Permit Proceedings or Proceedings and negotiations with the Permitting Authority, the Environment Agency and any other Relevant Authority and any statutory consultees and supply the Councils' Representative with copies of all documents, letters and instructions and enclosures to the Contractor's consultants relating to any such application.
- 21.5 The Contractor shall:
- 21.5.1 within thirty (30) Business Days of the Commencement Date and thereafter on each anniversary of the Commencement Date provide to the Councils' Representative a comprehensive list of all Necessary Consents which are required in respect of each Facility which have been or will be applied for and/or all Necessary Consents obtained (the "**Necessary Consents List**"). The Necessary Consents List shall identify in respect of each Facility:
- (a) the date on which each such Necessary Consent application was made;
  - (b) the date on which each such Necessary Consent is expected or was obtained;
  - (c) the date for any renewal for each such Necessary Consent; and
  - (d) any accompanying documents;

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

21.6 Not Used.

## **22 ADOPTABLE AND NON-ADOPTABLE AREAS**

22.1 The Contractor shall:

22.1.1 be solely responsible at its own cost for negotiating with and obtaining from the relevant statutory undertaking or authority or other persons whatsoever all necessary foul and surface water drainage, water, gas, electricity, telecommunication, Conduits and other services necessary in connection with the Works or to enable the Contractor to provide the Service;

22.1.2 ensure that, subject to obtaining all requisite Necessary Consents, any trenches necessary for the Works (whether inside or outside the Site) are carried out and reinstated to the satisfaction of the highway authority and other relevant authorities;

22.1.3 ensure that the laying of all Conduits and all service media connections to Conduits required in connection with the Works are correctly made and shall rectify at the Contractor's own expense any Conduits wrongly laid and any wrong or crossed connection;

22.1.4 save as expressly authorised or in accordance with any requisition to provide a water pipe or sewer which is accepted by the relevant water authority or sewerage undertaker, not lay or construct or permit or suffer anyone within the control of the Contractor to lay or construct any Conduits over, through or under the Adjoining Property;

22.1.5 ensure that all Conduits required in connection with the Works are laid and constructed to the satisfaction of the relevant statutory undertaker highway and supply authority and to ensure that all electric, gas and water services to the Site are capable of measurement separate from the Adjoining Property;

22.1.6 subject to obtaining reasonable access and having used reasonable endeavours (and the Contractor will notify the Councils in the event that the Contractor considers that it has been unable to obtain reasonable access) make good all

damage to the Adjoining Property and to all other roads, footpaths, landscaping and Conduits whether on the Site or the Adjoining Property caused by the Contractor in the execution of the Works;

22.1.7 construct the Conduits and the roadways and footpaths forming part of the Works in accordance with the Construction Documents and the provisions of this Contract; and

22.1.8 at its own cost enter into such agreements under section 38 or section 278 of the Highways Act 1980 or section 104 of the Water Industry Act 1991 and section 106 of the Town and Country Planning Act 1990 as may be required in respect of the Works and provide such bonds as the Relevant Authorities may reasonably require in connection with such agreements.

22.2 The Councils as landowner shall use reasonable endeavours to enter into such agreements as specified in Clause 22.1.8 as may be required in respect of the Works and provide such bonds as the highways or other authorities may reasonably require in connection with such agreements provided that the Contractor shall fully and effectually indemnify the Councils in respect of all Direct Losses arising out of the Councils being parties to such agreements (other than Direct Losses by reason of the negligence or a breach thereof by the Councils).

### **23 THIRD PARTY CONSENTS OF ADJOINING OWNERS AND INDEMNITY**

23.1 Save to the extent necessary to comply with its obligations under this Contract and/or to the extent it is complying with any Planning Permission and/or Necessary Consent and/or Laws, the Contractor shall not do or permit or suffer to be done anything which might:

23.1.1 be or become a danger or unreasonable nuisance or give rise to liability in tort to any Adjoining Owners or to members of the public generally;

23.1.2 cause damage or Contamination to any Adjoining Property; or

23.1.3 (unless permitted by a Third Party Consent and then only in accordance with the terms of such Third Party Consent) interfere with any Adverse Rights (but without prejudice to the Contractor's rights under and pursuant to Clause 15.6 (Councils Liabilities to be Excluded), Clause 15.8 (Title Matters) and Clause 31 (Effects of a Compensation Event) in respect of a Title Compensation Event,

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

- 23.2 If the Works and/or Service cannot be carried out without interfering with any Adverse Right (but without prejudice to the Contractor's rights under and pursuant to Clause 15.8 (Title Matters) and the Contractor's rights to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to Title Compensation Events ) the Contractor shall promptly and at its own expense obtain all necessary Third Party Consents and shall pay such sums as may be required for the giving of such Third Party Consent and shall supply to the Councils a copy of every Third Party Consents obtained. If, in order to obtain such necessary consents, the Councils are required to enter into a contract with the owner or beneficiary of the Adverse Right (where lawfully not prevented from doing so) it shall use reasonable endeavours to do so expeditiously and the Contractor shall indemnify the Councils for any reasonable and proper Direct Losses arising in connection with entering into such contracts.
- 23.3 Without prejudice to any liability of the Contractor with regard to damage caused, the Contractor shall make good any damage to any roads, footpaths, Conduits, services landscaping and other works on any Adjoining Property which may be caused by the Contractor or any person firm or company in the employment of or under the control of the Contractor (including without prejudice to the generality of the foregoing the Contractor's employees agents licenses and persons firms or companies employed or engaged by the Contractor in connection with the Works), provided that it has been able to obtain reasonable access, having used reasonable endeavours to do so (and the Contractor will notify the Councils in the event that the Contractor considers that it has been unable to obtain reasonable access).
- 23.4 Subject to Clause 95.1.3 (Indemnity), the Contractor shall be responsible for and shall indemnify the Councils against all Direct Losses in relation to any failure by the Contractor to comply with its obligations under this Clause 23 (but without prejudice to the Contractor's rights under and pursuant to Clause 15.8 (Title Matters) and the Contractor's rights to claim compensation under Clause 31 (Effects of a Compensation Event) in relation to Title Compensation Events, or with the terms of any Necessary Consents or Third Party Consent save to the extent that such Direct Losses arise as a result of any negligent act or omission of the Councils or any Councils Related Parties or as a result of a breach by the Councils of their obligations under this Contract.

## **24 CONSTRUCTION SUB-CONTRACTOR AND OPERATING SUB-CONTRACTOR**

### **24.1 Engagement of Construction Sub-Contractor and Operating Sub-Contractor**

24.1.1 The Contractor shall:

- (a) engage the services of the Construction Sub -Contractor to carry out the Works on the terms of the Construction Contract;
- (b) engage the services of the Operating Sub-Contractor to carry out the Service on the terms of the Operating Sub-Contract; and
- (c) procure that the Operating Sub -Contractor engages the services of the SRF Offtaker to carry out those elements of the Service for which the SRF Offtaker is responsible on the terms of the SRF Offtake Contract.

24.1.2 The Contractor shall not fail to enforce any rights it may have under the Construction Contract, the Operating Sub -Contract or the SRF Offtake Contract where such failure is likely (or would be likely if the Councils were to exercise their rights under the relevant Sub -Contractor Direct Agreement) to be adverse to the interests of the Councils under such Sub -Contractor Direct Agreement or SRF Offtake Councils Direct Agreement (as applicable).

### **24.2 Sub-Contractor Direct Agreements and Collateral Warranties**

24.2.1 The Contractor shall not engage the Construction Sub -Contractor, or the Operating Sub-Contractor, or any replacement thereof in connection with the Works or Service (as the case may be) without having procured that such persons have first delivered to the Councils a duly executed Sub -Contractor Direct Agreement.

24.2.2 The Contractor shall procure that the Construction Sub -Contractor does not engage any member of the Professional Team, or any replacement thereof, in connection with the Works without having procured that such member of the Professional Team has first delivered to the Councils a duly executed Collateral Warranty.

24.2.3 The Contractor shall procure that the Operating Sub -Contractor does not engage the counterparty to the Operating Sub -Contractor under the 4Recycling Offtake Contract (as defined in the Operating Sub -Contract) or

any replacement thereof in connection with the Service without having provided that such person has first delivered to the Councils a duly executed Collateral Warranty.

## **25 DEVELOPMENT AND SUBMISSION OF DESIGNS**

- 25.1 The Contractor shall develop the Base Design Proposal for the Works in relation to the ITSAD Facility into fully detailed designs which comply with the requirements of the Output Specification and the Construction Documents and are otherwise in accordance with the terms of this Contract and shall submit each item of Reviewable Design Data to the Councils' Representative for review in accordance with Review Procedure.
- 25.2 The Contractor warrants that it has used and will continue to use the degree of skill and care in the design of the Works that would reasonably be expected of a competent professional designer experienced in carrying out design activities of a similar nature, scope and complexity to those comprised in the Works.
- 25.3 Subject to Clause 25.4 the Contractor shall not commence or permit the commencement of the construction of the part or parts of the Works to which any Reviewable Design Data relate until it has submitted the relevant Reviewable Design Data for review under the Review Procedure and either it is confirmed by the Councils' Representative that the Contractor is entitled to proceed with construction in accordance with the terms of the Review Procedure or the Contractor is disputing the status of such Reviewable Design Data pursuant to paragraph 1.3 of the Review Procedure.
- 25.4 Notwithstanding the provisions of Clause 25.3, the Contractor may commence or permit the commencement of construction before the Councils' Representative provides approval for any design referred to in Clause 25.4, or during a dispute over any Reviewable Design Data, provided that if it is subsequently determined that the Contractor was not entitled to proceed with construction in accordance with paragraph 4 of the Review Procedure, then the Contractor shall forthwith undo, remove from Sites and replace (in a manner complying with this Contract) any parts of the Works which it has been determined the Contractor was not entitled to construct.
- 25.5 With effect from the date on which any Reviewable Design Data is or becomes approved in accordance with the Review Procedure, the Contractor may proceed with the construction of the relevant part or parts of the Works (subject to the need to submit any associated Reviewable Design Data to review) in accordance with that approved Reviewable Design Data.

- 25.6 The Contractor shall allow the Councils' Representative at any time a reasonable opportunity to view any items of Design Data, which shall be made available to the Councils' Representative as soon as reasonably practicable following receipt of any written request from the Councils' Representative.
- 25.7 The Contractor shall establish and maintain or procure that the Construction Sub-Contractor establishes and maintains a computerised design database which the Contractor's Representative and the Councils' Representative may access remotely by computer to view drawings comprised within the Design Data (including Reviewable Design Data) and electronically store and/or print copies of such Design Data. If the Councils' Representative is unable to access that design database and notifies the Contractor of the same, the Contractor shall procure that the database is made available as soon as reasonably practicable for inspection by the Councils' Representative or any person authorised by the Councils' Representative.
- 25.8 If it should be found that the Works do not fulfil the requirements of the Output Specification, the Contractor shall at its own expense amend the Works Delivery Plan and rectify the Works or any part of the Works affected. Such amendment and rectification shall have the effect that:
- 25.8.1 the Works Delivery Plan shall satisfy the requirements of the Output Specification; and
- 25.8.2 following such amendment or rectification the structural, mechanical and electrical performance of the ITSAD Facility will be of an equivalent standard of performance to that set out in the Works Delivery Plan prior to such amendment or rectification (for the purpose of comparison disregarding the fault which required the amendment or rectification to be made).
- 25.9 The liability of the Contractor in relation to the design of the ITSAD 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 Councils or the Councils' Representative.

## **26 THE EFFECT OF THE COUNCILS' AGREEMENT**

- 26.1 The agreement, consent, certification or approval by the Councils or the Councils' Representative is required for any matter where:
- 26.1.1 this Contract provides that such must be sought or obtained; and/or

26.1.2 the Contractor seeks such agreement voluntarily,

and, subject to the express terms of this Contract or of such agreement, consent, certification or approval, the giving of such agreement, consent, certification or approval shall not under any circumstances limit, diminish, obviate or reduce the Contractor's obligation to design and construct the ITSAD Facility and operate each Facility and make them available in accordance with this Contract.

26.2 Further, and for the avoidance of doubt, in the event that the Councils or the Councils' Representative provide any assistance, proffer an opinion or give advice to the Contractor the same shall not, subject to the express terms of this Contract, or any associated agreement, consent, certification or approval diminish or limit the Contractor's obligations under this Contract and in particular shall not detract from the Contractor's obligations referred to in Clause 26.1.

26.3 Save to the extent expressly provided otherwise, no approval, objection (or failure to object), proposal, comment, inspection, testing or certification in relation to any of the Construction Documents or the Works by the Councils or any Party acting on behalf of the Councils or any adviser to the Councils or the Independent Certifier, nor any payments by the Councils nor the acceptance of any payments made to the Councils shall affect or diminish the obligations of the Contractor under this Contract.

## **27 CARRYING OUT OF THE WORKS**

### **27.1 Not Used**

### **27.2 Materials**

27.2.1 If any of the materials referred to in the Works Delivery Plan are not procurable within a reasonable time then the Contractor may, with the prior consent in writing of the Councils' Representative (which shall not be unreasonably withheld or delayed), in carrying out the Works substitute for them alternative materials of no lesser quality and as nearly as may be of the same visual appearance provided that such consent shall be deemed to have been given to the Contractor if the Councils' Representative fails to provide any written response within ten (10) Business Days after the Contractor's request for the same provided that all relevant information was submitted with such request.

27.2.2 Notwithstanding anything to the contrary expressly set out in or implied elsewhere in this Contract the Contractor undertakes that the Works will comprise only new materials and goods of satisfactory quality and that no substances shall be used or incorporated in the Works which are not in conformity with (save where they exceed) current relevant British Standards, British Codes of Practice European Standards or European Codes of Practice (whichever are the higher standard) or which are deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.

### **27.3 Persons Employed**

The Contractor shall ensure that all persons employed in connection with the performance of the Works will be careful, skilled and have received appropriate training for the tasks which they are to undertake.

### **27.4 Supervision**

All aspects of the Works will be supervised by sufficient numbers of people having adequate knowledge, appropriate training and adequate experience of such matters for the satisfactory and safe supervision of the Works in accordance with this Contract.

### **27.5 Safety, Security and Cleaning**

During the carrying out of the Works the Contractor shall and shall procure that the Construction Sub-Contractor and all Sub-Contractors shall:

- 27.5.1 keep the Works in a safe condition and working areas of the Site (Bolton Road) secure against trespassers;
- 27.5.2 maintain the Works in good order;
- 27.5.3 take all necessary steps in accordance with Good Industry Practice to protect the Works from damage;
- 27.5.4 keep the Site (Bolton Road) clean and tidy having regard to the nature of the Works;
- 27.5.5 provide adequate retaining and supporting walls to support any Adjoining Property to the ITSAD Facility during the carrying out of the Works;

- 27.5.6 not use or occupy or permit or suffer the Site (Bolton Road) or any land affected by the Works to be used or occupied for any purpose other than the carrying out of the Works;
- 27.5.7 not deposit or manufacture or permit or suffer to be deposited or manufactured on the Site (Bolton Road) or on any land on which the Works are being carried out any materials (other than Contract Waste) which are not required for the carrying out of the Works;
- 27.5.8 not sell or dispose of any earth, clay, sand, gravel, chalk or other material from the Site (Bolton Road) or permit or suffer the same to be removed, except so far as shall be necessary for the proper execution of the Works, without the consent of the Councils which shall not be unreasonably withheld or delayed;
- 27.5.9 at the Contractor's sole cost transport all surplus materials arising from the Works and arrange for the tipping of the same at such places as may be lawfully be used for tipping 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) of the EPA;
- 27.5.10 lawfully dispose of all surplus materials arising from the Works;
- 27.5.11 not permit or suffer the storage of materials or the parking of vehicles by persons outside the boundaries of the Site (Bolton Road) other than for reasonable periods necessary for loading and unloading;
- 27.5.12 insofar as is reasonably practicable ensure that all vehicles leaving the Site (Bolton Road) are adequately cleaned to prevent the deposit of waste materials and debris on any public highway or surfaced private road and if any such material or debris is so deposited the Contractor shall forthwith at its own cost employ such measures as shall be necessary to clean up and remove the material or debris;
- 27.5.13 not (save in accordance with any Necessary Consent) permit any oil, grease, deleterious, dangerous, poisonous, explosive or radioactive matter to be discharged from the Site (Bolton Road) into any rivers or any ditches or Conduits on the Sites (Bolton Road) or on any Adjoining Property and shall not permit or suffer the blockage of any of such rivers, ditches and Conduits

by reason of anything done or omitted to be done on the Site (Bolton Road) or any land affected by the Works and subject to Schedule 37 (Approach to Permit Risk) to comply at the Contractor's expense with any reasonable and proper requirements of the Environment Agency or any other Relevant Authority so far as such requirements relate to or affect the Works;

27.5.14 save in the case of an emergency, not gain access to and egress from the Site (Bolton Road) except via such points as indicated in the Lease (Bolton Road);

27.5.15 not without the written consent of the Councils erect or permit or suffer to be erected on the Site (Bolton Road) any temporary structure except as is reasonably required for the carrying out of the Works;

27.5.16 not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Site (Bolton Road) any signs or trade boards save those previously approved in writing by the Councils;

27.5.17 take all necessary steps required by Legislation with regard to ensuring that the health and safety of all:

- (a) occupants of the Site (Bolton Road);
- (b) individuals invited onto the Site (Bolton Road); and
- (c) occupants of Adjoining Properties;

is not adversely impacted upon by the undertaking of the Works; and

27.5.18 be responsible at the Contractor's own cost for obtaining all road closure and/or orders necessary to ensure the construction of works to proceed.

## **27.6 Compliance with the Councils Notices**

The Contractor shall comply with and/or procure compliance with (at the Contractor's own cost and expense) any notice issued by the Councils (acting reasonably) from time to time requiring the removal from the Site (Bolton Road) of any person employed thereon in connection with the carrying out of the Works who in the reasonable opinion of the Councils (not acting arbitrarily, vexatiously or capriciously) is not acceptable on the grounds that such person is Unsuitable (the reasons for such Unsuitability being disclosed to the Contractor in such notice to the extent they are sufficiently detailed to support the Councils' opinion without breaching confidentiality obligations or Laws)

and requiring that such persons shall not be engaged or employed (directly or indirectly) again on the Project without the prior written consent of the Councils.

## **28 CDM REGULATIONS**

28.1 Without prejudice to Clause 66.1 (Contractor Responsibility) as between the Contractor and the Councils, 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.

### **28.2 The Contractor as "Client"**

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

### **28.3 Duties under the CDM Regulations**

The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties of a client arising under the CDM Regulations in connection with the Works and the Service and shall, prior to the Service Commencement Date, provide to the Councils a certified copy of the final draft Health and Safety File (as defined in the CDM Regulations) for the ITSAD Facility and, within thirty (30) Business Days of the Acceptance Test Certificate in accordance with Clause 17 (Principal Obligations), a certified copy of the full and complete Health and Safety File. The Contractor shall ensure that the Health and Safety File is revised as often as may be appropriate during the Contract Period to incorporate any relevant new information in relation either to the Works and/or the Service.

## **29 MONITORING AND INSPECTION**

### **29.1 Right of Inspection**

29.1.1 At all reasonable times prior to the Service Commencement Date the Councils and any person authorised by the Councils may enter any part of the Site (Bolton Road) in order to inspect and view the state and progress of the Works and to ascertain whether they are being executed in accordance with

the terms this Contract. In exercising such rights of entry, the Councils shall (and shall procure that any person authorised by them shall) comply with the Contractor's and either the Construction Sub-Contractor's or the relevant sub-contractor's reasonable safety and security requirements as they may be updated from time to time in respect of the ITSAD Facility and shall not (and shall procure that any authorised person by them shall not) unreasonably delay or impede the progress of the Works.

- 29.1.2 The Councils may require the Contractor to open up the relevant part of the Works if they believe that any completed Works have not been carried out in accordance with this Contract and are defective at any time prior to the date on which the Readiness Test Certificate is issued for the ITS Facility subject to giving reasonable notice and providing the Contractor with reasonable evidence of the same. The Parties shall instruct the Independent Certifier to inspect such Works to determine whether they are defective in a manner which would prevent the Independent Certifier from issuing the Acceptance Test Certificate following the Acceptance Tests. The Parties shall further require the Independent Certifier to deliver a report detailing his findings within two (2) Business Days of such inspection. If the Independent Certifier's report reveals that the relevant Works are not defective in a manner which the Independent Certifier believes (acting reasonably and in accordance with the Independent Certifier's Appointment) would prevent the Independent Certifier from issuing the Acceptance Test Certificate following the Acceptance Tests such opening up of any part of the Works for inspection shall be deemed to have been a Compensation Event, in respect of which Clause 31 (Effects of a Compensation Event) shall apply.
- 29.1.3 The Councils shall use reasonable endeavours to notify the Contractor in writing of any non-compliance of the Works with this Contract of which they become aware as a result of any inspection carried out under Clause 29.1.2. Such notification shall be provided to the Contractor as soon as is reasonably practicable after the relevant inspection by the Councils or their representatives. The Councils shall, if any such notification is given, provide to the Contractor such detailed particulars of such non-compliance as are available to the Councils.
- 29.1.4 The Councils shall have regard to any representations made by the Contractor concerning any notification of non-compliance issued pursuant to Clause

29.1.3 but unless within twenty (20) Business Days from the date of service of the notification, the Parties have not agreed the detailed particulars of the non-compliance (and the Councils have not notified the Contractor that they have withdrawn their notification of non-compliance), the matters shall be determined in accordance with Clause 104 (Dispute Resolution).

29.1.5 The Contractor shall as soon as reasonably practicable and at its own expense take all such measures as shall be necessary to remedy the non-compliance identified by the Councils pursuant to Clause 29.1.3 to the extent that such matters have been agreed by the Parties or determined pursuant to Clause 104 (Dispute Resolution).

29.1.6 No test or inspection of the Works by the Councils and (if any Works have not been or are not being carried out in accordance with this Contract) no failure or omission by the Councils to notify the Contractor of non-compliance pursuant to Clause 29.1.3 and no approval by the Councils of the Construction Documents shall in any way affect or lessen the obligations of the Contractor in relation to the Works under this Contract.

## **29.2 Supply of Information**

The Contractor shall supply to the Councils and any representative or adviser of the Councils visiting the Site (Bolton Road) pursuant to this Clause 29 such information in respect of the Works as may reasonably be required by such person in relation to the Councils' obligations under Clause 29.1.3.

## **29.3 Site Meetings**

29.3.1 The Contractor shall procure:

- (a) that the Councils' Representative is notified of all programmed site meetings relating to the Works as soon as possible after they are arranged and is entitled to attend all such meetings and is kept apprised of any delays, problems or obstacles in the Works and afforded the opportunity to attend all programmed meetings with the Construction Sub-Contractor or the relevant sub-contractor in respect of the Works and is notified of such meetings as soon as possible after they are arranged and that full details of any unplanned liabilities which

may arise in connection with the Works are forthwith identified to the Councils' Representative; and

- (b) that a copy of the minutes of every such site meeting and meeting with the Construction Sub-Contractor or the relevant sub-contractor in respect of the Works is promptly supplied to the Councils' Representative (whether or not the Councils' Representative and/or representatives of the Councils have attended such site meeting); and
- (c) that the Councils' Representative is invited to monthly programmed progress meetings at the site of the Ferrybridge Facility.

#### **29.4 Rights of Access**

- 29.4.1 The Contractor shall procure that the Councils or any duly authorised representative or adviser of the Councils shall have, at all reasonable times and upon giving reasonable notice, the right to enter the Site(s) in order to inspect the state and progress of the Works (and to ascertain whether they are being properly executed), the operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations under this Contract provided that doing so does not delay or impede the progress of the Works.
- 29.4.2 In exercising its rights under Clause 29.4.1 the Councils shall (and shall procure that any of their representatives or advisors shall) at all times comply with all relevant site rules in relation to the Sites.
- 29.4.3 The Councils or a representative or adviser of the Councils may at all reasonable times enter upon any property used by the Contractor as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works at reasonable times and on reasonable notice and subject to obtaining the consent of the relevant manufacturer or supplier (which the Contractor shall use reasonable endeavours to obtain).
- 29.4.4 The Contractor shall procure that satisfactory facilities are made available to the Councils and any representative of the Councils and that reasonable assistance is given for the purposes of Clauses 29.4.1 and 29.4.3 above, subject to the Contractor's and Construction Sub-Contractor's construction or

operational requirements not being adversely affected and to the Councils reimbursing the Contractor for any reasonable costs or expenses incurred by the Contractor as a result of the action taken by the Councils under Clauses 29.4.1, 29.4.3 and 29.4.4.

- 29.4.5 The Councils and the Councils' Representative shall at all times comply with any health and safety requirements when exercising their rights under this Clause 29.4.
- 29.4.6 If the Councils are or become aware of a breach by the Contractor of its obligations under Clause 52 (Maintenance) or Schedule 13 (Planned Maintenance) then the Councils may serve a notice on the Contractor (the "**Maintenance Rectification Notice**") to put forward to the Councils for their approval within ten (10) Business Days of the date of receipt of such notice (or such other notice period as agreed or determined between the Parties) (such approval not to be unreasonably withheld or delayed) a rectification plan (the "**Maintenance Rectification Plan**") to rectify such breach within such period as is reasonably practicable.
- 29.4.7 Where the Contractor has proposed to the Councils a Maintenance Rectification Plan within the time period referred to at Clause 29.4.6, the Councils may only reject such plan on the grounds that they reasonably believe such plan (if implemented in accordance with its terms) will not rectify the breach such that the Contractor is no longer in breach of its obligations under Clause 52 (Maintenance) or Schedule 13 (Planned Maintenance). In the event that the Councils reject such plan, the Contractor may refer the matter to dispute resolution in accordance with Clause 104 (Dispute Resolution).
- 29.4.8 Where the Councils have served a Maintenance Rectification Notice in accordance with Clause 29.4.6 and:
- (a) the Contractor has not proposed a Maintenance Rectification Plan within the time period referred to at Clause 29.4.6; or
  - (b) a Maintenance Rectification Plan has been rejected by the Councils and it has been determined pursuant to the Dispute Resolution Procedure that they were entitled to reject such plan; or

(c) a Maintenance Rectification Plan has not been rejected by the Councils (or if it has been determined pursuant to the Dispute Resolution Procedure that the Councils were not entitled to reject a Maintenance Rectification Plan), but such plan has not been implemented by the Contractor in accordance with its terms,

then the Councils may exercise their right of access and remedy such breach and they will be entitled to recover from the Contractor as a debt any costs or expenses which are reasonably and properly incurred in doing so.

29.4.9 If the Councils or the Councils' Representative cause material damage to any asset in exercising any right under this Clause 29.4 or fail to act in accordance with Clause 29.5, then the Councils shall reimburse the Contractor for its reasonable costs of making good such damage within thirty (30) Business Days, save where and to the extent that the Councils have acted in accordance with Good Industry Practice or upon the instruction of the Contractor or the Contractor's Representative.

29.5 The Councils will not be entitled to exercise their rights of access under Clause 29.4 where doing so will be in breach of Legislation or will put the Contractor or the Operating Sub-Contractor in breach of Legislation or any Environmental Permit.

## **30 DELAY AND EXTENSIONS OF TIME**

### **30.1 Notice**

30.1.1 If at any time the Contractor becomes aware that it will not or is unlikely to obtain the Readiness Test Certificate or Acceptance Test Certificate by the Planned Service Commencement Date the Contractor shall give notice to the Councils to that effect specifying:

- (a) the reason for the delay or likely delay;
- (b) an estimate of the likely effect of the delay on the achievement of such certification of the ITS Facility and/or AD Facility (as the case may be) and the remainder of the Works by the Planned Service Commencement Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with Clause 30.3); and

- (c) a revised Construction Programme.

## **30.2 Supply of Information**

30.2.1 Following service of a notice by the Contractor pursuant to Clause 30.1 the Contractor shall promptly supply to the Councils any further information relating to the delay which:

- (a) is received by the Contractor; or
- (b) is requested by the Councils.

## **30.3 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 30.1 acting in accordance with Good Industry Practice.

## **30.4 Time for Completion of the Works**

30.4.1 If the carrying out of the Works or any part thereof is delayed and the delay is notified to the Councils in accordance with Clause 30.1 and such delay is attributable to:

- (a) a Compensation Event, then the provisions of Clause 31 (Effect of a Compensation Event) shall apply;
- (b) a Relief Event, then the provisions of Clause 32 (Delays due to a Relief Event) shall apply; or
- (c) a Force Majeure Event, then the provisions of Clause 85 (Termination on Force Majeure) shall apply,

subject always to the right of any Party to refer to dispute resolution under Clause 104 (Dispute Resolution) any dispute arising pursuant to this Clause 30.

## **30.5 Sole Remedy for Delay**

30.5.1 Without prejudice to any liabilities of the Contractor arising under Clause 14 (Interim Service) (and notwithstanding any other provisions of this Contract) the Councils' sole remedy:

- (a) for the Contractor not achieving the commencement of the Works by the Planned Works Commencement Date, the Readiness Date by the Planned Readiness Date, Service Commencement Date by the Planned Service Commencement Date and/or carrying out the Works in accordance with the Construction Programme is limited to termination under Clause 83 (Termination on Contractor Default) pursuant to limbs (l), (m) or (o) of the definition of Contractor Default (as applicable)) or, where applicable, Clause 85 (Termination on Force Majeure); and
- (b) for the Contractor failing to commence the Ferrybridge Works or to complete commissioning of the Ferrybridge Facility is limited to termination under Clause 83 (Termination on Contractor Default) pursuant to limb (u) of the definition of Contractor Default (but without prejudice to the Councils' right under Clauses 79.9 [REDACTED] and 79.9 [REDACTED]).

## **31 EFFECT OF A COMPENSATION EVENT**

### **31.1 Impact of a Compensation Event**

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

- (a) the Contractor is unable to commence the Works by the Planned Works Commencement Date; and/or
- (b) the Readiness Date occurs later than the Planned Readiness Date; and/or
- (c) the Contractor is unable to achieve Service Commencement on or before the Planned Service Commencement Date, or following the Planned Service Commencement Date, the Long Stop Date; and/or
- (d) the Contractor is unable to comply with its obligations under this Contract; and/or
- (e) the Contractor incurs costs or loses revenue (including Third Party Revenue),

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

31.1.2 Subject to Clause 31.1.4 below, to obtain relief and/or claim compensation the Contractor must:

- (a) as soon as practicable, and in any event within twenty-one (21) 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 Revenue), give to the Councils a notice of its claim for an extension of time for the Planned Works Commencement Date, the Planned Readiness Date, the Planned Service Commencement Date, the Readiness Long Stop Date and/or the Long Stop Date, payment of compensation and/or relief from its obligations under the Contract; and
- (b) within fourteen (14) Days of receipt by the Councils of the notice referred to in Clause 31.1.2(a) above, give full details of the Compensation Event and the extension of time and/or relief from its obligations under this Contract and/or any Estimated Change in Project Costs and/or loss of revenue claimed; and
- (c) demonstrate to the reasonable satisfaction of the Councils that:
  - (i) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or any delay in the achievement of commencement of the Works by the Planned Works Commencement Date, and/or delay in obtaining the Readiness Test Certificate by the Planned Readiness Date and/or achievement of the Service Commencement by the Planned Service Commencement Date and/or breach of the Contractor's obligations under this Contract or, following the Planned Readiness Date, delay in issue of the Readiness Test Certificate by the Readiness Long Stop Date and/or following the Planned Service Commencement Date, delay in achieving Service Commencement before the Long Stop Date; and
  - (ii) the Estimated Change in Project Costs and/or loss of revenue, time lost, and/or relief from the obligations under the Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

31.1.3 In the event that the Contractor has complied with its obligations under Clause 31.1.2, then:

- (a) in the case of a delay, the Planned Works Commencement Date (if the Works have not yet commenced within six (6) Months of such date) and/or the Planned Readiness Date and/or the Planned Service Commencement Date or, following the Planned Readiness Date the Readiness Long Stop Date, or following the Planned Service Commencement Date, the Long Stop Date, shall be postponed by such time as shall be reasonable for such a Compensation Event taking into account the likely effect of delay; and/or
- (b) in the case of an additional cost being incurred or revenue (including Third Party Revenue) being lost by the Contractor:
  - (i) on or before the Service Commencement Date; or
  - (ii) as a result of Capital Expenditure being incurred by the Contractor at any time,

the Councils shall compensate the Contractor for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated), within thirty (30) Days of their receipt of a written demand by the Contractor supported by all relevant information; and/or

- (c) in the case of a payment of compensation for the Estimated Change in Project Costs and/or without double counting, loss of revenue that does not result in Capital Expenditure being incurred by the Contractor as referred to in Clause 31.1.3(b)(ii) but which reflects a change in the costs and/or without double counting, loss of revenue being incurred by the Contractor after the Service Commencement Date, the Councils shall compensate the Contractor in accordance with Clause 31.1.6 by an adjustment to the Unitary Charge; and/or
- (d) the Councils shall give the Contractor such relief from its obligations under the Contract, as is reasonable for such a Compensation Event.

- 31.1.4 In the event that information is provided after the dates referred to in Clause 31.1.2, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under the Contract in respect of the period for which the information is delayed.
- 31.1.5 If the Parties cannot agree the extent of any compensation, delay incurred, and/or relief from the Contractor's obligations under the Contract, or the Councils disagree 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 Clause 104 (Dispute Resolution).
- 31.1.6 Any payment of compensation referred to in Clause 31.1.3(c) shall be calculated in accordance with Clause 120 (Revision and Custody of Financial Model).

## **32 DELAYS DUE TO A RELIEF EVENT**

32.1 If and to the extent that a Relief Event:

32.1.1 is the direct cause of a delay in achieving the commencement of the Works at the ITSAD Facility on or before the Planned Works Commencement Date or a delay in the issue of the Readiness Test Certificate by the Planned Readiness Date or a delay in achieving Service Commencement on or before the Planned Service Commencement Date or following the Planned Readiness Date, delay in the issue of the Readiness Test Certificate by the Readiness Long Stop Date or following the Planned Service Commencement Date, delay in achieving Service Commencement by the Long Stop Date; and/or

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

then the Contractor is entitled to apply for relief from any rights of the Councils arising under Clause 83 (Termination on Contractor Default).

32.2 To obtain relief, the Contractor must:

32.2.1 as soon as practicable, and in any event within fourteen (14) Days after it became 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 Councils a notice of its claim for relief from its obligations under the Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

32.2.2 within seven (7) Days of receipt by the Councils of the notice referred to in Clause 32.2.1, give full details of the relief claimed; and

32.2.3 demonstrate to the reasonable satisfaction of the Councils that:

- (a) the Contractor and its Sub-Contractors and the SRF Offtaker (as relevant) could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure; and
- (b) the Relief Event directly caused the delay in commencing the Works by the Planned Works Commencement Date and/or in achieving the Readiness Date by the Planned Readiness Date and/or in achieving the Service Commencement by the Planned Service Commencement Date or, following the Planned Readiness Date delay in the issue of the Readiness Test Certificate by the Readiness Long Stop Date or following the Planned Service Commencement Date, delay in achieving Service Commencement by the Long Stop Date or the need for relief from other obligations under the Contract; and
- (c) the time lost and/or relief from the obligations under the 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 the Contract.

32.3 In the event that the Contractor has complied with its obligations under Clause 32.2 above, then:

32.3.1 the Planned Works Commencement Date and/or the Planned Readiness Date and/or the Planned Service Commencement Date or following the Planned Readiness Date, the Readiness Long Stop Date, or following the Planned Service Commencement Date the Long Stop Date, shall be postponed by such

time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

32.3.2 the Councils shall not be entitled to exercise their rights to terminate the Contract under Clause 83 (Termination on Contractor Default).

32.4 Nothing in Clause 32.3 shall affect any entitlement to make Deductions or any Deductions made as a result of Schedule 5 (Performance and Monitoring) during the period in which the Relief Event is subsisting provided however any such Deductions if made shall be disregarded for the purposes of the Councils' right to terminate the Contract for Contractor Default.

32.5 In the event that information required by Clause 32.2 above 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.

32.6 The Contractor shall notify the Councils 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.

32.7 If the Parties cannot agree the extent of the relief required, or the Councils disagree that a Relief Event has occurred or that the Contractor is entitled to any extension of the Planned Works Commencement Date, Planned Readiness Date, Planned Service Commencement Date or the Readiness Long Stop Date or the Long Stop Date and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with Clause 104 (Dispute Resolution).

### **33 EXCUSING CAUSES**

#### **33.1 Relief from Deductions**

33.1.1 If an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Service, the Contractor shall notify the Councils of the effect of such Excusing Cause within ten (10) Business Days of the date on which the Contractor becomes aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, and to the extent such failure or interference arises as a result of such Excusing Cause:

- (a) such failure by the Contractor to perform, and any poor performance of, any affected Service shall not constitute a breach of the provisions of this Contract by the Contractor; and/or
- (b) such interference shall not be taken account of in measuring the performance of the Service in accordance with Clause 62 (Performance Monitoring) and such Clause 62 (Performance Monitoring) will be operated as though the relevant Services had been performed free from such adverse interference; and
- (c) any such failure to perform the Service shall be deemed not to have occurred,

so that the Councils shall not be entitled to levy any Deductions in connection with such interference and the Contractor shall be entitled to payment under this Contract as if there had been no such interference with the performance of the Service, and in particular in the case of an Excusing Cause as referred to in Clause 33.1.2(j), the Councils shall not be entitled to levy Mileage Deductions which relate to Contract Waste which would have been delivered to the TLS Facility but for the occurrence of such Excusing Cause.

33.1.2 For the purposes of Clause 33.1 "**Excusing Cause**" means any of the following:

- (a) where a Facility or part thereof that has been closed by written agreement between the Contractor and the Councils and as part of that agreement no adjustments and/or Deductions in accordance with Schedule 4 (Payment Mechanism) will be levied; and/or
- (b) the implementation of a Councils' Change or a Qualifying Change in Law to the extent the same are implemented in accordance with agreed procedures; and/or
- (c) the exercise of the rights referred to at Clause 29.4.8 (Rights of Access); and/or
- (d) breach by the Councils or a Councils' Related Party of the Councils' obligations under the Waste Acceptance Protocol) and/or the Site Rules and Conditions; and/or

- (e) a deemed Excusing Cause pursuant to Clauses 19.5.1 or 19.7.2 or 19.7.3(b) or 19.10.2 (Adverse Ground Conditions and Contamination); and/or
- (f) a deemed Excusing Cause pursuant to Clause 37.3.3 (Emergencies); and/or
- (g) a deemed Excusing Cause pursuant to Clause 51.1 (Civil Defence and Emergencies); and/or
- (h) a deemed Excusing Cause pursuant to Clause 52.2.3 (Maintenance of the Site (Grange Lane)); and/or
- (i) a deemed Excusing Cause pursuant to Clause 79.2.4 [REDACTED]; and/or
- (j) a Satisfactory TLS Permit has not been transferred or issued to the Contractor or the Operating Sub-Contractor (as directed by the Contractor) by the Lease (Grange Lane) Completion Date, and this Excusing Cause shall apply and shall continue to apply until a Satisfactory TLS Permit has been transferred or issued to such person, save where the Contractor or the Operating Sub-Contractor has failed to use All Reasonable Endeavours (as defined in Clause 14.6.2 (Interim Service)).

### 33.1.3 Insured exposure

Without prejudice to Clause 64 (Insurance), the Contractor shall not be entitled to any payment which would not have been due under this Contract but for Clause 33.1 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.

### 33.1.4 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 33.

- 33.1.5 In the event that the Excusing Cause is notified to the Councils after the period referred to in Clause 33.1.1 the Contractor shall not be entitled to any relief from deductions in respect of such Excusing Cause for the period for which the notification is delayed.

#### **34 FOSSILS AND ANTIQUITIES**

- 34.1 As between the Parties, all fossils, antiquities and other objects having artistic, historic or monetary value which may be found on or at the Site (Bolton Road) are or shall become, upon discovery, the absolute property of the Councils.
- 34.2 Upon the discovery of any such item during the course of the Works, the Contractor shall:
- 34.2.1 immediately inform the Councils' Representative and the Independent Certifier of such discovery; and
- 34.2.2 take all steps not to disturb the object and, if necessary, cease any Works insofar as the carrying out of such Works would endanger the object or prevent or impede its excavation; and
- 34.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.
- 34.3 The Councils shall procure that the Councils' Representative promptly, and in any event within ten (10) Business Days, issues an instruction to the Contractor specifying what action the Councils requires the Contractor to take in relation to such discovery, provided that if no instruction is forthcoming within such period, the Contractor may continue to carry out the Works. The Contractor shall promptly and diligently comply with the Councils' Representative's instruction (except to the extent that such instruction constitutes a Councils' Change pursuant to Clause 34.6 in which case the provisions of Schedule 32 (Change Protocol) shall apply).

- 34.4 If directed to do so by the Councils' Representative, the Contractor shall allow representatives of the Councils to enter the Site (Bolton Road) for purposes of inspection, removal or disposal of a discovery referred to in Clause 34.2 provided that such entry shall be subject to the Councils complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of the ITSAD Facility, the Contractor's site rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor's Representative from time to time.
- 34.5 If human remains are discovered in the course of carrying out the Works, the Contractor shall advise the Councils forthwith and liaise with the Councils and shall liaise with and carry out any instructions of the relevant police authority and or Defra or any other Relevant Authority having authority in this regard.
- 34.6 If any instruction referred to in Clause 34.3 includes a requirement for the Contractor to suspend the carrying out of the Works and/or to carry out works (being any work or alteration, addition, demolition or extension or variation to the Works and/or the Works Delivery Plan for the ITSAD Facility) which are not works which would be necessary for the purpose of compliance with Legislation or any Necessary Consents, such works or instruction to suspend shall be deemed to be a Councils' Change which the Councils shall not be entitled to withdraw and which will not be deemed to be withdrawn under the provisions of Schedule 32 (Change Protocol).
- 34.7 The Councils shall act promptly and diligently in dealing with their obligations in this Clause 34 in relation to any find so as to mitigate any effect on the Contractor, the carrying out of the Works and/or the performance of the Service.

## **35 CERTIFICATION OF COMPLETION OF THE WORKS**

### **35.1 Appointment of the Independent Certifier**

- 35.1.1 The Contractor shall procure the appointment of the Independent Certifier to certify that the Readiness Tests and Acceptance Tests have been passed for the ITS Facility and the AD Facility in the form contained in Schedule 11 (Independent Certifier's Appointment) (or as such form is varied by agreement between the Parties).
- 35.1.2 The cost and expenses of the Independent Certifier shall be borne by the Contractor.

## **35.2 Service Commencement Date**

35.2.1 Schedule 9 (Acceptance Tests) and Schedule 11 (Independent Certifier's Appointment) set out the two (2) stage certification process to be undertaken by the Independent Certifier as follows:

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

35.2.2 The Service Commencement Date shall be the date on which the later of the ITS Facility and the AD Facility has passed all the Acceptance Tests or in the event of referral for determination under the Dispute Resolution Procedure pursuant to Clause 35.5.1 the date upon which it is determined that the later of the ITS Facility and the AD Facility has passed the Acceptance Tests.

## **35.3 Testing and Commissioning**

35.3.1 The Contractor shall develop the Outline Commissioning Plan into the Commissioning Plan and shall carry out all commissioning of the ITS Facility and the AD Facility in accordance with the Commissioning Plan.

35.3.2 During the Commissioning Period, the Contractor shall accept Contract Waste in accordance with the Commissioning Plan and the Waste Acceptance Protocol and the Councils shall pay to the Contractor the Commissioning Payment in accordance with Part 1 of Schedule 4 (Payment Mechanism).

35.3.3 The Councils shall not be entitled to terminate this Contract pursuant to limb (a) or (b) of the definition of Contractor Default to the extent that any such breach or default has arisen out of or in connection with its obligations under this Clause 35 or any failure for any reason to accept or process Contract Waste at the ITS Facility which has been confirmed to the Councils pursuant to Clause 35.3.

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

- 35.3.5 The Contractor shall, not less than twenty (20) Business Days prior to the anticipated date upon which the Contractor considers that the ITS Facility will be in a condition to proceed with the Tests confirm to the Councils the tonnages, timings and periods of deliveries of Contract Waste necessary for commissioning and testing of the ITS Facility.
- 35.3.6 The Councils shall procure the tonnages, timings and periods of deliveries of Contract Waste which the Contractor has confirmed to them as required pursuant to Clause 35.3.5 and this Clause 35.3.6 (save that such tonnages may not exceed the Maximum Tonnage, pro rata to the periods of delivery and having regard to seasonal variations in waste arisings). If the Contractor has provided the Councils with less than ten (10) Business Days' notice, the Councils' obligation to procure such tonnages, timings and periods of deliveries of Contract Waste will apply ten (10) Business Days from the date of the Contractor's notice. Such deliveries shall be made in accordance with the Contract Waste delivery requirements for such Contract Waste confirmed under Clause 35.3.5. The Councils shall be kept informed as to the likely need for any further tonnages, timings and periods of delivery of Contract Waste to the ITS Facility to allow for further Testing (including any repeat and/or any reassessed Acceptance Tests required in order to obtain the Acceptance Test Certificate) and the Councils shall provide such deliveries of Contract Waste in accordance with the terms of this Clause 35.3.6.
- 35.3.7 During the Commissioning Period the Councils shall not be entitled to make any Deductions from the Commissioning Payments other than Commissioning Performance Deductions and Mileage Deductions.
- 35.3.8 The Contractor shall be responsible for the handling and disposal of any Contract Waste delivered for the purposes of commissioning.
- 35.3.9 The Contractor shall undertake the Tests in accordance with the provisions of Schedule 9 (Acceptance Tests), and such Tests shall be witnessed by the Independent Certifier.
- 35.3.10 When the Contractor is of the opinion that the relevant Tests have been passed it shall promptly notify the Independent Certifier and the Councils of the same.

35.3.11 The Parties shall procure in accordance with the Independent Certifier's Deed of Appointment that the Independent Certifier shall, within the period of two (2) Business Days of receipt of the Contractor's notice under Clause 35.3.10 either:

- (a) issue the Readiness Test Certificate and/or Acceptance Test Certificate (as appropriate) stating the date upon which the relevant Tests in respect of the ITS Facility and/or the AD Facility (as the case may be) were passed notwithstanding that there may remain Snagging Items; or
- (b) notify the Councils and the Contractor that the relevant Test or Tests have not been passed (a " **Notice of Non-Completion**") and provide a report setting out the respects in which it considers that such Tests have not been passed.

35.3.12 Representatives from the Councils, the Senior Lenders and the Independent Certifier shall be entitled to witness the Tests.

35.3.13 For the avoidance of doubt, a Test Certificate (whether issued by the Independent Certifier or subsequently determined by the Adjudicator pursuant to Clause 35.5) will determine the commencement of the Commissioning Period or the Service Period (as the case may be) but will not be final and conclusive evidence that the ITS Facility has been constructed in accordance with the Contract (and in particular Clause 17.3) and will be without prejudice to:

- (a) the Councils' rights to levy Deductions pursuant to Schedule 4 (Payment Mechanism) whether or not the reason for such Deductions arose or could have been detected prior to the issue of the Acceptance Test Certificate; and
- (b) the Councils' rights and remedies under any Collateral Warranty; and
- (c) either Party's rights and remedies under the Independent Certifier's Deed of Appointment.

#### **35.4 Issue of Certificate**

35.4.1 If a Notice of Non-Completion is served pursuant to Clause 35.3.11(b) the Contractor shall repeat the steps set out in Clauses 35.3.1 to 35.3.10 until all

outstanding matters have been attended to and the relevant Test Certificate can be issued pursuant to Clause 35.3.11(a).

### **35.5 Effect of issue of Test Certificate**

- 35.5.1 If the Independent Certifier fails to issue the relevant Test Certificate in accordance with Clause 35.3.11(a) and either Party wishes to challenge the same, the relevant Party shall be entitled to refer the matter for determination by an Adjudicator in accordance with Clause 104 (Dispute Resolution) as if it constituted a dispute.
- 35.5.2 Without prejudice to any rights or remedies that the Parties may have against the Independent Certifier, the Parties agree that the relevant Test Certificate shall be final, binding and enforceable upon the Parties (except in the case of fraud, or manifest error in which case either Party shall be entitled to refer the matter for determination by an Adjudicator under Clause 104 (Dispute Resolution) within ten (10) Business Days of receipt of the relevant Test Certificate).
- 35.5.3 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 Clause 104 (Dispute Resolution), an Adjudicator's decision in respect of any matter referred to it pursuant to Clause 35.5.1 or 35.5.2 will be final, binding and enforceable upon the Parties and neither Party will be entitled to refer such decision to arbitration and/or any court of competent jurisdiction.

### **35.6 Snagging Items**

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

- 35.6.1 the Independent Certifier shall at the same time as it issues the relevant Test Certificate issue to the Contractor and the Councils a list of the relevant Snagging Items (the "**Snagging List**"). Within five (5) Business Days of receipt from the Independent Certifier of the Snagging List the Contractor shall provide to the Councils and the Independent Certifier a reasonable programme for making good each Snagging Item set out in the Snagging List which requires that each Snagging Item is made good to the standard required for the Works within twenty (20) Business Days of the date of receipt of such

programme by the Councils or within such longer period as is reasonably practicable. The Parties shall seek to agree such programme and in default of agreement either Party may refer the matter for determination under Clause 104 (Dispute Resolution). The programme agreed or determined in accordance with this Clause 35.6.1 will be the Snagging Programme (the "**Snagging Programme**"); and

35.6.2 the Contractor shall procure that each Snagging Item is made good to the standard referred to in Clause 35.6.1 and in accordance with the Snagging Programme. If any Snagging Item has not been made good to such standard by the date set out in the Snagging Programme then the Councils shall be entitled to make good such Snagging Items to such standard and recover the costs of doing so from the Contractor as a debt.

### **36 DEPOSIT OF AND ACCESS TO AS BUILT DRAWINGS**

- 36.1 The Contractor shall provide to the Councils, in respect of the ITSAD Facility, a draft set of As Built Drawings on the Service Commencement Date and a final set of As Built Drawings on the earlier of the date falling seven (7) Days after the date they become available to the Contractor and the date falling six (6) Months after the Service Commencement Date. The Contractor shall promptly update any As Built Drawings supplied to the Councils to reflect any changes from time to time and (following such update) promptly provide a set of amended As Built Drawings to the Councils.
- 36.2 Copyright in any of the As Built Drawings shall not pass to the Councils but the Councils may make or obtain copies of a ll or any part of any of the As Built Drawings but only for the purpose exercising their rights under this Contract or managing, running or using the ITSAD Facility or procuring services from third parties to manage, use or run the ITSAD Facility.
- 36.3 A set of each As Built Drawings shall be kept by the Councils. The Councils shall not allow access to any of the As Built Drawings to any persons whom they do not consider to have legitimate interests in viewing and/or using such drawings in connection with their assistance to the Councils in the exercise of their rights under Clause 73 (Councils Step-In) or their rights under this Contract in connection with termination or expiry of this Contract in circumstances where any of the plant and equipment to which such drawings relate will pass into the ownership or control of the Councils or any replacement contractor or contractors.

## **PART III – THE SERVICE**

### **37 PRINCIPAL OBLIGATIONS**

The Contractor shall undertake the provision of the Service in accordance with the provisions of this Contract.

#### **37.1 Standard of Performance**

37.1.1 The Service will, at all times, be performed by appropriately qualified and trained personnel to such high standards of performance as it is reasonable to expect and in accordance with:

- (a) the Output Specification;
- (b) the Service Delivery Plan;
- (c) the requirements of all Necessary Consents;
- (d) Good Industry Practice; and
- (e) all Legal Requirements (for the avoidance of doubt including the avoidance of Statutory Nuisances).

#### **37.2 Service Delivery Plan**

37.2.1 The Contractor:

- (a) shall, subject to Clause 37.2.1(b), submit to the Councils for approval under the Review Procedure any changes to the Service Delivery Plan (and any associated plans) prior to their implementation; and
- (b) (only in circumstances where there are requirements of Legislation or Guidance which the Contractor must implement urgently such that there is insufficient time to apply the Review Procedure) will be entitled to make changes to the Service Delivery Plan (and any associated plans) without the Councils' prior written consent and without submission for approval under the Review Procedure to the extent that such changes are proportionate, reasonable and necessary to comply with Legislation or Guidance provided that the Contractor notifies the Councils of such changes forthwith and thereafter retrospectively submits such changes to the Service Delivery Plan (and

any associated plans) to the Councils for approval under the Review Procedure.

### **37.3 Emergencies**

- 37.3.1 If an Emergency arises during the Service Period (and whether or not an Emergency has arisen shall be determined in the case of any dispute by the Councils' Representative acting reasonably) which cannot be dealt with by performance of the Service the Contractor shall use its best endeavours to procure that such additional or alternative services are undertaken by the Contractor as and when required by the Councils' Representative in writing in such a way as to ensure that the Emergency is dealt with and normal operation of the Facilities resumes as soon as is reasonably practicable.
- 37.3.2 As soon as reasonably practicable following each occasion on which the Councils exercise their rights pursuant to Clause 37.3.1 the Parties shall liaise and seek to agree upon the amended charge (if any) to the Councils for provision by the Contractor of any such additional or alternative services and to ensure that the Contractor is put in no better and no worse position in accordance with Clause 120 (Revision and Custody of Financial Model) in respect of all costs and Losses (including loss of revenue) arising as a result of complying with the Councils' Representative's requirements. The Parties hereby agree that the basis of assessment of any additional costs shall be receipted invoices for such services provided to the Councils by the Contractor (and in the event that such invoices are not reasonably available then reasonable evidence that any additional costs have been incurred by the Contractor shall be supplied). If such additional costs are not agreed between the Parties, then either Party may refer such matter for resolution under Clause 104 (Dispute Resolution).
- 37.3.3 For the period that the Contractor provides additional or alternative services in accordance with Clause 37.3.1 and provided that the Emergency has not arisen through the breach, neglect or default of the Contractor or any Contractor Related Party no Deductions shall arise in respect of the elements of the Service affected by the provision of or requirement to provide such additional or alternative services and the same shall be deemed to be an Excusing Cause.

#### **37.4 Use of Hazardous Materials**

The Contractor shall ensure that any Hazardous Materials or equipment used or intended to be used by the Contractor in the provision of the Service are kept under control and in safe keeping in accordance with all relevant Legal Requirements and the procedures documented in the relevant Service Delivery Plan.

#### **37.5 Environmental Policy**

The Contractor shall ensure that the minimum possible use is made of Hazardous Materials in the delivery of the Service and shall use less harmful substances or materials where practicable. The Contractor shall ensure that all such substances or materials are used at no greater concentration than is required and that used containers are disposed of so as not to cause any danger or damage to the Environment in accordance with Legal Requirements.

#### **37.6 Environment Agency and other Relevant Authorities**

37.6.1 Without prejudice to its obligations to comply with Legislation, Guidance and to provide the Service in accordance with Good Industry Practice, the Contractor shall ensure that it does not initiate an invitation or solicit any Relevant Authority (including for the avoidance of doubt the Environment Agency) to undertake any review of the Service, the Assets and/or any Facility and/or any Site (the "**Review**") without first consulting the Councils in writing and inviting the Councils to be present at any meetings with or inspections undertaken by such Relevant Authority.

37.6.2 If the Contractor fails to consult and invite the Councils pursuant to Clause 37.6.1 prior to any Review the Councils reserve the right in their absolute discretion to reject any associated Contractor Change Notice in accordance with the Change Protocol and/or any other request or claim by the Contractor for an adjustment to the Unitary Charge or otherwise and the Contractor shall be liable for any costs or expenses arising from such Review, in each case:

- (a) provided that such review would not have taken place but for the Contractor's invitation to or solicitation of the Relevant Authority; and
- (b) except as necessary to comply with Legislation and Guidance.

## 38 ACCEPTANCE OF WASTE

- 38.1 From and including the Readiness Date in respect of the ITS Facility and the Lease Completion Date (Grange Lane) in respect of the TLS Facility, the Parties shall comply with the provisions of the Waste Acceptance Protocol and the Contractor shall accept all Contract Waste in accordance with Schedule 1 (Output Specification) and the Waste Acceptance Protocol subject at all times to the applicable Maximum Tonnage for the Contract Year and any rights to reject loads under the Waste Acceptance Protocol.
- 38.2 In the event that during the Service Period Contract Waste is not accepted by the Contractor or a Facility is not able to receive Contract Waste and the Councils' collection vehicles are diverted to a Contingency Delivery Point in accordance with the Contingency Plan then without prejudice to any other remedy of the Councils under this Contract the Contractor may be liable for Mileage Deductions calculated in accordance with the provisions of Schedule 4 (Payment Mechanism).
- 38.3 If an event of Non -Acceptance occurs during the Interim Service Period and/or the Service Period the Contractor shall fully indemnify and shall keep fully indemnified the Councils from and against any Direct Losses arising as a result of such event ( provided that Mileage Deductions shall not apply in respect of such event).
- 38.4 In all circumstances throughout the Service Period the Contractor shall receive and process Contract Waste in priority to Third Party Waste and Non-Contract Waste.
- 38.5 By no later than the date falling twenty (20) Business Days before the Planned Readiness Date the Contractor shall submit to the Councils the Substitute Waste Plan for review under the Review Procedure.
- 38.6 Within ten (10) Business Days of the beginning of each Contract Year following the Planned Readiness Date the Contractor shall submit to the Councils for review under the Review Procedure an update of the Substitute Waste Plan to reflect the Contractor's proposals for sources of Substitute Waste.
- 38.7 In the event that at any time during a Contract Year the Councils reasonably believe that the aggregate tonnage of Contract Waste which they or their collection contractors will collect during such Contract Year within the Administrative Area will not exceed the Guaranteed Minimum Tonnage, then the Councils will be entitled to notify the Contractor ("**Substitute Waste Notice**"):

- 38.7.1 that they consider Contract Waste in the relevant Contract Year will fall below the Guaranteed Minimum Tonnage for such Contract Year;
- 38.7.2 the amount by which they consider there will be shortfall between the amount of Contract Waste being provided and the Guaranteed Minimum Tonnage ("**Contract Waste Shortfall**"); and
- 38.7.3 the period during which the Contract Waste Shortfall shall subsist ("**Shortfall Period**").
- 38.8 Where the Contractor receives a Substitute Waste Notice the Contractor shall implement the Substitute Waste Plan and use (and shall procure that its Operating Sub - Contractor shall use) reasonable endeavours to secure Substitute Waste for the Contract Waste Shortfall for the Shortfall Period at a price which is demonstrated to the Councils' satisfaction as being reasonably obtainable on market and arms' length terms for contracts of the nature and tenor proposed provided that the Contractor shall only be obliged to source Substitute Waste which is from creditworthy entities and that complies with the Substitute Waste Specification. For the avoidance of doubt, such waste (if any) accepted by the Contractor at the Facilities shall not be deemed to be Substitute Waste until Third Party Waste has been delivered in an amount equal to the difference between the Guaranteed Minimum Tonnage and the tonnages guaranteed in the Base Case. For the purposes of this Clause 38.8, "**reasonable endeavours**" shall mean the Contractor (and the Operating Sub - Contractor) shall act as a prudent commercial waste operator (in accordance with the principles, inter alia, of the Substitute Waste Plan) would act in order to secure waste (as defined in section 75 of the EPA) for its own facility having the capability of the Facility.
- 38.9 To the extent that the Contractor secures Substitute Waste which meets the Substitute Waste Specification then:
- 38.9.1 to the extent that the Substitute Waste Price is equal to or less than the Base Tonnage Payment Price per tonne for the Base Tonnage Payment Band 1 then the Councils will be entitled to, and the Contractor shall pay, an amount equal to the Substitute Waste Amount within forty-five (45) Business Days after the end of each Contract Month in respect of the Shortfall Period;
- 38.9.2 to the extent that the Substitute Waste Price is in excess of the Base Tonnage Payment Price per tonne for the Base Tonnage Payment Band 1 then:

- (a) the Councils will 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 the Base Tonnage Payment Price per tonne for the Base Tonnage Payment Band 1 within twenty (20) Business Days after the end of each Contract Month in respect of the Shortfall Period; and
- (b) the Councils will 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 Tonnage Payment Price per tonne for the Base Tonnage Payment Band 1 multiplied by fifty per cent (50%) within forty-five (45) Business Days after the end of each Contract Month in respect of the Shortfall Period.

38.10 In the event that the Contractor has not complied with its obligations pursuant to Clause 38.8 to use reasonable endeavours to secure Substitute Waste then the Guaranteed Minimum Tonnage will be reduced by an amount equal to the amount of Third Party Waste the Contractor would have secured if it had complied with such obligation and the provisions of paragraph 32 of Part 3 of Schedule 4 (Payment Mechanism) will apply accordingly.

38.11 From and including the Service Commencement Date (or such earlier date as notified by the Contractor) in respect of the ITS Facility and the Lease (Grange Lane) Completion Date in respect of the TLS Facility, the Contractor shall (subject to the terms of the Waste Acceptance Protocol) accept all Non-Contract Waste to the extent that it is permitted to do so under the terms of the relevant Planning Permission and Environmental Permit and the cost of such Non-Contract Waste treatment and/or disposal shall be a pass-through cost from the Contractor to the Councils, in accordance with paragraph 58 of Schedule 4 (Payment Mechanism) such Non-Contract Waste shall not count towards the Maximum Tonnage.

## **39 WASTE COMPOSITION**

### **39.1 SRF Composition is a Contractor Risk**

39.1.1 Save to the extent provided for in this Clause 39.1 and at Clause 39.2, the Councils will not be liable to the Contractor in relation to the consequences of any changes to the composition of Contract Waste during the Contract Period

and the Contractor will not be relieved from any of its obligations under this Contract as a result of such changes, provided that to the extent that Contract Waste which falls within limbs (a) and (b) of such definition has been collected as mixed by or on behalf of the Councils but has been pre-treated and/or processed to extract materials prior to delivery to the Facilities, then a Councils' Change Notice will be deemed to have been served on the Contractor giving notice of a change to the Service pursuant to Schedule 32 (Change Protocol) which, notwithstanding any provisions in Schedule 32 (Change Protocol) to the contrary, the Councils will not be entitled to withdraw and which may not be deemed to be withdrawn for any reason.

### **39.2 Meaning of Significant Collection Changes**

39.2.1 For the purposes of this Clause 39, a "**Significant Collection Change**" is one of the following changes in the collection arrangements for Contract Waste (or a series of such changes which, cumulatively, has the same effect):

- (a) collection by or on behalf of the Councils of new material types at the kerbside which previously were not collected by or on behalf of the Councils in circumstances where such collection has an overall household coverage in the Administrative Area greater than five per cent (5%); or
- (b) an increase of greater than five per cent (5%) above the Baseline Collection Coverage in respect of any material type collected by or on behalf of the Councils as at the Commencement Date,

unless it is a change referred to in Clause 39.2.2.

39.2.2 The following changes will not be considered to be a Significant Collection Change:

- (a) the collection of new material types at Bring Sites;
- (b) the collection of new material types at HWRC Sites;
- (c) any increase in the overall number of Bring Sites in the Administrative Area; or

- (d) any increase in the overall number of HWRC Sites in the Administrative Area.

### 39.3 **Significant Collection Changes: Impact on Recycling and Composting Deductions**

- 39.3.1 The Councils shall give one (1) Month's prior written notice to the Contractor on each occasion that they are considering a change to the collection arrangements for Contract Waste which could, if implemented, be a Significant Collection Change. Where the Contractor is of the opinion, acting reasonably, that any such potential change would, if implemented, be a Significant Collection Change and that such Significant Collection Change may adversely impact on the Contractor's ability to achieve the quality and quantity of Recycling and/or Composting of Contract Waste at the level which it was actually achieving over the twelve (12) Month period prior to such notice (the "**Baseline Recycling and Composting Performance**"), then the Contractor shall notify the Councils of such opinion (a "**Significant Collection Change Notice**").
- 39.3.2 Following receipt of a Significant Collection Change Notice, the Councils may, with the prior written agreement of the Contractor, conduct waste data trials to measure the likely impact of the proposed change to the collection arrangements on the Contractor's Baseline Recycling and Composting Performance (the "**Waste Data Trials**"). In agreeing such Waste Data Trials, the Parties shall use reasonable endeavours to agree the appropriate data requirements which measure the likely impact on the Contractor's Baseline Recycling and Composting Performance and, if the Parties reach such agreement, they shall jointly conduct such Waste Data Trials. The Contractor shall provide all reasonable assistance to the Councils in collecting data arising out of such Waste Data Trials.
- 39.3.3 During any Contract Year(s) in which Waste Data Trials are conducted:
  - (a) the Contractor shall be deemed to have achieved the Recycling and Composting Target for the purposes of calculating the occurrence of any event of default pursuant to limb (s)(i) of the definition of Contractor Default; and
  - (b) the reference in limb (s)(i) of the definition of Contractor Default to a "rolling period of three (3) Contract Years" shall disregard the Contract

Years in which the Waste Data Trials are carried out so that such reference is construed instead as referring to the Contract Year immediately before any Contract Year(s) during which Waste Data Trials are conducted, and the two (2) Contract Years immediately following the Contract Year during which the Waste Data Trials were concluded.

39.3.4 Within twenty (20) Business Days of the completion of any Waste Data Trials:

- (a) the Parties shall utilise the data from such trials to alter the inputs to the waste flow model and then re-run the waste flow model and the Unitary Charge shall be adjusted in accordance with Clause 120 (Revision of Base Case and Financial Model) with effect from the date of implementation of the Significant Collection Change; and
- (b) subject to Clause 39.3.6, the Recycling and Composting Target and the Recycling and Composting Termination Trigger shall be adjusted (calculated in accordance with the principles set out in the worked examples at Schedule 26 (Significant Collection Changes Worked Examples)), to apply for the remainder of the Contract Period with effect from the date of commencement of the Significant Collection Change, provided that the Recycling and Composting Termination Trigger may not be increased pursuant to this Clause 39.3.4.

39.3.5 Not Used.

39.3.6 Where Clause 39.3.4 applies, then, within twenty (20) Business Days following the end of the twelve (12) Month Period from the date of implementation of the Significant Collection Change which was the subject of the Waste Data Trials referred to in Clause 39.3.4 (the "**12 Month Revision Period**"):

- (a) the Unitary Charge shall be adjusted in accordance with Clause 120 (Revision of Base Case and Financial Model) using the waste flow data collected over the 12 Month Revision Period; and
- (b) the Recycling and Composting Target and/or the Recycling and Composting Termination Trigger shall be adjusted on a pro rata basis

for the remainder of the Contract Period with effect from the end of the 12 Month Revision Period (calculated in accordance with the principles set out in the worked examples at Schedule 26 (Significant Collection Changes Worked Examples)) but only to the extent that actual Recycling and Composting Performance during the 12 Month Revision Period has been better or worse than that assumed in the revised inputs to the waste flow model under Clause 39.3.4 (and disregarding any worse Recycling and Composting Performance (as demonstrated by the Councils (acting reasonably)) to the extent that such performance was as a result of worse operational performance of the ITS Facility (as demonstrated by the Councils (acting reasonably)) by the Contractor or the Operating Sub-Contractor),

provided that the Recycling and Composting Termination Trigger may not be increased pursuant to this Clause 39.3.6.

39.3.7 Not Used.

39.3.8 Where:

- (a) within ten (10) Business Days of receipt of the Significant Collection Change Notice, the Councils and the Contractor do not reach agreement in relation to Waste Data Trials referred to in Clause 39.3.2; or
- (b) where the Councils implement a Significant Collection Change without having served the prior written notice referred to in Clause 39.3.1; or
- (c) where the adjustments referred to in Clauses 39.3.4 or 39.3.6 have not been made within the twenty (20) Business Day periods referred to in such Clauses,

such event shall be treated as a deemed Councils' Change Notice giving notice of a change to the Service pursuant to Schedule 32 (Change Protocol) which, notwithstanding any provisions in Schedule 32 (Change Protocol) to the contrary, the Councils will not be entitled to withdraw and which may not be deemed to be withdrawn for any reason.

**40 NOT USED**

**41 NOT USED**

**42 SERVICE REQUIREMENTS**

42.1 The Contractor shall in connection with the provision of the Service:

42.1.1 ensure that any of its or its Sub -Contractors' (or their sub -contractors') staff whose role provides an interface with members of the general public wear on duty a uniform or badge of corporate identity which has been agreed between the Parties; and

42.1.2 ensure there shall at all times be a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Service with the requisite level of skill and experience to include ensuring that there are sufficient staff to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each element of the Service; and

42.1.3 ensure that all staff shall receive such training and supervision as is necessary to ensure the proper performance of this Contract and compliance with all Legislation, Guidance and Good Industry Practice.

**43 NOT USED**

**44 OWNERSHIP OF CONTRACT WASTE**

Subject to the terms of the Waste Acceptance Protocol and subject also to Part 12 of Schedule 4 (Payment Mechanism), as between the Councils and the Contractor 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 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.

**45 NON-CONFORMING WASTE**

45.1 The Contractor shall devise and implement procedures for ensuring that Non - Conforming Waste delivered by or on behalf of the Councils to the Facilities is identified and managed in accordance with the terms of the Waste Acceptance Protocol.

- 45.2 In the event that the Contractor receives Non-Conforming Waste at a Facility it shall handle such waste safely, lawfully and in accordance with the terms of the Waste Acceptance Protocol.
- 45.3 The Contractor shall ensure that its Sub Contractors and their sub-contractors (including any hauliers, disposal contractors, reprocessors and agents) equally comply with the provisions of this Clause 45 and with the requirements of all Legislation, Necessary Consents and Third Party Consents and shall have measures and policies in place for checking and monitoring the same. Such measures shall include inserting and enforcing similar provisions in any sub-contracts, the regular inspection of relevant documentation and the seeking of information from time to time from management.
- 45.4 The Contractor shall have a duty of care in respect of Contract Waste to warn the Councils if any person for whom the Councils are responsible and/or any WCA and/or any third party may in the reasonable opinion of the Contractor be in breach of the duty of care under section 34 of the EPA, or is acting in breach of or contrary to any Necessary Consent or Third Party Consent. For the avoidance of doubt this duty to warn is to assist the Councils in managing environmental considerations within the Administrative Area and not to transfer risk in the Facilities or the Sites from the Contractor to the Councils.

#### **46 NOT USED**

#### **47 QUALITY ASSURANCE**

- 47.1 The Contractor shall maintain a Quality Management System to ensure that the final detailed designs for the Works will enable the Contractor to operate the ITSAD Facility and to deliver the Service in accordance with this Contract.

##### **47.2 Quality Management Systems**

- 47.2.1 The Contractor shall procure that all aspects of the Works are carried out in accordance with a Quality Management System.
- 47.2.2 The Contractor shall and shall procure that the Operating Sub-Contractor shall on or before the first anniversary of the Service Commencement Date obtain, maintain and comply with a Quality Management System.
- 47.2.3 The Quality Management System referred to in Clause 47.1 shall be reflected in appropriate Quality Manuals and shall comply with:

- (a) BS EN ISO 9001 or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard, such other quality standard as the Parties may agree; and
- (b) Good Industry Practice.

47.2.4 The Contractor shall prepare and comply with the Quality Manuals and shall provide them to the Councils within nine (9) Months of Service Commencement.

47.2.5 Not Used.

47.2.6 Without prejudice to Clauses 47.2.3(a) and 47.2.3(b) the Contractor will be entitled (but without prejudice to Clauses 47.2.3(a) and 47.2.3(b)) from time to time, to amend the Quality Manuals and shall submit to the Councils' Representative any proposed changes to any Quality Manual. The Councils may comment on any such proposed change prior to the same being adopted and the Contractor shall consider and take account of (but shall not be bound by) such comments, (if any), prior to the same being adopted.

### **47.3 Additional Information**

The Contractor shall provide to the Councils such information as they may reasonably require to demonstrate compliance with this Clause 47.

## **48 UTILITIES**

Subject to Clause 18.11 (No Chancel Repair Liability) the Contractor shall be responsible for paying utility costs and charges and National Non -Domestic Rates incurred in providing the Services but without prejudice to its right to recover such amounts pursuant to paragraph 11 of Part 2 of Schedule 4 (Payment Mechanism).

## **49 OFF TAKE CONTRACTS AND THIRD PARTY WASTE CONTRACTS**

49.1 If and whenever the Contractor enters into any Off Take Contracts and/or any Third Party Waste Contracts during the Contract Period the Contractor shall ensure or procure as the case may be that any such contract is in writing and:

49.1.1 is on reasonable arms' length terms; and

- 49.1.2 does not include any terms or conditions which are unusual having regard to standard market practice; and
- 49.1.3 (where (the Contractor having used reasonable endeavours to achieve such agreement) agreed by the counterparty) includes a right on the part of the Contractor or the Operating Sub-Contractor to transfer at the request of the Councils, free of charge the Contractor's or the Operating Sub-Contractor's rights and obligations under such contract to the Councils or at the Councils' direction to any new contractor upon expiry or termination of the Contract Period (other than accrued rights and obligations as at the date of such transfer). Any such transfer shall be effective from the earlier of the Expiry Date or the Termination Date and accordingly the Councils shall not be required to assume or discharge obligations or liabilities of the Contractor, Operating Sub-Contractor or the counterparty to any Off Take Contract or any Third Party Waste Contract that have accrued prior to the date of the transfer; and
- 49.1.4 in relation to a Third Party Waste Contract, that the provisions of Clause 49.4 are complied with.

49.2 The Contractor shall not enter into an Off Take Contract or a Third Party Waste Contract with an Affiliate unless the Councils have confirmed in writing that they are satisfied that the provisions of Clause 49.1 have been complied with.

### **49.3 Due diligence over Off Take Contracts and/or Third Party Waste Contracts**

- 49.3.1 The Contractor shall:
- (a) afford the Councils a reasonable opportunity to conduct due diligence on any Off Take Contract and/or any Third Party Waste Contract before the Contractor enters into the same in order to enable the Councils to assess its terms for compliance with the provisions of Clause 49.1 above and to raise comments thereon; and
  - (b) take into account any reasonable comments made by the Councils under Clause 49.3.1 and shall use its reasonable endeavours to amend the Off Take Contract and/or any Third Party Waste Contract accordingly before such Off Take or Third Party Waste Contract is concluded; and

- (c) on request and free of charge provide copies of the Off Take Contract and/or any Third Party Waste Contracts and any related documents to the Councils' Representative.

#### **49.4 Third Party Waste Contracts**

49.4.1 Where a Third Party Waste Contract is to be entered into with a Local Authority for a term greater than five (5) Years, the Contractor shall ensure that the provisions of Clause 54 (Change in Law) and Schedule 17B (Insurance Premium Risk Sharing Schedule) are included in the relevant contract so that the Councils' liability under such provisions is equal to the Councils' Share (the "**Councils' Share**") (for such purposes being, as a percentage, the Councils' tonnages to be supplied under this Contract over the maximum capacity of the ITS Facility).

49.4.2 Where a Third Party Waste Contract is proposed to be entered into other than with a Local Authority for a term greater than five (5) Years, then the Contractor's obligations under Clause 49.4.1 shall be to use reasonable endeavours.

49.5 If the entry into, amendment, waiver or exercise of any right relating to a Third Party Waste Contract (with a term greater than five (5) Years) or an Off Take Contract has the effect of increasing the Councils' liabilities on termination or on the occurrence of a Relevant Event then such increased liabilities shall be disregarded unless the Contractor has obtained the rights of transfer referred to in Clause 49.1.3.

## **50 EQUIPMENT**

50.1 The Contractor shall from the Service Commencement Date:

50.1.1 provide, repair, maintain and replace all Equipment necessary for the provision of the Service;

50.1.2 maintain all Equipment in accordance with Clause 52 (Maintenance); and

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

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

50.1.5 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 Councils a final Equipment List ("**Final Equipment List**").

## **51 CIVIL DEFENCE AND EMERGENCIES**

51.1 The Councils' Representative acting reasonably and on reasonable notice (save in the event of Emergency when notice shall be given as soon as reasonably practicable) may at any time require any of the staff of the Contractor engaged directly or indirectly in the provision of the Service to take part in training with, or give assistance and support in the training of, the staff of the Councils or any other local authorities or any other organisations to enable the Councils to fulfil their functions in connection with civil defence or dealing with the risk or consequences of any Emergency or disaster, whether wartime or civil, and without prejudice to the Contractor's rights under Clause 37.3 (Emergencies) the Councils shall reimburse the Contractor for any Direct Losses arising out of any associated disruption to the Service (which the Contractor shall use reasonable endeavours to mitigate).

51.2 In order to assist the Councils' Representative in dealing with the threat of Emergencies the Contractor will provide the names, addresses and out of office hours telephone numbers for two (2) members of the Contractor's staff of sufficient standing and seniority to successfully implement the Local Emergency Plan.

## **52 MAINTENANCE**

### **52.1 Maintenance of the Site (Bolton Road)**

The Contractor shall ensure on a continuing basis that at all times its maintenance and operating procedures are sufficient to ensure that:

52.1.1 the Service is available in accordance with this Contract and the Output Specification; and

52.1.2 from the Service Commencement Date, the Site (Bolton Road) is kept in good structural and decorative order (subject to fair wear and tear) in accordance with any applicable manufacturers' guidelines and Good Industry Practice and

the Drainage Dyke is kept free of obstruction so as to permit the free flow of water through the Drainage Dyke; and

- 52.1.3 it can maintain the design intention of the Site (Bolton Road) and those Assets as described in limbs (a) and (b) of the definition of Assets (except the Ferrybridge Facility) to achieve their full working life; and
- 52.1.4 on the Termination Date or Expiry Date, the Site (Bolton Road) will be in such serviceable condition and state of repair as to enable its full and efficient operation for a period of five (5) Years following such date (in the case of the Expiry Date) or for the Unexpired Term plus five (5) Years (in the case of the Termination Date assuming the Site (Bolton Road) would be used to provide services similar in all material respects to the Service and that the maintenance regime detailed in the Planned Maintenance Plan continued to apply and is fully complied with).

## **52.2 Maintenance of the Site (Grange Lane)**

52.2.1 Within twenty (20) Business Days of the Lease (Grange Lane) Completion Date, the Contractor shall procure the carrying out by a suitably qualified and independent surveyor (being independent of the Councils and the Contractor) of a baseline condition survey of the TLS Facility and the Site (Grange Lane) to assess whether it:

- (a) has been maintained in a full and tenantable repair; and
- (b) has good structural integrity,

as at the date of the grant of the Lease (Grange Lane) (the "**Grange Lane Baseline Standard**").

52.2.2 In the event that the survey referred to in Clause 52.2.1 concludes that the TLS Facility and/or the Site (Grange Lane) do not meet the Grange Lane Baseline Standard in any material respect and/or to any material degree, the Parties shall seek to agree:

- (a) the works which are necessary to bring the TLS Facility and/or the Site (Grange Lane) up to the Grange Lane Baseline Standard (the "**Grange Lane Update Works**"); and

(b) any extension to the date referred to in Clause 52.2.4 which is reasonably necessary to enable the Contractor to carry out (or procure the carrying out of) the Grange Lane Update Works,

and, in default of such agreement within twenty (20) Business Days of receipt of the survey referred to in Clause 52.2.1, either Party may refer the matter for determination under Clause 104 (Dispute Resolution).

52.2.3 As soon as reasonably practicable after agreement or determination of the Grange Lane Update Works, (but no later than the date falling three (3) Months after the Service Commencement Date), the Contractor shall carry out such Grange Lane Update Works as so agreed or determined and the Councils shall reimburse the Contractor its reasonable and proper costs of carrying out such works within twenty (20) Business Days of any invoice in respect of the same. The carrying out of such works shall be deemed to be an Excusing Cause, but shall not constitute a Contractor Change or otherwise require the consent or approval of the Councils notwithstanding any provisions in this Contract to the contrary.

52.2.4 In the event that the survey referred to in Clause 52.2.1 concludes that the TLS Facility and/or the Site (Grange Lane) meet the Grange Lane Baseline Standard, the Contractor will not be in breach of Clause 52.2.5 as at the date of such survey.

52.2.5 The Contractor shall ensure on a continuing basis that at all times its maintenance and operating procedures are sufficient to ensure that:

(a) from the Lease Completion Date (Grange Lane) where Clause 52.2.4 applies; and

(b) from the date of Completion of the Grange Lane Upgrade Works where Clause 52.2.3 applies,

the TLS Facility and the Site (Grange Lane) is kept in a good structural and decorative order (subject to fair wear and tear) in accordance with any applicable manufacturers' guidelines and Good Industry Practice.

52.2.6 Without prejudice to the Contractor's obligations under this Clause 52, and subject to Clauses 52.2.3 and 52.2.5, the Contractor shall not make any material alterations or other physical changes to the TLS Facility and the Site

(Grange Lane), without the prior written consent of the Councils (not to be unreasonably withheld or delayed, and it will be unreasonable for the Councils to withhold or delay consent where such alterations or changes are necessary to comply with a Change in Law and/or to comply with the Contractor's obligations under this Contract).

52.2.7 With effect from each date on which the Councils serve notice on the Contractor that the Councils wish to exercise the right reserved at paragraph 4 of Schedule 1 (Exceptions and Reservations) of the Lease (Grange Lane) to pass with or without vehicles over and along the Access Road (Grange Lane) or in the event that the Councils exercise such right without serving such notice, the Councils shall pay to the Contractor within thirty (30) Business Days of a written demand a fair and proper proportion (calculated according to usage) of the reasonable and proper costs incurred by the Contractor in complying with its obligations under the Lease (Grange Lane) to keep the Access Road (Grange Lane) in repair, and if payment is not made within such thirty (30) Business Day period, the Councils shall pay interest at the rate of three per cent (3%) above the base lending rate of Barclays Bank plc from the date of demand by the Contractor to the date of repayment by the Councils. Any demand from the Contractor shall be accompanied by reasonable evidence of any expenditure it has incurred in relation to the Access Road (Grange Lane) (including copies of any relevant invoices and receipts).

### **52.3 Planned Maintenance**

52.3.1 The Contractor shall develop the Planned Maintenance Plan for each Site setting out the overall maintenance to be carried out at each Site over the Service Period.

52.3.2 The Contractor shall deliver to the Councils' Representative within three (3) Months of the Service Commencement Date a complete and accurate copy of the Planned Maintenance Plan in relation to the relevant Site. The Contractor shall keep the Planned Maintenance Plan up to date in accordance with Good Industry Practice and promptly supply updates as and when any changes are made thereto.

52.4 The Contractor shall carry out Planned Maintenance in accordance with this Contract and Schedule 13 (Planned Maintenance).

- 52.5 In respect of each Facility the Contractor shall, throughout the Contract Period, use all reasonable endeavours to comply with the Planned Maintenance Plan and the Planned Maintenance Programme.
- 52.6 The Contractor shall provide to the Councils a report for each Contract Year in accordance with paragraph 6 of Schedule 13 (Planned Maintenance).
- 52.7 If the report prepared pursuant to paragraph 6 of Schedule 13 (Planned Maintenance) reveals that any of the Sites are in a worse condition than required by the terms of the Contract then the Contractor and the Councils shall as soon as reasonably practicable meet to discuss and agree what the Contractor shall do to rectify such deficiencies in order to bring the condition thereof to that required by the terms of this Contract. In default of agreement within ten (10) Business Days the matter may be referred at the instance of either Party for resolution under Clause 104 (Dispute Resolution).
- 52.8 The Contractor shall carry out at its own cost any maintenance works agreed or determined pursuant to Clause 52.7.

**52.9 Surveys**

- 52.9.1 If the Councils reasonably believe that the Contractor is in breach of its obligations under Clause 52 then they may carry out (or procure) a survey of the Sites by a suitably qualified independent surveyor (not being an employee of the Councils) in order to assess whether the Sites have been and are being maintained by the Contractor in accordance with its obligations under Clause 52. This right may not be exercised more often than once every two (2) Contract Years provided always that the Councils may carry out (or procure) a survey of the Access Road (Grange Lane) at any time. The Councils shall carry out such survey in accordance with Clauses 52.9.3 and 52.9.4 below.
- 52.9.2 The Councils shall notify the Contractor in writing a minimum of fourteen (14) Days in advance of the date on which they wish to carry out a survey under Clause 52.9.1. The Councils 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 seven (7) 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 Service.

- 52.9.3 Any survey of the Sites carried out pursuant to this Clause 52.9 shall be conducted in accordance with and pursuant to section 9.2 of Schedule 3 (Service Delivery Plan) and the Councils shall use reasonable endeavours to minimise any disruption caused to the provision of the Service by the Contractor.
- 52.9.4 When carrying out any survey of the Access Road (Grange Lane) the Councils shall not do or allow to be done anything which materially and adversely impacts on the performance of the Service at the Site (Grange Lane) by the Contractor.
- 52.9.5 The cost of the survey shall, except where Clause 52.9.6(c) below applies, be borne by the Councils. The Contractor shall give the Councils (free of charge) any reasonable assistance required by the Councils in relation to the carrying out of any survey.
- 52.9.6 If the survey shows that the Contractor has not complied or is not complying with its obligations under Clause 52, the Councils shall:
- (a) notify the Contractor of the standard that the condition of the Sites should be in to comply with its obligations under Clause 52 (Maintenance); and
  - (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 Councils 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 Councils and the Contractor).
- 52.9.7 The Contractor shall carry out such rectification and/or maintenance work within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.
- 52.9.8 In the event of any failure by the Contractor to comply with Clause 52.9.7 or if the Councils are or become aware of a breach by the Contractor of its obligations under Clause 52.9.7, then (subject to Clause 52.9.9) the Councils

will be entitled on prior written notice to exercise their right of access and remedy such breach in accordance with Good Industry Practice and shall be entitled to recover any costs or expenses incurred from the Contractor as a debt.

52.9.9 The Councils will not be entitled to exercise their rights of access under Clause 52.9.8 where doing so will be in breach of Legislation or will put the Contractor or the Operating Sub-Contractor in breach of Legislation or any Environmental Permit.

## **PART IV – CHANGES TO THE WORKS OR SERVICE**

### **53 CHANGES TO THE WORKS OR SERVICE**

53.1 At any time during the Contract Period, the Councils may propose a Councils' Change and the Contractor may propose a Contractor Change in accordance with the Change Protocol and following such proposal (or any deemed service of a Councils' Change Notice expressly provided for in this Contract) the Parties shall comply with the provisions of the Change Protocol.

53.2 Nothing in this Clause 53 shall permit the Councils to propose or implement any Change to the extent such Change requires or has the effect of requiring any change to the works or activities at the Ferrybridge Facility but nothing in this Clause 53 shall operate to diminish the entitlement of the Contractor to payment of the Councils' Proportion pursuant to Clause 120.12 (Ferrybridge Increase in Costs/Capital Expenditure).

### **54 CHANGE IN LAW**

#### **54.1 Qualifying Change in Law**

54.1.1 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:

- (a) any necessary change in the Works or the Service; and
- (b) whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law; and

- (c) whether relief from compliance with obligations is required, including the obligation of the Contractor to commence the Works by the Planned Works Commencement Date and/or achieve issuance of the Readiness Test Certificate by the Planned Readiness Date (or following such date, by the Readiness Long Stop Date) and/or achieve Service Commencement on or prior to the Planned Service Commencement Date (or following such date, by the Long Stop Date) and/or meet the Output Specification during the implementation of any relevant Qualifying Change in Law; and
- (d) any loss of revenue (including Third Party Revenue subject to Clause 120.4 (Principles relating to Third Party Revenue)) that will result from the relevant Qualifying Change in Law; and
- (e) any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and
- (f) any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Service Period,

in each case giving in full detail the procedure for implementing the change in the Works and/or the Service. Responsibility for the costs of implementation (and any resulting variation to the Unitary Charge) shall be dealt with in accordance with Clauses 54.1.2 to 54.1.6 below.

54.1.2 As soon as practicable after receipt of any notice from either Party under Clause 54.1.1 above, the Parties shall discuss and agree the issues referred to in Clause 54.1.1 above and any ways in which the Contractor can mitigate the effect of the Qualifying Change of Law, including:

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

foreseeable Changes in Law at that time have been taken into account by the Contractor; and

- (c) 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 of the Contractor or their Affiliates carry on business; and
- (d) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets which 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 Clause 54.1.1(e) and/or 54.1.1(f) above.

54.1.3 If the Parties agree or it is determined under Clause 104 (Dispute Resolution) that the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Contractor's Share of any Capital Expenditure agreed or determined to be required as a result of a General Change in Law under this Clause 54), then the Contractor shall (in the case of the Facilities) use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and the Senior Lenders and shall (in the case of the Ferrybridge Facility) notify the Councils within ten (10) Business Days of the SRF Offtaker's cost of funding such Capital Expenditure in accordance with the principles set out at Clause 120.12 (Ferrybridge Increase in Costs/Capital Expenditure).

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

54.1.5 If (in the case of the Facilities) the Contractor has used reasonable endeavours to obtain funding for Capital Expenditure referred to in Clause 54.1.3, but has been unable to do so, or if (in the case of the Ferrybridge Facility) the Councils have provided written notice that they do not want the SRF Offtaker to fund the Capital Expenditure in each case within sixty (60) Days of the date that requirement to incur Capital Expenditure is agreed or determined, as referred to in Clause 54.1.3, then the Councils shall pay to the Contractor an

amount equal to that Capital Expenditure on or before the date falling thirty (30) Days after the Capital Expenditure has been incurred.

- 54.1.6 Any compensation payable under this Clause 54 by means of an increase or reduction in the Unitary Charge (including any financing costs where Contractor has obtained funding on terms reasonably satisfactory to it and the Senior Lenders) shall be calculated in accordance with Clause 120 (Revision and Custody of Financial Model).
- 54.1.7 Save in relation to the costs of Capital Expenditure (to the extent addressed in Clause 54.1.6), any loss of revenue (as referred to in Clause 54.1.1(d)) or Estimated Change in Project Costs (as referred to in Clause 54.1.1(e)), shall be payable under this Clause 54 by means of an increase in the Unitary Charge and such increase shall be determined and made in accordance with Clause 120 (Revision and Custody of Financial Model) and any relief from obligations as referred to at Clause 54.1.1(c) and as demonstrated pursuant to Clause 54.1.2 shall be granted.
- 54.1.8 Clause 54.1.9 shall apply to the extent that a Qualifying Change in Law restricts the use of biocompost material produced by the AD Facility on land or for any other environmentally acceptable use which, prior to such Qualifying Change in Law, constituted Recycling for the purposes of measuring performance against the Recycling and Composting Target and the Recycling and Composting Termination Trigger.
- 54.1.9 Where this Clause 54.1.9 applies then, notwithstanding the other provisions of this Clause 54:
- (a) the Recycling and Composting Target and the Recycling and Composting Termination Trigger will be adjusted downwards by an amount which reflects the impact of such Qualifying Change in Law on the Contractor's ability to meet the Recycling and Composting Target (relative to its ability to meet such target prior to such Qualifying Change in Law, having regard in particular to the Contractor's actual Recycling performance over the twelve (12) Month period prior to the occurrence of such Qualifying Change in Law); and
  - (b) the Contractor will not be entitled to claim for any Change in Costs or Change in Revenue arising out of such Qualifying Change in Law; and

- (c) the Contractor shall not be entitled to any relief or adjustment to the terms of this Contract, other than as referred to in limb (a) above.

## **PART V – PAYMENT AND FINANCIAL MATTERS**

### **55 CAPITAL CONTRIBUTION**

55.1 The Parties agree that upon the issue of the Acceptance Test Certificate for the ITSAD Facility, the Councils shall irrevocably pay nineteen million two hundred and seventy - six thousand two hundred and eight pounds (£19,276,208) to the Contractor as a capital contribution to the costs of the works in relation to the ITS Facility.

55.2 A failure to make such payment in the amount and on the date set out at Clause 55.1 will be a Compensation Event.

#### **55.3 AD Facility Renewable Incentives**

##### **55.3.1 Contractor's obligations in relation to Feed-in Tariff Scheme**

The Contractor shall:

- (a) within twelve (12) Months from the Works Commencement Date, make a ROO-FIT Application in relation to the AD Facility to Ofgem in accordance with the FiT Accreditation Process and, as part of such ROO-FIT Application, shall confirm to Ofgem that no grant, or offer of a grant, from public funds has been made for the purposes of purchasing and/or installing the AD Facility; and
- (b) promptly provide to the Councils a copy the ROO -FIT Application and a copy of all correspondence between the Contractor and Ofgem in relation to the ROO -FIT Application, including any notification of Ofgem's approval or rejection of the ROO-FIT Application.

55.3.2 Should the Contractor fail to make a ROO -FIT Application in relation to the AD Facility within twelve (12) Months from the Works Commencement Date, the further provisions of this Clause 55.3 shall no longer apply and there shall be no ROC Accreditation Date for the purposes of this Contract.

55.3.3 Where Ofgem rejects or queries the ROO -FIT Application and Ofgem's reason for the rejection or query is that it believes that the Capital

Contribution constitutes a grant, or offer of a grant, from public funds for the purposes of purchasing and/or installing the AD Facility:

- (a) the Contractor shall promptly inform the Councils of Ofgem's rejection or query and the Councils shall in a timely fashion produce and provide to the Contractor all relevant evidence and documentation to assist the Contractor in demonstrating to Ofgem that the Capital Contribution does not constitute a grant, or offer of a grant, from public funds for the purposes of purchasing and/or installing the AD Facility;
- (b) in respect of any such query or rejection, the Contractor shall:
  - (i) promptly submit such evidence and documentation to Ofgem (unaltered and un-supplemented, unless agreed otherwise by the Councils);
  - (ii) take all such steps as the Councils may require to challenge, appeal and/or otherwise dispute, in accordance with the Department of Energy and Climate Change's document entitled "Dispute Resolution Processes for Feed -In Tariff Complaints Raised by Generators" (as amended, supplemented and/or replaced from time to time) Ofgem's decision to reject the ROO - FIT Application and all costs associated with any such challenge, appeal and/or dispute shall be borne by the Contractor;
  - (iii) if the Contractor's challenge or appeal pursuant to Clause 55.3.3(b)(ii) has not been successful, the Contractor shall take all such steps as the Councils may require to otherwise judicially review Ofgem's decision to reject the ROO -FIT Application and all costs associated with any such judicial review shall be borne by the Councils,

provided that, in respect of any such rejection, the Contractor shall not take any step to challenge, appeal or dispute such rejection unless instructed to do so by the Councils, and, having commenced a challenge, appeal or dispute pursuant any such instruction, shall comply with any instruction from the Council not to pursue, or to cease pursuing any such challenge, appeal or dispute.

55.3.4 In the event that the ROO -FIT Application is rejected by Ofgem and the sole reason for such rejection is that Ofgem considers that the Capital Contribution constitutes a grant, or offer of a grant, from public funds for the purposes of purchasing and/or installing the AD Facility, then Clause 55.3.5 shall apply from the earlier of:

- (a) the date on which all challenges, appeals and/or disputes (as referred to in limb (b)(ii) and (b)(iii) above in relation to such rejection) have been finally determined (without achieving accreditation for the AD Facility under the Feed -in Tariff Scheme) and/or the Contractor has been instructed by the Councils not to pursue or (having been instructed to pursue) to cease pursuing any such challenge, appeal or dispute, and
- (b) the date falling six (6) Months after the date on which the Contractor notified the Councils of the rejection of the ROO -FIT Application by Ofgem.

For the avoidance of doubt, Clause 55.3.5 shall not apply in any other circumstances. Where Clause 55.3.5 does not apply, then there shall be no ROC Accreditation Date for the purposes of this Contract.

**55.3.5 Contractor's Obligations in relation to the Renewables Obligations Scheme**

- (a) Where this Clause 55.3.5 applies, the Contractor shall, in a timely fashion:
  - (i) make an RO Application to Ofgem using all reasonable endeavours to achieve accreditation;
  - (ii) promptly provide to the Councils a copy of the Contractor's RO Application and a copy of all correspondence between the Contractor and Ofgem in relation to the Contractor's RO Application, including any notification of Ofgem's approval or rejection of the RO Application; and
  - (iii) provide all reasonable assistance to Ofgem (including agreeing to on-site visits and/or random checks to verify the accuracy of information provided by the Contractor) in order to achieve accreditation.

- (b) Where the Contractor's RO Application made pursuant to the obligations under this Clause 55.3.5 (and not otherwise) is successful, then the "**ROC Accreditation Date**" shall be the date determined by Ofgem as being the date on which accreditation of the AD Facility pursuant to the Renewables Obligation Scheme was effective.
- (c) Where any RO Application made by the Contractor is rejected, then (irrespective of the reasons for rejection) there shall be no ROC Accreditation Date for the purposes of this Contract.
- (d) Unless otherwise agreed with the Councils, the Contractor shall not apply for accreditation of the AD Facility pursuant to the Renewables Obligation Scheme unless this Clause 55.3.5 applies.

#### 55.3.6 **General Obligations of the Contractor**

Where the AD Facility is accredited under the Feed -in Tariff Scheme or the Renewables Obligation Scheme, the Contractor shall provide (or procure the provision) to the Councils (in advance of their provision to Ofgem or any other Relevant Authority and/or public release) at no cost to the Councils a copy of all reports (including financial statements), submissions and declarations which the Contractor and/or Operating Sub -Contractor is required to prepare and provide to Ofgem under the terms of the relevant scheme.

## 56 **PAYMENT**

### 56.1 **Unitary Charge**

Save in respect of the Interim Service Payment and/or Commissioning Payments payable prior to the Service Commencement Date in accordance with Clauses 14 (Interim Service and Indemnity for Late Service Commencement) and 35.3.2, (Testing and Commissioning) the Contractor will not be entitled to receive any Unitary Charge until the Service Commencement Date. The Councils shall pay the Contractor the Monthly Unitary Charge in respect of each Contract Month in accordance with the provisions of this Clause 56.

## 56.2 Invoicing and Payment Arrangements

- 56.2.1 The Unitary Charge and the Interim Service Payment shall be payable in arrears in accordance with Clause 56.2.2.
- 56.2.2 Within ten (10) Business Days from the commencement of each Contract Month the Contractor shall deliver a valid VAT invoice to the Lead Authority for the Unitary Charge due in respect of the preceding Contract Month (the "**Monthly Invoice**"). The Monthly Invoice shall show:
- (a) the date of invoice; and
  - (b) the date when the payment is due; and
  - (c) the address to which payment is to be sent; and
  - (d) the Contract Month for which the Unitary Charge is being charged; and
  - (e) the calculation of the Unitary Charge for that Contract Month; and
  - (f) details of any deductions to be deducted from the Unitary Charge pursuant to the Performance Monitoring Report; and
  - (g) any adjustments to the Unitary Charge to reflect previous over - payments and/or under -payments (each adjustment stated separately); and
  - (h) any other amount due or payable by one (1) Party to the other under or in connection with this Contract; and
  - (i) any interest payable in respect of any amounts outstanding and/or paid after their due date; and
  - (j) any VAT payable for the relevant Month in respect of the amounts above.
- 56.2.3 The Monthly Invoice shall be accompanied by both the Performance Monitoring Report in respect of the Contract Month to which the Monthly Invoice relates and sufficient and clear working papers setting out the derivation and calculation of each of the amounts referred to in Clause 56.2.1.

56.2.4 Within twenty (20) Business Days of the receipt by the Lead Authority of the Monthly Invoice in accordance with the requirements of Clause 56.2.2, the Lead Authority shall (subject to Clause 56.4) pay to the Contractor the amount set out in such invoice.

56.2.5 Subject to Clause 56.4, in respect of other sums payable by the Councils to the Contractor under the terms of this Contract (whether pursuant to any indemnity or otherwise) the Contractor shall issue a revised invoice to the Lead Authority at any time following the date upon which a different amount is agreed or determined to that which was previously invoiced (together with a credit note for the previous invoice) and such sums shall become due and payable within twenty (20) Business Days of receipt of the Contractor's revised invoice.

### **56.3 Manner of Payment**

All payment under this Contract shall be made in pounds sterling by electronic transfer of funds for value on the date in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.

### **56.4 Disputes**

If either Party (acting in good faith) disputes the Performance Monitoring Report and/or all or any part of the Unitary Charge calculated in accordance with Clause 56.2, the undisputed amount of the Unitary Charge shall be paid by the Lead Authority in accordance with Clause 56.2 and the provisions of Clause 104 (Dispute Resolution) shall apply to that disputed amount. Following resolution of the dispute:

56.4.1 any amount agreed or determined to have been payable shall be paid forthwith by the Lead Authority to the Contractor together with interest on such amount calculated in accordance with Clause 56.5; and

56.4.2 any Deductions referred to in the Performance Monitoring Report which it is determined should be levied will be deducted from the Unitary Charge payment for the immediately following Contract Month (without double counting any Deductions already paid).

## **56.5 Late Payment**

- 56.5.1 Each Party shall be entitled without prejudice to any other right or remedy, to receive interest on any payment not made pursuant to the terms of this Contract on the due date, and such interest will be calculated from day to day at a rate per annum equal to the Default Interest Rate from the Day after the date on which payment was due up to and including the date of payment whether before or after judgment.
- 56.5.2 It is agreed between the Parties that the Default Interest Rate and the provisions of this Contract relating to the payment of compensation on termination of this Contract following the occurrence of a Councils' Default provide the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

## **56.6 Set-Off**

- 56.6.1 The Contractor shall not be entitled to retain or set -off any amount due to the Councils by it but the Councils may (save as provided for in Clause 93.1 (Set Off on Termination) or elsewhere in this Contract) retain or set -off any amount owed to them by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.
- 56.6.2 If the set off or retention of any amount referred to in Clause 56.6.1 relates to a disputed amount then any undisputed element of that amount shall be paid and the disputed element may be dealt with in accordance with Clause 104 (Dispute Resolution).

## **56.7 VAT**

- 56.7.1 All amounts due under this Contract are exclusive of VAT.
- 56.7.2 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.
- 56.7.3 The Councils 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 such Irrecoverable VAT arises as a result of a Change in Law. Any such payment shall be made within twenty-eight (28) Days of the delivery by the Contractor to the Councils of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed.

## **57 THIRD PARTY REVENUE**

57.1 The provisions of Part 9 of Schedule 4 (Payment Mechanism) shall apply in respect of the sharing of Third Party Revenue.

57.2 In the event that pursuant to the terms of this Contract the Councils are required to compensate the Contractor for lost Third Party Revenue the level of compensation payable shall be assessed on the basis set out in Clause 73.7 (Compensation for Loss of Third Party Revenue) or Clause 120.4 (Principles relating to Third Party Revenue) as the case may be.

## **58 FEES, COSTS AND EXPENSES**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Contract.

## **59 REFINANCING**

59.1 The Contractor shall obtain the Councils' prior written consent to any Qualifying Refinancing and both the Councils and the Contractor shall at all times act in good faith with respect to (a) any Refinancing or (b) any potential or proposed Refinancing under Clause 59.9.

59.2 The Councils shall be entitled to receive:

59.2.1 a fifty per cent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of one million pounds (£1,000,000);

59.2.2 a sixty per cent (60%) share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of three million pounds (£3,000,000); and also

- 59.2.3 a seventy per cent (70%) share of any other Refinancing Gain arising from a Qualifying Refinancing.
- 59.3 The Councils shall not withhold or delay their consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in Clause 59.2.
- 59.4 The Contractor shall promptly provide the Councils with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Councils shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).
- 59.5 The Councils shall have the right to elect to receive their share of any Refinancing Gain as:
- 59.5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
- 59.5.2 a reduction in the Unitary Charge over the remaining term of the Contract; or
- 59.5.3 a combination of any of the above.
- 59.6 The Councils and the Contractor will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Councils' share of the Refinancing Gain (taking into account how the Councils have elected to receive their share of the Refinancing Gain under Clause 59.5 above). If the Parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Councils' share, the dispute shall be determined in accordance with Clause 104 (Dispute Resolution).
- 59.7 The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Councils will be paid to the Councils by the Contractor within twenty-eight (28) Days of any Qualifying Refinancing.
- 59.8 Without prejudice to the other provisions of this Clause 59, the Contractor shall:

- 59.8.1 notify the Councils of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
- 59.8.2 include a provision in the Financing Agreements (other than the Subordinated Financing Agreements) whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements (other than the Subordinated Financing Agreements).

## **59.9 Councils' Right to Request Refinancing**

- 59.9.1 If the Councils (acting reasonably) consider the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements (other than the Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement))), the Councils may, by notice in writing to the Contractor, require the Contractor to request potential funders to provide terms for a potential Refinancing (a "**Refinancing Notice**").
- 59.9.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Councils believe such funding terms to be available. The Contractor and Councils shall meet to discuss the Refinancing Notice within twenty-eight (28) Days. Such a meeting will consider the evidence available to both Parties about the availability of funding terms for a potential Refinancing. The Councils shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten (10) Days following the meeting.
- 59.9.3 If the Councils serve a Refinancing Notice which is not withdrawn pursuant to Clause 59.9.2, then the Contractor shall:
- (a) act promptly, diligently and in good faith with respect to the potential Refinancing; and
  - (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that the Contractor shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating in the same business in the United Kingdom to that

operated by the Contractor, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Clause 59.7; and

either:

- (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Councils (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Councils that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Clause 59.9.3(b) above and (ii) initial drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
- (ii) if the Contractor (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements (other than the Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement))) in accordance with the requirements of Clause 59.9.3(b), provide evidence to the reasonable satisfaction of the Councils for such belief and evidence to the reasonable satisfaction of the Councils that the Contractor has complied with its obligations in Clauses 59.9.3(a) and (b).

59.9.4 Following receipt of the information referred to in Clause 59.9.3(b)(i), the Councils shall (in their absolute discretion) either:

- (a) instruct the Contractor to implement the proposed Refinancing; or
- (b) instruct the Contractor to discontinue the proposed Refinancing,

provided that if the Councils reasonably consider that the requirements of Clause 59.9.3(b)(i) have not been satisfied, the Councils may require the Contractor to satisfy its obligations under Clause 59.9.3(b)(i) whereupon the

provisions of Clauses 59.9.3 and 59.9.4 shall apply as if the Councils had served a Refinancing Notice.

59.9.5 If the Councils instruct the Contractor to implement the proposed Refinancing:

- (a) the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented; and
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Clauses 59.1 to 59.8 shall apply.

59.9.6 If:

- (a) the Councils instruct the Contractor to discontinue the potential Refinancing pursuant to Clause 59.9.4(b); and
- (b) the requirements of Clause 59.9.3(b)(ii) are satisfied,

then, the Councils shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Councils within twenty-eight (28) Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Contractor except insofar as (a) it can be demonstrated to the reasonable satisfaction of the Councils that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (b) the Councils have, by prior written agreement, approved the use of such internal management resource.

59.9.7 The Councils shall be entitled to issue a Refinancing Notice under Clause 59.9.1 at any time but not more than once in any two (2) Year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn has been issued for the purpose of this Clause 59.9.7.

## 60 MARKET TESTING

### 60.1 Procedure for Market Testing

60.1.1 At least forty (40) weeks before each Market Testing Date, the Parties shall meet together as often as may be necessary in respect of all Market Tested Services to be Market Tested on that date:

- (a) to consider any changes required to the relevant Market Tested Services; and
- (b) to discuss and seek to agree the appropriate manner of advertising the tender for the Market Tested Services required and the means of identifying prospective tenderers; and
- (c) to discuss and seek to agree the tender requirements which must include:
  - (i) a statement of the tender validity period; and
  - (ii) details of the tender evaluation criteria; and
  - (iii) the terms and conditions under which the Market Tested Services will be contracted; and
  - (iv) information relating to employees and their conditions of employment; and
  - (v) the information that tenderers are required to provide; and
  - (vi) how many tenders are required for the Market Testing to be valid; and
  - (vii) whether or not an independent tender manager needs to be appointed by the Contractor to manage the tender process.

**60.2 Not Used**

**60.3 Selection of Tenderers**

- 60.3.1 The Contractor shall be responsible for compiling, and submitting to the Councils for review, the list of prospective tenderers and selecting the tenderers from the list of prospective tenderers on the basis of their:
- (a) financial standing; and
  - (b) technical and managerial experience and ability, taking into account any relevant references.
- 60.3.2 The Councils shall have the right to prevent the selection of any person as a prospective tenderer if it reasonably believes that such person does not (or could not reasonably be considered to) comply with any of the criteria referred to in Clause 60.3.1 above.
- 60.3.3 The Councils shall, in their absolute discretion, have the right to prevent the selection of any person as a tenderer on the grounds that the prospective tenderer has committed a Prohibited Act.
- 60.3.4 The Councils shall have the right to review the list of prospective tenderers. The Contractor shall provide the Councils with an explanation of the reasons behind the non-inclusion on the list of prospective tenderers of any person identified as suitable by the Councils, if so requested by the Councils.
- 60.3.5 The Contractor shall provide any prospective tenderer which is unsuccessful in being selected with an explanation of the reasons for its non-selection, if so requested by the person in question.
- 60.3.6 The Contractor shall determine which compliant tender in respect of any Market Tested Service represents the best value for money having regard to the haulage costs which would be incurred for delivery to each bidder (calculated for round trip haulage costs for mileage in excess of fifty (50) miles to a delivery point agreed between the Parties using the Landfill Haulage Rate per tonne per mile in accordance with Part 11 of Schedule 4 (Payment Mechanism). On making this determination, the Contractor shall supply to the Councils a copy of its tender evaluation, together with sufficient supporting information concerning the tender evaluation in order to enable the

Councils to analyse and understand the basis for the Contractor's determination.

60.3.7 If the Councils do not agree with the Contractor's determination, the Councils may, within fifteen (15) Business Days of being provided with the tender evaluation, dispute such determination and, if the Parties do not resolve such dispute within a further fifteen (15) Business Days, the dispute shall be dealt with in accordance with Clause 104 (Dispute Resolution).

#### **60.4 Award of Contracts**

Upon agreement or determination of the selected tender, the Contractor shall procure the appointment of the selected tenderer for the Market Tested Service either as its sub-contractor or as a sub-contractor of the Operating Sub-Contractor.

#### **60.5 Adjustment to Unitary Charge**

60.5.1 Immediately following the completion of the Market Testing in relation to the Market Tested Service the Contractor shall submit a price proposal to the Councils in respect of that Market Tested Service (the "**Price Proposal**") which shall consist of the selected tenderer's tender price.

60.5.2 The Price Proposal shall:

- (a) become effective as from the date on which the selected tenderer commences the Market Tested Service; and
- (b) apply until the next relevant Market Testing Date in respect of that Market Tested Service or, if applicable, the Expiry Date; and
- (c) the Landfill Gatefee Payment shall be adjusted to reflect the Price Proposal in accordance with Clause 120 (Revision and Custody of Financial Model).

#### **60.6 Costs**

The costs incurred by the Contractor in performing its obligations in this Clause 60 shall be payable by the Contractor.

## **60.7 No Valid Tenders**

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 Councils shall direct the Contractor to either repeat the Market Testing in accordance with this Clause 60 (but with time periods replaced by reasonable and sensible periods of time from the date on which no valid tenders are returned) procure that the Operating Sub -Contractor awards the Market Tested Service to the current provider as the "**Successful Tenderer**" (provided that such current provider is willing to accept such award). If the Councils fail to so direct within ten (10) Business Days, the Contractor may make such election and the Councils will be deemed to have so elected.

## **61 BEST VALUE**

### **61.1 Best Value Duty**

61.1.1 The Contractor acknowledges that:

- (a) the Councils are subject to the Best Value Duty; and
- (b) the provisions of this Clause 61 are intended to assist the Councils in discharging their Best Value Duty in relation to the Service.

61.1.2 The Contractor shall, throughout the Contract Period, but only to the extent of its obligations in this Contract (save for this obligation), make arrangements to secure continuous improvement in the way in which the Service is provided, having regard to a combination of economy, efficiency and effectiveness.

61.1.3 The Contractor shall undertake or refrain from undertaking such actions as the Councils shall reasonably request to enable the Councils to comply with Part 1 of the 1999 Act including:

- (a) complying with requests for information, data or other assistance made by the Councils in pursuance of their Best Value Duties including to:
  - (i) Not Used;
  - (ii) facilitate any inspection or audit undertaken by any Relevant Authority in connection with the Best Value Duty in respect of

the Service, including any inspection undertaken with a view to verifying the Councils' compliance with their Best Value Duties pursuant to sections 10 and 11 of the 1999 Act;

- (iii) assist the Councils in relation to any action taken by the Secretary of State; and
  - (iv) enable the Councils to comply with any government departmental direction;
  - (v) Not Used;
- (b) complying with all requests by the Councils to procure the attendance of specific officers or employees of the Contractor or any Sub-Contractor (or to use all reasonable endeavours to procure the attendance of any specific officers or employees of their sub-contractors) at any meetings of the Councils at which the Project is to be discussed (but not, otherwise than in exceptional circumstances, more than four (4) times in any one (1) Contract Year); and
- (c) permitting any auditor, at all reasonable times and upon reasonable notice, access to:
- (i) the Facilities; and
  - (ii) any document or data relating to the Service; and
  - (iii) the personnel of the Contractor or any Sub-Contractor.

## **61.2 Annual Service Report and Annual Service Plan**

- 61.2.1 Without prejudice to any other provision in this Contract the Contractor shall, at its own cost, provide to the Councils a written report (the "**Annual Service Report**") in accordance with the requirements set out in the Output Specification and paragraph 15.10 of Part 3 (Service Requirements) of Schedule 1 Output Specification) and paragraph 19 of Schedule 3 (Service Delivery Plan).
- 61.2.2 The Contractor shall upon a written request from the Councils promptly provide such written evidence or other supporting information as the Councils

may reasonably require verifying and auditing the information and other material contained in the Annual Service Report.

- 61.2.3 If, in the Councils' reasonable opinion, the provision, performance or delivery of the Service (or any part) may be more effective, efficient and economic having regard to the Annual Service Report, and the Best Value Duty, then the Councils may serve a written notice upon the Contractor stating the nature and timing of the changes to the provision, performance or delivery of the Service (or the relevant part) which the Councils desire (the "**Annual Service Report Change Notice**").
- 61.2.4 The Contractor shall, within twenty (20) Business Days of the date of receipt of an Annual Service Report Change Notice provide the Councils at their own cost with a written statement (the "**Annual Service Plan**") containing the Contractor's proposals to achieve the change to the Service (or the relevant part) in accordance with the Annual Service Report Change Notice.
- 61.2.5 As soon as practicable after the Councils receive the Annual Service Plan the Parties shall discuss and agree the issues set out in the Annual Service Plan. In such discussions the Councils may modify the Annual Service Report Change Notice, in which case the Contractor shall, as soon as practicable, and in any event not more than fifteen (15) Business Days after the receipt of such modification, notify the Councils of any consequential changes to the Annual Service Plan.
- 61.2.6 If the Parties cannot agree on the contents of the Annual Service Plan then the dispute will be determined in accordance with the Dispute Resolution Procedure.
- 61.2.7 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the Dispute Resolution Procedure the Councils shall:
- (a) confirm in writing the Annual Service Plan; or
  - (b) withdraw the Annual Service Report Change Notice.
- 61.2.8 If the Councils do not confirm the Annual Service Plan within twenty (20) Business Days of the Annual Service Plan having been agreed or otherwise

determined pursuant to the Dispute Resolution Procedure then the Annual Service Plan shall be deemed to have been withdrawn.

61.2.9 If the Councils confirm the Annual Service Plan within the twenty (20) Business Day period referred to at Clause 61.2.8, the Councils will be deemed to have served a Councils' Change Notice for the implementation of such plan.

61.2.10 The Contractor shall take all reasonable steps to mitigate any costs and minimise any savings arising as a consequence of a Councils' Change Notice which is deemed to have been served pursuant to Clause 61.2.9.

### **61.3 Not Used**

### **61.4 Performance Standard Benchmarking**

61.4.1 Not less than three (3) Months before each Annual Service Report Date the Councils shall instigate a Performance Standard Benchmarking Exercise in relation to the Performance Standards in the Output Specification and thereafter the following provisions of this Clause 61.4 shall apply.

61.4.2 The Parties agree that any Performance Standard Benchmarking Exercise shall be carried out in good faith and each Party shall act reasonably in relation to any such Performance Standard Benchmarking Exercise.

61.4.3 The Performance Standard Benchmarking Exercise shall be carried out by the Councils at their own cost.

61.4.4 The purpose of the Performance Standard Benchmarking Exercise shall be to undertake an objective comparison as at the Annual Service Report Date of the relevant Performance Standard in relation to the Service with the attainment of the Performance Standard in relation to the same or similar service by an appropriate comparator group.

61.4.5 If, in the Councils' reasonable opinion, the results of the Performance Standard Benchmarking Exercise disclose that the Performance Standard may be improved having regard to the Best Value Duty then the Councils may serve a Councils' Change Notice upon the Contractor stating the nature of the change to the Performance Standard which the Councils desire.

61.4.6 Following the implementation of the Councils' Change referred to in Clause 61.4.5 (in accordance with Schedule 32 (Change Protocol)) the Performance Standard will be adjusted as at the date falling six (6) Months after the Annual Service Report Date to reflect the results of the Performance Standard Benchmarking Exercise.

## **PART VI – PERFORMANCE AND MONITORING**

### **62 PERFORMANCE MONITORING**

#### **62.1 Contractor Responsibility**

62.1.1 Subject to Clause 62.1.2, the Contractor acknowledges and agrees that, notwithstanding any provision of this Contract which contemplates that, in respect of the provision of the Service, the Councils will or may from time to time:

- (a) inspect any part of any Facility; and/or
- (b) check compliance by the Contractor with its obligations; and/or
- (c) confirm or indicate approval of or non -objection to proposals made by the Contractor; and/or
- (d) request the Contractor to make a change to the Service; and/or
- (e) otherwise seek to influence the manner in which the Project is conducted by the Contractor; or
- (f) take samples at any of the Facilities,

it will always be fully the responsibility of the Contractor, and not the responsibility of the Councils, to ensure that the Project is conducted in all respects in accordance with the Contractor's obligations under this Contract, and in accordance with all Legal Requirements and Necessary Consents and no such action by or on behalf of the Councils will in any way limit or affect such obligations.

62.1.2 For the avoidance of doubt the Parties acknowledge that the Councils' requirements for inspections and/or site visits and/or the Councils' participation in works progress meetings, testing and commissioning at the

Ferrybridge Facility shall be limited to the extent set out in Clause 66.1.6 (Contractor Responsibility) and clause 16 (Progress Meetings) and clause 17 (Site Visits) of the SRF Offtake Councils Direct Agreement.

## **62.2 Contractor Monitoring**

The Contractor shall diligently carry out a monthly performance monitoring exercise in accordance with Schedule 5 (Performance and Monitoring), as the same may be amended from time to time in accordance with Clause 47 (Quality Assurance).

## **62.3 Councils' Monitoring**

The Councils may elect to undertake their own performance monitoring exercise at any stage during the Contract Period for any purpose including ensuring that the Service is being provided in accordance with this Contract and that all information provided by the Contractor is accurate as to the adequacy of the Contractor's own monitoring processes. The Contractor shall cooperate with and assist the Councils with such performance monitoring. In that respect the Councils shall have the right to audit the Contractor's Quality Management System to establish the adequacy or accuracy of the quality management system documentation. The Contractor shall use its reasonable endeavours to assist the Councils in such an exercise.

## **62.4 Cost of Performance Monitoring**

Each Party shall bear its own costs of performance monitoring.

## **62.5 Legal Requirements**

Without prejudice to the generality of Clause 62.1, no such actions by or on behalf of the Councils will in any way lessen the Contractor's responsibility for ensuring that the Project is at all times conducted in a manner which complies with all applicable Legal Requirements.

## **62.6 Increased Monitoring**

62.6.1 If the Councils reasonably believe that either the Contractor has failed to observe or perform any of its obligations under this Contract or the Contractor is likely to fail to observe or perform any of its obligations under this Contract the Councils may (without prejudice to any other right or remedy available to them) give notice to the Contractor:

- (a) requiring the Contractor to carry out additional monitoring in such manner and to such extent as the Councils shall reasonably specify; and/or
- (b) requiring the Contractor to supply such additional reports, plans and other information in such manner and to such extent as the Councils shall reasonably specify; and/or
- (c) specifying any inspections to be carried out by the Councils, their agents or employees in monitoring the performance and observance of the Contractor's obligations under this Contract as are reasonably considered necessary by the Councils (causing as little disruption and inconvenience to the Contractor as is reasonably practicable).

62.7 In the event of failure by the Contractor to observe or perform its obligations in accordance with this Clause 62 and Schedule 5 (Performance and Monitoring) the Councils may give notice to the Contractor notifying the Contractor that the Councils will undertake all or any part of the future monitoring to such level and extent as would be required of the Contractor pursuant to this Contract to ensure that the Project is conducted in all respects in accordance with the Contractor's obligations under this Contract, and in accordance with all Legal Requirements and Necessary Consents whereupon the Contractor shall be relieved of such monitoring obligations until such time as the Councils shall decide.

62.8 The Contractor shall co-operate and assist the Councils with the monitoring by the Councils their agents or employees in accordance with Clause 62.7 and shall make available all the Contractor's records relating to the provision of the Service forthwith on request by the Councils and the Councils their agents and employees shall be permitted access forthwith on request by the Councils to the relevant Facility or premises where such records are kept or where the Service is provided or to be provided.

62.9 The Contractor shall pay to the Councils all reasonable costs (including any associated administrative costs and overheads) incurred by the Councils in respect of the inspections referred to in Clause 62.6.1(c) or in respect of the monitoring referred to in Clause 62.7, for so long as such inspections or monitoring demonstrates that the Contractor has failed to observe or perform any of its obligations under this Contract.

## **63 AUDIT ACCESS**

- 63.1 The Contractor shall co-operate fully and in a timely manner, with any reasonable request from time to time of any auditor (whether internal or external) of any of the Councils (including any official of the Environment Agency or any other statutory inspectorate) to inspect any Facility in connection with any audit regarding the carrying out by the Councils of their statutory functions with regard to the performance or non-performance of this Contract, such request to be made on the giving of reasonable notice to the Contractor.
- 63.2 The Contractor shall co-operate fully, and in a timely manner with any request from time to time of any auditor (whether internal or external) of the Councils (including any official of the Environment Agency or any other statutory inspectorate) to provide documents, or to procure the provision of documents, relating to the Project other than where such documents contain Commercially Sensitive Information (except to the extent that the Contractor can be required to provide such information to such persons by Law) and to provide, or to procure the provision of, any oral or written explanation relating to the same but only in connection with any audit regarding the carrying out by the Councils of their statutory functions with regard to the performance or non-performance of this Contract.
- 63.3 For the avoidance of doubt no Party shall be in breach of Clause 102 (Freedom of Information and Confidentiality) by reason of any disclosure properly and reasonably made pursuant to this Clause 63.
- 63.4 The Contractor shall procure that reasonably satisfactory office facilities are made available to the Councils and any auditor (whether internal or external) of the Councils (including any official of the Environment Agency, or any other statutory inspectorate) for the purposes of Clauses 63.1 and 63.2 if requested by the Councils to do so.

## **64 INSURANCE**

- 64.1 The Contractor shall, prior to the carrying out of any building or demolition work on a Site by the Contractor, take out and maintain or procure the maintenance of the insurances described in Part 1 and Part 3 of Schedule 17A (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.

- 64.2 The Contractor shall during the Service Period (and the Interim Service Period, if applicable) take out and maintain or procure the maintenance of the insurances described in Part 2 and Part 3 of Schedule 17A (Required Insurances) and any other insurances as may be required by law. These insurances must be effective in each case no later than the date on which the relevant risk commences.
- 64.3 Not Used.
- 64.4 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.
- 64.5 With the exception of any insurances required by law, the insurances referred to in Clauses 64.1 and 64.2 (Required Insurances) shall:
- 64.5.1 subject to Clause 64.6 below, name the Contractor as co-insured with any other Party maintaining the insurance;
  - 64.5.2 provide for non-vitiating protection in respect of any claim made by the Councils as co-insured in accordance with Endorsement 2 in Part 4 of Schedule 17A (Required Insurances);
  - 64.5.3 contain a clause waiving the insurers' subrogation rights against the Councils, their employees and agents in accordance with Endorsement 2 in Part 4 of Schedule 17A (Required Insurances);
  - 64.5.4 provide for thirty (30) Days prior written notice of their cancellation, non-renewal or amendment to be given to the Councils in accordance with Endorsement 1 in Part 4 of Schedule 17A (Required Insurances); and
  - 64.5.5 in respect of the Physical Damage Policies provide for payment of any proceeds received by the Contractor to be applied in accordance with Clause 64.15 (Reinstatement).
- 64.6 Wherever possible where the Councils are to be co-insured parties in accordance with Schedule 17A (Required Insurances), the insurances referred to in Clauses 64.1, 64.2 and 64.3 shall name the Councils as co-insureds for their separate interests.
- 64.7 The Contractor shall provide to the Councils:

- 64.7.1 copies on request of all insurance policies referred to in Clauses 64.1 and 64.2 (together with any other information reasonably requested by the Councils relating to such insurance policies) and the Councils shall be entitled to inspect them during ordinary business hours; and
- 64.7.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 64 and Schedule 17A (Required Insurances).
- 64.8 Renewal certificates or such other evidence of renewal as may be reasonably acceptable to the Councils in relation to the insurances referred to in Clauses 64.1 and 64.2 shall be obtained as and when necessary and copies (certified in a manner acceptable to the Councils) shall be forwarded to the Councils as soon as possible but in any event on or before the renewal date.
- 64.9 If the Contractor is in breach of Clauses 64.1 and 64.2 above, the Councils may pay any premiums required to keep such insurance in force or themselves procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 64.10 The Contractor shall give the Councils notification within thirty (30) Days after any claim in excess of fifty thousand pounds (£50,000) (indexed) on any of the insurance policies referred to in Schedule 17A (Required Insurances) accompanied by full details of the incident giving rise to the claim.
- 64.11 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.
- 64.12 Subject to the provision of Schedule 17B (Insurance Premium Risk Sharing Schedule) the insurance premiums referred to in Clauses 64.1 and 64.2 shall be the responsibility of the Contractor.

**64.13 Ensuring the Quality of the Insurances**

The insurances referred to in this Clause 64 shall be effected with insurers approved by the Councils, such approval not to be unreasonably withheld or delayed.

**64.14 Unavailability of terms or conditions**

- 64.14.1 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 market 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-contractor of the Contractor (of any tier)) then Clause 64.14.2 shall apply.
- 64.14.2 If it is agreed or determined that Clause 64.14.1 applies then the Councils shall waive the Contractor's obligations in Clauses 64.1 and 64.2 and/or Schedule 17A (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 64.14.1 continue to apply to such Insurance Term.
- 64.14.3 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 Schedule 17B (Insurance Premium Risk Sharing Schedule).

64.14.4 The Contractor shall notify the Councils as soon as reasonably practicable and in any event within five (5) Days of becoming aware that Clause 64.14.1(a) and/or Clause 64.14.1(b) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Contractor shall provide the Councils with such information as the Councils reasonably request 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.

64.14.5 In the event that Clause 64.14.1(a) and/or Clause 64.14.1(b) apply in respect of an Insurance Term, (irrespective of the reasons for the same) the Contractor shall approach the insurance market at least every four (4) Months to establish whether Clause 64.14.1(a) and/or Clause 64.14.1(b) remain applicable to the Insurance Term. As soon as the Contractor is aware that Clause 64.14.1(a) and/or Clause 64.14.1(b) has ceased to apply to the Insurance Term, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.

#### **64.15 Reinstatement**

64.15.1 Subject to Clause 64.19 (Economic Reinstatement Test), all insurance proceeds received under any policy referred to in paragraph 1 of Parts 1 and 2 of Schedule 17A (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 the proceeds were received.

64.15.2 All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of seventy - five thousand pounds (£75,000) (indexed) shall be paid into the Joint Insurance Account.

64.15.3 Subject to Clause 64.15.4, any insurance proceeds standing to the credit of the Joint Insurance Account (together with any interest accrued thereon) may be withdrawn by the Contractor from the Joint Insurance Account subject to the prior written consent of the Councils (such consent not to be unreasonably withheld or delayed and, in any event, provided that a response to any request for such consent is not withheld for more than ten (10) Business Days):

- (a) as required to enable the Contractor to make payments in accordance with the contractual arrangements entered into to effect the reinstatement works the subject of the claim giving rise to those insurance proceeds and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding those works; and
- (b) following the implementation of those reinstatement works to the reasonable satisfaction of the Councils (not to be unreasonably withheld or delayed), as the Contractor may require,

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

64.15.4 Subject to Clause 64.19 (Economic Reinstatement Test), where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in an amount in excess of one million pounds (£1,000,000) (indexed):

- (a) the Contractor shall deliver as soon as practicable and in any event within twenty-eight (28) Days after the making of the claim a plan (the "**Reinstatement Outline**") prepared by the Contractor for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace the assets which are the subject of the relevant claim or claims in accordance with this Clause 64.15.4. The Reinstatement Outline shall set out:
  - (i) 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 Councils (not to be unreasonably withheld or delayed); and
  - (ii) 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 Councils, which approval shall not be unreasonably withheld or delayed;

- (b) the Councils shall within ten (10) Business Days of receipt of the Reinstatement Outline notify the Contractor in writing that:
- (i) 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; or
  - (ii) 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 Councils' approval under Clause 64.15.4(a)(i) has been unreasonably withheld; and/or
  - (iii) the Councils do not approve the Reinstatement Outline 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 Councils approval under Clause 64.15.4(a)(ii) has been unreasonably withheld; or
  - (iv) if the Councils do not make one (1) of the said responses within the period specified in this Clause 64.15.4(b) it shall be deemed to have approved the Reinstatement Outline, save where the Councils have reasonably requested any further information from the Contractor, in which case the time limit outlined in this Clause 64.15.4 will be deemed to commence upon receipt of such information by the Councils;
- (c) if the Councils give notice of non-approval in accordance with Clauses 64.15.4(b)(ii) or 64.15.4(b)(iii) the Contractor may amend and re-submit the Reinstatement Outline (the "**Amended Reinstatement Outline**") to the Councils for their reconsideration and the Councils shall give their approval or non-approval within five (5) Business Days of the submission of the Amended Reinstatement Outline to the Councils (such approval not to be unreasonably withheld or delayed).

If the Councils do not approve the Amended Reinstatement Outline, they 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 Councils approval has been unreasonably withheld;

- (d) in the event that the Reinstatement Outline or Amended Reinstatement Outline or a person proposed to carry out the Reinstatement Works is not approved by the Councils in accordance with Clause 64.15.4(b) or 64.15.4(c) the Contractor may submit the Reinstatement Outline or the Amended Reinstatement Outline to the Dispute Resolution Procedure in order for it to be determined whether the Councils approval under Clauses 64.15.4(b) and 64.15.4(c) was unreasonably withheld;
- (e) the Reinstatement Outline or the Amended Reinstatement Outline (as the case may be) as approved by the Councils pursuant to this Clause 64.15 (Reinstatement) or as determined pursuant to the Dispute Resolution Procedure shall become the reinstatement plan (the "**Reinstatement Plan**");
- (f) the Contractor shall effect the Reinstatement Works in accordance with the Reinstatement Plan, and:
  - (i) shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan; and
  - (ii) 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 in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the

Councils may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;

- (iii) the Councils agree and undertake that, subject to compliance by the Contractor with its obligations under this Clause 64.15, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in Clause 64.15.4(f)(ii) they shall not exercise any right which they might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds; and
- (iv) the Councils undertake to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan; and
- (v) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Councils and in accordance with Clause 64.15.5 below the Councils 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 64.15 above, in respect of the Relevant Incident, together with any interest accrued; and
- (g) subject to the provisions of Clause 94.1.1 (Treatment of Assets at Expiry Date) the Contractor shall be solely responsible for the payment of any deficiency between the actual costs of the Reinstatement Works and the Relevant Proceeds.

64.15.5 Where insurance proceeds are to be used, in accordance with this Contract, to repair, reinstate or replace any Asset, the Contractor shall carry out the work in accordance with Schedule 1 (Output Specification) and the Contractor's proposals in Schedule 2 (Works Delivery Plan) as amended by agreement between the Parties or as determined pursuant to Clause 104 (Dispute Resolution Procedure) so that on completion of the work, the provisions of the Contract are complied with.

#### **64.16 Risks that Become Uninsurable**

Nothing in this Clause 64 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.

#### **64.17 Uninsurable Risks**

64.17.1 If a risk usually covered by " **contractor's all risks** " insurance, property damage insurance, machinery breakdown insurance, third party liability insurance, delay in start up and business interruption insurance (but not loss of profits), contractor's pollution liability or statutory insurances in each case required under this Contract becomes Uninsurable then:

- (a) the Contractor shall notify the Councils 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
- (b) if both Parties agree, or it is determined in accordance with Clause 104 (Dispute Resolution) that the risk is Uninsurable and that:
  - (i) the risk being Uninsurable is not caused by the actions of the Contractor or any sub-contractor of the Contractor (of any tier); and
  - (ii) the Contractor has demonstrated to the Councils 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 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).

64.17.2 If the requirements of Clause 64.17.1 are satisfied, but the Parties cannot agree as to how to manage or share the risk, then:

- (a) in respect of such third party liability or contractor's pollution liability insurance only the Councils shall (at the Councils' option) either pay to the Contractor an amount equal to the amount set out in Clause 86 (Compensation on Termination for Force Majeure) and the Contract will terminate with immediate effect and in accordance with Clause 93 (Calculation and Payment of Early Termination Payments), or elect to allow the Contract to continue and Clause 64.17.2(b) below shall thereafter apply in respect of such risk; and
- (b) in respect of such "**contractor's "all risks"** insurance, property damage insurance, machinery breakdown insurance third party liability insurance or contractor's pollution liability insurance (if the Councils elect to allow the Contract to continue in accordance with Clause 64.17.2(a)), delay in start up and business interruption insurance (but not loss of profits) or statutory insurances the Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Councils shall (at the Councils' 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 the Contract will continue, or an amount equal to the amount calculated in accordance with Clause 86 (Compensation on Termination for Force Majeure) plus (in relation to third party liability insurance or contractor's pollution liability insurance only) the amount of insurance proceeds that would have been payable whereupon the Contract will terminate with immediate effect and in accordance with Clause 93 (Calculation and Payment of Early Termination Payments); and
- (c) where pursuant to Clauses 64.17.2(a) and/or 64.17.2(b) this Contract continues then the Unitary Charge shall be reduced in each Year for which the relevant insurance is not maintained by an amount equal to

the premium paid (or which would have been paid) by the Contractor in respect of the relevant risk in the Year prior to it becoming Uninsurable (indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a Year only the reduction in the Unitary Charge shall be pro rated to the number of Months for which the risk is Uninsurable; and

- (d) where pursuant to Clauses 64.17.2(a) and/or 64.17.2(b) this Contract continues the Contractor shall approach the insurance market at least every four (4) Months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Contract; and
- (e) in respect of any period between the Councils receiving notification in accordance with Clause 64.17.1 that a risk required to be insured under third party liability insurance (" **Uninsurable Liability Risk** ") has become Uninsurable and the Councils' election to the Contractor in accordance with Clause 64.17.2(a) in respect of such risk then, provided it is ultimately agreed or determined that the requirements of Clause 64.17.1(b) are satisfied in respect of the Uninsurable Liability Risk and subject to Clause 67.17.2(f), Clause 64.17.2(b) shall apply in respect of occurrences of the Uninsurable Liability Risk during such period unless the Parties otherwise agree how to manage the risk during this period; and
- (f) Clause 64.17.2(e) shall only apply provided the Contractor does not unreasonably materially delay (a) agreement and/or determination in accordance with Clause 104 (Dispute Resolution) as to whether the requirements of Clause 64.17.2(b) are satisfied in respect of the Uninsurable Liability Risk and/or (b) meeting with the Councils to discuss the means by which the risk should be managed.

64.17.3 If, pursuant to Clause 64.17.2(b), the Councils elect to make payment to the Contractor (such that the Contract will terminate) (the "**Relevant Payment**"), the Contractor shall have the option (exercisable in writing within twenty (20)

Business Days of the date of such election by the Councils (the "**Option Period**") to pay to the Councils 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 Councils), 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.

#### **64.18 Increase in Insured Amount**

64.18.1 The limit of indemnity and maximum deductibles for each of the Required Insurances shall be indexed, provided such limits of indemnity and maximum deductibles shall only be increased on each renewal date such that the limit that is indexed becomes equal to or exceeds the next whole insurable amount or deductible (as the case may be) available in the insurance market.

#### **64.19 Economic Reinstatement Test**

64.19.1 If the ITSAD Facility is destroyed or substantially destroyed in a single event and the insurance proceeds (when taken together with any other funds available to the Contractor) are equal to or greater than the amount required to repair or reinstate the ITSAD Facility, then the Contractor shall calculate the Loan Life Cover Ratio (on the assumption that the ITSAD Facility is repaired or reinstated in accordance with Clause 64.15.4 (Reinstatement)).

64.19.2 If the calculation referred to in Clause 64.19.1 above shows that the Loan Life Cover Ratio is greater than or equal to 1.15:1 then the Contractor shall be subject to the procedure set out in Clauses 64.15.1 to 64.15.4 (Reinstatement).

64.19.3 Subject to Clause 64.19.5, if the calculation referred to in Clause 64.19.1 above shows that the Loan Life Cover Ratio is less than 1.15:1:

- (a) the Contractor shall notify the Councils to this effect; and
  - (b) the Contractor shall inform the Councils of the insurance proceeds;
- and:

- (i) if the insurance proceeds are less than A, the Contractor shall be entitled to withdraw the insurance proceeds from the Joint Insurance Account;
- (ii) if the insurance proceeds are more than or equal to A, then:
  - (1) the Contractor shall, subject to giving prior notice to the Councils of the same, be entitled to withdraw an amount equal to A; and
  - (2) following the withdrawal referred to in 64.19.3(b)(ii)(1) above, the Councils shall be entitled to withdraw an amount equal to the lesser of B and the remaining sums standing to the credit of the Joint Insurance Account;

in each case from the Joint Insurance Account,

where:

A = the Base Senior Debt Termination Amount (or, if any Additional Permitted Borrowing has been advanced, the Revised Senior Debt Termination Amount) as at the date on which the insurance proceeds are credited to the Joint Insurance Account; and

B = the outstanding prudential borrowing amount in relation to the Capital Contribution paid by the Councils which shall be equal to:

- (1) the value of the Capital Contribution
  - less
- (2) the aggregate amount repaid as at the date on which the insurance proceeds are credited to the Joint Insurance Account assuming for the purposes of this calculation a subtraction of seven hundred and seventy-one thousand and forty eight pounds (£771,048) shall be made on the 31 March in each Contract Year after the date the Capital Contribution is paid pursuant to Clause 55.1 (Capital

Contribution) save in respect of the 31 March in the Contract Year in which the Capital Contribution is paid when such subtraction shall equal zero (0).

64.19.4 If insurance proceeds are released from the Joint Insurance Account, the Contractor will be in breach of its obligations under this Contract and shall not, pursuant to Clause 32 (Delays due to a Relief Event), be relieved of its obligations unless it can demonstrate, to the reasonable satisfaction of the Councils, that it can carry out the works necessary to repair, reinstate or replace the ITSAD Facility in accordance with Clause 64.15.5 (Reinstatement) and within a reasonable timescale.

64.19.5 The Councils may, within twenty (20) Business Days of receiving a notice pursuant to Clause 64.19.3(a), elect to implement the following provisions, in which case Clause 64.19.3 shall cease to apply:

- (a) the Contractor shall be subject to the procedure set out in Clause 64.15 (Reinstatement);
- (b) the Councils shall provide relief from appropriate provisions of this Contract (on such terms as are agreed with the Contractor as appropriate) to the extent required to ensure that the Loan Life Cover Ratio is equal to or greater than 1.15:1 (on the basis that the Contractor receives the insurance proceeds it would have been entitled to receive had such relief not been granted) until the earlier of:
  - (i) the date on which the ITSAD Facility is repaired or reinstated in accordance with the Reinstatement Plan (as defined in Clause 64.15.4(e) (Reinstatement)); or
  - (ii) the date on which the ITSAD Facility is scheduled to be repaired or reinstated in accordance with the Reinstatement Plan (as defined in Clause 64.15.4(e) (Reinstatement)).

## **65 SECURITY**

### **65.1 Councils' Risk Management Policies**

65.1.1 Subject to Clause 65.1.2, in the performance of the Works and Service at the Sites, the Contractor shall take all necessary measures to comply with such of

the Councils' Risk Management Policies as are relevant to the Service. The Contractor shall take (and shall ensure that its Sub-Contractors take) all reasonable measures, by the display of notices or other appropriate means, to ensure that all persons employed on any work in connection with the performance of the Works and Services at the Sites are aware that the Councils' Risk Management Policies apply to them.

- 65.1.2 The Councils shall notify the Contractor of any changes to the Councils' Risk Management Policies but the Contractor need only comply with such variation if it is implemented by means of a Councils' Change Notice and the provisions of the Change Protocol shall apply except where such change to the Councils' Risk Management Policies arises out of a General Change in Law in which case Clause 54 (Change in Law) will apply.

## **65.2 Investigations**

The Contractor shall co-operate with any investigation relating to security concerning performance of the Works and delivery of the Service which is carried out by or on behalf of the Councils and:

- 65.2.1 shall use its reasonable endeavours to make any Staff identified by the Councils available to be interviewed by the Councils for the purposes of the investigation; and
- 65.2.2 shall, subject to any legal restriction on their disclosure and Clause 102 (Freedom of Information and Confidentiality), provide all documents, records or other material of any kind which may reasonably be required by the Councils for the purposes of the investigation. The Councils shall have the right to retain any such material for use in connection with the investigation and shall provide the Contractor with a copy of any material retained.

## **65.3 Security information**

The Councils shall, in so far as is practical, inform the Contractor of any specific or general security information in their possession which would reasonably be expected to affect the security of the Contractor, its property or the Staff.

## **65.4 Protester Action**

- 65.4.1 The Contractor shall use reasonable endeavours to prevent Protester Action affecting the ITSAD Facility and/or the Ferrybridge Facility including for the avoidance of doubt providing appropriate security and security fencing, an appropriately manned weighbridge and providing reasonable additional security measures in the event that and for so long as there are reasonable grounds for believing that a high risk of Protester Action persists.
- 65.4.2 Notwithstanding the provisions of Clause 65.4.1 above, in the event that Protester Action arises at or around the ITSAD Facility and/or the Ferrybridge Facility or on the access road to the ITSAD Facility and/or the Ferrybridge Facility the Contractor shall take such actions as are reasonable, proportionate and lawful to deal with Protester Action and where necessary shall co-operate with the emergency services.
- 65.4.3 Save to the extent provided in limb (h) of the definition of Relief Event, the Contractor shall be responsible for the consequences of any delays or disruption consequent upon any Protester Action.

## **66 HEALTH AND SAFETY AND OTHER LEGAL REQUIREMENTS**

### **66.1 Contractor Responsibility**

- 66.1.1 Without prejudice to the Contractor's obligations under Clause 70.1 (Contractor's Records) the Contractor shall be responsible for the observance by itself, its Staff and Sub-Contractors of:
- (a) all Legal Requirements relating to health and safety for all aspects of the Project; and
  - (b) all precautions necessary for the protection of itself, its Staff, Sub-Contractors and any other persons invited onto or otherwise entitled to be at or in the vicinity of any of the Facilities.
- 66.1.2 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 etc. 1974 and notify full details of such person to the Councils. Whilst on Councils owned premises (not being the Sites) the Contractor shall require its staff, licensees and visitors to comply with the lawful requirements of the

Councils' Safety Adviser. The Contractor shall provide and maintain, at all its premises and the Sites, an accident book which shall be open to inspection by the Councils' Safety Adviser or the Councils' Representative.

- 66.1.3 The Contractor shall have regard to the Councils' health and safety policy when preparing its own statement.
- 66.1.4 The Contractor shall supply a copy of its general statement of safety policy to the Councils, for approval no later than fifty (50) Business Days prior to the Planned Service 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 Councils' Representative of any consequent revisions.
- 66.1.5 The Contractor shall provide information and all reasonable assistance at no less than twelve (12) Month intervals from the Service Commencement Date to the Councils' Representative to enable a health and safety audit in respect of the Facilities to be completed by the Councils.
- 66.1.6 The Contractor shall procure that the Councils' Representative (or their nominees) shall be permitted to undertake a pre-arranged, supervised, non-intrusive inspection of the Ferrybridge Facility on reasonable notice at a reasonable time on no more than one (1) occasion in any Contract Year following the Actual Services Commencement Date subject to the Councils' Representative complying with the health and safety requirements and any applicable site rules and conditions in place from time to time at the Ferrybridge Facility.

## **66.2 Incidents**

The Contractor shall immediately report to the Councils' Representative all incidents involving the Contractor's or Sub-Contractors' employees or agents which ordinarily require reporting in accordance with the Health and Safety at Work etc. Act 1974 or other Legal Requirements.

## 67 INTELLECTUAL PROPERTY

### 67.1 Project Data

The Contractor shall make available to the Councils free of charge (and hereby irrevocably licences the Councils to use, with the right to grant sub-licences) all Project Data that might reasonably be required by the Councils and the Contractor hereby undertakes, warrants and represents that it has obtained all necessary licences, permissions and necessary consents to ensure that it can make such Project Data available to the Councils on these terms, for the purposes of:

- 67.1.1 the Councils carrying out their statutory duties (and their operations relating to the performance of their statutory duties), and their rights and obligations under this Contract; and
- 67.1.2 following termination of this Contract, the design or construction of the ITSAD Facility, the operation, maintenance or improvement of the ITSAD Facility and/or the carrying out of operations the same as, or similar to, the obligations of the Contractor pursuant to this Contract whether by the Councils directly, any assignee or transferee of any rights or benefits under this agreement or a third party engaged by the Councils for such purposes,

(together, the "**Approved Purposes**"), and in this Clause 67 (Intellectual Property) "**use**" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "**the right to use**" shall be construed accordingly.

### 67.2 Licences

67.2.1 The Contractor:

- (a) hereby grants to the Councils, free of charge, an irrevocable, non-exclusive and transferable licence (carrying the right to grant sub-licences) to use the Project Intellectual Property which is or becomes vested in the Contractor (but only to any assignee or transferee of any rights or benefits of the Councils under this Contract or upon or at any time following expiry, termination of this Contract for any reason or in connection with the exercise by the Councils of their step-in rights pursuant to Clause 73 (Councils Step-In)); and

(b) shall, where any Project Intellectual Property is or becomes vested in a third party, procure the grant to the Councils of a like licence to that referred to in Clause 67.2.1(a),

in each case, solely for the Approved Purposes.

67.2.2 The Contractor shall use all reasonable endeavours to ensure that any Project Intellectual Property created, brought into existence or acquired during the term of this Contract vests, and remain vested throughout the term of this Contract, in the Contractor and the Contractor shall enter into appropriate agreements with relevant Sub -Contractors (or other third parties) that may create or bring into existence, or from which it may acquire, any Project Intellectual Property.

67.2.3 The Contractor warrants that it shall not be in breach of any third party licence agreement for Project Intellectual Property by entering into this Contract and the Contractor shall indemnify the Councils for any Losses arising out of a breach of this Clause 67.2.3.

67.2.4 Not Used.

67.2.5 Not Used.

### **67.3 Maintenance of Data**

67.3.1 To the extent that any of the data, materials and documents referred to in this Clause 67 are generated by or maintained on a computer or similar system, the Contractor shall use reasonable endeavours to procure for the benefit of the Councils, at no charge the grant of a licence or sub -licence for any relevant software to enable the Councils or their nominee to access and otherwise use such data for the Approved Purposes. As an alternative, the Contractor may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format.

67.3.2 The Contractor shall ensure the back -up and storage in safe custody of the data, materials and documents referred to in this Clause 67 in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall submit to the Councils' Representative for approval its proposals for the back-up and storage in safe custody of such data, materials and documents

and the Councils will be entitled to object if the same is not in accordance with Good Industry Practice. The Contractor shall comply, and shall cause all Sub-Contractors to comply, with all procedures to which the Councils' Representative has given its approval. The Contractor may vary its procedures for such back-up and storage subject to submitting its proposals for change to the Councils' Representative who will be entitled to object on the basis set out above.

#### **67.4 Claims**

Where a Claim or proceeding is made or brought against the Councils which arises out of the infringement of any rights in or to any Project Intellectual Property (other than any Background Information) or because the use of any materials, plant, machinery or equipment in connection with the Works, Service or other purposes envisaged by this Contract infringes any rights in or to any Project Intellectual Property then, unless and to the extent such infringement has arisen out of the use of any such Project Intellectual Property by or on behalf of the Councils otherwise than in accordance with the terms of this Contract, the Contractor shall indemnify the Councils at all times from and against all Direct Losses arising out of such Claims or proceedings and the provisions of Clause 97 (Conduct and Control of Claims) shall apply.

#### **67.5 Confidentiality**

The Councils shall comply in all respects with the provisions of Clause 102 (Freedom of Information and Confidentiality) in respect of any documents, data or materials provided to it by the Contractor and any Project Intellectual Property licensed or granted to it by the Contractor under this Clause 67 (Intellectual Property) and shall ensure that those persons to whom the Councils communicate any such documents, data, materials and/or Project Intellectual Property comply with the provisions of Clause 102 (Freedom of Information and Confidentiality) as if those recipients were a party to this Contract.

### **68 REGULAR MEETINGS OF THE COUNCILS AND CONTRACTOR**

68.1 The Contractor shall comply with all requests by the Councils to either provide information or to procure the attendance of specific Staff of the Contractor or any Sub-Contractor (and shall include such a provision in any Sub-Contracts to be entered into) at any Councils' Overview and Scrutiny Meetings at which the Works and Services are to be discussed.

- 68.2 The Contractor shall ensure that appropriate members of Staff attend those meetings agreed as part of the Service Delivery Plan, together with such other meetings as are reasonably required by the Councils' Representative in relation to the performance by the Contractor, its employees or its Sub-Contractors of their respective obligations in respect of the Service.
- 68.3 Should the most appropriate member of the Staff be unable to attend any meeting, then a suitable replacement shall be fully briefed and shall attend on his behalf or the meeting shall be rearranged.
- 68.4 If requested, the Contractor shall nominate a suitable representative to attend meetings of the Councils or any committee thereof to report to members of the Councils concerning the Service.

## **69 OPERATING MANUALS**

### **69.1 Maintenance of Manuals**

- 69.1.1 The Contractor shall provide to the Councils a draft set of operating and maintenance manuals for the ITSAD Facility on the Service Commencement Date and a final and complete set of such manuals (the "**Operating Manuals**") on the earlier of the date falling seven (7) Days after they become available to the Contractor or within six (6) Months after the Service Commencement Date, such manuals to be provided in both electronic and "**hard copy**" format, setting out in all necessary detail such information, instructions, drawings, plans and specifications as would allow a competent person to understand, assemble, disassemble (to the extent usually necessary having regard to the nature of the plant and Equipment in question) repair and use for its intended purpose in accordance with the manufacturer's instructions all of the plant and Equipment to be used by the Contractor at the ITSAD Facility and setting out in reasonable detail (where appropriate using checklists, flow diagrams and process maps) all the procedures for providing the Service at the ITSAD Facility which if complied with would constitute compliance by the Contractor with its obligations in respect of the Service at the ITSAD Facility.
- 69.1.2 The Contractor shall throughout the Service Period maintain and update the Operating Manuals and promptly supply amendments to the Councils in electronic and "**hard copy**" format.

## **69.2 Access to Manuals**

The Contractor shall at the request of the Councils provide the Councils with an updated copy of any of the Operating Manuals and access to any of the Operating Manuals in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manuals under Clause 69.1.2.

## **69.3 Copy on Termination**

On termination or expiry of this Contract the Contractor shall within twenty (20) Business Days provide to the Councils two (2) copies in both electronic and " **hard copy**" format of all of the then current Operating Manuals.

## **70 CONTRACTOR'S RECORDS**

70.1 The Contractor shall:

70.1.1 at all times maintain a full record of particulars of the costs of performing the Service and the marginal costs of generating Third Party Revenue, including those relating to the design, construction, maintenance, operation and finance together with all other data necessary to evidence Third Party Revenue for the purposes of calculating the Third Party Revenue Share and fulfilling the Contractor's obligations pursuant to Clause 56.2.3 (Invoicing and Payment Arrangements) and paragraph 3.15.8 of Schedule 1 (Output Specification); and

70.1.2 when requested by the Councils, provide a summary of any of the costs referred to in Clause 70.1.1, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Councils may reasonably require to enable the Councils to monitor the performance by the Contractor of its obligations under this Contract; and

70.1.3 provide such facilities as the Councils may reasonably require for their representatives to visit any place where the records are held and examine the records maintained under this Clause 70; and

70.1.4 at the request of the Councils, provide to the Councils the following information provided to the Senior Lender during the term of this Contract:

(a) monthly technical adviser's report; and

(b) monthly management report from the Contractor,

in each case within ten (10) Business Days of such document being produced and with any text redacted or because it relates to Confidential Information which is not specific to the Project.

70.2 Compliance with the above shall require that the Contractor keeps (and where appropriate to procure that the sub-contractors (other than the SRF Offtaker) shall keep) books of account in accordance with best accountancy practice with respect to the Contract showing in detail:

70.2.1 administrative overheads;

70.2.2 payments made to Sub-Contractors and by Sub-Contractors to sub-contractors; and

70.2.3 capital and revenue expenditure; and

70.2.4 such other items as the Councils may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of Clause 31.1 (Impact of a Compensation Event), the Change Protocol, Clause 54.1 (Qualifying Change in Law), Clause 60 (Market Testing) and Clause 61.4 (Performance Standard Benchmarking),

and the Contractor shall have (and shall procure that the Sub-Contractors shall have) the books of account evidencing the items listed in Clauses 70.2.1 to 70.2.4 available for inspection by the Councils (and any expert) upon reasonable notice, and shall present a report of these to the Councils as and when requested.

70.3 The Contractor shall maintain or procure that the following are maintained in relation to the Facilities and the Non-Ferrybridge Service:

70.3.1 a full record of all incidents relating to health, safety and security which occur during the term of the Contract; and

70.3.2 full records of all maintenance procedures carried out during the term of the Contract,

and the Contractor shall have the items referred to in Clauses 70.3.1 and 70.3.2 available for inspection by the Councils upon reasonable notice, and shall present a report of them to the Councils as and when requested.

70.4 The Contractor shall procure that:

70.4.1 the SRF Offtaker keeps records showing:

- (a) the quantity of Project SRF accepted by the SRF Offtaker under the SRF Offtake Contract for each Month (including any amounts of Unacceptable SRF accepted by the SRF Offtaker);
- (b) the reasons why any Unacceptable SRF does not comply with the SRF Specification;
- (c) the quantity or estimated quantity of Project SRF rejected by the SRF Offtaker prior to being thermally treated for each Month and the reasons for such rejection;
- (d) the estimated quantity of Project SRF stored at the beginning and end of each Month;
- (e) the estimated quantity of Project SRF used for the recovery of energy at the Ferrybridge Facility for each Month;
- (f) the estimated quantity of air pollution control residues attributable to Project SRF, calculated as a proportion of the total air pollution control residues of the Ferrybridge Facility equal to the amount of Project SRF as a proportion of the total fuel thermally treated by the Ferrybridge Facility for the relevant period;
- (g) the estimated quantity of ash attributable to Project SRF, calculated as a proportion of the total ash produced by the Ferrybridge Facility equal to the amount of Project SRF as a proportion of the total fuel thermally treated by the Ferrybridge Facility for the relevant period; and
- (h) the date and length of each outage of the Ferrybridge Facility which affects the SRF Offtaker's ability to provide the SRF Offtake Services;

70.4.2 the SRF Offtaker notifies the Operating Sub-Contractor promptly of any notices received by the SRF Offtaker (whether from any Relevant Authority or any other person) relating in any way to any Ferrybridge Consent which may impact the SRF Offtaker's ability to perform the SRF Offtake Services; and

- 70.4.3 the Operating Sub-Contractor keeps records showing the quantity of Project SRF treated and/or disposed of otherwise than at the Ferrybridge Facility together with details of where such Project SRF is treated and or disposed of.
- 70.5 The records referred to in Clause 70.4.1 and Clause 70.4.2 (being those contained in the most recent monthly report provided to the Contractor by the Operating Sub -Contractor in relation to the SRF Offtake Contract) and those referred to in Clause 70.4.3 shall be made available to the Councils within ten (10) Business Days of the Councils' written request for the same and for the avoidance of doubt the Councils and any assignee or transferee or any right or benefit under this Contract shall be permitted to inspect and use (and the word "use" shall have the meaning ascribed to it under Clause 67.1.2 (Project Data)) such records for the Approved Purposes including on expiry or termination of this Contract for any reason or in connection with the exercise by the Councils of their step-in rights pursuant to Clause 73 (Councils Step-In).
- 70.6 The Contractor shall permit records referred to in this Clause 70 to be examined and copied by any auditor of the Councils and other representatives of the Councils, and by the Audit Commission (or its successor) and its representatives.
- 70.7 The Contractor shall ensure that records referred to in this Clause 70 are retained for a period of at least twelve (12) Years from the date that they are acquired by the Contractor but not so as to exceed five (5) Years after the Contractor's obligations under this Contract have come to an end.
- 70.8 Upon termination of this Contract in circumstances where the Councils wish to enter into another contract for the operation and management of the Facilities, the Contractor shall comply (and shall ensure that the Operating Sub -Contractor complies) with all reasonable requests of the Councils to provide information relating to the Contractor's costs of operating and maintaining the Facilities.
- 70.9 The Contractor shall:
- 70.9.1 provide to the Councils copies of its annual report and accounts within thirty (30) Days of publication; and
- 70.9.2 provide to the Councils a copy of the Financial Model at Financial Close and (as the same may be amended) within thirty (30) Days of any amendment to it; and

- 70.9.3 promptly upon the occurrence of a Financing Default notify the Councils of such Financing Default; and
- 70.9.4 use all reasonable endeavours to assist the Councils in its preparation of any report required by any central government department or H M Treasury, from time to time.
- 70.10 The Councils may, in the circumstances referred to in Clause 70.9.3 above (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements), require the Contractor to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Lenders (or their Agent on their behalf) attend such meetings as the Councils may convene to discuss such Interim Project Report and the circumstances giving rise to it.
- 70.11 Notwithstanding the other provisions of this Contract, the Contractor shall not be obliged to disclose any information or document to the Councils which is subject to legal professional privilege, or which has been produced solely for the purposes of this Contract, and which has been generated in the context of a dispute under this Contract.

## **71 ENVIRONMENTAL PROTECTION AND ANNUAL ENVIRONMENTAL REPORT**

- 71.1 Without prejudice to its obligations to comply with all applicable Legislation, the Contractor shall at all times comply with its duty of care under section 34 of the EPA.
- 71.2 The Contractor shall take all and any steps as are necessary to ensure that the impact of the operation of the Contractor upon the environment in pursuance of its obligations under this Contract are adequately and sufficiently assessed, controlled, monitored, mitigated and remediated as required by all appropriate enforcement agencies, Legislation and Good Industry Practice.
- 71.3 The Contractor shall produce and deliver a report to the Councils each Year in accordance with Schedule 6 (Annual Environment Report).
- 71.4 The Contractor shall promptly notify the Councils of all circumstances which shall or might reasonably be regarded as a breach of this Clause 71 and shall act at all times in good faith in respect of this Clause 71.

## 72 DATA PROTECTION

- 72.1 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.
- 72.2 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.
- 72.3 The Contractor shall not disclose Personal Data to any third parties other than:
- 72.3.1 to employees and sub -contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works and/or Service; or
- 72.3.2 to the extent required under a court order,
- provided that disclosure under Clause 72.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 72 and provided also that the Contractor shall give notice in writing to the Councils of any disclosure of Personal Data which it or a Sub -Contractor is required to make under Clause 72.3.2 immediately on becoming aware of such requirement.
- 72.4 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 but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data.
- 72.5 The Councils may, at reasonable intervals, request a written description of the technical and organisational measures referred to in Clause 72.4 which are employed by the Contractor and/or the Sub -Contractors. Within thirty (30) Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Councils can determine whether or not, in connection with the Personal Data, they are compliant with their duties under the DPA.
- 72.6 The Contractor shall indemnify and keep indemnified the Councils against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs)

incurred by them in respect of any breach of this Clause 72 by the Contractor and/or any act or omission of the Operating Sub-Contractor.

### 73 COUNCILS STEP-IN

73.1 If the Councils reasonably believe that they need to take action in connection with the Non-Ferrybridge Services:

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

73.1.2 to discharge a statutory duty,

then the Councils shall be entitled to take action in accordance with Clauses 73.2 to 73.5 below.

73.2 If Clause 73.1 applies and the Councils wish to take action, the Councils shall notify the Contractor in writing of the following:

73.2.1 the action they wish to take;

73.2.2 the reason for such action;

73.2.3 the date they wish to commence such action;

73.2.4 the time period which they believe will be necessary for such action; and

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

73.3 Following service of such notice, the Councils shall take such action as notified under Clause 73.2 above and any consequential additional action as they reasonably believe is necessary (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Councils while they are taking such the Required Action. The Councils 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.

73.4 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Councils shall undertake the Required Action in accordance with Good Industry Practice and shall (save in relation to liabilities which arose or which relate to

any period prior to the date of the Required Action) indemnify the Contractor against all Direct Losses where it fails to do so.

73.5 If the Contractor is not in breach of its obligations under the 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 Service:

73.5.1 the Contractor shall be relieved from its obligations to provide such part of the Service; and

73.5.2 in respect of the period in which the Councils are taking the Required Action and provided that the Contractor provides the Councils with reasonable assistance (such assistance to be at the expense of the Councils to the extent incremental costs are incurred), the Monthly Unitary Charge due from the Councils to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Service affected by the Required Action in full over that period and assuming that the Councils were delivering to the Contractor the Guaranteed Minimum Tonnage of Contract Waste over that period.

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

73.6.1 the Contractor shall be relieved of its obligations to provide such part of the Service; and

73.6.2 in respect of the period in which the Councils are taking Required Action, the Monthly Unitary Charge due from the Councils to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Service affected by the Required Action in full and assuming that the Councils were delivering to the Contractor the Guaranteed Minimum Tonnage of Contract Waste over that period, less an amount equal to all the Councils' costs of operation in taking the Required Action.

### **73.7 Compensation for Loss of Third Party Revenue**

The Contractor shall be compensated for Third Party Revenue lost as a direct consequence of the Councils taking the Required Action on the following basis (less, in each case, the Councils' share of any Third Party Revenue) to which they are entitled under Schedule 4 (Payment Mechanism):

73.7.1 in circumstances where the Contractor is not in breach, the Contractor's compensation for lost Third Party Revenue will be an amount equal to the higher of (i) the amount of Third Party Revenue actually received by the Councils 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 Revenue 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 Revenue set out in the Base Case, in each case less (without double counting) the Councils' cost of generating such income; and

73.7.2 in circumstances where the Contractor is in breach the Contractor compensation shall be limited to the difference (if any) between the amount of Third Party Revenue that the Councils receive during the period of the Required Action less the Councils' costs of generating that income.

73.8 Not Used.

73.9 The Councils will not be entitled to exercise step-in rights under Clause 73.3 where such step-in would be in breach of Legislation or any Environmental Permit and/or put the Contractor or any sub-contractor in breach of Legislation or any Environmental Permit.

## **PART VII - EMPLOYEES**

### **74 EMPLOYMENT MATTERS**

#### **74.1 Relevant Transfers**

The Councils and the Contractor agree that the following events:

- (a) the occurrence of a Relevant Service Transfer Date; and
- (b) where the identity of a provider (including the Councils) of any service which constitutes or which will constitute part of the Service is changed whether in anticipation of changes pursuant to this Contract or not,

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

#### **74.2 Compliance by Councils**

The Councils shall comply with its obligations under TUPE in respect of each Relevant Transfer pursuant to this Contract and the Contractor shall comply and shall procure that each Sub-Contractor and/or sub-contractor shall comply with its/their obligations (including the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to this Contract and each of the Councils and the Contractor shall indemnify the other against any Direct Losses sustained as a result of any breach of this Clause 74.2 by the Party in default.

#### **74.3 Emoluments and Outgoings**

74.3.1 The Councils shall procure if it has legal or contractual powers to do so that the First Contractors are responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to a Relevant Service Transfer Date.

74.3.2 The Contractor shall be responsible or shall procure that any relevant Sub-Contractor is responsible, for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Contractor or any Sub-Contractor in

connection with the provision of any of the Service, including all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including a Relevant Service Transfer Date.

#### **74.4 Employment Costs**

The Councils have supplied to the Contractor the information, as at the date of this Contract contained in Appendix 1 to Schedule 42 (Employment) (the "**First Employee List**") regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of, and other matters affecting each of those employees of the Councils and of any sub-contractor of the Councils who it is expected, if they remain in the employment of the Councils (or of any relevant sub-contractor of the Councils as the case may be) until immediately before a Relevant Service Transfer Date, would be Relevant Employees, but the Councils give no warranty as to the accuracy or completeness of this information.

#### **74.5 Final Employee List**

The Councils shall supply any further information provided by the First Contractors to the Contractor as an update of the First Employee List at six (6) monthly intervals from the date of this Contract and an updated list ten (10) Business Days before a Relevant Service Transfer Date. The Councils shall also supply to the Contractor within five (5) Business Days after a Relevant Service Transfer Date information, which was correct as at a Relevant Service Transfer Date, in respect of the Relevant Employees on all the same matters as should be provided in the First Employee List. This list is the "**Final Employee List**". The Councils give and shall give no warranty as to the accuracy or completeness of any information contained in any update of the First Employee List or in the Final Employee List.

74.6 Without prejudice to Clauses 74.5, 74.6 and 74.9 the Councils shall or shall procure if they have contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that every relevant sub-contractor of the Councils shall:

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

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

#### **74.7 Workforce Information**

The Contractor has provided to the Councils and the Councils have agreed the details set out in Appendix 2 (Workforce Information) of Schedule 42 (Employment) which shows in respect of each part of the Service, the following information:

- (a) the workforce which the Contractor proposes to establish to provide the Service (the "**Proposed Workforce**") classified by reference to grade, job description, hours worked, shift patterns, pay scales, rates of pay, terms and conditions and pension arrangements;
- (b) the monthly costs of employing the Relevant Employees who are expected to be engaged in the provision of the Service. These costs (the "**Remuneration Costs**") have been calculated on the basis of (amongst other things) the information contained in the First Employee List; and
- (c) the costs, including any lump sum payments, which have been agreed between the Parties for the purposes of any reorganisation which may be required to establish the Proposed Workforce or a workforce which is as close as reasonably practicable to the Proposed Workforce (including but not limited to costs associated with dismissal by reason of redundancy or capability and costs of recruitment). These costs (the "**Reorganisation Costs**") have been calculated by the Contractor and the Sub-Contractors on the basis of (amongst other things) the information contained in the First Employee List.

#### **74.8 Adjustment of Reorganisation and Remuneration Costs**

74.8.1 If at any time (including after the submission of the Final Employee List) the Remuneration Costs and/or the Reorganisation Costs require to be adjusted on account of any differences between the information contained in the First Employee List and that contained in the Final Employee List, or on account of any inaccuracies in or omissions from the information contained in the First Employee List or the Final Employee List then (subject to the remainder of

this Clause 74.8) there shall be a revision of the Unitary Charge to compensate for any difference.

74.8.2 If the circumstances described in Clause 74.8.1 arise:

- (a) in circumstances where there are more Relevant Employees than shown on the Final Employee List then the Parties shall discuss the implications for the provision of the Service; and
- (b) the Contractor and the relevant Sub-Contractor shall take all reasonable steps to mitigate any additional costs and any adjustment to the Unitary Charge shall be calculated as if they had done so.

74.8.3 In calculating any adjustment to be made to the Unitary Charge pursuant to this Clause 74.8:

- (a) no account shall be taken of a decrease in the Remuneration Costs or Reorganisation Costs to the extent that it arises from a reduction in the number of Relevant Employees or their whole time equivalent such that there are, immediately after a Relevant Service Transfer Date, fewer suitably qualified persons available than are required in order to establish the Proposed Workforce;
- (b) to avoid double counting, no account shall be taken of any change to the Remuneration Costs or the Reorganisation Costs to the extent that the Contractor has been or will be compensated as a result of any indexation of the Unitary Charge under this Contract;
- (c) to avoid doubt, any changes in costs which fall to be dealt with under this Clause 74.8 and which arise from a Change in Law shall be dealt with in accordance with the provisions of this Clause 74.8 and shall not be taken into account for the purposes of Clause 54 (Change in Law);
- (d) no downwards adjustments under this Clause 74.8 shall be made in respect of overpayments made by the Contractor (or a Sub-Contractor) to any Relevant Employees which arise from reliance on the Final Employee List to the extent that the Contractor (or the Sub-Contractor) is unable to correct overpayments in respect of continuing employment having taken reasonable steps to do so;

- (e) if there are underpayments by the Contractor or a Sub -Contractor to Relevant Employees, whether claimed or established as unlawful deductions from wages or as a breach of contract, which arise from reliance on the Final Employee List, there shall be an immediate increase to the Unitary Charge in respect of all such liabilities of the Contractor or the Sub -Contractor or for all such underpayments which are retrospective (save that any such liabilities which relate to the period prior to a Relevant Service Transfer Date shall be dealt with in accordance with Clause 74.11 or Clause 74.12) and an appropriate increase in respect of such liabilities of the Contractor which represent ongoing costs; and
- (f) in order to prevent duplication, no adjustment shall be made under this Clause 74.8 if any indemnity given by the Councils under any other provision of this Contract would apply.

74.8.4 Either Party may propose an adjustment to Unitary Charge pursuant to Clause 74.8 by giving not less than ten (10) Business Days notice to the other. Each Party will provide or procure the provision to the other, on an open book basis, access to any information or data which the other Party reasonably requires for the purpose of calculating or confirming the calculation of any adjustment pursuant to this Clause 74.8.

74.8.5 In relation to all matters described in Clauses 74.8.2(a), 74.8.2(b) and 74.8.3, the Contractor and the Councils shall, and the Contractor shall procure that the relevant Sub-Contractor or sub-contractor shall, co-operate with the other or others and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

74.8.6 The Councils shall and the Contractor shall, and shall procure that each Sub - Contractor shall, take all reasonable steps, including co -operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to this Contract takes place smoothly with the least possible disruption to the activities of the Councils (including the Service) and to the employees who transfer.

#### **74.9 Union Recognition**

The Councils shall procure if it has the contractual or legal powers to do so and shall otherwise use all reasonable endeavours to procure that the First Contractors and every relevant sub-contractor of the Councils shall, supply to the Contractor no later than five (5) Business Days prior to a Relevant Service Transfer Date true copies of its trade union recognition agreement(s) and the Contractor shall and shall procure that each and every Sub-Contractor shall in accordance with TUPE, recognise the trade unions representing Relevant Employees (as relevant to each Sub-Contractor or) after the transfer to the same extent as they were recognised by the Councils or the relevant sub-contractor before a Relevant Service Transfer Date.

#### **74.10 Replacement Sub-Contractor**

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

#### **74.11 Indemnities**

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

74.11.1 a breach by the Councils of its obligations under Clause 74.3.1; and

74.11.2 subject to Clause 74.11.3 any claim or demand by (i) any Transferring Employee or (ii) by any trade union or staff association or employee representative in respect of all or any of the Transferring Employees, in either case that arises out of the employment of any such Transferring Employee provided that this arises from any act, fault or omission of the Councils in relation to any such employee prior to the date of the Relevant Transfer including any act, fault or omission that leads to an Equal Pay Ruling;

74.11.3 where the costs of an Equal Pay Ruling are to be borne by the Councils pursuant to the provisions of Clause 74.11.2 in respect of all future payments to the Transferring Employees and/or where the same is applicable to any

New Employees following the Decision Date then the Unitary Charge shall immediately be adjusted in respect of all such future payments to the Transferring Employees and/or New Employees by adding the costs of such Equal Pay Ruling to the Unitary Charge as are appropriate on an ongoing basis until the date of any benchmarking or Market Testing. For the avoidance of doubt, in respect of all payments relating to the period prior to the Decision Date the Councils shall indemnify and keep indemnified in full the Contractor (for itself and for the benefit of each relevant Sub-Contractor) against all Direct Losses incurred by the Contractor in connection with or as a result of or in connection with the Equal Pay Ruling;

74.11.4 where any liability in relation to any Transferring Employee, in respect of his or her employment by the Councils or its termination which transfers in whole or part in accordance with TUPE and/or the Directive arises partly as a result of any act or omission occurring on or before a Relevant Service Transfer Date and partly as a result of any act or omission occurring after a Relevant Service Transfer Date the Councils shall indemnify and keep indemnified in full the Contractor or the relevant Sub-Contractor against only such part of the Direct Losses sustained by the Contractor or any Sub-Contractor in consequence of the liability as is reasonably attributable to the act or omission occurring before a Relevant Service Transfer Date.

74.11A The indemnities contained in Clauses 74.11.1 and 74.11.2 shall apply as if references in those Clauses 74.11.1 and 74.11.2 to any Transferring Employee also included a reference to any Relevant Employee and references to any act, fault or omission of the Councils also included a reference to the relevant Third Party Contractor employer of the Relevant Employee prior to a Relevant Service Transfer Date to the extent that the Councils recover any sum in respect of the subject matter of those indemnities under any indemnity or other legal entitlement they have against such Third Party Contractor. The Councils shall use all reasonable endeavours to recover any such sums under any such entitlement as mentioned in Clauses 74.11.1 and 74.11.2.

## **74.12 Contractor Indemnities**

74.12.1 The Contractor shall indemnify and keep indemnified in full, the Councils, and at the Councils' request each and every service provider who shall provide

any service equivalent to any of the Service immediately after expiry or earlier termination of this Contract (a "**Future Service Provider**") against:

- (a) all Direct Losses incurred by the Councils or any Future Service Provider in connection with, or as a result of, any claim or demand against the Councils or any Future Service Provider by (i) any person who is, or has been, employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Service or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor after a Relevant Service Transfer Date;
- (b) all Direct Losses incurred by the Councils or any Future Service Provider in connection with or as a result of a breach by the Contractor of its obligations under Clause 74.3.2; and
- (c) all Direct Losses incurred by the Councils or any Future Service Provider in connection with, or as a result of, any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Sub-Contractor in respect of all or any of the Relevant Employees) arising from, or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulations 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of a Relevant Service Transfer Date.

74.12.2 The Contractor shall indemnify and keep indemnified in full the Councils, against all Direct Losses incurred by the Councils in connection with or as a result of:

- (a) any claim by any Relevant Employee that any proposed or actual substantial change by the Contractor or any Sub-Contractor to the Relevant Employees' working conditions, or any proposed measures of the Contractor or the relevant Sub-Contractor are to that employee's detriment whether such claim arises before or after a Relevant Service Transfer Date; and

- (b) any claim arising out of any misrepresentation or misstatement whether negligent or otherwise made by the Contractor or a Sub-Contractor to the Relevant Employees or their representatives whether before, on or after a Relevant Service Transfer Date and whether liability for any such claim arises before on or after a Relevant Service Transfer Date.

The indemnities in this Clause 74.12.2 shall not apply in respect of any sum for which the Councils are to indemnify the Contractor or a relevant Sub-Contractor pursuant to Clause 74.11 or as a result of any adjustment to the Unitary Charge in accordance with Clause 74.8 or to the extent that the claim arises from a wrongful act or omission of the Councils or any Future Service Provider.

#### **74.13 Provision of Details and Indemnity**

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

#### **74.14 Compliance with Voluntary Principles**

The Contractor shall and shall procure that any relevant Sub-Contractor shall comply with the Voluntary Principles in relation to any New Employees.

#### **74.15 Retendering**

74.15.1 The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) Months immediately preceding the expiry of this Contract or following the service of a termination notice or as a consequence of the Councils notifying the Contractor of its intention to retender this Contract:

- (a) on receiving a written request from the Councils provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Service (the "**Assigned Employees**")

full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor (or of any Sub-Contractor) until immediately before the Termination Date, would be Returning Employees (the "**Retendering Information**");

- (b) provide the Retendering Information promptly and at no cost to the Councils;
- (c) notify the Councils forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- (d) be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Councils' prior written consent (such consent not to be unreasonably withheld or delayed);
- (e) be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Councils' prior written consent (such consent not to be unreasonably withheld or delayed); and
- (f) be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Service to provide the Service save with the Councils' prior written consent (such consent not to be unreasonably withheld or delayed).

74.15.2 The Contractor shall, and shall keep indemnified in full, the Councils (and at the Councils' request any Future Service Provider) against all Direct Losses arising from any claim by any party as a result of the Contractor (or Sub-Contractor) failing to provide or promptly to provide the Councils and/or any Future Service Provider where requested by the Councils with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in, or omission, from the Retendering

Information provided that this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Councils and was materially inaccurate or incomplete when provided.

#### **74.16 Termination of Contract**

74.16.1 On the expiry or earlier termination of this Contract, the Councils and the Contractor agree that it is their intention that TUPE shall apply in respect of the provision thereafter of any service equivalent to the Service but the position shall be determined in accordance with the law at the date of expiry or termination as the case may be and this Clause 74.16 is without prejudice to such determination.

74.16.2 For the purposes of this Clause 74.16 "**Returning Employees**" shall mean those employees wholly or mainly engaged in the provision of the Service as the case may be as immediately before the expiry or termination of this Contract whose employment transfers to the Councils or a Future Service Provider pursuant to TUPE. Upon expiry or earlier termination of this Contract for whatever reason (such date being termed the "**Return Date**"), the provisions of this Clause 74.16.2 will apply.

74.16.3 Without prejudice to Clause 74.16.2:

- (a) the Contractor shall remain (and procure that any Sub -Contractor shall remain) responsible for all the Contractor's (or Sub -Contractor's) employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the Councils and any Future Service Provider against all Direct Losses incurred by the Councils or any Future Service Provider resulting from any claim whatsoever, whether arising before on or after the Return Date by or on behalf of any of the Contractor's or Sub-Contractor's employees who do not constitute the Returning Employees;
- (b) the Councils shall use reasonable endeavours to procure (if it has legal or contractual powers to do so) that all wages, salaries and other benefits of the Returning Employees (who had been engaged in the provision of the Service) and all PAYE tax deductions and national

insurance contributions relating thereto in respect of the employment of the Returning Employees on and after the Return Date are satisfied;

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

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

#### **74.17 Offer of Employment on Expiry or Termination**

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

74.17.2 If an offer of employment is made in accordance with this Clause 74.17.2, the employment shall be on the same terms and conditions (except for entitlement to membership of an occupational pension scheme, which shall be dealt with in accordance with Clause 75 (Pensions)) as applied immediately before the expiry or earlier termination of this Contract including full continuity of employment, except that the Councils or Future Service Provider may, at their absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of Clause 74.15.

74.17.3 Where any such offer as referred to in Clause 74.17.1 is accepted, the Contractor shall indemnify and keep indemnified in full the Councils and/or any Future Service Provider on the same terms and conditions as those set out in Clause 74.12 as if there had been a Relevant Transfer in respect of each and every employee who has accepted any such offer and for the purposes of this Clause 74.17 each and every such employee shall be treated as if they were a Returning Employee.

74.17.4 Where any offer as referred to in Clause 74.17.1 is not accepted and TUPE does not apply, the relevant employee shall remain an employee of the Contractor or Sub-Contractor as appropriate.

#### **74.18 Sub-Contractors**

In the event that the Contractor enters into any Sub-Contract in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Clause 74 and Clause 75 (Pensions) and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep the Councils indemnified in full against all Direct Losses incurred by the Councils or any Future Service Provider as a result of, or in connection with, any failure on the part of the Contractor to comply with such terms.

### **75 PENSIONS**

#### **75.1 No Employees in LGPS**

75.1.1 The Councils warrant that none of the individuals presently employed by the Councils or by any existing third party contractor to the Councils who are engaged in the provision of the Service are, or are eligible to be, on or prior to

the Relevant Transfer, members of the Local Government Pension Scheme ("LGPS") or any pension scheme that is certified by the Government Actuary's Department as being broadly comparable to the LGPS.

75.1.2 The Councils hereby indemnify the Contractor and/or the Sub-Contractor (as applicable) on demand for and against all liabilities (including but not limited to all losses, damages, actions, costs expenses, demands, charges, fines and penalties) incurred by it or them which arise from any breach by the Councils of the warranty contained in Clause 75.1.1 above.

## **75.2 Pensions for Transferring Employees**

75.2.1 The Contractor shall (and shall procure that each relevant Sub-Contractor shall) comply with the requirements of TUPE and/or section 257 of the Pensions Act 2004 in respect of the provision of pension benefits for Transferring Employees for service with effect from the Relevant Transfer Date.

## **75.3 Pensions for New Employees**

75.3.1 The Contractor shall procure (and shall procure that any relevant Sub-Contractor shall procure) that any New Employee shall be provided with membership of or participation in one of the schemes or arrangements set out below:

- (a) membership of the LGPS where the employer has admission body status within the scheme and makes the requisite contribution; or
- (b) membership of a good quality employer pension scheme, being either:
  - (i) a contracted-out final salary based defined benefit scheme; or
  - (ii) a defined contribution scheme under which the employer must match employee contributions up to six per cent of basic pay (6%); or
- (c) a stakeholder pension scheme, under which the employer matches employee contributions up to at least six per cent of basic pay (6%).

#### **75.4 Co-operation on Termination**

On the termination or expiry of this Contract (for whatever reason) for a reasonable period both before and after such termination, the Contractor undertakes for itself that it will and shall procure that any relevant Sub -Contractor will co-operate fully with the Councils (and any successor which provides to the Councils services in the nature of any of or any part of the Service) in order to achieve a smooth transfer of the ongoing pension liabilities for future service.

#### **75.5 Pension Issues on Expiry or Termination**

The Contractor shall (and shall procure that each relevant Sub-Contractor shall):

- (a) maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub -Contractor in the provision of the Service on the expiry or termination of this Contract (including identification of such Employees);
- (b) promptly provide to the Councils such documents and information mentioned in Clause 75.5(a) which the Councils may reasonably request in advance of the expiry or termination of this Contract; and
- (c) fully co-operate (and procure that the trustees of the Contractor's scheme (if any such scheme exists) shall fully co -operate) with the reasonable requests of the Councils relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Contractor or any Sub - Contractor in the provision of the Service on the expiry or termination of this Contract.

### **76 EMPLOYEE ARRANGEMENTS**

#### **76.1 Rehabilitation of Offenders**

The Parties acknowledge that the provisions of the Rehabilitation of Offenders Act 1974 do not apply to any office or employment concerned with the provision to persons aged under ei ghteen (18) Years of accommodation, care, leisure and recreational facilities, schooling, social services, supervision or training, being an office or employment of such a kind as to enable the holder to have access in the course of his

normal duties to such persons and any other office or employment the normal duties of which are carried out wholly or partly on the premises where such provision takes place. Accordingly, before any employee of, or person engaged by the Contractor or any Sub-Contractor at the Facilities obtains access to such persons or commences work at such premises, the Contractor shall disclose to the Councils in the case of a New Employee the name and for any other such person the name and address and results of the Criminal Records Bureau check carried out pursuant to Clause 76.2 below and shall save in the case of any particular Relevant Employee in respect of whom the Councils had prior to the Service Commencement Date given or approved access to the particular premises question any person proposed to be employed or engaged or seeking to be employed or engaged in the provision of the Service at the Facilities and who may reasonably be expected in the course of such employment or engagement to have access to children or young persons as to whether he or she has any convictions for offences of any description the Contractor shall not without the prior written approval of the Councils employ or engage or permit or suffer to be employed or engaged in connection with the Service at the Facilities any such person who discloses any previous conviction or convictions or who shall subsequently be convicted of any offence.

## **76.2 Criminal Records Bureau**

76.2.1 The Contractor shall procure that in respect of all potential staff or persons performing any part of the Service (other than Transferring Employees) (each a "**Named Employee**") before a Named Employee begins to attend the Sites to perform any part of the Service:

- (a) each such Named Employee is questioned as to whether he or she has any convictions; and
- (b) the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each such Named Employee; and
- (c) a copy of the results of such check is notified to the Councils.

76.2.2 The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Criminal Records Bureau check pursuant to Clause 76.2.1, is employed or engaged

without the Councils' prior written consent (such consent not to be unreasonably withheld or delayed).

76.2.3 The Contractor shall and shall procure that the Sub-Contractors shall retain all evidence of criminal convictions disclosed by an individual pursuant to Clause 76.2.1, copies of the Criminal Records Bureau disclosures and satisfactory outcome of checks carried out in accordance with Clause 76.2 and provide or make available for inspection copies of such evidence, disclosures or checks to the Councils on request.

### **76.3 Conduct of Staff**

76.3.1 Whilst engaged at the Sites the Contractor shall and shall procure that any Sub-Contractor shall comply with the Councils' Policies relating to the conduct of staff and security arrangements. The Councils (acting reasonably) may:

- (a) instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any Sub-Contractor in the provision of the Service in accordance with the terms and conditions of employment of the employee concerned where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Councils shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
- (b) where the Councils have reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Service is undesirable, require the exclusion of the relevant employee from the relevant location(s),

and for the avoidance of doubt, it shall be unreasonable for the Councils to exercise such rights if it has not been agreed or determined that such person is unsuitable and/or if doing so would give rise to reasonable grounds on which such person could claim under applicable employment Legislation against the Contractor or the relevant Contractor Related Party.

76.3.2 The Contractor shall ensure that all employees involved in the performance and carrying out of the Service are aware of the need to carry out their duties in a quiet and orderly manner and deal with all Service Users and others with

whom they may come into contact, in a civil and courteous manner and that they refrain from behaviour likely to cause offence to users of the Service, employees of the Councils or their contractors, the general public or any others with whom they may come into contact.

#### **76.4 Contractor's Employees**

76.4.1 Other than as expressly provided in this Contract, the Contractor shall be entirely responsible for the employment and conditions of service of the Contractor's employees and shall procure that any Sub-Contractor of the Contractor is likewise responsible for its employees but shall and shall procure that the Sub-Contractors ensure that the Contractor and Sub-Contractor's employees comply with the Employee Code of Conduct.

76.4.2 The Contractor shall not allow any unpaid employees such as students, persons on government training schemes or work experience attachments to be involved in the performance and carrying out of the Service except with the specific prior written approval of the Councils' Representative. Such approval will only be considered if the Contractor is carrying out the Service fully in accordance with the requirements of the Contract and the persons concerned will be in addition to the employees the Contractor is already using to perform and carry out the Service. Any such application shall be in writing and submitted to the Councils' Representative at least one (1) Month before such persons are intended to commence work. The application shall give full details including the basis of attachment, duration, duties and previous experience and training of such persons. The Councils' Representative's decision on such attachments shall be final. Any persons who are permitted to be attached by the Councils' Representative shall be treated for the purposes of this Contract only as any other employee of the Contractor.

#### **76.5 Admission to the Sites**

The Contractor shall at least twenty (20) Business Days before the date on which the Contractor first carries out any of the Works or provides any part of the Service provide the Councils with a written list of the names and addresses of all employees or other persons who it expects may require admission to the Site in connection with the carrying out of the Works or provision of the Non-Ferrybridge Services, specifying the capacities in which those employees or other persons are concerned with the Works or Service and giving such other particulars as the Councils may require. The Contractor

shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty (20) Business Days before their inclusion. The decision of the Councils on whether any person is to be refused admission to the Site shall be final and conclusive and the Councils shall not be obliged to give reasons for their decision. For the avoidance of doubt, the provisions of this Clause 76.5 shall not apply to those individuals who shall be required by the Contractor or any Sub-Contractor to attend on the Site to provide emergency reactive services. In the case of such individuals, the Contractor shall or shall procure that any Sub-Contractor ensures that such individuals are accompanied at all times while on the Site by a member of the Contractor or Sub-Contractor's staff who has been properly notified to the Councils in accordance with the terms of this Clause 76.5.

#### **76.6 Indemnity**

The decision of the Councils as to whether any person is to be refused admission to the Site pursuant to Clauses 76.3 and 76.5 shall be final and conclusive. If the Councils decline to give reasons and/or where reasons are given are agreed or determined under the Dispute Resolution Procedure to be unreasonable for exercising their rights under Clauses 76.5, the Councils shall indemnify the Contractor and keep the Contractor indemnified from and against any Losses suffered or incurred by the Contractor, provided that the Contractor or the relevant Sub-Contractor has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

#### **76.7 Not Used**

#### **76.8 Removal from Sites**

76.8.1 The Contractor shall comply with and/or procure compliance with any notice issued by the Councils from time to time requiring the removal from any of the Sites of any person employed thereon who in the opinion of the Councils acting reasonably is not acceptable on the grounds of risk to themselves or a Councils' Related Party or property and that such persons shall not be employed again upon the Project without the written consent of the Councils.

76.8.2 At any time prior to the expiry of such notice the Contractor shall have the right to make representations to the Councils' Representative concerning an employee referred to in Clause 76.8.1 and the Councils' Representative shall take such representations into account (while being under no obligation in any way to accept them as valid). After taking such representations into account

the Councils' Representative shall be entitled at his entire discretion to withdraw such notice, to suspend its operation upon such conditions as he shall think fit or to confirm it. If the Councils' Representative confirms such notice then upon its expiry the Contractor shall remove such employee from the performance and carrying out of the Service. Save to the extent provided at Clause 76.6, the Councils and the Councils' Representative shall in no circumstances be liable either to the Contractor or to the employee in respect of any liability, loss or damage occasioned by such removal and the Contractor shall fully and promptly indemnify the Councils and the Councils' Representative against all Losses arising out of such liabilities or claims.

## **76.9 Relief from Deductions**

76.9.1 Where the Councils exercise their rights under this Clause 76 and it can be shown that:

- (a) the Contractor or any Sub-Contractor has acted in accordance with the relevant provisions of this Clause 76.9; and/or
- (b) the Councils did not act reasonably in instructing the Contractor not to employ an individual and/or in requesting his removal from a Site and/or in refusing admission to a Site,

then, without prejudice to Clause 76.6 the Councils shall give the Contractor such relief from Deductions for a reasonable period to allow the Contractor or any Sub-Contractor to make alternative arrangements to replace the person whose employment has been refused or whose removal has been requested. For the avoidance of doubt, any relief from Deductions given under this Clause 76.9 shall only be in respect of that part of the Service in which such person is or would have been engaged.

## **76.10 Resources and Training**

76.10.1 The Contractor shall procure that:

- (a) there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Service with the requisite level of skill and experience. This obligation shall include ensuring that there are sufficient staff to cover periods of

holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Service; and

- (b) all staff receive such training and supervision as is necessary to ensure the proper performance of the Service under this Contract.

#### **76.11 Personnel Policies and Procedures**

The Contractor shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Service, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Councils.

### **77 EQUAL OPPORTUNITY**

77.1 The Contractor shall comply with and maintain policies to ensure that both it and its Sub-Contractors comply with their and the Councils' statutory obligations under the Equal Pay Act 1970, Sex Discrimination Act 1975, Race Relations Act 1976 as amended by the Race Relations Amendment Act 2000, the Disability Discrimination Act 1995 and the Equality Act 2010 and, accordingly, shall not and shall use its best endeavours to secure that all servants, employees, or agents of the Contractor and all Sub-Contractors do not discriminate against any person because of their sex, sexuality, marital status, colour, race, nationality (including citizenship), national or ethnic origin or on the grounds of their disability in decisions to recruit, train, promote, discipline or dismiss employees.

77.2 The Contractor shall and shall procure that the Sub-Contractor shall observe, as far as is reasonably practicable, the Equal Opportunities Commission's Codes of Practice for employment and equal pay as approved by Parliament in 1985 and 1997 respectively, the Commission for Racial Equality's Code of Practice for employment as approved by Parliament in 1984 and the Code of Practice for employment issued by the then Department for Education and Employment as approved by Parliament in 1996 (or any codes which replace these).

77.3 In the event of any finding of unlawful sex, racial or disability discrimination being made against the Contractor or any Sub-Contractors during the Contract Period by any

court or tribunal, or of an adverse finding in any formal investigation (in the case of sex and racial discrimination only) by the Equal Opportunities Commission or the Commission for Racial Equality over the same period, the Contractor shall inform the Councils of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Councils to prevent repetition of the unlawful discrimination.

77.4 The Contractor shall promptly provide the Councils with full written details of any steps taken under Clause 77.3 above.

77.5 The Contractor's equal opportunities policy shall be set out in instructions circulated to those members of the Contractor's Staff and Sub-Contractor's Staff concerned with recruitment, training and promotion, in relevant documentation available to its Staff and others and in its recruitment advertisements and other relevant literature.

77.6 The Contractor shall provide such information as the Councils may reasonably request for the purpose of assessing the Contractor's compliance with the above conditions including, if requested, examples of any instructions, recruitment advertisements or other literature and details of the monitoring of applicants and employees.

## **PART VIII - TERMINATION**

### **78 DIRECT AGREEMENT**

The rights of the Parties to terminate this Contract pursuant to its terms are subject to the rights of the Senior Lenders pursuant to the Direct Agreement.

### **79 [REDACTED]**

### **80 TERMINATION ON COUNCILS DEFAULT**

80.1 If a Councils' Default has occurred and the Contractor wishes to terminate the Contract, it must serve a termination notice on the Councils within forty-five (45) Days of becoming aware of the Councils' Default.

80.2 The termination notice must specify the type of Councils' Default which has occurred entitling the Contractor to terminate.

80.3 The Contract will terminate on the Day falling forty -five (45) days after the date the Councils receive the termination notice, unless the Councils rectify the Councils' Default within thirty (30) Days of receipt of the termination notice.

## **81 COMPENSATION ON COUNCILS DEFAULT**

81.1 On termination of the Contract under Clause 80 (Termination on Councils' Default) the Councils shall pay the Contractor the Councils' Default Termination Sum in accordance with Clause 93 (Calculation and Payment of Early Termination Payments) on the Termination Date. Subject to Clauses 81.4 and Clause 81.5 and the Councils' Default Termination Sum shall be an amount equal to the aggregate of:

81.1.1 the Base Senior Debt Termination Amount;

81.1.2 the Contingent Loan Termination Amount; and

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

81.1.4 an amount which when taken together with:

(a) dividends (or other distributions) paid by the Contractor on its share capital on or before the Termination Date; and

(b) interest paid and principal repaid by the Contractor under the Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement)) on or before the Termination Date,

taking account of the actual timing of all such payments, gives a real internal rate of return on the share capital subscribed and amounts advanced under the Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement)) equal to the Base Case Equity IRR.

81.2 On payment of the amount referred to in Clause 81.1 above, the Councils shall have the option to require the Contractor to transfer its right, title and interest in and to the physical Assets to the Councils or as directed by the Councils.

81.3 If the aggregate of the amounts referred to in Clauses 81.1.1 and 81.1.4 is less than the Revised Senior Debt Termination Amount, then the Councils' Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Clause 81.1.3 provided always that:

(a) the amount referred to in Clause 81.1.3 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Councils that the amount will not be paid in payment (in whole or in part) of any Distribution; and

(b) if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.

81.4 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under clause 11.5.3(a) of the Direct Agreement then in addition to the deduction of the Distribution referred to in limb (v) of the definition of Revised Senior Debt Termination Amount, the Councils shall be entitled to set off the value of that Distribution a second time against the Councils' Default Termination Sum, provided that the amount of the Councils' Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

81.5 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.5.3(a) of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Councils to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Clause 81, then the Councils' Default Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Councils' Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

## **82 PERSISTENT BREACH**

82.1 If a particular breach by the Contractor in the Service Period (other than any breach for which Performance Points could have been awarded and/or Deductions could have been

made) has continued for more than thirty (30) Days or occurred more than four ( 4) times in any six (6) Month period then the Councils may serve a notice on the Contractor:

82.1.1 specifying that it is a formal warning notice;

82.1.2 giving reasonable details of the breach; and

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

82.2 If, following service of such a warning notice, the breach specified has continued beyond thirty (30) Days or recurred in three (3) Months within the three (3) Month period after the date of service, then the Councils may serve another notice on the Contractor:

82.2.1 specifying that it is a Final Warning Notice;

82.2.2 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

82.2.3 stating that if such breach continues for more than thirty (30) Days or recurs in three (3) or more Months within the six (6) Month period after the date of service of the Final Warning Notice, the Contract may be terminated.

82.3 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.

### **83 TERMINATION ON CONTRACTOR DEFAULT**

83.1 If a Contractor Default has occurred and the Councils wish to terminate the Contract, they must serve a termination notice on the Contractor provided that prior to determining whether to exercise this right of termination pursuant to limb (a) of Contractor Default, the Councils shall, acting reasonably and in good faith (by reference to the nature and gravity of the breach), determine whether action other than termination, including exercising its other contractual rights and remedies under this Contract (having regard to the nature of such rights and remedies) would be more appropriate to deal with the breach or circumstances giving rise to the breach and if the

Councils so determine, they shall not terminate this Contract as a result of the particular breach arising.

83.2 The termination notice must specify:

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

83.2.2 that in the case of any Contractor Default falling within the limbs (a), (g), (h), (i) and (j) of the definition of Contractor Default this Contract will terminate on the Day falling sixty (60) Days after the date the Contractor receives the termination notice, unless:

(a) in the case of a breach under limb (a) of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within thirty (30) Days after the date the Contractor receives the termination notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or

(b) in the case of any Contractor Default falling within limbs (a), (g), (h), (i) and (j) of the definition of Contractor Default the Contractor rectifies the Contractor Default within sixty (60) Days after the date the Contractor receives the termination notice; or

83.2.3 that in the case of any other Contractor Default falling within:

(a) limbs (b) to (f) and (k) to (u) this Contract will terminate on the date falling thirty (30) Days after the date the Contractor receives the termination notice; or

(b) limb (v) this Contract will terminate on the day falling thirty (30) Days after the Contractor receives the termination notice, unless it is rectified in accordance with Clause 122.5 (Replacement Security) within such thirty (30) Days period.

83.3 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 this Contract will continue.

83.4 If:

83.4.1 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 83.2.2 and the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice; or

83.4.2 in the case of a Contractor Default falling within limbs (a), (g), (h), (i), (j) and (v) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice,

the Councils may give written notice stating that the Contract will, subject to the terms of the Direct Agreement, terminate on the date falling seven (7) Days after the date of receipt of such notice.

83.5 If the Contractor fails to implement any rectification programme put forward under Clause 83.2.2(a) in accordance with its terms, this Contract will, subject to the terms of the Direct Agreement, terminate on the date falling ten (10) Business Days after the date of notification to the Contractor of such failure.

## **84 COMPENSATION ON TERMINATION ON CONTRACTOR DEFAULT**

### **84.1 Retendering Election**

84.1.1 On termination of this contract in accordance with Clause 79.3 [REDACTED] or Clause 83 (Termination on Contractor Default), subject to Clause 84.1.2, the Councils shall be entitled either to:

(a) retender the provision of the Project in accordance with Clause 84.2; or

(b) require an expert determination in accordance with Clause 84.3.

84.1.2 The Councils shall be entitled to retender the provision of the Project in accordance with Clause 84.2 if:

(a) the Councils notify the Contractor on or before the date falling twenty (20) Business Days after the Termination Date that it intends to retender; and

(b) there is a Liquid Market; and either:

- (i) the Senior Lenders have not exercised their rights to step -in under clause 5 (Representative) of the Direct Agreement; or
- (ii) the Contractor or Senior Lenders have not procured the transfer of the Contractor's rights and liabilities under this Contract to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,

but otherwise the Councils shall not be entitled to re -tender the Project and/or the provision of the Service and Clause 84.3 shall apply.

## **84.2 Retendering Procedure**

84.2.1 If the Councils elect to re tender the provision of the Project under Clause 84.1, then the following provisions shall apply:

- (a) the objective of the retendering procedure shall be to establish and pay to the Contractor the Highest Compliant Tender Price, as a result of the Tender Process;
- (b) the Councils shall (subject to any legal requirements preventing it from doing so) use their reasonable endeavours to complete the Tender Process as soon as practicable;
- (c) the Councils shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, but shall act reasonably in setting such requirements and terms, and if the ITSAD Facility has achieved Service Commencement and the SRF Offtake Contract has not already been terminated as at the Termination Date, the Councils shall (in the period from the Termination Date to the date of the New Contract) take a novation of the SRF Offtake Contract in accordance with the terms of the SRF Offtake Councils Direct Agreement but only:
  - (i) if based on information provided to the Councils in relation to the SRF Offtake Contract concerning the previous twenty -four (24) Months, the Councils reasonably consider that they will (subject to the terms of the SRF Offtake Councils Direct Agreement) be able to comply with any relevant obligations

contained in the relevant SRF Offtake Contract) at all times act in accordance with Legislation and Good Industry Practice; and

- (ii) provided that the Councils shall not be liable for any accrued or historic liabilities arising out of or in connection with the SRF Offtake Contract in respect of the period to the Termination Date;
- (d) the Councils shall structure the Tender Process so that:
- (i) bidders are required to price their bid on a basis that involves both the novation of the SRF Offtake Contract and no novation of the SRF Offtake Contract; and
  - (ii) to the extent that the Councils have in connection with the termination of this Contract exercised step in rights relating to individual elements of the Service (including Landfill and haulage), structure the Tender Process in a way that allows the bidders to price their bid to include the transfer of some or all of such relevant contracts to the bidder in addition to the bidders being able to bid without transfer of any such relevant contracts;
- (e) when determining the Highest Compliant Tender Price, such price shall be the highest of the prices which each bidder is required to submit in accordance with limb (d);
- (f) the Contractor authorises the release of any information by the Councils under the Tender Process which would otherwise be prevented under Clause 102 (Freedom of Information and Confidentiality) that is reasonably required as part of the Tender Process;
- (g) the Contractor may, at its own cost, appoint a person (the "**Tender Process Monitor**") to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Lenders on the Councils' compliance with the Tender Process and making representations to the Councils. The Tender Process Monitor will not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Councils to such effect as a condition of its appointment) but shall be entitled to advise the

Contractor as to whether it considers that the Councils have acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price;

- (h) the Tender Process Monitor shall enter into a confidentially agreement with the Councils in a form acceptable to the Councils and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Councils regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Councils shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 104 (Dispute Resolution);
- (i) for all or any part of a Month, falling within the period from the Termination Date to the Compensation Date, the Councils shall pay to the Contractor:
  - (i) the Post Termination Service Amount for that Month, on or before the date falling ten (10) Business Days after the end of that Month; and
  - (ii) the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.
- (j) if any Post Termination Service Amount is less than zero (0) then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price;
- (k) the Councils shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the

Joint Insurance Account on the date that the New Contract is entered into;

- (l) as soon as practicable after tenders have been received, the Councils shall (acting reasonably) determine the Compliant Tenders and shall either:
  - (i) notify the Contractor of the Adjusted Highest Compliant Tender Price; or
  - (ii) in circumstances only where the Termination Date has fallen at any time prior to the expiry of the Defects Liability Period where the Councils have received no Compliant Tenders within the time stipulated for the return of such tenders then the following provisions of this Clause 84.2 shall not apply to that termination and the provisions of Clause 84.3 shall apply;
- (m) if the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 104 (Dispute Resolution), the Councils shall be entitled to enter into a New Contract. The Councils shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling twenty (20) Business Days after it has been determined in accordance with Clause 104 (Dispute Resolution) and the Councils shall pay interest to the Contractor at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which had been withheld from the date specified in Clause 84.2.1(n) below until the date specified in this Clause 84.2.1(m). For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Councils shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in Clause 84.2.1(n) below, with the disputed amount being dealt with in accordance with this Clause 84.2.1(m);
- (n) subject to Clause 84.2.1(m) above, the Councils shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the date of the New Contract;

- (o) the discharge by the Councils of their payment obligation in Clauses 84.2.1(m) and/or 84.2.1(n) above shall be in full and final settlement of all the Contractor's claims and rights against the Councils for breaches and/or termination of this Contract and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Councils which arose prior to the Termination Date that has not already been taken into account in the Adjusted Highest Compliant Tender Price;
- (p) subject to Clauses 84.2.1(q) and 84.2.1(s) below, if the Councils have not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two (2) Years after the Termination Date then the following provisions of this Clause shall not apply to that termination and the provisions of Clause 84.3 shall apply instead;
- (q) if the Adjusted Highest Compliant Tender Price is zero (0) or a negative number then the Councils shall have no obligation to make any payment to the Contractor and with effect from the time that the Councils give notice of that event to the Contractor, the Councils shall be released from all liability to the Contractor for breaches and/or termination of this Contract and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Councils which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;
- (r) if the Adjusted Highest Compliant Tender Price is less than zero (0) then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Councils on the date of the New Contract;
- (s) the Councils may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under Clause 84.3 (No Retendering Procedure) by notifying the Contractor that this election has been made; and
- (t) if the Councils have received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to

complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days of such notification.

### **84.3 No Retendering Procedure**

84.3.1 If either the Councils are not entitled to retender the provision of the Project under Clause 84.1 or the Councils elect to require an expert determination in accordance with this Clause 84.3, or the provisions of Clause 84.2.1(l)(ii) apply, then the following procedure shall apply:

- (a) subject to Clause 84.3.1(b) below, the Contractor shall not be entitled to receive any Post Termination Service Amount;
- (b) if the Councils elect to require an expert determination in accordance with this Clause 84.3 after it has elected to follow the procedure under Clause 84.2, then the Councils shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with Clause 84.2;
- (c) in agreeing or determining the Estimated Fair Value of the Contract the Parties shall be obliged to follow the principles set out below:
  - (i) all forecast amounts (including Third Party Revenue) shall be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Contract;
  - (ii) the total of all future payments of the full Unitary Charge (without deductions) and Third Party Revenue and Capital Contribution forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;
  - (iii) the total of all costs forecast to be incurred by the Councils as a result of termination (which shall not include any such costs which in any case would have been incurred by the Councils regardless of whether termination had occurred) shall be

calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to Clause 84.2.1(j) above, such costs to include (without double counting):

- (A) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;
- (B) (where the SRF Offtake Contract has not been terminated prior to the date on which the Estimated Fair Value of the Contract is agreed or determined) the costs of the service forecast to be incurred by the Councils in providing the Project to the standard required by this Contract provided that in relation to the costs of SRF disposal, such costs shall be calculated on the basis of the lower of:
  - (aa) the costs incurred by the Councils on the basis that it had exercised its step-in rights under the SRF Offtake Councils Direct Agreement and was operating the SRF Offtake Contract until the expiry of the same; and
  - (bb) the costs incurred by the Councils on the basis that it was not operating the SRF Offtake Contract but including any costs and liabilities associated with the termination of such SRF Offtake Contract(s);
- (C) (where the SRF Offtake Contract has been terminated prior to the date on which the Estimated Fair Value of the Contract is agreed or determined) the costs of the service forecast to be incurred by the Councils in providing the Project to the standard required by this Contract;
- (D) all costs (and depreciation and other charges) in generating any Third Party Revenue forecast to be incurred such as to reduce the level of Third Party Revenue to the level of net income from that Third Party Revenue which the Contractor or the Operating Sub-Contractor (as the case

may be) would have been forecast to receive had the Contract not terminated; and

- (E) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Councils to complete construction or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the full Unitary Charge and the Third Party Revenue referred to in Clause 84.3.1(c)(ii) above.

- 84.3.2 If the Parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling thirty (30) Days after the date on which the Councils elected to require an expert determination in accordance with this Clause 84.3 (No Retendering Procedure), then the Estimated Fair Value of the Contract shall be determined in accordance with Clause 104 (Dispute Resolution).
- 84.3.3 The Councils shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling sixty (60) Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this Clause 84.3.
- 84.3.4 The discharge by the Councils of their obligation in Clause 84.3.3 is in full and final settlement of all the Contractor's claims and rights against the Councils for breaches and/or termination of this Contract or other Project Document whether in contract, tort, restitution or otherwise save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.
- 84.3.5 To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero (0), then an amount equal to the Adjusted Estimated Fair Value of the Contract shall be due and payable by the Contractor to the Councils on the Compensation Date.

84.3.6 On termination under Clause 83 (Termination on Contractor Default), the Councils shall have the option to require the Contractor to transfer to the Councils all of their right, title and interest in and to the Assets to the Councils.

## **85 TERMINATION ON FORCE MAJEURE**

85.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Councils 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 85.5 or 85.7).

85.2 Nothing in Clause 85.1 above shall affect any entitlement to make Deductions or any Deductions made as a result of Schedule 4 (Payment Mechanism) in the period during which the Force Majeure Event is subsisting.

85.3 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.

85.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

85.5 If no such terms are agreed on or before the date falling one hundred twenty (120) Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and eighty (180) Days, then, subject to Clause 85.6 below, either Party may terminate the Contract by giving thirty (30) Days' written notice to the other Party.

85.6 If the Contract is terminated under Clause 85.5 above or 85.7 below:

85.6.1 compensation shall be payable by the Councils in accordance with Clause 86 (Compensation on Termination for Force Majeure); and

85.6.2 the Councils may require the Contractor to transfer its title, interest and rights in and to any Assets to the Councils.

85.7 If the Contractor gives notice to the Councils under Clause 85.5 above that it wishes to terminate the Contract, then the Councils have the option either to accept such notice or to respond in writing on or before the date falling ten (10) Days after the date of their receipt stating that it requires the Contract to continue. If the Councils give the Contractor such notice, then:

85.7.1 the Councils shall pay to the Contractor, the Unitary Charge and Third Party Revenue in accordance with Clause 120.4 (Principles relating to Third Party Revenue), from the Day after the date on which this Contract would have terminated under Clause 85.5 as if the Service were being fully provided and assuming that the Councils were delivering to the Contractor the Guaranteed Minimum Tonnage of Contract Waste over that period; and

85.7.2 the Contract will not terminate until expiry of written notice (of at least thirty (30) Days) from the Councils to the Contractor that it wishes the Contract to terminate.

85.8 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.

## **86 COMPENSATION ON TERMINATION FOR FORCE MAJEURE**

86.1 On termination of the Contract under Clause 85 (Termination on Force Majeure), the Councils shall pay to the Contractor the Force Majeure Termination Sum in accordance with Clause 93 (Calculation and Payment of Early Termination Payments).

86.2 Subject to Clauses 86.4 to 86.6 below the Force Majeure Termination Sum shall be the amount equal to the aggregate of:

86.2.1 the Base Senior Debt Termination Amount;

86.2.2 the Contingent Loan Termination Amount; and

- 86.2.3 the Junior Debt less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements (excluding the Contingent Loan Agreement and the Letter of Credit (Contingent Loan Agreement));
- 86.2.4 all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid to the Shareholders of the Contractor (save to the extent deducted under Clause 86.2.3 above); and
- 86.2.5 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of the Contract and any Sub-Contractor Breakage Costs.
- 86.3 If the amounts referred to in Clauses 86.2.3 and/or 86.2.4 are less than zero (0), then, for the purposes of the calculation in Clause 86.1 they shall be deemed to be zero (0).
- 86.4 If the aggregate of the amounts referred to in Clauses 86.2.1, 86.2.3, 86.2.4 and 86.2.5 is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in Clause 86.2.5 provided always that:
- 86.4.1 the amount referred to in Clause 86.2.5 shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Councils that the amount will not be paid in payment (in whole or in part) of any Distribution; and
- 86.4.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.
- 86.5 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under clause 11.5.3(a) of the Direct Agreement then in addition to the deduction of the Distribution referred to in limb (v) of the definition of Revised Senior Debt Termination Amount, the Councils shall be entitled to set off the value of that

Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

- 86.6 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.5.3(a) of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Councils to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Clause 86, then the Force Majeure Termination Sum, shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 86.7 Such amount shall be determined and paid in accordance with Clause 93 (Calculation and Payment of Early Termination Payments).
- 86.8 On termination, the Councils shall have the option to require the Contractor to transfer to the Councils all of its right, title and interest in and to the Assets.

## **87 TERMINATION ON CORRUPT GIFTS AND FRAUD**

### **87.1 Corrupt Gifts and Fraud**

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

### **87.2 Termination on Corrupt Gifts and Fraud**

- 87.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Councils shall be entitled to act in accordance with Clauses 87.2.2 to 87.2.7 below.
- 87.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Councils may terminate the Contract by giving notice to the Contractor.
- 87.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Councils may give notice to the

Contractor of termination and the Contract will terminate, unless within thirty (30) 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 Service by another person.

87.2.4 If the Prohibited Act is committed by a Sub -Contractor or by an employee of that Sub-Contractor not acting independently of that Sub -Contractor, then the Councils may give notice to the Contractor of termination and the Contract will terminate, unless within thirty (30) Days of receipt of such notice the Contractor terminates the relevant Project Document and procures the performance of such part of the Works and/or Service by another person.

87.2.5 If the Prohibited Act is committed by an employee of a Sub -Contractor or the SRF Offtaker acting independently of that Sub -Contractor or the SRF Offtaker, then the Councils may give notice to the Contractor of termination and the Contract will terminate, unless within thirty (30) Days of receipt of such notice the Sub-Contractor or the SRF Offtaker terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Service by another person.

87.2.6 If the Prohibited Act is committed by any other person not specified in Clauses 87.2.2 to 87.2.5 above, then the Councils may give notice to the Contractor of termination and the Contract will terminate unless within thirty (30) Days of receipt of such notice, the Contractor procures the termination of such person's employment or agency and of the appointment of their employer (where not employed by the Contractor or the Sub -Contractors) and (if necessary) procures the performance of such part of the Works and/or the Service by another person.

87.2.7 Any notice of termination under this Clause shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the Party whom the Councils believe has committed the Prohibited Act;
- (c) the date on which the Contract will terminate, in accordance with the applicable provision of this Clause; and

(d) the Councils' chosen option under Clause 88 (Compensation on Termination for Corrupt Gifts and Fraud).

## **88 COMPENSATION ON TERMINATION ON CORRUPT GIFTS AND FRAUD**

88.1 On termination of the Contract in accordance with Clause 87.2 (Termination for Corrupt Gifts and Fraud), then the Councils shall pay the Contractor an amount equal to the Revised Senior Debt Termination Amount.

88.2 Such amount shall be determined and paid in accordance with Clause 93 (Calculation and Payment of Early Termination Payments).

88.3 If termination occurs then the Councils may require the Contractor to transfer its rights, title and interest in and to the Assets to the Councils.

## **89 VOLUNTARY TERMINATION BY THE COUNCILS**

### **89.1 Councils**

89.1.1 The Councils may terminate the Contract at any time on or before its Expiry Date by complying with their obligations under Clause 89.1.2 below.

89.1.2 If the Councils wish to terminate the Contract under this Clause 89 they must give notice to the Contractor stating:

(a) that the Councils are terminating the Contract under this Clause 89.1;

(b) that the Contract will terminate on the date specified in the notice, which must be a minimum of thirty (30) Days after the date of receipt of the notice; and

(c) whether the Councils have chosen to exercise their option under Clause 89.1.3 below.

89.1.3 On termination, the Councils shall have the option to require the Contractor to transfer to the Councils all of its right, title and interest in and to the Assets to the Councils or as directed by the Councils.

89.1.4 The Contract will terminate on the date specified in the notice referred to in Clause 89.1.2 above.

## **90 COMPENSATION ON VOLUNTARY TERMINATION**

On termination under Clause 89.1 above, the Councils shall pay the Contractor an amount equal to the amount payable under Clause 80 (Termination on Councils' Default) in accordance with Clause 93 (Calculation and Payment of Early Termination Payments).

## **91 TERMINATION FOR BREACH OF THE REFINANCING PROVISIONS**

### **91.1 Termination by the Councils for Breach of the Refinancing Provisions**

91.1.1 If the Contractor wilfully breaches Clause 59.1 (Refinancing) then the Councils may terminate the Contract at any time on or before its Expiry Date by complying with its obligations under Clauses 91.1.2 to 91.1.4 below.

91.1.2 If the Councils wish to terminate the Contract under this Clause, it must give notice to the Contractor stating:

- (a) that the Councils are terminating the Contract under this Clause 91.1;
- (b) that the Contract will terminate on the date falling thirty (30) Days after the date of receipt of the notice; and
- (c) whether the Councils have chosen to exercise their option under Clause 91.1.3 below.

91.1.3 On termination, the Councils shall have the option to require the Contractor to transfer to the Councils all of its right, title and interest in and to the Assets or as directed by the Councils;

91.1.4 The Contract will terminate on the date falling thirty (30) Days after the date of receipt of the notice referred to in Clause 91.1.2 above.

## **92 COMPENSATION ON TERMINATION FOR BREACH OF THE REFINANCING PROVISIONS**

On termination under Clause 91.1.4, the Councils shall pay the Contractor an amount equal to the amount payable under Clause 88 (Compensation on Termination on Corrupt Gifts and Fraud) in accordance with Clause 93 (Calculation and Payment of Early Termination Payments).

## 93 CALCULATION AND PAYMENT OF EARLY TERMINATION PAYMENTS

### 93.1 Set-Off on Termination

Except where expressly stated otherwise, the Councils are not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Clauses 81 (Compensation on Councils' Default), 86 (Compensation on Termination for Force Majeure), 88 (Compensation on Termination for Corrupt Gifts and Fraud), 90 (Compensation on Voluntary Termination) and 92 (Compensation on Termination for Breach of the Refinancing Provisions), save to the extent that after such an amount has been set off, the termination payment made would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

### 93.2 Method of Payment

93.2.1 The Councils shall pay to the Contractor the Termination Sum, together with interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt Rate on or before the date falling sixty (60) Days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with Clause 93.2.2 below.

93.2.2 The Councils may, other than on a Councils' Default or pursuant to Clause 8.3 (Failure to issue a Certificate), elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in instalments as follows:

- (a) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal:
  - (i) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant)

representing the Outstanding Principal on the dates (the "**Instalment Dates**") and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the Senior Financing Agreements had the Termination Date not occurred; and

(ii) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) shall be paid in equal instalments on the Instalment Dates;

(b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Senior Lenders on each Instalment Date under the terms of the Senior Financing Agreements had the Termination Date not occurred; or

(c) as the Parties may otherwise agree.

93.2.3 From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

93.2.4 If the Councils have elected to pay in accordance with Clause 93.2 above, it may (on twenty-eight (28) Days prior written notice to the Contractor) elect to pay the outstanding part of the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.

93.2.5 If the Councils:

(a) fail to make a payment to the Contractor in accordance with Clauses 93.2.1 and/or 93.2.2 and/or 93.2.3 above; or

(b) breach Clause 99.1 (Restrictions on the Councils)

the Contractor may issue a notice to the Councils declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

### **93.3 Certification**

The Councils shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time. The receipt by the Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof as relevant shall discharge the Councils' obligations to pay such sums to the Contractor.

### **93.4 Exclusivity of Remedy**

93.4.1 Subject to the Councils' entitlement to any surplus monies in the Alternative SRF Charged Account in accordance with the terms of Clauses 79.8 and 79.9 [REDACTED], any and all sums irrevocably paid by the Councils to the Contractor under this Part VIII (Termination) shall be in full and final settlement of each Party's rights and claims against the other for breaches and/or termination of this Contract or any Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of the Contractor to the Councils which the Councils have been unable to set off pursuant to Clause 56.6 (Set Off);
- (b) any antecedent liability of either Party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent that such liability has not already been taken into account in determining or agreeing the Councils' Default Termination Sum, Adjusted Highest Compliant Tender Price or Termination Sum, as the case may be; and
- (c) any liabilities arising in respect of any breach by any Party of their obligations under Clause 12 (Continuing Obligations) which arise or continue after the Termination Date to the extent not taken into account

in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract.

### **93.5 Termination of Agreement**

Notwithstanding any other provisions of this Contract, this Contract shall only terminate in accordance with the express provisions of this Contract.

## **94 TREATMENT OF ASSETS ON EXPIRY OF SERVICE PERIOD (HANDBACK) OR TERMINATION**

### **94.1 Surveys on Expiry**

94.1.1 Eighteen (18) Months prior to the Expiry Date, the Councils may procure the carrying out by a suitably qualified and independent surveyor (being independent of the Councils) 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 52 (Maintenance).

94.1.2 The Councils shall notify the Contractor in writing a minimum of seven (7) Days in advance of the date it wishes to carry out the final survey. The Councils 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) 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 Service.

94.1.3 When carrying out the final survey, the Councils shall use reasonable endeavours to minimise any disruption caused to the provision of the Service by the Contractor. The Contractor shall afford the Councils (free of charge) any reasonable assistance required by the Councils during the carrying out of the final survey. The cost of the final survey shall be borne by the Councils.

94.1.4 If the final survey shows that the Contractor has not complied with or is not complying with its obligations under Clause 52 (Maintenance), the Councils shall:

- (a) notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Assets to the standard

they would have been in if the Contractor had complied or was complying with its obligations under Clause 52 (Maintenance);

- (b) specify a reasonable period within which the Contractor must carry out such work; and
- (c) recover the cost of the survey from the Contractor by means of a withdrawal from the Retention Fund Account or a deduction from the next Unitary Charge or other means of reimbursement.

94.1.5 If the Contractor has been notified under Clause 94.1.4(a) that rectification and/or maintenance work is required, twelve (12) Months prior to the Expiry Date the Councils shall deduct the costs of that work as quantified by that survey from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of Monthly Unitary Charge and pay such amount into the Retention Fund Account.

94.1.6 The Contractor shall carry out the rectification and/or maintenance work referred to at Clause 94.1.4(a) to the Councils' reasonable satisfaction within the period specified and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

94.1.7 If and to the extent that the Contractor carries out the necessary rectification and/or maintenance work to the Councils' reasonable satisfaction within the specified period, the Councils shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account. If the amount in the Retention Fund Account is insufficient to cover the Contractor's costs, the Contractor shall bear the balance of its costs itself.

94.1.8 If and to the extent that the Contractor fails to carry out the necessary rectification and/or maintenance work to the Councils' reasonable satisfaction within the specified period, the Councils shall be entitled to carry out themselves, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account to pay for such work or, where there are insufficient funds in the Retention Fund Account, make deductions from the Monthly Unitary Charge to pay for such work.

94.1.9 If:

- (a) all the rectification and/or maintenance work identified by the Councils has been carried out to the Councils' reasonable satisfaction; and
- (b) all such work has been paid for by the Contractor; and
- (c) no termination notice given in accordance with this Contract is outstanding

then the Councils shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

#### **94.2 Transfer of documents etc. to the Councils**

The Contractor shall within twenty (20) Business Days of the Expiry Date (or, if earlier the Termination Date) hand over to the Councils all documents (or complete and accurate copies thereof), records, books, data and/or information in the possession, custody or power of the Contractor relating to and/or touching upon the Assets, the design, installation, maintenance and/or replacement of the Assets and the carrying out of the Service other than any of such documents, records, books, data and/or information of a financial nature which will not be relevant to the provision of services equivalent to the Service after the Termination Date or the Expiry Date (as the case may be). Documents, records, books, data and/or information kept or stored on computer shall be surrendered, released and/or handed over to the Councils by whatever means and in whatever format the Councils may reasonably require provided however nothing in this Clause 94.2 shall prevent the Contractor from retaining copies or certified copies of any such documents, records, books, data and/or information.

#### **94.3 Provision of Information**

The Contractor shall (subject to any condition imposed on the Contractor or any Sub - Contractor by Legislation):

- 94.3.1 following the service of a termination notice;
- 94.3.2 following termination of this Contract when a termination notice is not served; and
- 94.3.3 no later than six (6) Months and no earlier than twelve (12) Months before the Expiry Date,

supply to the Councils within twenty (20) Business Days of the relevant date or request all information reasonably required by the Councils to carry out the Service (including information on the identity, terms and conditions of employment of all employees of the Contractor or any sub-contractor (including the Sub-Contractors) employed in the provision of the Service and information relating to the Assets including the Equipment and the Facilities) and the Contractor warrants that, to the best of its knowledge and belief, such information is accurate in all material respects.

#### **94.4 Assignment of Rights etc.**

On the Expiry Date (or if earlier, on the Termination Date) the Contractor shall:

94.4.1 assign to the Councils or any person nominated by the Councils the benefit of all and any contracts or arrangements (as may be reasonably required by the Councils) it may have with any third parties (including for the avoidance of doubt Off Take Contracts) and shall, if for any reason it cannot assign the same declare a trust of all its beneficial interest in the same for the benefit of the Councils (subject to the Councils indemnifying the Contractor for any Losses, costs and expenses incurred by the Contractor as a result of, or consequent on, any such trust); and

94.4.2 take such action in relation to Intellectual Property Rights as is required pursuant to Clause 67 (Intellectual Property),

and the Contractor hereby irrevocably and unconditionally appoints the Councils as the Contractor's lawful attorney (and to the complete exclusion of any rights that the Contractor may have in such regard) for the purpose of generally executing or approving such deeds or documents and doing any such acts or things necessary to give effect to the provisions of this Clause 94.4 as the attorney may think fit.

#### **94.5 Transfer of Assets**

94.5.1 Subject to Clauses 94.5.2 and 94.5.3 below and unless the Councils elect in writing to the contrary, the Contractor shall transfer its rights, title and interest in and to such Assets (other than any accrued contractual or other rights existing on the Expiry Date, or the Termination Date, if earlier) (or such part of such Assets as may be required by the Councils) to the Councils (or any person nominated by the Councils), 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.

94.5.2 If despite using all reasonable endeavours to secure a contractual right to require a transfer, assignment or novation of:

- (a) Equipment and related contracts, agreements, guarantees, warranties, bonds and insurances; and/or
- (b) Third Party Waste and Off Take Contracts,

the obligation to transfer the relevant Equipment (or associated instruments), Third Party Waste Contract or Off Take Contract in this Clause 94.5 shall be an obligation to use reasonable endeavours to do so at the Termination Date or Expiry Date notwithstanding the absence of a contractual right. The Councils shall not be required to assume or discharge obligations or liabilities of the Contractor, Operating Sub-Contractor or SRF Offtaker nor shall they be entitled to assume any right, benefit or entitlement of the Contractor, the Operating Sub-Contractor or the SRF Offtaker, in each case in respect of any Off Take Contract or Third Party Waste Contract or matter referred to in Clause 94.5.1 to the extent that such obligations, liabilities, rights, benefits or entitlements have accrued prior to the date of the transfer.

94.5.3 Where the Councils have not made an election as referred to in Clause 94.5.4 below, the Contractor's obligation to transfer the Environmental Permit to a New Contractor or to the Councils is subject to the Environment Agency approving such transfer and accordingly the Councils shall co-operate (and shall procure that the New Contractor to so co-operates) with the Contractor in liaising with the Environment Agency insofar as this is required in order to facilitate the transfer of the Environmental Permit.

94.5.4 The Councils may elect that the Contractor's obligations under Clause 94.5.1 in connection with the transfer of the Environmental Permit be effected by surrendering the same in accordance with all applicable Guidance and upon such surrender the Contractor will be deemed to have complied with its aforementioned obligations.

## **94.6 Duty to Co-operate**

During the final six (6) Months of the Contract Period (where this expires by effluxion of time) or during the period from Service of any termination notice until the Termination Date, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Service (or any part of the Service) to the Councils or any New Contractor of such services the same or similar to the Service, and for the purposes of this Clause 94.6 the meaning of the term "co-operate" shall include:

- 94.6.1 liaising with the Councils and/or any New Contractor, and providing reasonable assistance concerning the Service and their transfer to the Councils or to such New Contractor;
- 94.6.2 allowing any New Contractor access (at reasonable times and on reasonable notice) to the Facility but not where to do so might reasonably interfere with or impede the provision of the Service;
- 94.6.3 providing to the Councils and/or to any New Contractor all and any information concerning the Site(s), the Works and the Service which is reasonably required for the efficient transfer of responsibility for performance of the Project but, for the avoidance of doubt, information which is commercially sensitive to the Contractor or a Sub-Contractor shall not be provided (and for the purposes of this Clause 94.6, commercially sensitive shall mean information which would if disclosed to a competitor of the Contractor or a Sub-Contractor give that competitor a competitive advantage over the Contractor or a Sub-Contractor and thereby prejudice the business of the Contractor or a Sub-Contractor); and
- 94.6.4 transferring its rights, title and interest in and to the Assets (or such part of the Assets as may be required by the Councils) to the New Contractor with effect on and from the Termination Date or the Expiry Date.

## **94.7 Transfer of Responsibility**

The Contractor shall use all reasonable endeavours:

- 94.7.1 to facilitate the smooth transfer of responsibility for the Service to a New Contractor or to the Councils, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is

calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer; and

94.7.2 to transfer all Necessary Consents (in each case to the extent that the same are transferable by Legislation) to the New Contractor, and shall provide all reasonable assistance to the New Contractor in relation to such transfer.

## **PART IX - GENERAL**

### **95 INDEMNITIES, GUARANTEES AND CONTRACTUAL CLAIMS**

#### **95.1 Indemnity**

95.1.1 The Contractor shall, subject to Clause 95.1.3, be responsible for, and shall release and indemnify the Councils, their employees, agents and contractors on demand from and against, all liability for Direct Losses resulting from any:

- (a) death or personal injury;
- (b) loss of or damage to property (including property belonging to the Councils or for which the Councils are responsible but excluding the land, buildings, plant, equipment and other assets which are the responsibility of the Contractor to provide under this Contract and which form part of the Facilities) (the "**Councils' Property**"); and
- (c) third party actions, claims and/or demands (other than any which are the subject of the indemnity in Clause 95.1.2) brought against the Councils or any Councils' 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 Councils' Property of the Contractor or any Contractor Related Party.

95.1.2 The Contractor shall, subject to Clause 95.1.3, be responsible for, and shall release and indemnify the Councils on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims or demands (as described in Clause 95.1.1(c) above) brought against the Councils or any Councils' Related Party for breach of statutory duty which

may arise out of or in consequence of a breach by the Contractor of its obligations under this Contract except where there is an express remedy available to the Councils under the main body clauses of this Contract, Schedule 4 (Payment Mechanism) and Schedule 5 (Performance and Monitoring) in respect of such breach.

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

- (a) any of the matters referred to in Clauses 95.1.1, 95.1.2 and 23.4 (Third Party Consents of Adjoining Owners and Indemnity) which arises as a direct result of the Contractor acting on the instruction of the Councils or the Councils' Representative;
- (b) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Councils and/or any Councils' Related Party or by the breach by the Councils of their obligations under this Contract;
- (c) in respect of any contractual third party claim made pursuant to Clause 95.1.1(c) and/or any claim made pursuant to Clauses 95.1.1, 95.1.2 and 23.4 (Third Party Consents of Adjoining Owners and Indemnity) to the extent that when taken together with any other claims made under those Clauses, the amount of the Contractor's uninsured losses exceeds [REDACTED] (indexed) for each single event or series of related events and/or [REDACTED] (indexed) in aggregate in any single Liability Period; or
- (d) any third party claims arising as a result of or in connection with the exercise by the Councils, or any individual Council of their power under section 237 of the Town and Country Planning Act 1990 (as amended) pursuant to Clause 18.12.1.

95.1.4 An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

## **95.2 Sole Remedy**

95.2.1 Subject to:

- (a) any other express right of the Councils pursuant to this Contract; and
- (b) the Councils' right to claim, on or after termination of this Contract, the amount of their 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 Councils pursuant to this Contract or has been taken into account to calculate any compensation payable by the Councils pursuant to Clauses 86 (Compensation on Termination for Force Majeure), 84 (Compensation on Termination on Contractor Default), 81 (Compensation on Councils' Default), 90 (Compensation on Voluntary Termination), 88 (Compensation on Termination on Corrupt Gifts and Fraud) and 92 (Compensation on Termination for Breach of the Refinancing Provisions),

the sole remedy of the Councils in respect of the Contractor's failure to provide the Service in accordance with this Contract shall be the operation of Schedule 4 (Payment Mechanism).

95.2.2 Nothing in this Clause 95.2 (Sole Remedy) shall prevent or restrict the right of the Councils to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

## **96 COMMON LAW RIGHTS OF THE CONTRACTOR**

96.1 Without prejudice to any entitlement of the Contractor:

96.1.1 to specific performance of any obligation under this Contract; or

96.1.2 to injunctive relief; or

96.1.3 to any other express right or remedy of the Contractor pursuant to this Contract,

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

96.2 For the avoidance of doubt (and subject to the Contractor's rights pursuant to Part VIII (Termination) of this Contract arising out of or in connection with any termination of this Contract), the Contractor will be entitled to enforce in contract, tort or otherwise any rights, benefits, entitlements or obligations under this Contract in circumstances where termination of this Contract pursuant to limb (b) and/or limb (c) of the definition of Councils' Default is or could become the sole express right or remedy for the purposes of Clause 96.1.

## 97 CONDUCT AND CONTROL OF CLAIMS

97.1 In this Clause 97:

97.1.1 "**Beneficiary**" means, in relation to an indemnity, warranty, covenant, representation or undertaking, the person receiving the benefit of the indemnity, warranty, covenant, representation or undertaking;

97.1.2 "**Claim**" includes a claim by any person (including a trade union or Relevant Authority); and

97.1.3 "**Covenantor**" means in relation to an indemnity, warranty, covenant, representation or undertaking given in this Contract the person giving the indemnity, warranty, covenant, representation or undertaking to the Beneficiary.

97.2 If the Beneficiary becomes aware of any matter which might give rise to a Claim for an indemnity, warranty, representation or undertaking from the Covenantor, the following provisions shall apply:

97.2.1 the Beneficiary shall as soon as reasonably practicable and in any event within ten (10) Business Days give written notice to the Covenantor of the matter which might give rise to a claim under or pursuant to a covenant, in respect of which the indemnity, warranty, representation or undertaking (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Covenantor with respect to the matter. If the matter has become the subject of any proceedings the Beneficiary shall (so far as it is able) give the notice within sufficient time to enable the Covenantor to contest the proceedings before any first instance judgement in respect of such proceedings is given;

97.2.2 the Beneficiary shall:

- (a) take such action and institute such proceedings and give such information and assistance as the Covenantor or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against any person (other than the Covenantor) the rights of the Beneficiary or its insurers in relation to the matter;
- (b) in connection with any proceedings related to the matter (other than against the Covenantor) use professional advisers nominated by the Covenantor or its insurers and, if the Covenantor or its insurers so request, allow the Covenantor or its insurers the exclusive conduct of the proceedings in each case on the basis that the Covenantor shall fully consult with the Beneficiary and keep the Beneficiary fully informed and the Covenantor shall fully indemnify the Beneficiary for all costs incurred as a result of any such request or nomination by the Covenantor or its insurers; and
- (c) not admit liability in respect of or settle the matter without the prior written consent of the Covenantor, such consent not to be unreasonably withheld or delayed.

97.3 If the Covenantor has notice of any actual or potential Claim it shall inform the Beneficiary and if the Covenantor has conduct of any litigation and negotiations in connection with a claim, the Covenantor shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the Claim, to cause the Beneficiary's interests to be materially prejudiced.

97.4 If the Covenantor does not elect to have conduct of any litigation and negotiations in connection with a Claim by notice in writing to the Beneficiary within seven (7) Days of the Beneficiary giving notice of the matter in accordance with Clause 97.2.1 the Beneficiary shall be at liberty to take such action in relation to that matter as it considers expedient to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter in question subject to a duty to use all reasonable endeavours to mitigate the liability of the Covenantor in respect of that Claim.

97.5 The Covenantor shall not pay or settle any claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed.

97.6 The Beneficiary shall be entitled at any time to give notice to the Covenantor 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). On receipt of such notice the Covenantor shall promptly take all steps necessary to transfer conduct of such Claim to the Beneficiary and shall provide to the Beneficiaries all reasonable co operation, access and assistance for the purposes of considering and resisting such Claim. Once the Beneficiary has taken over or retained (as the case may be) the conduct of any defence, dispute, compromise or appeal of any Claim it shall thereafter be solely responsible for any costs it incurs and shall not settle any claim or effect any compromise without the agreement of the Covenantor which approval will not be unreasonably withheld or delayed.

**98 NOT USED**

**99 ASSIGNMENT**

**99.1 Restrictions on the Councils**

99.1.1 The rights and obligations of the Councils under this Contract and the Leases 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 Councils under this Contract being:

- (a) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- (b) any local authority which has sufficient financial standing or financial resources to perform the obligations of the Councils under this Contract and the Direct Agreement; or
- (c) any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Councils 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 Councils under this Contract and the Direct Agreement.

## **99.2 Restrictions on the Contractor**

99.2.1 Subject to Clause 99.2.2. and the provisions of the Direct Agreement, the Contractor shall not give, bargain, sell, assign, underlet, charge 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 Councils.

99.2.2 The Contractor shall be entitled to assign the benefit of this Contract by way of security to the Senior Lenders pursuant to the Financing Agreements.

## **99.3 Exception**

99.3.1 Subject to Clause 99.3.2 and Clause 99.3.3 nothing in this Contract shall prohibit the Contractor from providing or procuring the provision of the Works or the Service from a Sub-Contractor of suitable financial standing, technical ability and good repute and whose identity has been notified to the Councils by the Contractor and approved by the Councils in writing prior to the appointment of such new Sub-Contractor (such approval not to be unreasonably withheld or delayed), provided also that the Contractor shall remain primarily liable for the Contractor's obligations under this Contract.

99.3.2 Where the Sub-Contractor is a replacement Construction Sub-Contractor or a replacement Operating Sub-Contractor, collateral warranties in the form of the Sub-Contractor Direct Agreement, with such amendments as may be agreed by the Councils (such agreement not to be unreasonably withheld or delayed), shall be duly executed by any such new Sub-Contractor and delivered to the Councils prior to the appointment of any such new Sub-Contractor.

99.3.3 The Councils shall have the right to require the Contractor to submit such information as the Councils shall reasonably require regarding the financial standing, technical ability and good repute of any new or replacement proposed Sub-Contractor, provided that it will be reasonable for the Councils to withhold their consent pursuant to Clause 99.3.1 in circumstances where such proposed Sub-Contractor:

- (a) is of suitable standing, technical ability and good repute but is unable to satisfy the Net Worth Test (unless all proposed replacements for the Operating Sub-Contractor (i) are of suitable standing, technical ability and good repute and (ii) cannot satisfy the Net Worth Test in which

case the Councils shall not have sufficient grounds to refuse their consent); or

- (b) is not of suitable standing, technical ability and good repute but is able to satisfy the Net Worth Test.

99.3.4 For the purposes of Clause 99.3.1, the Councils hereby approve the Sub - Contractors listed in the Service Delivery Plan and the Works Delivery Plan.

#### **99.4 Contractor's obligations**

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

#### **99.6 Sub-Contractors**

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

#### **99.7 Replacement of Sub-Contractors**

99.7.1 The rights set out in Clause 99.7.2 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 99.7.3 may be exercised no more than once.

99.7.2 On the substitution or replacement of the defaulting Operating Sub-Contractor or a defaulting sub-contractor to the Operating Sub -Contractor (in both cases provided that the Contractor is acting in compliance with Clause 9.2 (Changes to Ancillary Documents)), the Contractor may elect that, for the purposes of Clause 83 (Termination on Contractor Default) only:

- (a) any accrued Deductions; and/or
- (b) any warning notices or Final Warning Notices in respect of Clause 82 (Persistent Breach); and/or
- (c) any Performance Points,

shall be cancelled, and:

- (i) any failure to achieve a target referred to in Contractor Default limb (s); and

- (ii) any Non-Acceptance referred to in Contractor Default limb (t) during the three (3) Month period prior to the date of termination of the Operating Sub-Contract,

in each case shall be disregarded; and

- (iii) each Facility will be deemed to have been available for the twelve (12) Month period prior to the date of termination of the Operating Sub-Contract for the purposes of limb (r) of the definition of Contractor Default,

in each case relating to the Service or relevant part of the Service in respect of which the Operating Sub -Contractor or any sub -contractor to the Operating Sub-Contractor is being replaced. The Contractor shall notify the Council on or before the appointment of any such substitute or replacement Operating Sub-Contractor or sub -contractor whether it elects for this Clause 99.7 to apply on that occasion.

99.7.3 Where an election is made pursuant to Clause 99.7.2 on the substitution or replacement of the defaulting Operating Sub -Contractor or a defaulting sub -contractor to the Operating Sub-Contractor then, for the purposes of Clause 83 (Termination on Contractor Default) only:

- (a) any Deductions that shall accrue shall be ignored for the purpose of limb (q) of the definition of Contractor Default; and
- (b) no warning notices or Final Warning Notices in respect of Clause 82 (Persistent Breach) shall accrue for the purposes of limb (b) of the definition of Contractor Default; and
- (c) no Performance Points shall accrue for the purpose of limb (p) of the definition of Contractor Default,

during a period of forty (40) Business Days from the date on which that part of the Service is first provided by the replacement or substitute Operating Sub-Contractor or sub-contractor as appropriate, and

- (i) any failure to achieve a target referred to in Contractor Default limb(s); and

- (ii) any Non-Acceptance during the three (3) Month period prior to the date of termination of the Operating Sub-Contract,

in each case shall be disregarded; and

- (iii) each Facility will be deemed to have been available for the twelve (12) Month period prior to the date of termination of the Operating Sub-Contract for the purposes of limb (r) of the definition of Contractor Default,

in each case relating to the relevant part of the Service in respect of which the Operating Sub-Contractor or any sub-contractor to the Operating Sub-Contractor is being replaced. Deductions shall still be made from the Monthly Unitary Charge and/or Unitary Charge as the case may be during that period.

## **100 CHANGE OF OWNERSHIP**

### **100.1 Ownership Information**

- 100.1.1 The Contractor represents and warrants to the Councils that at the date of the Contract the legal and beneficial ownership of the Contractor and Holdco is as set out in Schedule 28 (Contractor and Holdco Information) and that, other than any Shareholder pre-emption rights, no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor or Holdco.
- 100.1.2 The Contractor shall inform the Councils as soon as reasonably practicable (and, in any event, within thirty (30) Days) of any Change of Ownership occurring.
- 100.1.3 The Councils may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, require the Contractor to inform it as soon as reasonably practicable and in any event within thirty (30) Days of receipt of the Councils' request for details, of any Change of Ownership.
- 100.1.4 The Contractor's obligations under Clauses 100.1.2 and 100.1.3 above shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiry.

100.1.5 The Contractor shall obtain the Councils' prior written consent (which may be given subject to conditions) to any Restricted Share Transfer of the Contractor or Holdco except that where any share transfer within limb (a) of the definition of Restricted Share Transfer arises as a consequence of the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Contractor or Holdco such consent is not required.

## **100.2 Change of Ownership**

100.2.1 Subject to Clauses 100.2.2, 100.2.3 and 100.2.4 the Contractor shall procure that no Change of Ownership may occur during the Lock In Period.

100.2.2 Any Change of Ownership arising as a consequence of:

- (a) subject to Clause 100.1.5, the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Contractor or Holdco, provided that any document (other than the Initial Financing Agreements) conferring security over any shares has been approved by the Councils (such approval not to be unreasonably withheld or delayed); or
- (b) any change in legal or beneficial 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
- (c) any transfer of shares in the Contractor or Holdco by Shanks PFI Investments Limited and/or an Affiliate of Shanks PFI Investments Limited to Shanks PFI Investments Limited and/or an Affiliate of Shanks PFI Investments Limited; or
- (d) any transfer of shares in the Contractor or Holdco by SSE Generation Limited and/or an Affiliate of SSE Generation Limited to SSE Generation Limited and/or an Affiliate of SSE Generation Limited; or
- (e) following the exercise by the Original Shareholders of their rights described in Clause 100.2.4 below any transfer of shares in the Contractor or Holdco by JLI and/or an Affiliate of JLI to JLI and/or an Affiliate of JLI,

shall be disregarded for the purpose of Clause 100.2.1 above.

### 100.2.3

- (a) Where, during the Lock In Period, the holder of any shares in the Contractor or Holdco is an Affiliate of Shanks PFI Investments Limited and that holder ceases to be an Affiliate of Shanks PFI Investment Limited it shall be a breach of this Clause 100.2.3(a) if the shares held by that holder are not within twenty (20) Days of that holder ceasing to be an Affiliate of Shanks PFI Investments Limited transferred to Shanks PFI Investments Limited or an Affiliate of Shanks PFI Investment Limited.
- (b) Where, during the Lock In Period, the holder of any shares held in the Contractor or Holdco is an Affiliate of SSE Generation Limited and that holder ceases to be an Affiliate of SSE Generation Limited it shall be a breach of this Clause 100.2.3(b) if the shares held by that holder are not within twenty (20) Days of that holder ceasing to be an Affiliate of SSE Generation Limited transferred to SSE Generation Limited or an Affiliate of SSE Generation Limited.
- (c) Where, during the Lock In Period, the holder of any shares in the Contractor or Holdco is an Affiliate of JLI and that holder ceases to be an Affiliate of JLI it shall be a breach of this Clause 100.2.3(c) if the shares held by that holder are not within twenty (20) Days of that holder ceasing to be an Affiliate of JLI transferred to JLI or an Affiliate of JLI.

100.2.4 On and from the date of this Contract and until the expiry of the Lock In Period the Original Shareholders shall be at liberty to transfer or otherwise dispose of any of their legal, beneficial or equitable interest in their shareholding in Holdco in whole or in part to JLI, and such transfer(s) shall be disregarded for the purpose of Clause 100.2.1 above provided that following such transfer(s):

- (a) Shanks PFI Investments Limited retains the legal, beneficial or equitable interest in at least twenty-five per cent (25%) of the shares in Holdco; and
- (b) SSE Generation Limited retains the legal, beneficial or equitable interest in at least ten per cent (10%) of the shares in Holdco,

and further provided that:

- (i) the JLI Net Worth at the time of any such transfer(s) is more than one hundred million pounds (£100,000,000); and
- (ii) any such transfer(s) shall be concluded on not less than one (1) Month's notice to the Councils no earlier than three (3) Months after the Commencement Date; and
- (iii) any such transfer(s) shall not be to any person whose business activities wholly or substantially comprise gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons.

## **101 STATUTORY RESPONSIBILITIES**

101.1 Save to the extent that this Contract sets out a procedure for the application for or obtaining of any Necessary Consent, approval or consent the Contractor will apply for any Necessary Consent, approval or consent in the normal way.

## **102 FREEDOM OF INFORMATION**

102.1 The Contractor acknowledges that the Councils are subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Councils' compliance with their Information disclosure requirements pursuant to the same in the manner provided for in Clauses 102.2 to 102.7 (inclusive) below.

102.2 Where the Councils receives a Request for Information in relation to Information that the Contractor is holding on their behalf and which the Councils do not hold themselves the Councils shall refer to the Contractor such Request for Information that they receive as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and the Contractor shall:

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

102.2.2 provide all necessary assistance as reasonably requested by the Councils in connection with any such Information, to enable the Councils 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.

102.3 Following notification under Clause 102.2, and up until such time as the Contractor has provided the Councils with all the Information specified in Clause 102.2.1, the Contractor may make representations to the Councils as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Councils shall be responsible for determining at their absolute discretion:

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

102.3.2 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 Councils.

102.4 The Contractor shall ensure that all Information held on behalf of the Councils is retained for disclosure for at least twelve (12) Years (from the date it is acquired) and shall permit the Councils to inspect such Information as requested from time to time.

102.5 The Contractor shall transfer to the Councils any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Business Days of receiving it.

102.6 The Contractor acknowledges that any lists provided by him or outlining Confidential Information, are of indicative value only and that the Councils may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

102.7 In the event of a request from the Councils pursuant to Clause 102.2 above:

102.7.1 in respect of information required to be disclosed in accordance with the FOIA (as determined by the Councils pursuant to Clause 102.3 above the

Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Councils of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Councils under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Councils' 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 Councils 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 Councils are entitled to under section 10 of the FOIA. In such case, the Councils 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 it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time and/or;

102.7.2 in respect of Information required to be disclosed in accordance with the Environmental Information Regulations (as determined by the Councils pursuant to Clause 102.3 above), the Contractor shall as soon as practicable, and in any event within five (5) Business Days of receipt of such request, inform the Councils of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Councils under Regulation 8 of the Environmental Information Regulations and as calculated in accordance with the Councils' published schedule of charges. Where the Contractor provides the Councils with copies of such Information, the Councils shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Councils is itself entitled reimbursement of such costs under the Environmental Information Regulations and in accordance with its published schedule of charges.

102.8 The Contractor acknowledges that (notwithstanding the provisions of Clause 103 Freedom of Information and Confidentiality) the Councils may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Councils under Part 1 of the Freedom of Information Act 2000 (the

"FOIA Code"), be obliged under FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

102.8.1 in certain circumstances without consulting with the Contractor; or

102.8.2 following consultation with the Contractor and having taken its views into account,

provided always that where Clause 102.8.1 applies the Councils shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

### **103 FREEDOM OF INFORMATION AND CONFIDENTIALITY**

103.1 The Parties agree that the provisions of this Contract and each Project Document shall, subject to Clause 103.2 below, not be treated as Confidential Information and may be disclosed without restriction.

103.2 Clause 103.1 above shall not apply to provisions of this Contract or a Project Document designated as Commercially Sensitive Information and listed in Part 1 of Schedule 29 (Commercially Sensitive Information) to this Contract which shall, subject to Clause 103.4 below, be kept confidential for the periods specified in that Part.

103.3 Subject to Clause 103.4, the Parties shall keep confidential all Confidential Information received by one (1) Party from the other Party relating to this Contract and Project 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.

103.4 Clauses 103.2 and 103.3, shall not apply to:

103.4.1 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;

103.4.2 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;

- 103.4.3 any disclosure to enable a determination to be made under Clause 104 (Dispute Resolution) or in connection with a dispute between the Contractor and any of its Sub-Contractors;
- 103.4.4 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;
- 103.4.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 103.4.6 any provision of information to the Parties' own professional advisers or Holdco or any Affiliates of the Contractor's insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under the Contract, or may wish to acquire shares in the Contractor and/or Holdco in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- 103.4.7 any disclosure by the Councils of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to:
- (a) any proposed New Contractor, its advisers and lenders, should the Councils decide to retender the Contract; or
  - (b) any person in connection with Clause 60 (Market Testing);
- 103.4.8 any registration or recording of the Necessary Consents and property registration required;

103.4.9 any disclosure of information by the Councils to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Councils for any purpose related to or ancillary to the Contract;

103.4.10 any disclosure for the purpose of:

- (a) the examination and certification of the Councils' or the Contractor's accounts; or
- (b) any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Councils have used their 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 103.4.4 above) compliance with FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither Clause 103.4.10(d) nor Clause 103.4.4 above shall permit disclosure of Confidential Information otherwise prohibited by Clause 103.3 above where that information is exempt from disclosure under section 41 of FOIA.

103.5 Where disclosure is permitted under Clause 103.4, other than Clauses 103.4.2, 103.4.4, 103.4.5, 103.4.8, and 103.4.10, the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

103.6 For the purposes of the Audit Commission Act 1998, the Audit Commission and the District Auditor may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractor and may require the Contractor and any Sub-Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under the Audit Commission Act 1998 in relation to the Contractor is not a function exercisable under this Contract.

- 103.7 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Councils in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Councils.
- 103.8 Where the Contractor, in carrying out its obligations under the Contract, is provided with information relating to Staff and Service Users, 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 the prior written consent of those Staff and Service Users and has obtained the prior written consent of the Councils.
- 103.9 On or before the Termination Date or the Expiry Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to Staff and Service Users including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Councils.
- 103.10 The Parties acknowledge that the Audit Commission has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 103.11 The provisions of this Clause 103 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

#### **104 DISPUTE RESOLUTION**

- 104.1 Any dispute arising in relation to any aspect of the Contract shall be resolved in accordance with this Clause 104.
- 104.2 **[REDACTED]**.
- 104.3 Without prejudice to Clause 104.2 above, either Party may give the other notice of intention to refer the dispute to adjudication and the adjudicator shall be selected in accordance with Clause 104.4 below.
- 104.4 The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:
- 104.4.1 there shall be two (2) panels of experts, one in respect of construction matters (the "**Construction Panel**") and one in respect of operational and maintenance matters (the "**Operational Panel**"). All the experts on each panel

shall be wholly independent of the Contractor, the Councils, the relevant Sub - Contractor and the major competitors of the Contractor or relevant Sub - Contractor;

104.4.2 the Construction Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Councils. Such appointments shall take place within twenty-eight (28) Days of the date of this Contract;

104.4.3 the Operational Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Councils. Such appointments shall take place on or before the Service Commencement Date;

104.4.4 if any member of a panel resigns during the term of the Contract, a replacement expert shall be appointed by the Contractor and the Councils as soon as practicable;

104.4.5 if the Councils and the Contractor are unable to agree on the identity of the experts to be appointed to the panel(s), the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within thirty (30) Days of any application for such appointment by either Party.

104.5 The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute. Within seven (7) Days of appointment in relation to a particular dispute, the Adjudicator shall require the Party which commenced the Adjudication (the "**Referring Party**") by giving notice of intention to commence adjudication pursuant to Clause 104.3 to provide its written submissions to the Adjudicator and the responding party (the "**Responding Party**") and details of remedies sought together with supporting documents within seven (7) Days of the appointment of the Adjudicator in accordance with Clause 104.4. The Responding Party shall thereafter provide to the Adjudicator and the Referring Party its written response within seven (7) Days (not including the date of receipt) thereafter.

104.6 In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty-eight (28) Days of appointment (or such other period as the Parties may agree after the reference). The Adjudicator may extend the period of twenty-eight (28) Days by up to fourteen (14) Days with the consent of the Referring Party. Unless and until revised, cancelled or varied by the Court, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision.

- 104.7 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 104.8 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 104.9 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.
- 104.10 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Parties shall procure that the Adjudicator does not, save as permitted by Clause 103 (Freedom of Information and Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.
- 104.11 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 104.12 If:
- 104.12.1 there is any dispute in respect of matters referred to in the Change Protocol, Clause 54 (Change in Law), Clause 60 (Market Testing), Clause 81 (Compensation on Councils' Default), Clause 84 (Compensation on Termination on Contractor Default), Clause 86 (Compensation on Termination for Force Majeure), Clause 88 (Compensation on Termination for Corrupt Gifts and Fraud), Clause 90 (Compensation on Voluntary Termination) or any other Clause in Part VIII (Termination); or
- 104.12.2 either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with Clause 104.6; or

104.12.3 both Parties agree,

then either Party may (within twenty -eight (28) Days of receipt of the Adjudicator's decision, where appropriate), notify the other Party of its intention to refer the dispute to the courts for final determination.

104.13 The Parties acknowledge that the courts have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract and to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one Party to the other.

104.14 The Parties shall continue to comply with, observe and perform all their obligations under this Contract regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause 104 and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this Clause 104.

104.15 If any dispute arising under this Contract raises issues which relate to:

104.15.1 any dispute between the Contractor and the Construction Sub -Contractor arising under the Construction Contract or otherwise affects the relationship or rights of the Contractor and/or the Construction Sub -Contractor under the Construction Contract (the "**Construction Contract Dispute**"); or

104.15.2 any dispute between the Contractor and the Operating Sub -Contractor arising under the Operating Sub -Contract or otherwise affects the relationship or rights of the Contractor and/or the Operating Sub -Contractor under the Operating Sub-Contract (the "**Operating Sub-Contract Dispute**");

104.15.3 the acts, omissions, breach or default of the SRF Offtaker (the "**SRF Offtaker Dispute**"),

then the Contractor may include as part of its submissions made to the Adjudicator submissions made by the Construction Sub -Contractor or by the Operating Sub -Contractor or the SRF Offtaker as appropriate.

104.16 The Adjudicator shall not have jurisdiction to determine the Construction Contract Dispute or the Operating Sub-Contract Dispute or SRF Offtaker Dispute but the decision of the Adjudicator or the court shall, subject to Clause 104.12, be binding on the Contractor and the Construction Sub -Contractor insofar as it determines the issues

relating to the Construction Contract Dispute and on the Contractor and the Operating Sub-Contractor insofar as it determines the issues relating to the Operating Sub-Contract Dispute and on the Contractor and the SRF Offtaker insofar as it determines the issues relating to the SRF Offtaker Dispute.

104.17 Any submissions made by the Construction Sub-Contractor or the Operating Sub-Contractor or the SRF Offtaker shall:

104.17.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and

104.17.2 concern only those matters which relate to the dispute between the Councils and the Contractor under this Contract.

104.18 Where the Construction Sub-Contractor, the Operating Sub-Contractor or the SRF Offtaker makes submissions in any reference before the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Councils and two-thirds by the Contractor.

104.19 The Councils shall have no liability to the Construction Sub-Contractor, the Operating Sub-Contractor or the SRF Offtaker arising out of or in connection with any decision of the Adjudicator or the court in respect of the costs of the Construction Sub-Contractor or the Operating Sub-Contractor or the SRF Offtaker in participating in the resolution of any dispute under this Contract.

104.20 The Contractor shall not allow the Construction Sub-Contractor, the Operating Sub-Contractor or the SRF Offtaker access to any document relevant to the issues in dispute between the Councils and the Contractor save where:

104.20.1 the document is relevant also to the issues relating to the Construction Contract Dispute, the Operating Sub-Contract Dispute or the SRF Offtaker Dispute as the case may be; and

104.20.2 the Contractor has first delivered to the Councils a written undertaking from the Construction Sub-Contractor and/or the Operating Sub-Contractor and/or the SRF Offtaker (as appropriate) addressed to the Councils that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or court or any professional adviser engaged by the

Construction Sub-Contractor, the Operating Sub -Contractor or the SRF Offtaker (as appropriate) to advise in connection with the dispute.

## **105 PUBLIC RELATIONS AND PUBLICITY**

105.1 The Contractor shall not by itself, its employees or agents (and shall procure that its Sub-Contractors do not) communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract without the prior written approval of the Councils otherwise than in accordance with the Communication Protocol.

105.2 No facilities to photograph or film in or upon any property used in relation to the Project (except the Ferrybridge Facility) shall be given or permitted by the Contractor unless in accordance with the Communications Protocol or where the Councils have given their prior written approval.

## **106 SUB-CONTRACTOR LOSSES**

### **106.1 Sub-Contractor Losses**

106.1.1 Where:

- (a) a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and
- (b) the Contractor subsequently makes a claim against the Councils under this Contract in relation to such compensation and/or relief,

the Councils waive any right to defend the Contractor's claim on the ground that the Contractor is only required to pay compensation or grant relief to the Sub -Contractor under the sub-Contracts to the extent that the same is recoverable from the Councils.

## **107 WAIVER**

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

107.2 No waiver under Clause 107.1 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.

## **108 SEVERABILITY**

If any term, condition or provision contained in 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 or enforceability of the remaining parts of this Contract.

## **109 COUNTERPARTS**

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

## **110 LAW OF THE CONTRACT AND JURISDICTION**

The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales and subject to Clause 104 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the courts of England and Wales to settle any disputes which arise out of or in connection with this Contract.

## **111 NOT USED**

## **112 THIRD PARTY RIGHTS**

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.

## **113 NOT USED**

## **114 RELATIONSHIP OF THE PARTIES**

Each of the Parties is an independent contractor and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or (except as expressly provided in this Contract) of principal/agent or of employer/employee nor are the Parties engaging in a joint venture through participation in the Project. The Contractor shall not have any right to act on behalf of the Councils nor to bind the Councils by contract or otherwise, and the Councils shall not have any right to act on behalf of the Contractor nor to bind the Contractor by contract or otherwise, except to the extent expressly permitted by the terms of this Contract.

## 115 NOTICES

### 115.1 Form of Notice

115.1.1 Any demand, notice or other communication given in connection with or required by this Contract shall be made in writing (entirely in the English language) and shall be delivered to, or sent by pre-paid first class post to, the recipient at its registered office or its address stated in this Contract (or such other address as may be notified in writing from time to time) or sent by facsimile transmission to the recipient, in the case of:

(a) the Councils:

- (i) for all demands, notices or other communication other than termination notices issued by the Contractor pursuant to Clause 80.1 (Termination on Councils' Default) to:

The Chief Executive, Rotherham Borough Council (as Lead Authority), Riverside House, Main Street, Rotherham S60 1AE. Tel: (01709) 382121, Fax: (01709) 823598; and

- (ii) any termination notice issued by the Contractor pursuant to Clause 80.1 (Termination on Councils' Default) to:

The Chief Executive, Rotherham Borough Council (as Lead Authority for Barnsley, Doncaster and Rotherham Waste Partnership PFI Project), Riverside House, Main Street, Rotherham S60 1AE. Tel: (01709) 382121, Fax: (01709) 823598;

with a copy of such termination notice to each of:

- (iii) The Chief Executive, Barnsley Metropolitan Borough Council, The Town Hall, Barnsley, South Yorkshire S70 2TA. Tel: (01226) 773006, Fax: (01226) 772499; and
- (iv) The Chief Executive, Doncaster Borough Council, PO Box 71, Copley House, Waterdale, Doncaster DN1 3EQ. Tel: (01302) 862230, Fax: (01302) 862232;

- (b) the Contractor, to the Company Secretary, 3SE (Barnsley, Doncaster & Rotherham) Limited, Duned in House, Auckland Park, Mount Farm, Milton Keynes MK1 1BU; Tel: (01908) 650580, Fax: (01908) 650651

and unless otherwise expressly stated in this Contract marked for the attention of the Councils' Representative in the case of the Councils, and the Contractor's Representative in the case of the Contractor.

## **115.2 Service**

115.2.1 Any such demand, notice or communication shall be deemed to have been duly served:

- (a) if delivered by hand, when left at the proper address for service; or
- (b) if given or made by pre-paid first class post, two (2) Business Days after being posted; or
- (c) if sent by facsimile, on the day of transmission provided that a confirmatory copy is on the same day that the facsimile is transmitted, sent by pre-paid first class post in the manner provided for in this Clause 115.2

provided in each case that if the time of such deemed service is either after 4.00 pm on a Business Day or on a day other than a Business Day service shall be deemed to occur instead at 10.00 am on the following Business Day.

## **116 ENTIRE AGREEMENT**

116.1 Except where expressly provided in this Contract, this Contract and the documents referred to herein and completed at Financial Close to which the Councils are party constitute 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.

## **117 AMENDMENTS**

No amendment to or modification of this Contract shall be valid or binding on any Party unless it is made in writing, refers expressly to this Contract and is executed by the Parties concerned or their duly authorised representative.

## 118 COMPLAINTS

The Contractor shall co-operate fully with the Local Ombudsman as defined in the Local Government Act 1974 and with the Councils in the investigation of a complaint against the Councils which relates to the defective or non-performance of this Contract by the Contractor.

## 119 EMU CONTINUITY OF CONTRACT

119.1 The Parties confirm that the occurrence or non occurrence of an event associated with economic and monetary union in the European Union will not have the effect of altering any term of, or discharging or excusing performance under this Contract or any transaction, or give a Party the right unilaterally to alter or terminate this Contract or any transaction.

119.2 The words "**an event associated with economic and monetary union in the European Union**" shall include each and any combination of the following:

119.2.1 the introduction of, changeover to or operation of a single or unified European currency (whether known as the Euro or otherwise);

119.2.2 the fixing of conversion rates between a member state's currency and the new currency or between the currencies of member states;

119.2.3 the substitution of that new currency for the ECU as the unit of account of the European Union;

119.2.4 the introduction of that new currency as lawful currency in a member state;

119.2.5 the withdrawal from legal tender of any currency which, before the introduction of the new currency, was lawful currency in one of the member states;

119.2.6 the disappearance or replacement of a relevant rate option or other price source for the ECU or the national currency of any member state, or the failure of the agreed sponsor (or successor sponsor) to publish or display a relevant rate, index, price, page or screen; or

119.2.7 the withdrawal of any member state from a single or unified European currency. With effect from the date (if any) that the United Kingdom adopts the Euro as its lawful currency in substitution for Sterling (the "**Euro Effective Date**"): **Euro**

- (a) to the extent relevant all amounts calculated in Sterling shall be converted from Sterling to Euros in accordance with the fixed conversion rate provided for by law;
- (b) no payments falling due after the Euro Effective Date which would have been payable in Sterling after this Contract but for the adoption of the Euro by the United Kingdom as its lawful currency shall be made in Sterling or national currency units.

## **120 REVISION AND CUSTODY OF FINANCIAL MODEL**

### **120.1 Updating the Base Case**

120.1.1 Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Contract or where the Parties mutually agree otherwise) be determined in accordance with this Clause 120. Where for the purposes of this Clause 120 the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor, in consultation with the Councils, to reflect the cumulative impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken. In calculating the Estimated Change in Project Costs and in assessing other adjustments to be made to the Base Case arising from the Relevant Event, the Contractor shall be entitled to take into account, inter alia:

- (a) any Change in Costs and Change in Revenue (save to the extent, in either case, such directly affect the SRF Offtaker where the SRF Offtaker incurs no Capital Expenditure);
- (b) reasonable economic assumptions prevailing at the time; and
- (c) changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

provided that the Councils shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the terms of this Contract, including (to the extent so borne by the Contractor under this Contract) changes in VAT rates, taxation rates, RPIX and the impact of

adjustments and/or Deductions in accordance with Schedule 4 (Payment Mechanism).

## **120.2 Application to the Base Case**

120.2.1 Where, pursuant to this Contract, either Party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case (with the exception of payment of the Councils' Refinancing Gain share to which Clause 59 (Refinancing) shall apply), the adjustment to the Unitary Charge due shall be as required to ensure that, by reference to the Base Case adjusted under this Clause 120, the Contractor is left in a no better and no worse position than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Unitary Charge required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

## **120.3 No Better No Worse**

120.3.1 Any reference in this Contract to "**no better and no worse**" or to leaving the Contractor in a "**no better and no worse position**" shall be construed:

- (a) by reference to the Contractor's rights, duties and liabilities under or arising pursuant to performance of this Contract, the Financing Agreements, the Construction Contract the SRF Offtake Contract and the Operating Sub-Contract;
- (b) where necessary, as incorporating the consequence of any funding obtained or used by the Contractor to implement the Relevant Event which has been previously agreed by the Councils or determined in accordance with this Contract; and
- (c) by reference to the Contractor's ability to generate Third Party Revenue and perform its obligations and exercise its rights under this Contract, the Financing Agreements, the Construction Contract, SRF Offtake Contract, the Operating Sub-Contract and any other Project Documents or Ancillary Documents; and
- (d) so as to ensure that:

- (i) the Contractor is left in the position which is no better and no worse in relation to the Key Financial Indicators by reference to the version of the Base Case (applicable immediately prior to the Relevant Event) had the Relevant Event not occurred; and
- (ii) the ability of the Contractor to generate Third Party Revenue and to comply with this Contract, the Financing Agreements, the Construction Contract, SRF Offtake Contract, the Operating Sub-Contract and any other Project Documents or Ancillary Documents is not adversely affected or improved as a consequence of the Relevant Event.

#### **120.4 Principles relating to Third Party Revenue**

For the purposes of calculating the financial adjustment pursuant to the provisions of this Clause 120 the following principles shall be applied:

120.4.1 if the Relevant Event arises from a Qualifying Change in Law (or any event that this Contract deems to be a Qualifying Change in Law), subject to Clause 120.4.2 the adjustment to the Unitary Charge due in respect of the resulting lost Third Party Revenue (the **"Qualifying Change in Law TPR Adjustment"**), shall compensate the Contractor for the Third Party Revenue that would otherwise have been receivable but for the occurrence of a Qualifying Change in Law;

120.4.2 when taken together with all other Third Party Revenue receivable by the Contractor, the Qualifying Change in Law TPR Adjustment:

- (a) where prior to the occurrence of the Qualifying Change in Law the Contractor has been generating Third Party Revenue at levels equal to or in excess of those forecast in the Base Case shall not result in the Third Party Revenue exceeding the levels forecast in the Base Case; and
- (b) where the Contractor has been generating Third Party Revenue at levels below those forecast in the Base Case, shall not result in Third Party Revenue exceeding an amount equal to the lower of:
  - (i) the Third Party Revenue forecast in the Base Case; and

- (ii) the average Third Party Revenue received by the Contractor and the Operating Sub-Contractor over the twenty-four (24) Month period immediately prior to the occurrence of the Qualifying Change in Law (provided, in the event the Qualifying Change in Law TPR Adjustment occurs in the period prior to the date falling two (2) Contract Years from the Service Commencement Date:
  - (A) where prior to or fewer than twelve (12) Months since the Service Commencement Date, the amount of any Qualifying Change in Law TPR Adjustment compensated shall be as forecast in the Base Case. If subsequently the actual Third Party Revenue received during the period prior to or fewer than twelve (12) Months since the Service Commencement Date is calculated as being less than the amount compensated, the amount by which the Third Party Revenue received is less than the amount compensated shall be deducted from the Contractor's share of any future excess Third Party Revenue); or
  - (B) where there have been more than twelve (12) Months but fewer than twenty-four (24) Months since the Service Commencement Date, or the Parties otherwise agree that there is insufficient data for an average monthly Qualifying Change in Law TPR Adjustment to be calculated over twenty-four (24) Months, the applicable period shall be reduced to such reasonable period as the Parties may agree. If subsequently the actual Third Party Revenue received during the period from twelve (12) Months to twenty-four (24) Months since the Service Commencement Date is calculated as being less than the amount compensated, the amount by which the Third Party Revenue received is less than the amount compensated shall be deducted from the Contractor's share of any future excess Third Party Revenue;

120.4.3 if the Relevant Event arises from a Compensation Event (or an event the Contract deems to be a Compensation Event), the adjustment to the Unitary Charge due in respect of the resulting lost Third Party Revenue (the "**Compensation Event TPR Adjustment**") subject to Clause 120.4.4, shall compensate the Contractor for the Third Party Revenue that would otherwise have been receivable but for the occurrence of the Compensation Event;

120.4.4 when taken together with all other Third Party Revenue receivable by the Contractor, the Compensation Event TPR Adjustment:

(a) where prior to the occurrence of the Compensation Event the Contractor has been generating Third Party Revenue at levels equal to or in excess of those forecast in the Base Case, shall not result in the Third Party Revenue not exceeding the levels forecast in the Base Case; and

(b) where the Contractor has been generating Third Party Revenue at levels below those forecast in the Base Case, shall not result in Third Party Revenue exceeding an amount equal to the lower of:

(i) the Third Party Revenue forecast in the Base Case; and

(ii) the average Third Party Revenue received by the Contractor and the Operating Sub-Contractor over the twenty-four (24) Month period immediately prior to the occurrence of the Compensation Event (provided, in the event the Compensation Event TPR Adjustment occurs in the period prior to the date falling two (2) Contract Years from the Service Commencement Date:

(A) where prior to or fewer than twelve (12) Months since the Service Commencement Date, the amount of any Compensation Event TPR Adjustment compensated shall be as forecast in the Base Case. If subsequently the actual Third Party Revenue received during the period prior to or fewer than twelve (12) Months since the Service Commencement Date is calculated as being less than the amount compensated, the amount by which the Third Party Revenue received is less than the amount compensated

shall be deducted from the Contractor's share of any future excess Third Party Revenue; or

- (B) where there have been more than twelve (12) Months but fewer than twenty-four (24) Months since the Service Commencement Date, or the Parties otherwise agree that there is insufficient data for an average monthly Compensation Event TPR Adjustment to be calculated over twenty-four (24) Months, the applicable period shall be reduced to such reasonable period as the Parties may agree. If subsequently the actual Third Party Revenue received during the period from twelve (12) Months to twenty-four (24) Months since the Service Commencement Date is calculated as being less than the amount compensated, the amount by which the Third Party Revenue received is less than the amount compensated shall be deducted from the Contractor's share of any future excess Third Party Revenue;

120.4.5 if the Relevant Event arises from a Councils' Change the adjustment to the Unitary Charge shall take in account the resulting lost Third Party Revenue and any net change in the cost of generating such Third Party Revenue such that when taken together with all other Third Party Revenue receivable by the Contractor and the net cost of generating such Third Party Revenue, put the Contractor in a no better, no worse position;

120.4.6 if the Councils issue a notice to continue in accordance with Clause 85.7 (Termination on Force Majeure), then subject to Clause 120.4.7 the adjustment to the Unitary Charge due in respect of the resulting loss in Third Party Revenue (the "**Force Majeure TPR Adjustment**"), shall compensate the Contractor for the Third Party Revenue that would otherwise have been receivable but for the occurrence of the Force Majeure Event;

120.4.7 when taken together with all other Third Party Revenue receivable by the Contractor, the Force Majeure TPR Adjustment:

- (a) where prior to the occurrence of the Force Majeure Event the Contractor has been generating Third Party Revenue at levels equal to

or in excess of those forecast in the Base Case, shall not result in Third Party Revenue exceeding the levels forecast in the Base Case; and

(b) where the Contractor has been generating Third Party Revenue at levels below those forecast in the Base Case, shall not result in Third Party Revenue exceeding an amount equal to the lower of:

(i) the Third Party Revenue forecast in the Base Case; and

(ii) the average Third Party Revenue received by the Contractor and the Operating Sub-Contractor over the twenty-four (24) Month period immediately prior to the occurrence of the Force Majeure Event (provided, in the event the Force Majeure TPR Adjustment occurs in the period prior to the date falling two (2) Contract Years from the Service Commencement Date:

(A) where prior to or fewer than twelve (12) Months since the Service Commencement Date, the amount of any Force Majeure TPR Adjustment compensated shall be as forecast in the Base Case. If subsequently the actual Third Party Revenue received during the period prior to or fewer than twelve (12) Months since the Service Commencement Date is calculated as being less than the amount compensated, the amount by which the Third Party Revenue received is less than the amount compensated shall be deducted from the Contractor's share of any future excess Third Party Revenue; or

(B) where there have been more than twelve (12) Months but fewer than twenty-four (24) Months since the Service Commencement Date, or the Parties otherwise agree that there is insufficient data for an average monthly Force Majeure TPR Adjustment to be calculated over twenty-four (24) Months, the applicable period shall be reduced to such reasonable period as the Parties may agree. If subsequently the actual Third Party Revenue received during the period from twelve (12) Months to twenty-four (24) Months since the Service Commencement Date is calculated as being less than the amount compensated,

the amount by which the Third Party Revenue received is less than the amount compensated shall be deducted from the Contractor's share of any future excess Third Party Revenue.

#### **120.5 Replacement of Base Case**

Any Base Case produced following adjustments in accordance with this Clause 120 shall, when it is approved by the Councils (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Contract until its further amendment in accordance with the Contract.

#### **120.6 Amendments to Logic and/or Formulae**

- 120.6.1 Wherever possible adjustments shall be carried out without altering the logic and formulae incorporated in the Base Case in any way whatsoever.
- 120.6.2 Where it is necessary to amend the logic or formulae incorporated in the Base Case to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles.
- 120.6.3 Where any amendments is made to the logic or formulae incorporated in the Base Case, the Base Case, as amended, shall first be run as at the date immediately prior to the amendment to ensure that the outputs from the Base Case as amended correspond to the outputs immediately prior to the amendment.
- 120.6.4 Any amendment to the logic or formulae incorporated in the Base Case shall be fully recorded so that the manner in which the revised Unitary Charge is calculated can be readily verified.
- 120.6.5 Any adjustments proposed to the logic or formulae of the Base Case by the Contractor, in respect of a Relevant Event, may be subject to independent audit on behalf of the Councils. The reasonable costs of such model audit will be borne by the Councils, except that if the audit identifies an error in the Base Case or the proposed Financial Model the Contractor shall reimburse such costs to the Councils.

## **120.7 Lump Sum Payment**

If payment of the Capital Expenditure required for any Relevant Event is to be made by the Councils in a lump sum which fully finances the Councils' Share of the Cumulative Capital Expenditure then no account shall be taken of the need to finance any Capital Expenditure in connection with the Relevant Event.

## **120.8 Procedures for Small Variations**

120.8.1 Notwithstanding the provisions of this Clause 120 and at the option of the Contractor with the Councils' prior written consent, the procedures in this Clause 120 shall not be operated to adjust the Unitary Charge in the case of a Relevant Event or a sequence of Relevant Event involving Capital Expenditure cumulatively not exceeding two hundred thousand pounds (£200,000) or which are not expected to lead cumulatively to a change in the Unitary Charge of more than five hundred thousand pounds (£500,000) in any Contract Year and in these circumstances the consequences of such Relevant Event or Relevant Events shall be taken into account when these procedures are next operated as a consequence of any further Relevant Event or in accordance with the provisions of Clause 120.8.2.

120.8.2 If, as a consequence of the Contractor exercising its option under Clause 120.8.1, at the end of any Contract Year there remain any Relevant Events for which the Unitary Charge has not been adjusted pursuant to this Clause 120, the procedures in this Clause 120 shall then be followed so as to adjust the Unitary Charge in respect of the Relevant Event or Relevant Events concerned.

## **120.9 Key Financial Indicators**

120.9.1 Where for the purposes of this Contract the Base Case is to be adjusted by reference to a Relevant Event the key financial indicators subject to Clause 120.9.2 shall be maintained in the revised Base Case immediately following the Relevant Event at the same rates (to three (3) decimal places) as those in the Base Case at the Commencement Date.

120.9.2 The "**Key Financial Indicators**" are:

- (a) the Historic Debt Service Cover Ratio (as defined in the Senior Financing Agreements);

- (b) the Forecast Debt Service Cover Ratio (as defined in the Senior Financing Agreements);
- (c) the Loan Life Cover Ratio; and
- (d) the Base Case Equity IRR.

#### **120.10 Copies of the Revised Base Case**

Following any change to the Base Case under the provisions of this Clause 120, the Contractor shall promptly deliver a copy of the revised Base Case to the Councils in the same form as is established at the date of this Contract or in such other form as may be agreed between the Parties.

#### **120.11 Custody of Base Case**

120.11.1 The Contractor shall no later than ten (10) Business Days after the date of this Contract deliver one (1) electronic copy on CD-Rom in Microsoft Excel 2003 of the Base Case and one (1) copy to each of the Councils (for the Councils to hold on their own behalf).

120.11.2 The Contractor shall lodge with the Councils one (1) electronic copy on CD - Rom in Microsoft Excel 2003 (or any media/software that replaces this) of each Base Case as may be revised from time to time pursuant to this Clause 120.11 no later than ten (10) Business Days after any revisions have been effected and agreed with the Councils.

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

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

120.11.5 Not Used.

#### **120.12 Ferrybridge Increase in Costs/Capital Expenditure**

For the purposes of calculating the financial adjustment pursuant to the provisions of this Clause 120 relating to any Relevant Event which gives rise to:

120.12.1 increased Capital Expenditure to be incurred at the Ferrybridge Facility the Councils shall be responsible for the Councils' Proportion of such Capital

Expenditure and shall, save where the Councils elect to pay by way of a lump sum, pay a monthly contribution, calculated as one twelfth (1/12) of the Councils' Proportions of the annual annuity based charge which is calculated based on the repayments of capital and interest of the agreed value of the increased capital costs over the remaining useful asset life from the date the work is completed. The interest will be calculated using a corporate bond yield for a company with a similar credit rating to SSE with a similar life to the average life of the monthly capital repayments.

120.12.2 increased operating expenditure to be incurred at the Ferrybridge Facility will be limited to that referred to in limbs (bb) and (cc) of the definition of Qualifying Change in Law and will be based on the following principles:

- (a) changes in costs can only apply to quantifiable output figures supported by external audit and reported to the Environment Agency, Ofgem or an equivalent or other relevant regulator; and
- (b) the following assumptions will apply:

1 tonne of SRF supplied to the Ferrybridge Facility and derived from Contract Waste is equivalent to	1 MWhe of net electrical power produced
1 tonne of SRF supplied to the Ferrybridge Facility and derived from Contract Waste is equivalent to	0.5 of a Levy Exemption Certificate
1 tonne of SRF supplied to the Ferrybridge Facility and derived from Contract Waste is equivalent to	128kg of bottom ash (dry basis) produced at the Ferrybridge Facility
1 tonne of SRF supplied to the Ferrybridge Facility and derived from Contract Waste is equivalent to	43kg of FGT Residue produced at the Ferrybridge Facility

Changes to the costs of other outputs (e.g. emissions) will be levied on the basis of the proportions set out in the Councils' Proportion.

120.12.3 The Change in Costs will be, subject to any adjustment for excess costs pursuant to Clause 20.22.1(a) or Clause 20.22.1(b) (Excess Costs above the Appeal Contingency (Ferrybridge)), reflected through a change in the SRF Contract Price (as defined in the SRF Offtake Contract) and the Base Case will be adjusted to reflect the impact on the Unitary Charge of such adjusted SRF Contract Price.

120.12.4 For the avoidance of doubt the Unitary Charge shall not be adjusted upwards in respect of any Relevant Event affecting the Ferrybridge Facility other than to the extent provided for in this Clause 120.12.

## **121 WHISTLE BLOWING PROCEDURE**

121.1 The Contractor shall and shall procure that the Operating Sub-Contractor shall within six (6) Months of the Service Commencement Date develop, implement and thereafter comply with an appropriate whistle blowing procedure as approved by the Councils (such approval not to be unreasonably withheld or delayed) which ensures that employees of the Operating Sub-Contractor are able to bring to the attention of a Relevant Authority malpractice, fraud and breach of Laws on the part of the Operating Sub-Contractor or any other Sub-Contractor without fear of disciplinary and other retribution or discriminatory action.

## **122 NET WORTH TEST**

### **122.1 Net Worth Test Only Applies Following the Senior Debt Discharge Date**

This Clause 122 will apply from the Senior Debt Discharge Date or the Senior Debt Discharge Date (SRF) as applicable.

### **122.2 Net Worth Test Whilst the SRF Offtake Contract is in Force**

Subject to Clauses 122.4 and 122.5 during the period in which the SRF Offtake Contract has not been terminated for any reason, the Net Worth Test will have been failed if the Net Worth of the Operating Sub-Contractor's Guarantor is less than [REDACTED] (indexed).

### **122.3 Net Worth Test Where the SRF Offtake Contract has been Terminated**

Subject to Clauses 122.4 and 122.5 following termination of the SRF Offtake Contract for any reason, the Net Worth Test will have been failed if the Net Worth of the Operating Sub-Contractor's Guarantor is less than [REDACTED] (indexed).

### **122.4 Net Worth Test Following a Stock Exchange Delisting**

Subject to Clause 122.5, if the Operating Sub-Contractor's Guarantor ceases to be listed on the London Stock Exchange (or any replacement or successor stock exchange) for any reason, the Net Worth Test will have been failed.

### **122.5 Replacement Security**

Subject to Clause 83.2.3(b), a Net Worth Test failure will have been rectified (and shall be deemed not to have occurred) in the event that the Operating Sub-Contractor has provided, or procured the provision of, Replacement Security (where Clauses 122.2 or 122.3 apply), or Replacement Security (Delisting) (where Clause 122.4 applies).

### **122.6 Failure of Replacement Security**

If the security which constituted Replacement Security or Replacement Security (Delisting) for the purposes of rectifying a Net Worth Test failure pursuant to Clause 122.5 (as applicable) ceases to satisfy the definition thereof then such event will constitute a Net Worth Test failure in respect of which Clause 122.5 will apply.

### **122.7 Accounting Principles**

All of the defined terms used in this Clause 122 are to be calculated in accordance with the accounting principles applied in connection with the Original Group Accounts.

122.8 If as a result of a change in IAS 17, the accounting principles applied by the Operating Sub-Contractor's Guarantor in connection with its accounts are different from those applied in connection with the Original Group Accounts:

122.8.1 the Contractor shall promptly advise the Councils; and

122.8.2 the Contractor and the Councils shall negotiate in good faith with a view to agreeing such amendments to this Clause 122 as are necessary to ensure that the Councils continue to benefit from a covenant which is comparable to that contained in this Clause 122 as at the date of this Contract; and

122.8.3 if amendments satisfactory to the Parties are agreed with thirty (30) Business Days, those amendments shall take effect in accordance with the terms of that agreement; and

122.8.4 if such amendments are not so agreed within the said thirty (30) Business Days, within fifteen (15) Days after the end of that thirty (30) Business Days period, the Parties shall refer the matter to the Dispute Resolution Procedure.

#### **122.9 Release Of Suitable Replacement Security**

If:

122.9.1 the Operating Sub -Contractor has provided, or procured the provision of, Replacement Security; and

122.9.2 during any subsequent twelve (12) Month period after the date on which the Replacement Security was provided, it has been agreed (or determined pursuant to Clause 104 (Dispute Resolution Procedure)) that the Net Worth Test would not have been failed if no such Replacement Security had been provided

then the relevant Replacement Security provided may be withdrawn and/or released. In such event, the Parties shall take all reasonable steps necessary to effect the prompt withdrawal or release of any such Replacement Security.

#### **122.10 Quarterly Certification**

122.10.1 Within twenty (20) Business Days of the start of each Quarter the Contractor shall write to the Councils with a statement of whether it considers the applicable Net Worth Test to have been satisfied.

122.10.2 The statement provided in Clause 122.10.1 will be supported by appropriate back-up information including but not limited to:

(a) confirmation of whether the Net Worth Test considered is that outlined in Clause 122.2 or Clause 122.3;

(b) clarification of whether the listing requirements referred to in Clause 122.4 are met;

- (c) whether a Net Worth Test failure has been rectified by the use of Replacement Security or Replacement Security (Delisting) together with details of the Replacement Security or Replacement Security (Delisting) as applicable; and
- (d) copies of relevant accounting information which has been used to support the calculations in respect of the statement in Clause 122.10.1.

122.10.3 Following receipt of the statement and support information referred to in Clause 122.10 above should the Councils reasonably require any additional information, the Contractor shall provide such information within twenty (20) Business Days of written request.

**EXECUTED as a DEED** by the Parties or their duly authorised representatives and delivered on the date of this Contract

**THE COMMON SEAL OF** )

**BARNSLEY METROPOLITAN** )

**BOROUGH COUNCIL** )

Was affixed to this Deed )

In the presence of: ) .....

**Authorised Signatory**

**THE COMMON SEAL OF** )  
**DONCASTER** )  
**BOROUGH COUNCIL** )  
Was affixed to this Deed )  
In the presence of: ) .....

**Authorised by the Assistant Director of Legal and Democratic Services**

**Number in seal register**

**THE COMMON SEAL OF** )

**ROTHERHAM** )

**BOROUGH COUNCIL** )

Was affixed to this Deed )

In the presence of: ) .....

**Authorised Signatory**

Executed as a deed by )

**3SE (BARNSELY, DONCASTER &** )

**ROTHERHAM) LIMITED** acting by its )

director/attorney )

\_\_\_\_\_ : )

Signature of director/attorney .....

Signature of witness .....

Name of witness .....

Address of witness .....

.....

.....

Occupation of witness .....

## **SCHEDULE 1 - Output Specification**

## **SCHEDULE 2 - Works Delivery Plan**

### **SCHEDULE 3 - Service Delivery Plan**

**SCHEDULE 4 - Payment Mechanism**

## **SCHEDULE 5 - Performance and Monitoring**

**SCHEDULE 6 - Annual Environmental Report**

**SCHEDULE 7 -[REDACTED]**

## **SCHEDULE 8 – Design**

**SCHEDULE 9 – Acceptance Testing**

**SCHEDULE 10 - Cumulative Capital Expenditure**

**SCHEDULE 11 - Independent Certifier's Appointment**

**SCHEDULE 12 - Sub-Contractor Direct Agreements**

**SCHEDULE 13 - Planned Maintenance**

**SCHEDULE 14 - Property Agreements**

**SCHEDULE 15 - Collateral Warranties**

**SCHEDULE 16 - Relevant Discharge Terms**

**SCHEDULE 17A -Required Insurances**

**SCHEDULE 17B – INSURANCE PREMIUM RISK SHARING SCHEDULE**

**SCHEDULE 18 - Funder Direct Agreement**

## **SCHEDULE 19 - Financing Agreements**

**SCHEDULE 20 - Ground Conditions and Contamination Scope**

**SCHEDULE 21 - Ancillary Documents**

**SCHEDULE 22 - Proposed Site Timetable**

**SCHEDULE 23 - Outline Substitute Waste Plan**

## **SCHEDULE 24 - Project Documents**

**SCHEDULE 25 - Parent Company Guarantee**

**SCHEDULE 26 - Significant Collection Changes Worked Examples**

**SCHEDULE 27 - Councils' Policies**

**SCHEDULE 28 - Contractor and Holdco Information**

**SCHEDULE 29 - Commercially Sensitive Information**

**SCHEDULE 30 - Joint Insurance Account Agreement**

**SCHEDULE 31 – Administrative Area and Baseline Collection Coverage**

**SCHEDULE 32 – Change Protocol**

**SCHEDULE 33 – Waste Law List**

**SCHEDULE 34 – Liaison Procedure**

**SCHEDULE 35 – Review Procedure**

**SCHEDULE 36 – Communications Strategy**

**SCHEDULE 37 – Approach to Permit Risk**

**SCHEDULE 38 – Title Matters**

**SCHEDULE 39 – [REDACTED]**

**SCHEDULE 40 – Waste Acceptance Protocol**

**SCHEDULE 41 – Off-Site Works not amounting to Off-Site Expenditure**

**SCHEDULE 42 – Employment**

**SCHEDULE 43 – EPC Escalation**

**SCHEDULE 44 – [REDACTED]**

**SCHEDULE 45 – Disclosed TLS Permit**