

SCHEDULE 37 – APPROACH TO PERMIT RISK

1 DEFINITIONS

In each part of this Schedule 37 (Approach to Permit Risk) the following expressions (in addition to those specified in Clause 1 (Definitions)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Permit Challenge Period means the expiry of the later of:

- (a) the period prescribed by law including but not limited to Part 54 of the Civil Procedure Rules during which a third party may institute a challenge which could result in the quashing or modification of the relevant decision of the Permitting Authority; and
- (b) where such a challenge is initiated within the period in (a) above, the period up to and including the final determination or withdrawal of that challenge plus five (5) Business Days

in respect of the ITSAD Facility or the Ferrybridge Facility, as applicable;

Judicial Review Challenge means proceedings brought under Part 54 of the Civil Procedure Rules in respect of an Environmental Permit;

Leading Counsel (Permit) means counsel experienced in environmental permitting matters and practising at the environmental bar who:

- (a) shall be agreed upon by the Parties or, in default of agreement shall be a minimum 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 this Schedule 37 (Approach to Permit Risk);

Permit Deemed Refusal means any failure by the Permitting Authority or the Secretary of State to determine an application for an Environmental Permit within the statutory period which would entitle the applicant to appeal against the deemed refusal of that application for an Environmental Permit or any other period which the applicant and the Permitting Authority may agree shall constitute the period for determination of the application for an Environmental Permit for the purposes of any appeal by the applicant;

Permit Long Stop Date means:

- (a) in respect of the ITSAD Facility, 1 October 2013; and
- (b) in respect of the Ferrybridge Facility, 1 May 2013;

Permit Proceedings means any of the following:

- (a) a direction by the Secretary of State requiring a referral to him for determination or determination by the Secretary of State (or any inspector appointed by him) of any application for an Environmental Permit under a direction pursuant to the Environmental Permitting Regulations;
- (b) an appeal to the Secretary of State under the Environmental Permitting Regulations against refusal (including Permit Deemed Refusal) of any application for an Environmental Permit;
- (c) an application seeking to remove or modify any conditions imposed in an Environmental Permit; and
- (d) an appeal to or direction by the Secretary of State requiring a referral to him for determination or determination by the Secretary of State under the Environmental Permitting Regulations relating to any application seeking to remove or modify any conditions imposed in an Environmental Permit;

RPP Permit Amendments means that where the Councils seek a Revised Project Plan in accordance with Clause 20.12 (Revised Project Plan) of this Contract that any reference:

- (a) to Satisfactory Planning Permission shall be substituted by Satisfactory Permit;
- (b) to the Planning Long Stop Date (ITSAD) shall be substituted by Permit Long Stop Date; and
- (c) in Clause 20.12.7(b) (Revised Project Plan) to Clause 20.14.1 (Termination as a Result of Planning Failure) shall be substituted by paragraph 11 (Failure to Obtain an Environmental Permit) of this Schedule 37 (Approach to Permit Risk); and

Satisfactory Permit means an Environmental Permit which does not impose on the applicant by way of condition or other obligation any requirement which:

- (a) in the case of the ITSAD Facility, renders the Contractor unable to carry out all or any of the Works and/or perform the Non-Ferrybridge Service in accordance with the Output Specification, Works Delivery Plan and/or Service Delivery Plan; or
- (b) in the case of the Ferrybridge Facility, renders 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

and an "**Unsatisfactory Permit**" is a Permit which is not a Satisfactory Permit.

2 APPLICATION OF THIS SCHEDULE

This Schedule 37 (Approach to Permit Risk) shall apply only to the Contractor's obligations in respect of the Environmental Permits.

3 CONTRACTOR TO OBTAIN ENVIRONMENTAL PERMITS

3.1 The Contractor undertakes to the Councils that (subject to the provisions of this Schedule 37 (Approach to Permit Risk)) it shall use All Reasonable Endeavours to obtain a Satisfactory Permit in the name of the Contractor or the Operating Sub-Contractor to enable it to undertake the Works and to deliver the Non-Ferrybridge Service at the ITSAD Facility and in the name of the SRF Offtaker (or an Affiliate of the SRF Offtaker) to enable it to undertake the Ferrybridge Works and to deliver the Service (other than the Non-Ferrybridge Service) at the Ferrybridge Facility in each case, by the Permit Long Stop Date.

3.2 The Contractor shall bear the cost of obtaining and of implementing and complying with the provisions and conditions of all Satisfactory Permits, other than the Councils' internal costs and any costs relating to Permit Proceedings:

- (a) in the name of the Contractor which exceed the Appeal Contingency (ITSAD) (subject to paragraph 7.1 below); and/or
- (b) in the name of the SRF Offtaker (or an Affiliate of the SRF Offtaker) which exceed the Appeal Contingency (Ferrybridge) (subject to paragraph 7.1A below)

and in respect of which the Councils have given prior written consent that such costs may be incurred (where the Councils are responsible for the same) in accordance with paragraph 6 (Permit Proceedings) below.

- 3.3 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 paragraph 3.1; and
 - (b) a written summary of those steps which it anticipates taking in the following quarter in order to comply with its obligations under paragraph 3.1.
- 3.4 Without limiting the Contractor's obligations under paragraph 3.1, the Councils may within five (5) Business Days after receipt of such summary notify the Contractor in writing of any further measures which they believe the Contractor should take in order to comply with its obligations under paragraph 3.1 and the Contractor shall give due consideration to any such suggestions of the Councils.
- 3.5 Without prejudice to the Contractor's obligations under this paragraph 3, 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 paragraph 3.1 to use All Reasonable Endeavours to obtain any Satisfactory Permit and to rectify any failures to do so pursuant to paragraph 3.7 below. 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 any Satisfactory Permit and the Councils' confirmation shall be solely based on such information.
- 3.6 Subject to paragraph 3.9, where:
- (a) the Councils confirm in writing that in their opinion the Contractor has fully complied with its obligations set out in paragraph 3.1 to use All Reasonable Endeavours, the Contractor shall be considered to have used All Reasonable Endeavours up until the date of the Contractor's request pursuant to paragraph 3.5; or
 - (b) the Contractor has made a request pursuant to paragraph 3.5 and the Councils have failed to respond to such request within twenty (20)

Business Days then the Councils shall be deemed to have stated that the Contractor has used All Reasonable Endeavours, (provided the Councils may refer the matter to the Dispute Resolution Procedure within five (5) Business Days of the expiry of such twenty (20) Business Day period); or

- (c) the Councils confirm that an AREP Failure has been rectified pursuant to paragraph 3.6(b) or it has been determined through the Dispute Resolution Procedure that an AREP Failure has been rectified then the Contractor shall be considered to have used All Reasonable Endeavours up to the date of such confirmation or determination

provided that in the event that any information subsequently comes to the attention of the Councils which suggests that the Contractor has failed to use All Reasonable Endeavours prior to the date of the Contractor's request pursuant to this paragraph 3.6 then the Councils shall notify the Contractor of the same (a "**Subsequent Information Notice**") and any such written confirmation provided by the Councils pursuant to this paragraph 3.6 or failure to provide written confirmation pursuant to paragraph 3.8(b) shall be disregarded.

3.7 Where, in response to a request made pursuant to paragraph 3.5, the Councils confirm in writing that in their opinion the Contractor has not complied with its obligations under paragraph 3.1 (or where the Councils have issued a Subsequent Information Notice to the Contractor in accordance with paragraph 3.6) at any time ("**AREP Failure**"), the Councils shall give reasons for such opinion, including reasonable details of the AREP 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 such AREP Failure ("**AREP 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 AREP Rectification Notice, provide written confirmation as to whether, in the Councils' opinion (acting reasonably) and based upon (i) the content of the AREP Rectification Notice and the supporting information provided with it, and (ii) any other information which the Councils ought reasonably to

have been aware of, the Contractor has or has not rectified the AREP Failure; and

- (c) if the Councils confirm in writing that in their opinion an AREP Failure has not been rectified, then the Contractor shall be entitled to provide a further AREP Rectification Notice(s) and the provisions of this paragraph 3.7 shall apply.

3.8 Not Used.

3.9 Where the Contractor remedies a failure to use All Reasonable Endeavours in accordance with paragraph 3.7 it shall not be entitled to an extension to the Planned Readiness Date, Planned Service Commencement Date nor any longstop date to the extent that such extension is attributable to such failure to use All Reasonable Endeavours.

4 MEANING OF ALL REASONABLE ENDEAVOURS

4.1 For the purposes of paragraph 3 (Contractor to Obtain Environmental Permits) of this Schedule 37 (Approach to Permit Risk) "**All Reasonable Endeavours**" means that the Contractor shall:

- (a) in relation to any application for any Environmental Permit incur such expenditure and do all the things reasonably necessary (including engaging the Permitting Authority in discussions regarding the proposed application for an Environmental Permit prior to the submission of such application, the commencement or defence of Permit 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 Permit;
- (b) prepare all documentation and supporting information in accordance with good practice for application for environmental permits under the Environmental Permitting Regulations;
- (c) respond to all queries of the Permitting Authority or the Secretary of State or his inspector promptly;
- (d) (subject to the provisions of paragraph 7 (Appeal Contingency (ITSAD)) and paragraph 7A (Appeal Contingency (Ferrybridge))) meet

the 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 costs of securing the services of any expert witnesses considered necessary for the purpose of such Permit Proceedings; and

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

4.2 The Councils confirm that they are satisfied that the Contractor has complied with its obligations under paragraph 3.1 in the period prior to the date of this Contract.

5 OBLIGATIONS OF THE CONTRACTOR

5.1 In the case of the Environmental Permit for the ITSAD Facility only, the Contractor shall :

- (a) 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 application for an Environmental Permit; and
- (b) not vary any application for an Environmental Permit 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 application for an Environmental Permit the Contractor shall inform the Councils' Representative of the variation to such application for an Environmental Permit and (where appropriate and/or applicable) provide to the Councils' Representative any documents or letters relating to such variation.

6 PERMIT PROCEEDINGS

6.1 If, in respect of any application for an Environment Permit, the relevant Permitting Authority:

- (a) refuses to grant such Environmental Permit or there is a Permit Deemed Refusal; or
- (b) grants such Environmental Permit but it is not a Satisfactory Permit 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 Permit Proceedings may secure a Satisfactory Permit; or
- (c) refuses to grant an application to remove, modify or vary any condition imposed in such Environmental Permit; or
- (d) grants such Environmental Permit in respect of which any condition is imposed which is unreasonable in the Contractor's reasonable opinion; or
- (e) paragraph 10.10 applies

the Contractor shall take the opinion of Leading Counsel (Permit) as to the merits of pursuing any Permit Proceedings (save where paragraph 6.2(b) applies).

6.2 If:

- (a) Leading Counsel (Permit) advises the Contractor that there is a reasonable prospect of success in any Permit Proceedings in order to obtain a Satisfactory Permit (or in order to remove, modify or vary any condition referred to in paragraph 6.1(c)); or
- (b) the Parties agree (or it is determined pursuant to Clause 104 (Dispute Resolution)) to pursue such Permit Proceedings without obtaining the opinion of Leading Counsel (Permit)

then the Contractor shall institute such Permit Proceedings until determination of such Permit Proceedings (unless subsequently the Councils (in accordance with paragraph 6.4) or the Contractor (in accordance with paragraph 6.6) (as the case may be) directs that such Permit Proceedings shall cease to be pursued).

6.3 At any reasonable time after the commencement of any Permit Proceedings in relation to any Environmental Permit the Councils may require the Contractor to take (or the Contractor may take) the opinion of Leading Counsel (Permit) as to the merits of continuing to pursue such Permit Proceedings and the Councils may require the Contractor to make such opinion available to the Councils (and if the Contractor takes the opinion of Leading Counsel (Permit) otherwise than pursuant to the instruction of the Councils, it will notify the Councils of the same).

6.4 In the event that Leading Counsel (Permit) advises in an opinion which has been taken pursuant to paragraph 6.1 or subsequently under paragraph 6.3 that there is no reasonable prospect of success in obtaining a Satisfactory Permit, the Councils shall serve written notice on the Contractor on or before a date falling twenty (20) Business Days from the date of receipt by the Councils of the opinion of Leading Counsel (Permit) (and the related instructions to such counsel including any further clarifications or submissions in respect of such instructions) either:

- (a) directing that the Contractor shall not pursue or shall cease to pursue the relevant Permit Proceedings; or
- (b) directing that the Contractor institutes or continues the relevant Permit Proceedings

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

6.5 If, pursuant to paragraph 6.4(a), the Councils (acting reasonably) direct that the Contractor should not pursue or should cease to pursue such Permit Proceedings, the Contractor may still institute or continue to pursue (or procure the pursuit of) those Permit Proceedings, (in the case of the Environmental Permit for the ITSAD Facility only) subject to service of prior written notice of its intention to do so upon the Councils within twenty (20) Business Days of the date of receipt of the Councils' notice under paragraph 6.4(a) and the Contractor will bear all the costs of instituting or continuing to pursue those Permit Proceedings which it incurs from the date on which the Councils served notice pursuant to paragraph 6.4(a) provided that paragraph 7 (Appeal Contingency (ITSAD)), paragraph 7A (Appeal Contingency (Ferrybridge)) and paragraph 9 (Costs Awarded in Permit Proceedings) will not apply to such costs which are incurred from such date.

6.6 The Contractor shall be entitled at any time, in its absolute discretion, to cease to pursue any Permit Proceedings which it institutes or continues pursuant to paragraph 6.5 and in respect of which it has undertaken to bear the costs pursuant to paragraph 6.5 (and such act shall not be deemed to be a failure to use All Reasonable Endeavours).

7 APPEAL CONTINGENCY (ITSAD)

7.1 The Contractor will bear all costs relating to and arising from any Permit Proceedings in respect of the ITSAD Facility (including for the avoidance of doubt the costs of obtaining any Leading Counsel (Permit's opinion under paragraph 6 (Permit Proceedings)) up to the limit of the Appeal Contingency (ITSAD) (taking account of any costs of Proceedings previously incurred under Clause 20 (Planning Permissions) and any costs of Permit Proceedings in each case, in relation to the ITSAD Facility since the Commencement Date) following which 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 Permit Proceedings provided that:

- (a) the Contractor shall within twenty (20) Business Days of receiving:
 - (i) written notification that the application for an Environmental Permit for the ITSAD Facility is being referred to the Secretary of State;
 - (ii) any decision of the Permitting Authority or the Secretary of State to refuse an Environmental Permit for the ITSAD Facility;
 - (iii) a Permit Deemed Refusal in respect of an Environmental Permit for the ITSAD Facility; or
 - (iv) the grant of an Environmental Permit for the ITSAD Facility which is to be the subject of the Permit Proceedings

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 Permit 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 the

Contractor shall at no time be entitled to claim from the Councils any costs above the said 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 its reasonable endeavours to ensure that the costs of the Permit Proceedings are kept to the minimum extent prudent and reasonable at all times.

7A APPEAL CONTINGENCY (FERRYBRIDGE)

7.1A The Contractor (or the SRF Offtaker on its behalf) will bear all costs relating to and arising from any Permit Proceedings in respect of the Ferrybridge Facility (including for the avoidance of doubt the costs of obtaining any Leading Counsel (Permit)'s opinion under paragraph 6 (Permit Proceedings)) up to the limit of the Appeal Contingency (Ferrybridge) except that if the Councils direct the Contractor to institute or continue Permit Proceedings in accordance with paragraph 6.4(b) in relation to the Ferrybridge Facility the Contractor (or the SRF Offtaker on its behalf) will bear all such costs up to the limit of the Appeal Contingency (Ferrybridge) (with such limit reduced by the amount of any costs incurred in connection with s36 Proceedings for which the Contractor is responsible under Clause 20.18 to 20.29 (inclusive)) since the Commencement Date, and the Councils shall indemnify the Contractor for all amounts reasonably, properly and prudently spent or contracted to be spent by the Contractor (or the SRF Offtaker on its behalf) in excess of such limit (reduced, as referred to above in respect of the Ferrybridge Facility) in the conduct of the Permit Proceedings provided that:

- 7.1.1A the Contractor shall within twenty (20) Business Days of receiving a notice from the Councils pursuant to paragraph 6.4(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 Permit 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 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

7.1.2A the Contractor shall use reasonable endeavours to ensure that the costs of the Permit Proceedings are kept to the minimum extent prudent and reasonable at all times.

8 EXCESS COSTS ABOVE APPEAL CONTINGENCY

8.1 Where the Councils are required to indemnify the Contractor pursuant to paragraph 7 (Appeal Contingency (ITSAD)) for costs incurred over and above the amount of the Appeal Contingency (ITSAD) (as adjusted pursuant to paragraph 7.1) and/or pursuant to paragraph 7A (Appeal Contingency (Ferrybridge)) for costs incurred over and above the amount of the Appeal Contingency (Ferrybridge) (as adjusted pursuant to paragraph 7.1A) ("**Permit Excess Costs**"), the Councils shall reimburse the Contractor such Permit Excess Costs together with any reasonable and proper financing costs subject to the Contractor providing satisfactory evidence to the Councils of such Permit 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 adjustment to the Unitary Charge in accordance with Clause 120 (Revision and Custody of Financial Model) for all or some part of the remainder 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(s)) in respect of the whole amount

so that, in any such case, such Permit 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 paragraph 11 (Failure to Obtain an Environmental Permit), the Councils shall pay any unreimbursed Permit Excess Costs to the Contractor within sixty (60) Business Days of such termination.

8.2 The Contractor shall provide the Councils with such cost information as the Councils may request in writing (acting reasonably) including any breakdown of costs as is reasonably practicable to allow the Councils to undertake any of the methods of payment set out in paragraphs 8.1(a) to 8.1(c) above and the Contractor shall provide

such information promptly and in any event within five (5) Business Days of a written request from the Councils pursuant to this paragraph 8.2.

9 COSTS AWARDED IN PERMIT PROCEEDINGS

If the Councils have indemnified the Contractor for its costs in respect of any Permit Proceedings pursuant to paragraph 8 (Excess Costs above the Appeal Contingency) any costs awarded to the Contractor in those Permit Proceedings shall be paid to the Councils in full up to the amount they have paid pursuant to paragraph 8 (Excess Costs above Appeal Contingency) and thereafter shall be retained by the Contractor. All payments to the Councils shall be by way of a lump sum payment within twenty (20) Business Days of the Contractor receiving such costs to which they relate.

10 SATISFACTORY PERMIT

10.1 Where by the relevant Permit Long Stop Date for the ITSAD Facility or the Ferrybridge Facility, the Contractor obtains either:

- (a) a Satisfactory Permit; or
- (b) (in the case of the Environmental Permit for the ITSAD Facility only) an Unsatisfactory Permit where the Councils have served a Councils Notice of Change (which has been approved in accordance with the Change Protocol) to enable the Contractor:
 - (i) to comply with the Unsatisfactory Permit and its other obligations under this Contract without being in breach of this Contract; or
 - (ii) to render compliance with the relevant part of the Unsatisfactory Permit unnecessary; or
 - (iii) to render the Unsatisfactory Permit a Satisfactory Permit

the Contractor shall be deemed to have obtained the relevant Satisfactory Permit.

10.2 As soon as reasonably practicable and in any event within fifteen (15) Business Days after issue of an Environmental Permit, the Contractor shall provide to the Councils a copy of such Environmental Permit and will notify the Councils in writing whether or not the Contractor considers the Environmental Permit to be a Satisfactory Permit or an Unsatisfactory Permit. If the Contractor considers that an Environmental Permit is an

Unsatisfactory Permit it may deem such Unsatisfactory Permit to be a Satisfactory Permit and shall within fifteen (15) Business Days of the issue of the notice given pursuant to this paragraph 10.2 notify the Councils of the same.

10.3 If the Contractor considers that the Environmental Permit in respect of the ITSAD Facility only will be an Unsatisfactory Permit it shall provide to the Councils within fifteen (15) Business Days of the issue of the notice given pursuant to paragraph 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 which, if taken, would:
 - (i) enable the Contractor to comply with the Environmental Permit without being in breach of this Contract; and/or
 - (ii) render it a Satisfactory Permit; or
 - (iii) render compliance with such Unsatisfactory Permit unnecessary including:
 - (iv) initiating Permit Proceedings; or
 - (v) issuing a Councils' Notice of Change to vary the Works and/or the Service.

10.3A If the Contractor considers that the Environmental Permit in respect of the Ferrybridge Facility only will be an Unsatisfactory Permit it shall provide to the Councils within fifteen (15) Business Days of the issue of the notice given pursuant to paragraph 10.2:

- (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 Environmental Permit in respect of the Ferrybridge Facility.

10.4 If the Contractor fails to provide the notice pursuant to paragraph 10.2 within fifteen (15) Business Days after the issue of any Environmental Permit then on the expiry of the Permit Challenge Period for such Environmental Permit, such Environmental Permit shall be deemed to be a Satisfactory Permit.

- 10.5 If the Contractor notifies the Councils that an Environmental Permit is a Satisfactory Permit, or such an Environmental Permit is deemed to be a Satisfactory Permit in accordance with paragraph 10.4 then the provisions of paragraph 10.1 shall apply.
- 10.6 If the Contractor notifies the Councils that an Environmental Permit will, on expiry of the Permit Challenge Period, be an Unsatisfactory Permit the Councils shall, within ten (10) Business Days of receipt of the notice given pursuant to paragraph 10.3 or 10.3A, as appropriate, notify the Contractor in writing whether or not the Councils accept that the Environmental Permit is or will be an Unsatisfactory Permit and whether they accept the action indicated by the Contractor in the notice served pursuant to paragraph 10.3 (in respect of the Environmental Permit for the ITSAD Facility) or paragraph 10.3A (in respect of the Environmental Permit for the Ferrybridge Facility) and in particular whether (in respect of either the ITSAD Facility and/or the Ferrybridge Facility) Permit Proceedings will be likely to secure a Satisfactory Permit having regard to the grounds given by the Contractor in any notice served pursuant to paragraph 10.3 or 10.3A, as appropriate.
- 10.7 If the Councils do not accept within the ten (10) Business Days period set out in paragraph 10.6 that an Environmental Permit will be, on expiry of the Permit Challenge Period, an Unsatisfactory Permit, the matter may be referred at the instance of either Party for determination by Leading Counsel (Permit) as to whether the Environmental Permit is a Satisfactory Permit or an Unsatisfactory Permit and/or whether Permit Proceedings would be likely to secure a Satisfactory Permit.
- 10.8 If the Councils accept in accordance with paragraph 10.6 or it is determined pursuant to paragraph 10.7 that an Environmental Permit is an Unsatisfactory Permit and the Parties agree or it is determined pursuant to paragraph 10.7 that Permit Proceedings will not be likely to secure a Satisfactory Permit by the Permit Long Stop Date:
- (a) in the case of the ITSAD Facility, the Councils may:
 - (i) within thirty (30) Business Days after it is accepted by the Councils pursuant to paragraph 10.6 or it is determined in accordance with paragraph 10.7 by Leading Counsel (Permit) that the Environmental Permit is an Unsatisfactory Permit issue a Councils' Notice of Change in respect of the Works and/or the Service or other actions required which would if implemented:

- (A) enable the Contractor to comply with the terms of the Environmental Permit for the ITSAD Facility which make it an Unsatisfactory Permit without being in breach of this Contract or to make it a Satisfactory Permit or to make compliance with such Unsatisfactory Permit unnecessary; and
 - (B) in each case upon confirmation and final implementation of the Councils Change arising as a result of such Councils Notice of Change in accordance with Schedule 32 (Change Protocol) the Environmental Permit for the ITSAD Facility shall be deemed to be a Satisfactory Permit on the expiry of the relevant Permit Challenge Period); or
 - (ii) require the Contractor to prepare a Revised Project Plan in which case the provisions of Clause 20.12 (Revised Project Plan) shall apply (as amended by the RPP Permit Amendments) and the provisions of paragraph 3 (Contractor to Obtain Environmental Permits) shall cease to apply; and/or
- (b) in the case of the Ferrybridge Facility:
- (i) the Contractor may within thirty (30) Business Days after it is accepted by the Councils pursuant to paragraph 10.6 or it is determined in accordance with paragraph 10.7 by Leading Counsel (Permit) that the Environmental Permit is an Unsatisfactory Permit issue a Contractor's Notice of Change in respect of the Works and/or the Service or other actions required which would if implemented enable the Contractor to comply with the terms of the Environmental Permit for the Ferrybridge Facility and in each case upon confirmation and final implementation of the Contractor's Change arising as a result of such Contractor Notice of Change the Environmental Permit in respect of the Ferrybridge Facility shall be deemed to be a Satisfactory Permit on expiry of the relevant Permit Challenge Period; or
 - (ii) subject to paragraph 10.8(b)(i), the Councils may require the Contractor to prepare a Revised Project Plan in which case the

provisions of Clause 20.12 (Revised Project Plan) shall apply (as amended by the RPP Permit Amendments) and the provisions of paragraph 3 (Contractor to Obtain Environmental Permits) shall cease to apply.

10.9 If:

- (a) the Councils:
 - (i) do not issue a Councils' Notice of Change within the thirty (30) Business Day period set out in paragraph 10.8(a) (or such longer period as may be agreed by the Parties); or
 - (ii) withdraw or are deemed to have withdrawn the Councils' Notice of Change issued pursuant to paragraph 10.8(a) in accordance with the terms of the Change Protocol; and/or
- (b) the Contractor:
 - (i) does not issue a Contractor Change Notice within the thirty (30) Business Day Period set out in paragraph 10.8(b) (or such longer period as may be agreed between the Parties); or
 - (ii) withdraws or is deemed to have withdrawn a Contractor Change Notice issued pursuant to paragraph 10.8(b)

then, in either such case, the Contractor shall prepare a Revised Project Plan in which case Clause 20.12 (Revised Project Plan) shall apply (as amended by the RPP Permit Amendments) and the provisions of paragraph 3 (Contractor to Obtain Environmental Permits) shall cease to apply.

10.10 If:

- (a) the Councils accept pursuant to paragraph 10.6 or it is determined pursuant to paragraph 10.7 that an Environmental Permit is an Unsatisfactory Permit; and
- (b) the Parties agree or it is determined that Permit Proceedings might secure a Satisfactory Permit

then the Parties shall seek the opinion of Leading Counsel (Permit) pursuant to paragraph 6 (Permit Proceedings) and:

- (c) in the case of the ITSAD Facility, paragraph 7 (Appeal Contingency (ITSAD)) shall apply and if Permit Proceedings are not instituted or, if instituted, are withdrawn or determined leaving in place an Unsatisfactory Permit the Councils may either:
 - (i) within thirty (30) Business Days after it is accepted by the Councils pursuant to paragraph 10.6 or it is determined in accordance with paragraph 10.7 by Leading Counsel (Permit) that the Environmental Permit is an Unsatisfactory Permit issue a Councils Notice of Change in respect of the Works and/or the Service or other actions required which would if implemented:
 - (A) enable the Contractor to comply with the terms of the Environmental Permit for the ITSAD Facility which make it an Unsatisfactory Permit without being in breach of this Contract or to make it a Satisfactory Permit or to make compliance with such Unsatisfactory Permit unnecessary; and
 - (B) in each case upon confirmation and final implementation of the Councils' Change arising as a result of such Councils' Notice of Change in accordance with Schedule 32 (Change Protocol) the Environmental Permit for the ITSAD Facility shall be deemed to be a Satisfactory Permit on the expiry of the relevant Permit Challenge Period); or
 - (ii) require the Contractor to prepare a Revised Project Plan in which case the provisions of Clause 20.12 (Revised Project Plan) shall apply (as amended by the RPP Permit Amendments) and the provisions of paragraph 3 (Contractor to Obtain Environmental Permits) shall cease to apply; and/or
- (d) in the case of the Ferrybridge Facility, paragraph 7A (Appeal Contingency (Ferrybridge)) shall apply and if Permit Proceedings are

not instituted or, if instituted, are withdrawn or determined, leaving in place an Unsatisfactory Permit:

- (i) within thirty (30) Business Days after it is accepted by the Councils pursuant to paragraph 10.6 or it is determined in accordance with paragraph 10.7 by Leading Counsel (Permit) that the Environmental Permit is an Unsatisfactory Permit the Contractor may issue a Contractor's Notice of Change in respect of the Works and/or the Service or other actions required which would if implemented enable the Contractor to comply with the terms of the Environmental Permit for the Ferrybridge Facility and in each case upon confirmation and final implementation of the Contractor's Change arising as a result of such Contractor Notice of Change the Environmental Permit in respect of the Ferrybridge Facility will be deemed to be a Satisfactory Permit on expiry of the relevant Permit Challenge Period; or
- (ii) subject to paragraph 10.10(b)(i), the Councils may require the Contractor to prepare a Revised Project Plan in which case the provisions of Clause 20.12 (Revised Project Plan) shall apply (as amended by the RPP Permit Amendments) and the provisions of paragraph 3 (Contractor to Obtain Environmental Permits) shall cease to apply.

11 FAILURE TO OBTAIN AN ENVIRONMENTAL PERMIT

11.1 At the earlier of:

- (a) the date when the Parties acting reasonably conclude and agree that it will not be possible to obtain a Satisfactory Permit for the ITSAD Facility by the Permit Long Stop Date or a Satisfactory Permit for the Ferrybridge Facility by the Permit Long Stop Date; and
- (b) the Permit Long Stop Date for the ITSAD Facility or the Permit Long Stop Date for the Ferrybridge Facility, where at such date the Contractor has failed to obtain a Satisfactory Permit for the ITSAD Facility or the Ferrybridge Facility (as the case may be); and

- (c) unless the Parties agree otherwise, the date at which Leading Counsel (Permit) advises under paragraph 6.1 (Permit Proceedings) or paragraph 6.4 (Permit Proceedings) that there is no reasonable prospect of success in pursuing or continuing to pursue any Permit Proceedings in order to obtain a Satisfactory Permit, save where (and for so long as) the Councils have directed or the Contractor has chosen to initiate or continue to pursue those Permit Proceedings under paragraphs 6.4 (Permit Proceedings) and 6.5 (Permit Proceedings); or
- (d) unless the Parties agree otherwise, the date at which Permit Proceedings have been finally determined (including any withdrawal of the same) and a Satisfactory Permit has not been obtained

the Councils shall by notice in writing advise the Contractor that they either:

- (i) wish to terminate this Contract pursuant to paragraph 11.2; or
- (ii) wish the Contractor to propose a Revised Project Plan, in which case Clause 20.12 (Revised Project Plan) shall apply (as amended by the RPP Permit Amendments).

11.2 In the event of a notice of termination served pursuant to paragraph 11.1, this Contract shall terminate on the Day falling thirty (30) Business Days from the date of such notice of termination and (provided that the Contractor has complied with (or is considered to have complied with) its obligations under paragraph 3.1 to use All Reasonable Endeavours to obtain a Satisfactory Permit for each of the ITSAD Facility and the Ferrybridge Facility and has complied with its obligations in Clause 20.1.1 (Planning Permissions) and 20.18.1 (Contractor to obtain s36 Consent in relation to Ferrybridge Facility) to use All Reasonable Endeavours (as defined in Clause 20.2 (Planning Permissions) and 20.19 (Meaning of All Reasonable Endeavours) respectively) to secure a Satisfactory Planning Permission for the ITSAD Facility and a Satisfactory s36 Consent for the Ferrybridge Facility) the provisions of Clause 86 (Compensation on Termination for Force Majeure) shall apply as if such termination arose as a result of 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):

- (a) limb (a) of the Base Senior Debt Termination Amount is zero;

(b) Junior Debt shall be no greater than six million six hundred thousand pounds (£6,600,000); and

(c) Sub-Contractor Breakage Costs shall be zero

provided that, for the purposes of calculating the Force Majeure Termination Sum on any termination pursuant to this paragraph 11, any sums drawn down under the Equity Bridge Loan shall be considered to be Junior Debt.

11.3 If the Contractor has not used All Reasonable Endeavours as described in paragraph 4 (Meaning of All Reasonable Endeavours) above to obtain a Satisfactory Permit for the ITSAD Facility then 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.

12 DELAYS AND EXTENSIONS OF TIME

12.1 If at the Planned Works Commencement Date (and subject to the Contractor having used or having been considered or it is determined (in accordance with paragraph 3.6 (Contractor to Obtain Environmental Permits) to have used All Reasonable Endeavours to obtain a Satisfactory Permit for the ITSAD Facility):

- (i) the Contractor has not obtained a Satisfactory Permit for the ITSAD Facility; or
- (ii) the Contractor has procured the grant of a Satisfactory Permit for the ITSAD Facility, but the Permit Challenge Period in respect of such Satisfactory Permit has not expired; or
- (iii) 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 the Satisfactory Permit for the Ferrybridge Facility)

(together a "**Permit Delay**"), then each of such events shall be a Compensation Event.

12.2 Without prejudice to the Contractor's right to obtain relief from its obligations and/or compensation under this Contract (including for the avoidance of doubt, an extension of time) pursuant to Clause 31 (Delays due to a Compensation Event) whenever a Permit Delay has arisen and before the Contractor has obtained a Satisfactory Permit, if the

Contractor subsequently obtains a Satisfactory Permit the Contractor shall promptly 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 and/or Tests at 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 "**Revised Project Dates**").

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

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

12.4 In default of notification of the proposed Revised Project Dates in accordance with paragraph 12.2 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.

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

13 PERMIT CHALLENGE PERIOD AND JUDICIAL REVIEW CHALLENGE

In the event that a Judicial Review Challenge is instituted in respect of an Environmental Permit during the Permit Challenge Period then any Environmental Permit which would otherwise be deemed to be a Satisfactory Permit shall be deemed to be and to have always been an

Unsatisfactory Permit until such time as the Judicial Review Challenge is dismissed, withdrawn, quashed or defeated.